

GUIDE TO THE LICENSING OF HOUSES IN MULTIPLE OCCUPATION IN NORTHERN IRELAND:

GUIDANCE FOR LOCAL GOVERNMENT

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PART 1 INTRODUCTION

What is this guidance for?

1.1.1 This guidance is intended for Councils. It provides detailed guidance on the exercise of their functions in relation to HMO licensing under the Houses in Multiple Occupation Act (Northern Ireland) 2016. Councils must have regard to it on the exercise of their functions and their aim to provide better protection for tenants living in houses in multiple occupation. It may also be helpful to organisations working with Councils on HMO issues.

1.1.2 This guidance should be read in conjunction with the relevant legislation, and should not be interpreted as an authoritative statement as to the law in this area. The HMO policy will remain the responsibility of the Department for Communities. The licensing scheme will be subject to departmental approval with new agreed future monitoring and reporting arrangements.

Interpretation

1.1.3 in this guidance:

- “The 2016 Act” means the Houses in Multiple Occupation Act (Northern Ireland) 2016.
- "HMO" means house in multiple occupation, within the meaning of the 2016 Act.
- HMO licence means a licence which is clarified under Section 7 of the Act.

Why is there regulation of HMOs?

1.1.4. The Houses in Multiple Occupation (NI) Act 2016 will enable better regulation of HMOs and will transfer responsibility for regulating HMOs from the Housing Executive to Councils. This revised system of HMO regulation, means that this important function will now sit more appropriately with other critical government functions such as planning, building control and environmental health.

1.1.5 The purpose in bringing forward this new HMO regime is to properly and effectively regulate HMOs to ensure the health, safety and well-being of the occupants and at the same time minimise any negative impacts on the neighbourhood and surrounding area. While aspects remain similar to the previous regime, there are notable differences such as additional enforcement powers for Councils and increased penalties for criminal offences. An overview of the new regime, and specific guidance on enforcement powers, is provided within this guidance.

How was this guidance developed?

1.1.6 Government officials worked with representatives from Councils and the Northern Ireland Housing Executive to produce the detail provided in this guidance.

1.1.7. The draft guidance has been subject of consultation with representatives from the Landlords Association. The issues raised during the consultation were fully considered in finalising the guidance.

What does the guidance contain?

1.1.8 The guidance relates to the procedures and activities involved in the exercise by Councils of their functions under the 2016 Act which will allow Councils to better target those high risk properties, focus resources on licensing and enforce appropriate standards in HMOs.

Part 1 introduction.

Part 2 outlines HMO Licensing and key provisions within the 2016 Act.

Part 3 deals with the administration of licensing.

Part 4 discusses the standards expected in the living accommodation, and imposing licence conditions.

Part 5 deals with the identification, enforcement, complaints, data protection and sharing of information.

Annex A contains specifications relating to physical standards.

Annex B contains details relating to the Fixed Penalty Notices (FPNs)

PART 2 HMO LICENSING- GENERAL REQUIREMENTS

2.1 OVERVIEW

What is the licensable activity?

2.1.1 A licence is required for the occupation of living accommodation as an HMO. The application for a licence must be made by the owner of the living accommodation and has effect for a maximum of 5 years. The details of any agent authorised to act for the owner in relation to the occupation of the living accommodation must be specified in the application.

2.1.2 Section 26 of the 2016 Act applies where living accommodation is owned jointly by two or more persons. The licence may be applied for and held by any one of the owners or jointly.

2.1.3 Where there are joint owners but the application is made by only one of them, there is no requirement for the consent of other joint owners. Neither is there any requirement for other joint owners to be assessed as a fit and proper person.

Can you transfer a licence to another property or person?

2.1.4 No. They (or new owner if selling the property) must submit a new application as all prospective licence holders must make a fit and proper person declaration, an HMO licence is non-transferable and a licence must be held for each property.

What is the definition of an HMO?

2.1.5 A building or part of a building is an 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.

2.1.6 The legislation covers not only ordinary houses, flats and bedsits, but also other types of residential accommodation including hostels and student halls of residence. Accommodation within a building which, although otherwise separate, shares use of a toilet, personal washing facilities or cooking facilities, is taken to form part of a single HMO. The accommodation must be licensed regardless of the type of owner as long as it is not otherwise exempt (see Schedule 1 of the 2016 Act).

2.1.7 The definition of "family" is set out in full in section 88 (2) and (3) of the 2016 Act. The definition includes couple, relative, married, unmarried and same-sex couples and stepchildren and foster children, as well as certain close blood relatives.

Are there any types of buildings which are not Houses in Multiple Occupation?

2.1.8 Schedule 1 of the 2016 Act lists types of building that are not houses in multiple occupation. This guidance should be read in conjunction with the primary legislation. Types exempted from definition include those:

- where the property is occupied only by the owners (note: explanation and detail at section 9);

- where the HMO is a building controlled or managed by those public sector bodies listed at section 2;
- establishments regulated by the Regulation and Quality Improvement Authority;
- buildings regulated otherwise than under this Act and specified in accompanying regulations;
- buildings occupied by students that are managed and controlled by an educational establishment, or a specified person or a person of a specified description, which is listed in the regulations and that educational establishment is a member of either code of practice referred to in the Houses in Multiple Occupation Regulations 2018;
- 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;
- buildings owned by the crown and occupied by members of the armed forces;
- forces accommodation;
- prisons, a young offenders centre a juvenile justice centre or a remand centre;

2.1.9 Order making powers also exist under Schedule 1 of the 2016 Act to add, remove, or vary descriptions of exemptions.

What sanctions are there for owners who operate an HMO without a licence?

2.1.10 It is a criminal offence to operate an HMO without a licence. The maximum penalty is currently £20,000. Fixed Penalty Notices will also form part of this new licensing regime and will run alongside criminal offences. The consideration of issuing a Fixed Penalty Notice for breaches of the legislation provides Councils with an additional enforcement tool. The process for how they will issue a Fixed Penalty Notice is an operational matter for Councils. **Note Annex B attached.**

2.1.11 If a property ceases to be in multiple occupation whilst the licence is in force the owner or agent should contact the Council and return the licence; they will be committing a crime if they continue to operate as an HMO after surrendering their licence.

Are agents affected by licensing?

2.1.12 Where the owner of an HMO authorises an agent to act on his behalf, the agent's details must be included in the HMO licence application.

2.1.13 Agents should check that their clients (or prospective clients) are licensed where necessary. It is a criminal offence for anyone to act as an agent for an unlicensed owner of a licensable HMO, by doing anything "which directly permits or facilitates the occupation of the living accommodation" as an HMO. The maximum penalty is the same as for the unlicensed owner Fixed Penalty Notice - up to a maximum of £5,000 or £20,000 on summary conviction

2.1.14 In particular, the Council should ensure that when it serves a notice, under section 64, regarding a Fixed Penalty Notice that a copy of the notice and any accompanying documents should also be served on any agent specified on the licence application.

2.1.15 If a Council suspects that living accommodation is an HMO, they may ask anyone who receives rent directly or indirectly, in respect of the premises, for information about the accommodation including the owner's name and address. This would, in many cases, include agents. It is an offence to fail to comply with such a request, liable on summary conviction to

a fine not exceeding level 2 on the standard scale.

How do the Provision of Services Regulations 2009 affect HMO licensing?

2.1.16 The EU Services Directive aims to break down barriers to cross border trade in services between countries in the EU. The Directive has been implemented in the UK by the Provision of Services Regulations 2009 (S.I. 2009/2999).

2.1.17 While the Department for Communities is responsible for ensuring that legislation is compliant with the Directive, it is for Councils to ensure that their practices are compliant.

