

<b>TRANSFER OF HOUSES IN MULTIPLE OCCUPATION : FEES AND FIXED PENALTY NOTICES</b>	<b>5<sup>th</sup> March 2019</b>
<b>TO: ENVIRONMENTAL SERVICES COMMITTEE</b>	
<b>FOR DECISION</b>	

<b>Linkage to Council Strategy (2015-19)</b>	
<b>Strategic Theme</b>	Resilient Healthy & Engaged Communities
<b>Outcome</b>	Delivery of New Statutory function
<b>Lead Officer</b>	Head of Health & Built Environment
<b>Cost:</b> (If applicable)	To be funded through HMO Licensing Scheme

## **Background**

The Houses in Multiple Occupation (HMO) Act NI 2016 received Royal Assent on 12<sup>th</sup> May 2016 and is due to be commenced on 1<sup>st</sup> April 2019. The Department of Communities (DfC) will also be laying some subordinate Regulations at the same time, one of which is the Houses of Multiple Occupation (Fees) Regulations (NI) 2019. This sets the maximum level of fee for an application for a HMO licence at £45 per person per annum.

DfC has carried out a stakeholder engagement in relation to the subordinate legislation and the feedback from stakeholders had been fully reviewed. No concerns were raised in that engagement in relation to the maximum fee which is being proposed in the Regulations.

Whilst the Regulations set a maximum fee level of £45 it is proposed to set the fee at £37 per person per annum which, it is estimated, will allow the service to be provided on a cost neutral basis. The fee will be subject to review after two years by both council officers and DfC.

This report also provides the Committee with detail regarding the powers available to the Council under the 2016 Act in relation to the enforcement of the HMO licensing regime via the imposition Fixed Penalty Notices.

## Key Issues

### Fees

Members are reminded that The Houses in Multiple Occupation (HMO) Act NI 2016 received Royal Assent on 12<sup>th</sup> May 2016 and is due to be commenced on 1<sup>st</sup> April 2019. This will transfer responsibility for regulating HMOs from the Northern Ireland Housing Executive (NIHE) to local district councils. The new scheme will be a licensing scheme which assesses whether the applicant is a fit and proper person to hold a licence. This paper relates to the proposed fees which are to be introduced as part of that new scheme.

Following the preparation of a draft budget, and a subsequent detailed review by external consultants, officers consider that a fee of £37 per person per annum would provide for full cost recovery for the service.

The budget reflects the need to provide for full cost recovery for the service.

In preparing the draft budget, the estimated expenditure includes full staff costs, non-staff costs and overhead costs. Overhead costs include the costs of a solicitor who will be recruited to provide the additional legal support that will be needed to support the new licensing regime.

The estimated income includes deferred income from the old Registration Scheme which will be received from the Northern Ireland Housing Executive (NIHE) and income from new applications. The budget does not include transition costs already provided by DfC to support the implementation of the new licencing scheme, for example training costs and the new ICT system.

Members will note that while the costs of the new scheme are anticipated to remain relatively constant, apart from planned inflationary increases, estimated annual income is not evenly spread across each financial year. The total budget for the new HMO service has thus been established to include income and expenditure over five years, ie the life span of a licence. Years with higher income due to higher numbers of renewals (ie 2019 and 2020) generate an annual surplus, which are off set over the five year budget period against those years where smaller numbers of properties are due to renew and which will thus generate less income (ie 2021, 2022 and 2023).

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.

Tables 1 and 2 (overleaf) demonstrate that over the 5 years 2019 – 2023, and 2024 - 2028, the scheme will be cost neutral to councils and will not require any subsidy.

Table 1: Estimated budget for the HMO licencing scheme 2019 - 2023

Projected surplus/deficit for HMO service 2019 – 2023						
	2019	2020	2021	2022	2023	Total
Total income	£1,300,984	£1,431,844	£942,774	£926,273	£493,083	£5,094,958
Total expenditure	£979,039	£998,620	£1,018,592	£1,038,964	£1,059,743	£5,094,958
Net deficit/surplus	£321,945	£433,224	(£75,818)	(£112,691)	(£566,660)	£0

Table 2: Estimated budget for the HMO licencing scheme 2024 - 2028

Projected surplus/deficit for HMO service 2024 – 2028						
	2024	2025	2026	2027	2028	Total
Total income	£777,947	£1,257,966	£1,548,970	£1,001,229	£1,039,133	£5,625,245
Total expenditure	£1,080,938	£1,102,557	£1,124,608	£1,147,100	£1,170,042	£5,625,245
Net deficit/surplus	(£302,991)	£155,409	£424,362	(£145,871)	(£130,909)	£0

### DfC engagement

On 14 November 2018, the DfC launched a stakeholder engagement, which included the issuing of 2607 letters to landlords and agents registered under the current scheme, and the publication of the new scheme's details on the DfC website. The communication also outlined the new registration fees for the scheme. The engagement closed on 30 November 2018.

No significant concerns were raised by stakeholders in response to the proposed new licensing fee arrangements.

The level of fee payable per occupant will be £37 per person per year with the full fee payable on renewal. Setting a maximum amount at £45 in the regulations will give councils the scope to increase the fee if required to compensate for any future deficit in income without amendment to subordinate regulation.

The ongoing financial impacts of the new service will be monitored by, and reported to, the DfC, via a MoU. Further, DfC intend to undertake a review of the service during year 2 of the new regime, which will include a review of financial performance.

