

LICENSING OF HOUSES OF MULTIPLE OCCUPATION- TRANSFERRING FUNCTION FROM NORTHERN IRELAND HOUSING EXECUTIVE APRIL 2019	4th December 2018
TO: ENVIRONMENTAL SERVICES COMMITTEE	
FOR DECISION	

Linkage to Council Strategy (2015-19)	
Strategic Theme	Protecting and Enhancing our Environments and Assets
Outcome	Implementation of the Houses in Multiple Occupation Act Northern Ireland 2016
Lead Officer	Head of Health & Built Environment
Cost: (If applicable)	To be fully funded from licensing fees received

Background

The Houses in Multiple Occupation (HMO) Act NI 2016 is due to commence on 1st April 2019. This will transfer the responsibility for the Houses in Multiple Occupation ('HMO') registration scheme from Northern Ireland House Executive to local district councils. It also creates a new licensing system which requires landlords to demonstrate that they are a fit and proper person to be a HMO landlord.

The purpose of this report is to consider the role of the Environmental Services Committee in the decision making process relating to the licensing of HMOs and to consider proposed amendments to the Scheme of Delegation.

Key Issues

The new legislative control, the Houses in Multiple Occupation (HMO) Act NI 2016 ('the 2016 Act') received Royal Assent on 12th May 2016. On commencement of this Act, HMO regulation will transfer responsibility for the HMO registration scheme from the Northern Ireland House Executive to councils. It also creates a new licensing system which requires landlords to demonstrate that they are a fit and proper person to be a HMO landlord. This will also be assessed by councils.

A copy of the 2016 Act can be found at:
<http://www.legislation.gov.uk/nia/2016/22/contents>.

A building or part of a building is a HMO within the meaning of the 2016 Act if the living accommodation is:

- occupied by three or more unrelated persons from three or more families, and
- occupied by them as their only or main residence, and
- either a house, premises or a group of premises owned by the same person with shared basic amenities.

The 2016 Act lists types of building that are not HMOs, and include, for example, those where the property is occupied only by the owners, buildings occupied by students that are managed and controlled by an educational establishment, where the occupants are members of, and fully maintained by, a religious order whose principal occupation is prayer, contemplation, religious education or the relief of suffering, and buildings owned by the crown and occupied by members of the armed forces.

The Role of Committee in the Decision-Making Process

As Members are aware the Committee has authority to recommend to Council the determination of applications in relation to a variety of matters, such as Entertainments Licences, Street Trading Licences, etc where objections have been received.

Given the licensing/regulatory nature of the 2016 Act and the responsibility of the Committee in terms of assessing similar type issues, it is recommended that the Committee also assumes responsibility for making a recommendation to Council to determine those applications for a house in multiple occupation where adverse representations are received, where variation of a licence is required, in the determination of a fit and proper person check, and in the revocation of licences, except where in the public interest the Director of Environmental Services, in consultation with the Chief Executive and Councils Solicitor, considers that there are particular circumstances which make it necessary to suspend a licence immediately.

It may be necessary that Standing Orders need to be amended to set out those aspects of the 2016 Act for which the Environmental Services Committee will have delegated authority from Council to determine.

The Committee should note the legislative requirement to process a licence application within a reasonable time. Councils should aim to determine applications before the end of the period of 3 months beginning with the date on which the Council received a valid application form. Although it is appreciated that in certain cases, e.g. where physical changes to the living accommodation are to be made, additional time period might be required. A court of summary jurisdiction may extend the period in the case of a particular application.

Outline of the Licensing Regime

Licence Requirements

Under the terms of the 2016 Act, a council may only grant the licence is satisfied:

1. The occupation of the property as a HMO would not be a breach of planning control;

2. The owner, and any managing agent, are fit and proper persons;
3. The proposed management arrangements are satisfactory;
4. Granting the licence will not result in the over provision of HMOs in the locality; and
5. The property is fit for human habitation and is suitable for occupation as a HMO.

A HMO licence may include such conditions as the council considers appropriate for the regulation of the management, use and occupation of the HMO and its condition and contents. A licence can be granted for up to 5 years but no less than 6 months.

Under the 2016 Act it is an offence to operate as an unlicensed HMO, to exceed the permitted occupancy or breach the Licence conditions. It is also an offence to claim a property is licensed when it is not and for failure to name a managing agent on the Licence. Councils will also have the power to serve a range of enforcement notices.

Notice of applications must be placed at the property and advertised in a newspaper circulating in the locality of the HMO.

In determining an application for a HMO licence a council must give the applicant an opportunity of appearing before and of being heard by it, and give any person who has made any such representation, an opportunity of appearing before and of being heard by the council. Whilst it is proposed at this stage that the committee would hear any such representations with respect to applications, this arrangement would be subject to review.

Refusal, revocation or variation of a licence

The Council has powers under the Act to refuse an application, revoke or make a variation to a licence in a variety of circumstances.