2.1.18 This guidance highlights some areas that authorities may wish to consider. For example, guidance on setting fees is provided at Section 3.4.

2.1.19 Councils should consider whether any special arrangements may be required for the service provided for all new licence applications. Furthermore, Councils may wish to note the need to ensure that service providers can obtain HMO licences through an online Point of Single Contact (PSC) and ensure that information is accurate and kept current.

2.1.20 Owners must be able to complete all HMO related transactions online.

2.1.21 Exemptions from the requirement to carry out transactions online should be made, as well as Council availability for the inspection of premises and the physical examination of the capability or professional integrity of HMO providers.

Delivery dates for formal communications

2.1.22 All formal communications required by the 2016 Act, including notices, requirements and applications, must comply with the 2016 Act. This sets out that formal communications must be made in writing, and a communication is served on someone if it is delivered, or sent to their address. A formal communication which is delivered, posted or sent in another manner which the sender reasonably considers likely to be delivered on the same or next day (for example by electronic means such as email), is, unless the contrary is proved, to be treated as having been delivered on the next working day.

What happens to existing HMO Registrations on the transition to licensing?

2.1.23 Transitional provisions will apply when the commencement order comes into force which will set out the transitional arrangements and explain that,

- in the main, on 1 April 2019 those registered under the current Registration Scheme will become licences under the new regime, with the original expiry date for renewal;
- Councils will consider the refunding of fees on application relating to the unexpired term of HMOs registered under the Registration Scheme;
- existing regulations/rights will apply under the Registration Scheme regime where the landlord has applied prior to 1 April 2019 whether the decision is pending or specific proceedings are ongoing.

2.1.24 The commencement order will clarify the agreed practicalities setting out in specific legal terms when the HMO registered property becomes licensed under the new regime. At the time of transfer no additional fee is required for any existing properties that move from registration to licensing.

2.1.25 The existing HMO position under the Registration Scheme will continue under the

Commented [DG1]: Subject to change as the department are awaiting Senior Counsel advice on this

new regime after transfer where an HMO has been suspended or suspension is being considered. These HMOs can then be followed up by Councils which may attract further inspection and associated enforcement action.

2.1.26 If a prosecution case has not been heard by the launch date for the licensing scheme it does not mean that the case should be withdrawn. The court will consider what occurred at the relevant time when the Registration Scheme was in place and if the conduct amounted to an offence under that scheme and so convict the offender accordingly.

2.2 APPLYING FOR AN HMO LICENCE

What is the process for applying for a licence?

2.2.1 Schedule 2 of the Act provides information on applications for HMO licences. The owner submits an application to the Council, together with the appropriate fee. The application must contain the information set out in Part 2 Section 8 of the Act, which means that it should include details of the living accommodation, the owner of the living accommodation (and any agent authorised to act for them), and "any other information which the Council may reasonably require". An example of such additional information might be details of any joint owners of the HMO (if not applying to be joint licence holders) and the day to day contact for the business.

2.2.2 Section 8 (3) of the Act describes the requirement for an applicant to publish notice of his HMO application and how to submit objections to the Council.

2.2.3 Further regulations also provide for; the duty and discretion of the Council on receipt of an application; for representations to be made in response to the notice; and the consequences of failing to comply with requirements.

What does the Council have to consider in deciding whether to grant a licence?

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

2.2.5 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.
- The Council must have regard to matters listed in section 10 of the Act.

2.2.6 If the Council is not so satisfied, they must refuse to grant the licence.

2.2.7 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.

2.2.8 If the Council is not so satisfied, the Council has no power to grant the licence.

2.2.9 The Council cannot consider an application from the same applicant for the same accommodation, or any accommodation where refusal was on the grounds of failing the fit and proper test, within one year of refusal. This does not prevent the Council from

considering a further application where it is satisfied that there has been a material change of circumstances.

2.2.10 The Council must copy the application to the statutory authorities as stated in section 88 of the 2016 Act for the area, so that they can inform the Council of any information they consider relevant to the Council's consideration of the application. They may also provide information about any relevant complaints against the applicant or manager, or in relation to the property.

2.2.11 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 and may if it sees fit refuse to grant or remove licence on this basis. (See Section 3.6)

Making the licensing decision

2.2.12 The Council has rights of entry and inspection under Sections 78-80 of the 2016 Act to enable it to assess whether the living accommodation is suitable for occupation as an HMO. These rights may also be exercised at any stage to assist the Council in exercising its licensing functions e.g. enforcement of the licensing regime, revoking or varying licences. Any information gathered from such an inspection will provide evidence to support the Council's decision as to whether or not to grant the licence.

2.2.13 The Council must also consider any objections to the application. Legislative provisions permits any person to make an objection to a licence application. The Council must copy any such objection to the applicant as per Schedule 2 Part 9 (5), and must notify the applicant of any other information they intend to take into account in considering the application.

2.2.14 The detail of the procedural requirements in relation to an application for an HMO licence are contained within Schedule 2 to the Act. Section 14 of the Act - Licence Conditions, should give careful consideration to the possibility of granting licenses subject to conditions, which may help to ensure that appropriate standards are maintained throughout the period of the licence.

2.2.15 Councils must keep a register of applications and the decisions made on them. Any individual, public representative or statutory body can apply for access to an extract from the register. However the person(s) making the request must have a genuine interest in the property. Information must be excluded from the register if it would jeopardise the safety or welfare of any person or the security of the premises.

Is there an appeals process?

2.2.16 Section 67 of the Act applies to decisions taken by Councils. 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.

2.2.17 A person on whom a notice has been served may within 7 days of service of the notice request the Council to give a statement of its reasons for the decision.

2.2.18 Any appeal must be made within 28 days of receiving notice, .In determining an application for a HMO licence the Council shall –

- give the applicant an opportunity of appearing before and of being heard by the Council;
- give any person who has made any such representation, an opportunity of appearing before and of being heard by the Council;

How long does it take for an application to be determined?

2.2.19 The Council must process a licence application within a reasonable time. Authorities should aim to determine applications before the end of the period of 3 months beginning with the date on which the Council received it 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.

How long is an HMO licence valid?

2.2.20 Section 19 states that an HMO licence lasts for five years, or a shorter period specified in that licence which cannot be less than six months. It starts on the date when notice of the decision to grant the licence is served on the owner, or another date specified in the licence. In the case of a licence granted because the Council did not come to a decision within the period required, the licence will last for one year from the end of that period. It is suggested that general practice should be that a licence is granted for a five year period, with licences of a shorter duration being granted where the Council is satisfied that a justification for a shorter period exists.

2.2.21 Such a justification might relate to the standards of the living accommodation e.g. where it is considered suitable for occupation as an HMO at the time the application is granted, but is unlikely to remain suitable for an extended period due to (for example) the age or state of the fixtures and fittings. In such a case, the Council might wish to grant the licence for one year only, so as to provide for regular checks of the continuing suitability of the accommodation.

Can changes be made during the period of the licence?

2.2.22 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.

2.2.23 It should be noted that, in contrast to applications for the grant of a licence, Councils may charge a fee for the variation of an HMO licence. There may be cases in which the variation under consideration is so substantial as to amount, in effect, to the issue of a new licence. In such cases, Councils may consider it appropriate to request the licence holder submit an application for a new licence (accompanied by the appropriate fee). Councils should, however, take care not to request new applications unnecessarily, and bear in mind that the grounds on which a licence could be revoked (which could be relevant if the licence holder disputes the need to apply for a new licence) are limited. The ability to charge fees for

licence applications (as opposed to licence variations) should not be a determining factor.