### Variations to a licence

As well as the licence fees outlined above, Council is required to establish and agree the cost of variations to a licence. Officers propose the following, based on the cost of a licence (ie £37 per person per year for 5 years = £185) :

Table 3: proposed licence variation fees

Licence variations	
Item	Cost
Addition of a new owner or managing agent	£185
Addition of a new occupant	£185 for each new occupant + £75 inspection fee (per visit)

Maximum fee for copy of the HMO Register

The council is also required to set the maximum fee to provide a certified copy of an entry relating to an HMO to any person who falls with section 62(9) of the Act, and a certified copy of its register, or of an extract from it, to any statutory authority, for the subordinate Regulations.

Officers have considered the cost for similar copies across the council, and propose the following:

Table 4: proposed maximum fees for copy of the HMO Register

Maximum fee for copy of HMO register	
Item	Maximum cost
A certified copy of an entry relating to an HMO to any person who falls within section 62(9) of the Act	£15
A certified copy of its register, or of an extract from it, to any statutory authority	£15

Fixed Penalty Notices

The Houses in Multiple Occupation (HMO) Act NI 2016 provides a wide variety of enforcement options to be available to the Council, including the ability to serve Fixed Penalty Notices (FPN).

A fixed penalty notice (“FPN”) is a notice giving the recipient the opportunity of discharging any liability to conviction for an offence, by paying a fixed sum of money within a particular period.

Section 64-66 of the 2016 Act gives councils the power to issue fixed penalty notices which tend to be conferred in respect of lower level offending.

Members should note the issuing of a notice is an alternative to prosecuting the offender, in instances where an authorised officer, following an investigation, has reason to believe that a person has committed an offence under any of the relevant provisions, and there are grounds for instituting proceedings for an offence.

Section 64 of the 2016 Act lists the offences and maximum amount of the FPN's. These are included Appendix 1. The 2016 Act states that the amount for each fixed penalty notice 'is to be determined by the council'.

In January 2015, following a report ref OD150122 on the convergence of fixed penalty amounts including those for the Landlord Registration scheme, shadow council agreed to set these at the maximum levels specified in the legislation. see table 5 below:

Table 5:

Offence	Criminal penalty	FPN
Failure of a landlord to register	£2,500	£500
Landlord found guilty of providing false information	£2,500	£500
Landlord fails to provide evidence of registration	£500	£100

On this basis, it is recommended that the fixed penalty levels for the offences under the new HMO (NI) Act 2016 are set on the same basis. These are detailed in Appendix 1.

#### Financial and Resource Implications

Regarding the fees, it is anticipated that the new HMO licencing scheme transferring from NIHE will remain cost neutral to councils given the increase in fees outlined above. As noted, the number of HMO applications to the new scheme will not be even, year by year. This therefore gives peaks and troughs in income. However, over a five year period the income offsets the expenditure meaning that this service will be cost neutral to the council.

Regarding the Fixed Penalty Notices, given the inherent difficulties in projecting the variation in the income that may be derived from this source, it has not been possible to accurately determine how much income might be received from these enforcement actions, and any attempts to quantify such income is deemed speculative and variable. Given this, fixed penalty income has not been included in the revenue estimates for the first five years of the scheme. It is currently envisaged that income from enforcement action will be re-invested back into the scheme, for example, on education related activities.

#### **Recommendation**

It is recommended that Committee

- note the update information regarding the fees for the Houses of Multiple Occupation licensing function;
- agree to set a fee of £37 per person per annum in respect of an application for a HMO licence;

- agree additional fees for an application to vary a licence, and those for supplying a certified copies from, or of, the register as detailed in Table 3 & 4 above.
- note the information regarding the use of Fixed Penalty Notices as enforcement functions that are available to the Council under the Houses in Multiple Occupation (HMO) Act NI 2016;
- agree the value of any fixed penalty notices that may be issued as detailed in this report at Appendix 1.

The Houses in Multiple Occupation (HMO) Act NI 2016, Fixed Penalty Notices and Criminal Penalties Table.

Appendix 1

**The Houses in Multiple Occupation (HMO) Act NI 2016  
Proposed Fixed Penalty Notice Fines**

No .	Offence	Relevant Section	Maximum FPN	Maximum Penalty
1	Unlicensed HMO: Agent	30(1)	£5,000	£20,000
2	Unlicensed HMO: Owner	30(2)	£5,000	£20,000
3	Unlicensed HMO: Owner instructs agent to let as HMO	30(3)	£2,500	£10,000
4	Breach of occupancy condition	31(1)	£5,000	£20,000
5	Breach of licence conditions: owner/agent	31 (2)	£2,500	£10,000
6	Breach of licence conditions: person not named on licence	31(3)	£2,500	£10,000
7	Person represents HMO as licensed when it is not	32	£2,500	£10,000
8	Agent operating but not named on licence - other	33(1)	£2,500	£10,000
9	Agent operating but not named on licence - owner	33(2)	£2,500	£10,000
10	Failure to comply with rectification notice	37(1)	£2,500	£10,000
11	Failure to comply with information notice	49	£200	£500
12	Contravention of overcrowding notice	60(1)	£5,000	£20,000
13	Contravention of occupancy requirement of suitability notice	60(2)	£5,000	£20,000
14	Uses or permits use of HMO subject to a hazard notice	60(4)	£5,000	£20,000
15	Refusal to provide information under 68 & 70	75	£200	£500
16	Owner fails to complete works specified in hazard notice	60(6)	£500	£1,000
17	Obstruction whilst seeking entry (without or with a warrant)	80(5)	£500	£1,000
18	Obstruction of person complying with a rectification notice	82 (4)	£500	£1,000
19	Obstruction of works needed under with Part 4 notices, TENs & rectification notices	81(4)	£500	£1,000
20	Providing false or misleading information	Para 14, Schedule 2	£200	£500
21	Unlawful occupation	Para 8, Schedule 3	£500	£1,000