Refusal of a licence

Before it formally considers an HMO application, the Council has the power to refuse to consider it, if it considers that occupation of the accommodation as an HMO would be a breach of planning control.

In considering the application the Council has to satisfy itself that the applicant, and their agent, has signed a self-declaration confirming fit and proper person status to operate an HMO. If the Council is not so satisfied, they must refuse the application.

The Council must also satisfy itself that the property is suitable for use as an HMO or could be made so by including conditions in the licence. If the Council is not so satisfied, it must refuse the application.

The Fire and Rescue Service has independent responsibility for enforcing fire safety legislation in HMOs in Northern Ireland through the Fire and Rescue Services (NI) Order 2006. Article 48 of the Fire and Rescue Services Order 2006 restricts the extent to which licensing regimes can deal with fire safety. The Council has a duty during inspection to examine the condition of the living accommodation as well as the safety and security of the persons likely to occupy it. The Council should

therefore take into account the level of fire safety in the HMO and the extent of its compliance with the Fire and Rescue Services (NI) Order 2006. If a council is of the view that there is a serious fire safety issue which cannot be resolved that will be referred to the Fire and Rescue Service. Such an issue will also go towards assessing the fitness of the applicant to hold a licence.

The Council must have regard to any objections to the application.

Revocation of a licence

A Council may revoke a licence at any time. There are a number of possible grounds that may lead to a revocation of a licence. These include that the licence holder or agent is no longer a suitable person, that the accommodation is no longer suitable for occupation as an HMO and cannot be made suitable, or that there has been a serious breach of the licence conditions. The Act also specifies that it does not matter if the Council has taken any other action or criminal proceedings have been commenced, the licence can still be revoked.

Variation of a licence

The Council can vary the terms of the licence at any time, either at their own discretion or if the licence-holder asks them to do so (for example to make a material change to the property). The licence holder must be given notice and an opportunity to be heard before a variation is imposed, and can appeal a decision to vary or refuse to vary a licence.

Appeals process

Any person on whom the council is required to serve notice of a decision has the right to appeal against the decision. The requirements to serve notice will vary depending on the nature of the decision. Generally this includes the applicant, and anyone who has made a valid written representation. In some cases occupants of the premises must also be served a notice.

Any appeal must be made to the Magistrates Court within 28 days of receiving notice.

Proposed Amendments to the Scheme of Delegation

In order to deal with the majority of HMO Licence applications in a timely fashion and with the aim of keeping administrative costs to a minimum it is therefore suggested that the following amendment is made to the Scheme of Delegation:

The Director Environmental Services is responsible for exercising all powers in relation to the issue, but not refusal, of HMO Licences, excluding provisions relating to:

- applications for the grant, renewal, transfer or variation of licences where objections are received;
- applications where officers believe there may be an issue in relation to the fitness of the applicant to hold a licence;

- approving any guidance documents;
- setting of licence fees;
- revocation of licences, except where in the public interest the Director, in consultation with the Chief Executive and the Councils Solicitor, considers that there are particular circumstances which make it necessary to suspend a licence immediately.

Any amendment to the Scheme of Delegation or Standing Orders must be referred to the Strategic Policy and Resources Committee. Feedback from Members on the proposal for Licensing Committee to be responsible for this function, together with the proposed amendments to the Scheme of Delegation will be reported to the Strategic Policy and Resources Committee.

Any decision of Committee in relation to amendments to the Scheme of Delegation will also be subject to ratification by full Council.

Financial and Resource Implications

The cost of administering the new licensing regime has been included in the estimates for 2019/20. The proposed licence fees have been calculated by Councils, the Regional Programme Board and agreed via SOLACE to ensure full cost recovery of this transferring service.

The Councils' fee calculator shows that a new fee of £37 per person per annum will be required to ensure that the new scheme does not run at a deficit. This represents a 47% increase on the existing scheme's fees (i.e. £25/person/annum). However, it should be noted that this represents an increase of just 98p per person per month, and that there have been no fee increases since the current fee rates were established in 2008.

It is anticipated that DfC will subsequently set an upper limit (**required in legislation**) of £45.00 per person per annum in the regulations to provide scope for any increases (i.e. annual inflationary increases), that may be required as the scheme becomes established. The Regional Programme Board is in agreement with the proposed upper limit being set at £45.00 as it provides sufficient scope for potential inflationary, or other, increases to fee levels during the initial years of the scheme and helps ensure the delivery of the **scheme remains cost neutral**.

It is proposed to hold a training workshop in early 2019 for members with respect to the operation of the licensing system and roles and responsibilities.

Recommendation

It is recommended that:

- The Environmental Services Committee assumes responsibility for recommending to Council the determination of all matters under the Houses in Multiple Occupation (HMO) Act NI 2016, with the exception of those which are proposed to be delegated to the Director of Environmental Services

- The Environmental Services Committee approve amendments to Scheme of Delegation, as outlined above.