What happens when an owner sells their property or dies?

2.2.24 Under Section 28 of the 2016 Act a licence may be transferred to another person only in accordance with the detail provided. An existing HMO licence transfers to the new owner of a licensed property and lasts for one month from the date of purchase, provided that the new owner is already entered on the Council's register of HMO's. If the new owner submits a licence application before the end of that month, the licence will continue in force until that application is determined. If the new owner is not a registered landlord, the licence expires on the date that ownership transfers.

2.2.25 Section 29 of the 2016 Act states that where a sole licensee dies an existing HMO licence is to be treated as being held from the date of death by the licensee's personal representatives, but ceases to have effect 3 months after that date. If the new owner submits a licence application before the end of the 3 month period, the licence will continue in force until that application is determined.

When can a licence be revoked?

2.2.26 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. Section 23 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.

2.2.27 The Council must propose a date for a hearing and invite representations from interested parties. The Council must consider any oral representations made before deciding whether to revoke the licence. A revocation comes into force on the date by which the decision to revoke the licence may be appealed, or on the date when such an appeal is abandoned or finally determined other than by quashing the decision to revoke.

PART 3 ADMINISTRATION OF HMO LICENSING

3.1 OVERVIEW

3.1.1 Before considering a licence application a Council may also consider whether occupation of the living accommodation as an HMO would be a breach of planning control. The purpose of HMO licensing is to achieve and maintain high standards of service in this part of the private rented sector by ensuring that the HMO owner and any agent is a fit and proper person, and ensuring the suitability of accommodation. A Council may also consider whether granting an HMO licence will result in an overprovision of HMOs in a locality.

3.1.2 HMOs provide an important supply of housing, particularly for some groups of people, such as students, mobile workers, and those who require support in a homely setting. However, many HMO occupiers are unaware of their rights, or have few housing choices, and are therefore vulnerable to exploitation.

3.1.3 The Department for Communities recognises the importance of HMO owners in providing flexible and affordable housing to occupiers, with HMO licensing ensuring that occupiers can enjoy accommodation that is safe and of a reasonable standard.

3.1.4 It is important that regulation of HMOs is effective but also proportionate and cost effective. Regulation that is disproportionate and unduly onerous could impact costs, increase rents, and ultimately deter some HMO owners from applying for HMO licences, putting occupiers at risk.

3.1.5 In administering the HMO licensing regime, Councils should seek to robustly tackle poor practice and unscrupulous owners.

3.1.6 In order to address any future concerns from HMO landlords it is suggested that Councils engage with HMO owners to ensure that they are operating the regulatory regime in compliance with the new legislation. Setting up a forum including local HMO owners can be a useful way to discuss general issues of concern and agree on steps to address them.

3.1.7 Councils must ensure that their assessment processes enable them to be satisfied that the statutory requirements for a licence to be granted are met.

3.2 CO-ORDINATION AND PREVENTING DUPLICATION

3.2.1 Processing an application for an HMO licence may require the involvement of Council officers from several different sections. The officers involved are likely to represent:

- Legal services/licensing
- Environmental Health
- Planning
- Building Standards

3.2.2 Processing an application will also require the consideration of external bodies. These will include:

- Northern Ireland Fire and Rescue Service
- Police Service for Northern Ireland
- Sharing of information between Councils
- Court Service
- Disclosure and Barring Service

3.2.3 It is important that the work of all interests is well coordinated, licensing approvers will find it particularly difficult to form an accurate view where they receive conflicting reports. Co-ordination therefore needs to take place at all levels.

Administration of HMO licensing

3.2.4 It is recommended that the nominated Councils establish a clearly identified team as the single point of contact for HMO enquiries, applications, objections and complaints. Information from other Council departments or partner agencies about suspected unlicensed HMOs, or suspected breaches of licence conditions, can feed into this team. The same team could provide a central point of co-ordination, with responsibility for distributing information about applications to the other officers whose views are required, organising joint visits to the property, collating reports, and organising action on complaints, as well as all correspondence with applicants and objectors.

3.2.5 Different sections within a Council will hold information that can usefully inform decisions on licence applications. HMO licensing teams are encouraged to investigate the scope for sharing information, for example through memoranda of understanding with teams

responsible for fire safety, landlord registration, housing, housing benefit, homelessness services, antisocial behaviour, noise nuisance, planning, building standards, etc.

Technical Issues

3.2.6 Employment of varying standards and interpretations by HMO licensing officers and committees could impose additional compliance costs on HMO owners.

3.2.7 There must be a shared understanding among those officers involved in inspecting properties and processing applications. Councils will wish to put procedures in place to ensure that any differences of view between the various disciplines involved, about the standards to be applied or methods of satisfying the standards, can be resolved centrally and the agreed position clearly communicated to all inspecting officers.

3.2.8 It is suggested that procedures are put in place to enable an approach to be agreed internally where new situations arise, for example a type of HMO which has not previously been encountered, or new technology or a new approach which may offer a different way of satisfying standards. It may be possible for both technical and management issues to be addressed by the same group.

3.3 VERIFICATION OF COMPLIANCE WITH LICENSING REQUIREMENTS

3.3.1 A Council may refuse to consider an application for an HMO licence if it considers that occupation of the accommodation as an HMO would be a breach of planning control. This does not affect existing houses in multiple occupation that have transferred from the registration scheme to licensing under transitional provisions. A Council has no power to grant an HMO licence unless it is satisfied that the living accommodation is suitable for occupation as an HMO, and is satisfied that the owner (and any agent acting for the owner) is a fit and proper person and is not disqualified from holding a licence. A Council may refuse to grant an HMO licence if it considers that there is, or that the grant of the licence would result in, overprovision of HMOs in the area. Licence conditions may be imposed when granting a licence, to ensure that appropriate standards are maintained throughout the period of the licence.

3.3.2 There are various ways in which Councils can obtain evidence to verify that the standards are met and licensing conditions complied with:

- **direct inspection** involves officers of the Council checking standards in person, by inspecting the property, gathering evidence from occupiers and neighbours about the management of the property;
- **evidence from third parties** can confirm that certain requirements have been checked by an appropriate certifier or are controlled under other forms of regulation, and need not be checked again, or can provide a basis for further investigations;
- **evidence from the applicant or licence holder** may also be taken into account, although its usefulness and the extent to which the Council is content to rely on it may vary;

3.4 FEES

3.4.1 The 2016 HMO Act gives the Department the power to make provision about the charging of fees. The Department will consider proposals from Councils and agree a fee which will be set in the Houses in Multiple Occupation Regulations 2018. This will form part of a package of documents to be consulted on with the relevant stakeholders. Should Councils require a change to the fees after the initial 5 year period they will be required to write to the

Department and provide the rationale for the fee to be considered for amendment in regulations.

3.4.2 Councils should develop a fee structure for applications to cover the costs in administering their functions to provide assurance that the licensing system is self-sustaining. Councils should ensure their fee structure complies with the Provision of Services Regulations 2009 and must be related to the costs of operating the scheme and any overheads identified. The Provision of Services Regulations 2009 require that fees charged in relation to a licensing regime must not exceed the costs of all the procedures required to carry out this function. In undertaking this responsibility Councils will need to establish and identify the work involved in granting a licence and the likely costs associated with that work.

3.4.3 Enforcement against unlicensed operators is for the benefit of those who hold a licence and can be included in the fee. At the same time the Councils must not make a profit from the fees which must be reasonable and proportionate.

3.4.4 Income received by the Council from HMO licence fees should not be used to subsidise any other public service, nor should charges levied by the Council relating to any other public service be used to provide a subsidy for any work on HMO licensing.

3.4.5 Councils should ensure that appropriate and proportionate enforcement action can be taken in relation to HMO related offences and that appropriate advice and support can be supplied to HMO occupiers and owners.

3.4.6 Typical elements of the cost of granting a licence could include:

- administration — this could cover basic office administration to process the licence application, such as resource, copying, postage and the cost of handling fees;
- visits to the premises — this could cover the average cost of officer time if a premises visit is required as part of the authorisation process. It would also be normal to include 'on-costs' in this calculation. Councils will need to consider whether 'on-costs' include travel costs and management time;

3.4.7 Licence maintenance costs could include;

- Additional monitoring and inspection visits — Councils may wish to include a notional charge for routine risk based visits to premises in between licensing inspections where this is standard for all premises.
As with the initial licensing visit, authorities can consider basing this figure on average officer time, travel and management costs as suggested above.
- Councils will want to consider how enforcement costs associated with complaints are funded. The majority of enforcement activity will be aimed at ensuring compliance with the licensing regime to protect both the public from rogue service providers and the trade from unregulated competition. Any calculations for ongoing enforcement action will need to consider that some cases may result in prosecution as a last resort, which is likely to incur costs, though an element of these costs may be recovered through the court processes and money obtained from Fixed Penalty Notices.

3.4.8 It is for Councils to take their own view on the appropriate action to achieve compliance with the EU Services Directive, but they may wish to consider the approach provided.

3.4.9 Applicants must be able to complete all their transactions online. Councils need to

ensure that service providers can obtain HMO licences through an online Point of Single Contact (PSC) and ensure that information is accurate and kept current. Details of fees should be made available online, by utilising the Point of Single Contact (PSC) website on the local Council's own website.

3.4.10 It is suggested that Councils make available to the public information on the activities covered by the licensing fee, to make clear all the activities which are involved in operating the regime.

3.5 FIRE SAFETY

3.5.1 HMOs fall within the scope of the Fire and Rescue Services (NI) Order 2006. Under that legislation it is for the person or persons with duties under the legislation to determine what fire safety measures are appropriate to provide on the basis of an assessment of risk. Councils will also have 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 and may, if it sees fit, refuse to grant or remove licences on that basis.

3.5.2 Although the Northern Ireland Fire and Rescue Service (NIFRS) is a statutory consultee for HMO licenses under the Houses in Multiple Occupation Act (Northern Ireland) 2016, they have independent responsibility for enforcing the fire safety legislation in HMOs through the Fire and Rescue Services (NI) Order 2006. This is separate from the HMO licensing regime. This enforcement is done on a risk assessed basis with resources targeted at higher risk premises. Councils will be expected to agree a Memorandum of Understanding (MOU) with the NIFRS and agree how fire safety measures will be operated under licensing.

3.5.3 A Houses in Multiple Occupation Fire and Safety Guide will provide standards to be applied to HMO properties and is based on the principle that all occupants of a HMO should be able to leave the premises safely in the event of a fire.

3.6 RESTRICTION ON APPLICATIONS LINK TO PLANNING

3.6.1 The HMO Subject Plan for Belfast City Council Area 2015 sets out that planning authorities should consider the need for HMO accommodation as part of the housing requirement for the area.

3.6.2 Landlords may wish to be aware of planning requirements in relation to Houses in Multiple Occupation.

3.6.3 A potential landlord considering setting up an HMO should therefore be encouraged to contact their Council planning department early on to establish the position.

3.6.4 High concentrations of HMOs can lead to a range of cultural, social, physical and economic changes in a community. Where the Council planning authority establishes a policy to manage HMO concentrations it should ensure that it is enforced. Schedule 2 Sections 5- 7 of the Act provides the operational process for refusal of applications that are in breach of planning control.

3.6.5 The 2016 Act gives a Council the discretionary power to refuse to consider an application for an HMO licence if it considers that occupation of the accommodation as an HMO would be a breach of planning control. Further details are provided at section 8 and 9.

3.6.6 The ability to refuse to consider an HMO licence application is separate from any planning enforcement powers, and is not intended to be an alternative use of those powers. Both regimes should operate together.

PART 4 STANDARDS AND LICENSING CONDITIONS

4.1 OVERVIEW

4.1.1 The 2016 Act gives Councils the discretionary power to refuse to consider an application for an HMO licence if it considers that occupation of the accommodation as an HMO would be a breach of planning control. The licensing of HMOs seeks to ensure high standards in terms of the suitability of a property owner (and their agent) to be an HMO owner (or to act for the owner) and the suitability of the living accommodation itself. It also allows the Council to consider overprovision. It should have regard to the factors set out in sections 41-61 of the 2016 Act.

4.2 PRELIMINARY REFUSAL: BREACH OF PLANNING CONTROL

4.2.1. The Council may grant the licence only if it is satisfied that the occupation of the living accommodation as an HMO would not constitute a breach of planning control.

4.2.2 For the purposes of section 8(2) (a) of the 2016 Act (refusal of licence for breach of planning control), “breach of planning control” has the meaning given by section 131 of the Planning Act (Northern Ireland) 2011.

4.2.3 For provisions under which a decision to refuse a licence under section 8(2) (a) is treated differently from a refusal on other grounds, see—

- paragraphs 5 to 7 of Schedule 2 (procedure on refusal of application);
- section 25 (restriction on making applications after refusal);
- section 67(1) (d) (appeals).

4.3 SUITABILITY OF THE APPLICANT AND AGENT

4.3.1 An essential part of considering a licence application is establishing whether the applicant, as well as any agent they wish to act for them in relation to the HMO, is a 'fit and proper' person. The fit and proper person test is intended to provide a level of assurance that the landlord or agent is a suitable person to let privately rented property.

4.3.2 It may prove useful to verify that the applicant is indeed the owner of the property if it is suspected that the applicant is dishonestly applying on behalf of an unsuitable owner. Councils may ask applicants to provide this information if required.

4.3.3 The Council should consider whether the applicant has any relevant convictions. Not all convictions would be relevant to a person's prospective role as an operator of an HMO. For example, motoring offences would not normally be relevant, but a conviction for fraud or theft could be since the operator would be in a position of trust.

4.3.4 If the HMO operator is subject to any other form of regulation the Council may also wish to approach the relevant regulatory authority for their comments. This would usually focus on the applicant's record of maintaining expected standards and their response if

concerns are raised. In addition, the Council should consider the advice of the Fire and Rescue Service on the applicant's approach to fire safety.

4.3.5 The Council must refuse an application if it considers that either the applicant or their agent is not a fit and proper person. The factors which the Council must have regard to in determining whether the applicant or agent are fit and proper are noted in Section 10 of the 2016 Act. Where an applicant or agent is not an individual, these tests apply to any director, partner or other person involved in the management of the company, trust or organisation.

4.3.6 The Council must have regard to whether the person has any offence involving:

- fraud or other dishonesty;
- violence;
- drugs;
- human trafficking; or
- a firearm (within the meaning of Article 2(2) of the Firearms (Northern Ireland) Order 2004);
- committed an offence listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting notification requirements);
- practised unlawful discrimination in, or in connection with, the carrying on of any business;
- contravened any provision of the law relating to housing or of landlord and tenant law; or
- acted otherwise than in accordance with a code of practice approved under section 63.

All of the detail required can be accessed via a self-assessment declaration. This will require applicants upon first application and renewal to declare and produce evidence of any criminal record.

4.3.7 As administrators of HMO licensing it is for the Council to decide whether the applicant is a fit and proper person to act as an HMO owner or agent based on all the information available. In exceptional cases Councils can verify an applicant's details with AccessNI/Disclosure and Barring Service should they need to authenticate credentials via criminal record checks provided by the landlord or their agent.

4.3.8 A Council is obliged to maintain a public register, including details of its decision in relation to each application, as well as in relation to variations, revocations and cancellations of licences, and any other information as it thinks fit. Councils might wish to include information about the grounds on which a licence was refused or revoked, which it is suggested might prove a useful resource for other licensing authorities.

4.4 SUITABILITY OF THE LIVING ACCOMMODATION

Introduction

4.4.1 One of the key aims of HMO licensing is to ensure that the accommodation provided is safe, of good quality, and has sufficient facilities for the number of occupants. This section sets out the factors which must be considered, together with examples of physical standards which it is recommended that local authorities apply in their assessment of living accommodation, on receipt of an application and as part of their enforcement activity. Technical details relating to the suggested standards are included in **Annex A**.

4.4.2 It should be noted that these standards are intended to provide reference points to help Councils determine whether living accommodation in respect of which an HMO licence has

been applied for, or has been granted, is suitable (or remains suitable) for occupation as an HMO. They should be applied flexibly, with the Council taking into account whatever material it considers relevant in assessing the suitability of the accommodation in accordance with Section 13 the 2016 Act.

4.4.3 HMO Licensing officers should always give consideration to alternative approaches proposed by the owner. In adopting and applying standards, licensing authorities should keep in mind the need to achieve a suitable level of accommodation which is safe and secure without placing a disproportionate burden on the owners of HMOs.

4.4.4 In general, local authorities should ensure that all licence applications are treated equally and fairly, regardless of whether the application is for accommodation which has not previously been licensed, or which has had a licence for some time. However, a flexible approach should be taken; in some cases, such as where an HMO has been operating with a licence for some time, it may be considered suitable for a new licence even if it does not meet certain standards which the Council would normally wish to apply to new accommodation or accommodation which has not previously been licensed.

4.4.5 It may be appropriate for the Council to balance the likely expense of any work required and the contribution that it would make to the safety of occupiers. This is a matter for the Council to determine what is appropriate or necessary in the context of a particular case. For example it may consider that it is more proportionate to require inexpensive work that contributes to occupier safety, such as installing a CO detector, than expensive work that does not impact on occupier safety but may improve facilities such as requiring additional kitchen or bathroom facilities or electrical outlets, where the existing facilities are functioning and in reasonable condition.

4.4.6 In such cases, Councils may still decide to grant the licence, but may consider imposing licence conditions which would enable the accommodation to be upgraded during the period of the licence. Some examples of circumstances in which this might be desirable are included in the coverage of individual standards below.

Factors to be considered

4.4.7 The 2016 Act requires that Councils are satisfied that the accommodation is suitable for occupation as an HMO (or can be made suitable by the inclusion of licence conditions). Section 13(2) sets out various factors that the Council must consider when coming to a decision on suitability of the accommodation. These are:

- the location of the accommodation;
- the condition of the accommodation;
- any amenities the accommodation contains;
- the safety and security of persons likely to occupy the accommodation;
- the possibility of undue public nuisance.

4.4.8 Section 12 also gives a Council the discretionary power to refuse to grant an HMO licence if it considers that there is, or that the grant of the licence would result in, overprovision of HMOs in the locality.

4.5 THE LOCATION OF THE ACCOMMODATION

4.5.1 The Council is required to consider the location of the accommodation in assessing whether it is suitable for occupation as an HMO.

4.5.2 This would allow a Council to take account of the locality, where it would be

unsuitable for an HMO. For example there might be a lack of safe access, or other factors that could endanger residents.

4.6 THE CONDITION OF THE ACCOMMODATION

4.6.1 Another factor which must be considered is the condition of the accommodation. In general terms, this is likely to cover the physical condition of the premises, as well as any additional aspects which might make the accommodation unfit for occupation as an HMO e.g. lack of adequate heating, damp, missing treads on stairs, lack of sound-proofing or inadequate dividing walls between bedrooms. However, Councils should take into account any material they consider relevant to their assessment.

4.6.2 Suggested standards which authorities should consider in relation to this factor are as follows:

Space heating

4.6.3 All units of accommodation must be equipped with adequate means of space heating.

4.6.4 It must be capable of maintaining a temperature of 21° Centigrade when the outside temperature is minus 1° Centigrade.

4.6.5 The heating must be available at all times and must be under the control of the occupant.

4.6.6 The heating must be safe and should be efficient and affordable. Electrical heating appliances must have a dedicated socket.

Detection of Carbon Monoxide

4.6.7 There must be installed a CO alarm which meets the requirements of BS EN 50291:2001 in the same room as any gas appliance. Alarms should be powered by a battery designed to operate for the working life of the alarm. Such alarms should incorporate a warning device to alert users when the working life is due to pass. This type of alarm is easier to change when the working life has expired as it does not require a specialist electrician.

4.6.8 HSE has undertaken research into the long term reliability and use of carbon monoxide alarms, available via the link that follows:
<http://www.hse.gov.uk/research/trhtm/index.htm>

4.6.9 This research indicated that the sensors within CO alarms which detect carbon monoxide have a lifetime of between 5 - 7 years. This may mean that a resident has a CO alarm in place, but it is beyond its lifetime and therefore may not be providing the level of protection that the resident may think they have.

4.6.10 The research report also found that on occasion carbon monoxide alarms, although fitted in the same room as a gas appliance, were not fitted in the correct location to detect carbon monoxide. Guidance on the installation of carbon monoxide alarms is available in BS EN 50292:2002 and in the manufacturers' instructions.

4.6.11 The CO alarm must therefore be fitted in the correct location and not have passed, or be shortly about to pass, beyond its lifetime. Where the CO alarm is likely to pass beyond its lifetime during the licence period, it is strongly suggested that authorities consider including a licence condition to the effect that the alarm must be replaced within a specified timescale.

Chimneys, Flues and Fuels

4.6.12 Any chimneys/flues that are in use must be cleaned annually.

4.6.13 Where the chimneys/flues will require to be cleaned during the licence period, it is strongly suggested that Councils consider including a licence condition to the effect that they must be cleaned within a specified timescale.

4.6.14 Liquid Petroleum Gas (LPG) heaters must not be used. Specifications for solid fuel, oil-fired or gas-fired heaters are as per the current relevant British Standards.

Lighting and ventilation

4.6.15 Natural lighting

All habitable rooms should have adequate natural lighting to enable domestic activities to be undertaken safely. A clear glazed window equivalent in size to 1/10th of the room floor area will be adequate. Where practical all kitchens, bathrooms and water closet compartments shall be provided with natural light via an area of clear glazing in the kitchen and obscure glazing in the bathrooms and WC compartments, situated in either a window and/or door equivalent in total area to at least 1/10th of the floor area of the room.

4.6.16 Artificial lighting

Adequate electric lighting must be provided to all accessible parts of the building. Time switches shall not be permitted in kitchens and bathrooms. Light switches are to be suitably positioned so that they can be operated directly upon entering a room, hallway, or landing, with two way switches to enable operation at both top and bottom of a staircase.

4.6.17 Ventilation

All habitable rooms should be ventilated directly to the open air by an opening window. Kitchens, bathrooms and WCs should be ventilated directly to the external air by a window, the openable area of which shall be equivalent to at least 1/20th of the floor area of the room and/or mechanical ventilation providing a minimum of three air changes per hour shall be provided. Such installations shall be fitted with an overrun device for a minimum of 20 minutes and be connected to the lighting circuit of the room. Neither an openable door giving access directly to the external air, nor a louvered opening in such a door will be acceptable for the purposes of these requirements. All rooms containing an open flue gas heating appliance must be provided with suitable and sufficient permanent ventilation.

Relationship to compliance with the Building Regulations

4.6.18 The Physical Standards included in this guidance cover a range of issues, many of which are also addressed by Building Regulations. It should be borne in mind that the HMO licensing regime involves different considerations from the regulation of Building Standards, so the fact that a building meets all relevant building standards does not necessarily mean that it is suitable for occupation as an HMO.

4.6.19 In cases where the Council is considering requiring the applicant to carry out work on the living accommodation prior to granting the licence to make it suitable for use as an HMO,

or as a licence condition, officials should liaise with building standards officers so that the applicant can be advised of any relevant permissions that may be required, in order that they may be sought and obtained prior to commencement of the works.

4.7 SECTION 13 (3) - ANY AMENITIES THE ACCOMMODATION CONTAINS

4.7.1 Councils must also consider any amenities the accommodation contains. This is likely to include matters such as whether there are appropriate cooking and sanitary facilities, white goods such as refrigerators and washing machines, as well as adequate and appropriate storage for rubbish and recycling and facilities for drying clothes and bedding.

4.7.2 This should be considered in conjunction with the number and type of persons likely to occupy the dwelling. Acceptable levels of provision are indicated below, however a Council should be willing to take into account alternative proposals for provision to suit specific local circumstances.

4.7.3 The condition of the amenities should also be considered, e.g. are they in good working order and able to be kept clean and maintained.

4.7.4 Suggested standards which the Council should apply in considering this factor are as follows:

Facilities for the storage, preparation and provision of food

4.7.5 Wherever possible, living accommodation should contain appropriate amenities to permit occupiers to prepare, or be provided with, meals in the accommodation as well as snacks at reasonable times. In most cases this would be achieved by provision of kitchen facilities for resident use but in some types of accommodation meals may be prepared by staff.

4.7.6 The walls, floor, ceilings, work tops and cupboards of the kitchen must be sound, clean and, as appropriate, well decorated at the commencement of any tenancy. The kitchen must be laid out in such an arrangement as to allow for its safe use and be easy to keep clean and hygienic by the tenant.

4.7.7 No kitchen, kitchen/dining room or kitchen/living room shall be shared by more than 10 individuals or 6 households, irrespective of its total floor area.

Food storage

4.7.8 Each individual shall be provided with a proper food store, 0.18m³ dry storage and 0.06m³ cold storage, within the unit of accommodation. Households comprising of more than one individual will require more of each type of storage space. Where shared kitchens are provided, each individual or household sharing shall have their own proper food store either within the unit of accommodation or in the kitchen. The space in a sink unit below the sink will not be accepted for food storage.

Food Preparation a securely fixed worktop shall be provided for each individual or household using a kitchen, the minimum size of such worktops should be as follows-

<i>Household</i>	<i>Dimensions</i>
1 individual or household	600mm x 600mm
2 individuals or households	1200mm x 600mm

Increasing in width thereafter by 300mm per additional individual or household sharing.

In addition to any socket or point used for an electric cooker or oven, there shall be provided in each kitchen a minimum of:

<i>Household</i>	
1-5 individuals	2 double sockets
6-10 individuals	3 double sockets

Sockets should be positioned immediately adjacent to the work surface(s) and installed in compliance with the current edition of the Regulations for Electrical Installations of the Institution of Electrical Engineers.

Cooking of Food

4.7.9 Each kitchen shall be provided with a proper cooking appliance. The minimum acceptable will be a cooker with four rings or hot plates together with a grill and an oven in the following ratios:

<i>Household</i>	<i>Number of Cookers</i>
1-5 individuals	1 cooker
6-10 individuals	2 cookers
1-3 households	1 cooker
4-6 households	2 cookers

If due to the physical constraints of an existing kitchen (internal arrangement) the fitting of a second cooker would have a detrimental effect on the safety of anyone using that kitchen, a built in microwave oven may be provided. This will only be acceptable if the maximum occupancy within the unit does not exceed 7 individuals.

Disposal of Waste Water

4.7.10 Each kitchen shall be provided with a stainless steel (or other equal and approved material) sink and drainer (1000mm x 600mm minimum) properly located within a base unit and properly connected through an adequate sized trap to the drains.

Each sink shall have an adequate and wholesome supply of cold drinking water directly off the rising main. There shall also be an adequate continuous supply of hot water. In shared kitchens, sinks with adequate continuous supplies of hot and cold water shall be provided in the following ratios;

<i>Household</i>	
1-5 individuals	1 sink
6-10 individuals	2 sinks
1-3 households	1 sink
4-6 households	2 sinks

In kitchens requiring second sink a plumbed in full size dishwasher will be acceptable in lieu of a second sink.

4.8 Personal washing facilities

4.8.1 Where a dwelling is not capable of occupation by more than 3 persons, as determined under Article 41 of the Houses in Multiple Occupation (N.I) Act 2016, the provision of a suitably located bath or shower, water closet (W.C.) and wash hand basin (separated or not),

with continuous supplies of hot and cold running water, shall be satisfactory for the purposes of these standards.

4.8.2 Where an en-suite bathroom or shower room, or a bathroom or shower room for the sole use of an individual or household, containing a suitable bath or shower, wash hand basin and W.C. is available, this shall be adequate.

4.8.3 Where the bathroom or shower room is shared, each individual or household sharing shall have a readily accessible bathroom or a shower room provided in the following ratios:

<i>Household</i>	
5 individuals	1 bathroom or shower room
6 -10 individuals	2 bathrooms or shower rooms
11-15 individuals	3 bathrooms or shower rooms

4.8.4 Where a bathroom or shower room is shared, it shall contain a wash hand basin within the compartment. However if due to the physical constraints of the bathroom or shower room a wash hand basin cannot be accommodated within the space, an additional wash hand basin shall be provided within each bedroom.

4.8.5 Where this is not applicable and the bathroom or shower room is shared, each occupant shall have an accessible W.C. compartment, separate from the bathroom or shower room, and containing a W.C. and a wash hand basin in the following ratios:

<i>Household</i>	
1-5 individuals	1 water closet
6-10 individuals	2 water closets
11-15 individuals	3 water closets

4.8.6 Where 2 W.C.'s are required (6-10 individuals sharing), 1 W.C. may be in a room also containing a bath or shower and a wash hand basin. Where 3 W.C.'s are required (11-15 individuals sharing), 1 W.C. may be in a room also containing a bath or shower and a wash hand basin.

4.8.7 External water closets shall not be reckonable for this purpose.

4.8.8 Where amenities are shared, each occupant should be able to reach a W.C. wash hand basin and bath or shower without having to pass through accommodation which is occupied exclusively by another individual or household.

4.8.9 No unit of accommodation should generally be more than one floor vertically, or 30 metres horizontally, from the nearest W.C. wash hand basin and bath or shower. Bathrooms, shower rooms and W.C. compartments shall be constructed as to ensure privacy.

4.8.10 Baths, showers, W.C.s and wash hand basins shall not be permitted in kitchens. Baths should be 1.67m minimum in length; shower trays 800mm X 800mm minimum and wash hand basins 360mm x 265mm minimum, each with its own continuous supplies of hot and cold running water.

4.8.11 Bathrooms, shower rooms and W.C. compartments should have surfaces which are designed to be reasonably smooth and non-absorbent and capable of being readily and easily cleaned. Floors should be slip resistant.

4.9 SECTION 50 - SUITABILITY FOR NUMBERS IN OCCUPATION

4.9.1 The Council must consider whether the accommodation is suitable for the particular number and type of persons likely to occupy it. The Council should therefore require the applicant to provide details of the proposed number of occupiers of the accommodation, and the nature of the accommodation to be provided. The Council should consider imposing a licensing condition to specify the maximum number of occupants for the premises.

4.9.2 The number of persons is principally relevant to ascertain whether there are sufficient bedrooms and amenities and to avoid overcrowding, and the type of occupier is relevant to ascertain any special facilities that might be required and whether the accommodation is appropriate to the proposed occupiers' needs.

4.9.3 In some cases this may overlap to an extent with the Council's consideration of the safety and security of persons likely to occupy the accommodation. For example, if the accommodation is intended to provide womens' refuge accommodation, it is likely that a higher degree of security (e.g. secure entry, locks on bedrooms etc.) is required. If the accommodation is intended for those requiring additional support, particular adaptations for the elderly or disabled may be necessary.

4.10 Space and layout

4.10.1 The living accommodation should not be overcrowded. Sleeping accommodation would generally be expected to be in the form of single or double bedrooms, although other arrangements may be more appropriate depending on the type and number of likely occupiers. Every room used as a bedroom would be expected to be capable of accommodating at least:

- a bed;
- a wardrobe (except where a built-in wardrobe of equal size is provided); and
- a chest of drawers;

together with adequate activity space.

4.10.2 Minimum room area expected is included in Annex A.

4.10.3 Suggested furniture and activity spaces are also given in Annex A.

4.10.4 All bedrooms would be expected to be located so that it is not necessary to pass through another bedroom to reach a bathroom, W.C. or circulation space.

4.10.5 Floor space would be expected to only be counted where there is a ceiling height of at least 1.5m. This means that, for example, attic bedrooms with coombed ceilings still need to provide a reasonable usable floor space.

4.11 Treatment of children and resident owners

4.11.1 A number of these standards refer to the space and facilities required according to the number of occupants of the property. In general, this relates to the number of adults. It is suggested that, for these standards, children over 11 years should be treated as full adults, children between one and ten years as equivalent to half an adult, and children under one should not be counted.

4.11.2 Where emergency accommodation is required, either for the whole family or for a child who cannot stay with his or her usual carer, Councils may wish to take a sympathetic approach to requests for variation of a licence where this would lead to the HMO exceeding the permitted number of occupiers.

4.11.3 Councils should note that, when assessing the standards and facilities required, licensing officers should take account of all the likely occupiers of the property, including the applicant where the proposal is for the owner to be resident in the HMO. For example, a couple renting out spare rooms in their own home to five occupiers from three families will need facilities appropriate for 7 people.

4.12 SUBDIVISION OF ANY ROOMS WITHIN THE ACCOMMODATION

4.12.1 Councils must consider whether any rooms within the property have been subdivided, as this may impact on their assessment of the suitability of the accommodation to be occupied as an HMO. In the case of rooms to be used for sleeping accommodation it is suggested that this should involve consideration of whether the dividing walls are of adequate thickness and quality; the dimensions of the rooms created; whether each room created has adequate natural light and ventilation; whether each room created has its own space heating and electrical sockets.

4.13 ADAPTATION OF ANY ROOMS WITHIN THE ACCOMMODATION, RESULTING IN AN ALTERATION TO THE SITUATION OF THE WATER AND DRAINAGE PIPES WITHIN IT

4.13.1 It is also necessary for Councils to consider any adaptations which have resulted in the displacement of the water and drainage pipes within the HMO. It is suggested that Councils should consider this in tandem with the possibility of public nuisance resulting from the HMO e.g. where the new location of the water and drainage pipes could result in noise nuisance to neighbouring occupiers, or the possibility of flooding.

4.14 SAFETY AND SECURITY REQUIREMENTS

4.14.1 The safety and security of occupiers is of utmost importance in assessing whether accommodation is suitable for occupation as an HMO. Councils are therefore required to consider this when deciding whether accommodation is suitable for use as an HMO. If it is considered that there are any risks to occupiers' safety and security, the licence should not be granted until remedial action has been taken and the Council is content that the risk has been removed.

4.14.2 In considering whether the accommodation is safe and secure, the Council should have regard to any material it thinks fit. There are links with consideration of the condition of the property, and perhaps its amenities and location. It is expected that in most cases a direct inspection of the accommodation will be required to check safety features and identify risks (unless there is a strong justification to the contrary), as well as verification by other means that appropriate standards are met, relevant certificates have been obtained, etc.

4.14.3 Examples of matters that should be considered include gas and electrical safety, whether appropriate secure entry and locking systems are in place, and wider issues such as whether fire safety requirements are met and that the structure of the building is safe. It may also be relevant to consider whether there are any identifiable risks in accessing the building.

4.14.4 Examples of suggested standards to be applied are as follows:

Gas and electrical safety

General

4.14.5 Any works to the gas or electrical installations must have been carried out in accordance with the relevant regulations and guidance.

4.14.6 Evidence must be supplied to the effect that an annual gas safety check has been carried out on all gas appliances by a Gas Safe registered engineer.

4.14.7 Appropriate certificates must be available to show that the electrical system (PIR or EICR) and any appliances provided by the HMO owner (PAT) have been examined by a competent person who has confirmed they are functioning properly and are safe.

4.14.8 Councils should be satisfied that the PIR or EICR certificate is up to date (these must be renewed at least every five years, or earlier as directed by the approved electrical contractor).

4.14.9 Councils should be satisfied that the PAT Certificate is up to date (these must be renewed at least annually, or earlier as directed by the approved electrical contractor).

4.14.10 The Council may also wish to be satisfied that information is displayed in the accommodation which highlights issues of electrical safety to occupiers, in terms of both maintenance of appliances and safe use of fused extension boards rather than adaptors. For example; to prohibit use of any particular equipment which appeared to be unsafe, or, in certain types of accommodation (such as hostel-type accommodation), to prohibit the use of any electrical equipment not provided by the HMO owner.

4.14.11 Councils may wish to include a licence condition to the effect that where any relevant certificate is due to expire or must be renewed part way through a licence period, this must be renewed with no break in continuity of certification.

Gas

4.14.12 There must be evidence to demonstrate that all necessary checks of gas appliances have been carried out (e.g. an annual gas safety check under the Gas Safety (Installation and Use) Regulations 1998 or equivalent), and have been performed by a Gas Safe registered engineer.

4.14.13 The Council should request a copy of the current gas safety certificate to confirm that this has been done. The Licensee is required to retain the current gas safety certificate and those of the previous two years.

Electricity

4.14.14 Most electrical sockets should be easily accessible. Other outlets may be inaccessible, for example those for white goods.

4.14.15 Where the number of electrical socket outlets is not suitable for every day activity, the Council may wish to consider granting the licence but including a licence condition to the effect that the number of outlets must be increased over a specified period of time.

PAT Certification

4.14.16 A current Portable Appliance Test (PAT) Certificate must be held for all plug in appliances owned by the HMO owner. It should show whether the item passed or failed.

4.14.17 HMO owners do not have a duty to inspect electrical equipment belonging to the occupier. The Council may, where it considers appropriate, wish to be satisfied that HMO owners offer to / seek permission to PAT test their occupiers electrical equipment at the same time as carrying out their own annual portable appliance tests.

Security

4.14.18 The accommodation must have secure locks on access doors and ground floor or accessible windows.

4.14.19 Where the Council considers that additional safety or security features are required in light of the type of person likely to occupy the accommodation (e.g. as a womens' refuge where additional secure entry arrangements may be required and/or locks on bedroom doors etc.), these would be expected to be installed prior to the Council granting the licence.

4.14.20 All door locks must be capable of being opened from the inside without recourse to a key, so that residents can escape in case of fire. HMO owners could be encouraged to consult the Crime Prevention Officer at the local Police Station for advice on security.

4.15 THE POSSIBILITY OF UNDUE PUBLIC NUISANCE

4.15.1 When deciding whether accommodation is suitable for use as an HMO, the Council must consider whether such use of the property could result in undue public nuisance. It is likely that this will principally relate to matters such as the possibility of unacceptable levels of noise and disruption to neighbours.

4.15.2 An example of a suggested standard Councils would be expected to apply in considering this factor is as follows:

Noise reduction

4.15.3 Noise is a significant source of complaints about HMOs from neighbours, and some physical aspects of the property can add to the problems. Councils should therefore be satisfied that appropriate measures have been taken to minimise noise nuisance, such as the installation of items such as door closers and extractor fans, and 'deafening' under the floors.

4.15.4 Further guidance on available measures to address noise nuisance should be available via Council's websites.

4.16 OVERPROVISION

4.16.1 Councils have the discretionary power to refuse to grant a HMO licence if it considers that there is, or that the grant of a licence would result in, overprovision of HMOs in the locality. It is for the Council to determine the locality and the extent for which HMO type housing accommodation is required to meet that need. In considering whether to refuse to grant a licence on this ground the Council must have regard to whether there is an existing HMO licence in effect in respect of the living accommodation and, where known, the views of the applicant and any occupants. In considering whether there is overprovision, the Council must have regard to the number and capacity of licensed HMOs in the locality, as well as the need for HMO accommodation in the locality.

4.17 INSPECTIONS

4.17.1 It is recommended that the default position should be that a direct inspection of the accommodation is required, unless the Council considers an alternative approach to be justified and it will not hinder its ability to be satisfied that the accommodation is suitable. Councils should be flexible in considering its approach to assessment of applications from different types of HMO provider. It is strongly suggested that an alternative to direct inspection should not be considered justified or appropriate in the case of accommodation that has not previously been a licensed HMO, or where there has been a break since it was last licensed. Direct inspections are particularly important to check that the requirements of the Council are complied with and to recommend any alterations. They also allow the assessment of the suitability of the duty holder's fire risk assessment and the fire safety measures present in the property. Even after a licence has been granted, as part of the Council's ongoing enforcement activity it is suggested that random checks and scheduled inspections at agreed intervals should be considered.

4.17.2 Councils should ensure that their procedures for assessing applications, including direct inspection where this takes place, are proportionate and cost-effective. In particular, an efficient and streamlined inspection process is likely to be welcomed by HMO owners and occupiers. HMO occupiers understandably prefer to minimise the number and frequency of officials visiting the accommodation. The cost and possibility of inconvenience for the owner should also be taken into account when arranging inspections or repeat inspections. If there appears to be duplication or a lack of co-ordination, those affected by the licensing regime may also feel that fees (and consequently rents) could be reduced by more efficient working.

4.17.3 There are three areas in which inspection and reporting processes can be streamlined: the number of visits made, the number of officers visiting the property, and the number of reports produced.

4.17.4 Council officers and other representatives are there to inspect and may offer guidance to the HMO owner, but the onus is on the applicant to comply and they should take independent advice where appropriate.

Reports

4.17.5 Where the inspection visit is undertaken by multiple officers, either a single report or individual reports may be produced. It is likely to be most helpful to the HMO owner to receive a single note of all officers' findings. This will avoid any confusion if, for example, both building standards and HMO licensing officers comment on the same issue. The form of reporting to the licensing committee will depend on the committee's wishes, but again it is suggested that a single report might be considered, thereby avoiding conflicting advice. This would draw together contributions from each discipline in a standard format, addressing each issue in turn.

Sensitivity in inspection visits

4.17.6 It is important for all inspecting officers to be aware that they are visiting someone's home, and to behave with sensitivity to that situation. Both the scheduling of visits and the behaviour of inspecting officers may need to take account of religious and cultural issues. Language issues may also arise, with either occupiers or HMO owners, and interpreting services (both for other languages and for special communication needs) should be made available where necessary.

4.17.7 Occupiers should have been made aware of the inspection by the HMO owner, but it

may be necessary to explain again why officers need to enter their rooms. In some cases the HMO owner or occupiers may be distressed or angry if changes to the property are suggested, so officers should be trained to deal sensitively with difficult reactions. Where occupiers are particularly vulnerable, for example in a womens' refuge or accommodation for people with community care needs, officers may wish to make special arrangements, being guided by the HMO owner or support workers. It may help, for example, to schedule extra time to meet with the occupiers in a communal area before inspecting their private rooms.

Dealing with queries from architects and property managers

4.17.8 Councils should ensure that they give consistent and useful advice to professionals such as architects and property managers who are thinking of converting or building premises expected to be licensable as HMOs. The detailed physical standards are set out in **Annex A**. These are intended to provide reference points to help determine whether an HMO provides an acceptable level of accommodation and they should be applied flexibly. Councils should also advise of any standard licensing conditions for physical standards that they routinely apply. Professionals will benefit from early and clear advice on the desired standards, and this should assist in ongoing compliance.

Contact with occupiers

4.17.9 Councils are expected to make occupiers aware of the process of HMO licensing and the standards to be expected, and to offer a contact point to raise any concerns. Occupiers in HMOs often have little awareness of their rights, and may have low expectations of standards. At the same time they may be reluctant to express any concerns for fear of harassment or eviction. For this reason it is not appropriate to meet with occupiers and the HMO owner at the same time. It is suggested that trying to contact occupiers in person at the HMO is unlikely to have a high success rate. Therefore sending letters addressed to each occupier (where known) is a better approach than simply leaving leaflets at the property.

4.17.10 In addition, a passive approach may not be sufficient to elicit responses from occupiers dissatisfied with the accommodation or management. A more effective strategy may be to ask occupiers to return a questionnaire asking about key issues, which can help inform whether the HMO owner is a 'fit and proper' person to hold a licence. If any problems are identified through this process, the Council should carefully consider how these are addressed with the HMO owner, with steps being taken to ensure that the HMO owner does not attach any blame to individual occupiers.

4.17.11 All contacts with occupiers must take account of possible barriers to communication such as first languages other than English, learning disabilities or literacy problems. Councils might wish to consider working in partnership with equalities and adult literacy groups in their area, who may be able to help both in providing suitable materials, interpreting, advocacy services, and in getting information about HMO licensing to their users, members or communities.

4.17.12 If occupiers express any concerns which require further investigation, they should be invited to discuss them. This discussion should normally be conducted by someone with an awareness of housing issues and the skills to deal with a client who may be distressed or nervous. It is usually best to conduct such discussions away from the HMO. Procedures should also be in place to refer occupiers to other sources of advice if they raise issues which are not directly connected with licensing, such as debt or mental health problems. If the occupier complains of criminal behaviour, either in connection with the management of the HMO or by residents or visitors to the property, the Council should encourage them to report this to police and consider providing them with appropriate support.

4.18 POWER TO INCLUDE LICENCE CONDITIONS

4.18.1 Good management by the HMO owner is vital if the aims of HMO licensing are to be achieved. Physical standards must be maintained, occupiers' rights must be respected, and any problems which arise during the period of the licence must be effectively addressed. Good management is also key to tackling the issues which most concern neighbours of HMOs, such as building maintenance, cleaning, and noise or disturbance. For these reasons, it is suggested that Councils should consider the implications of any management issues which come to their attention in deciding whether to grant (or later, to revoke or vary) an HMO licence. In particular, such information could be relevant to consideration of the suitability of the applicant or agent.

4.18.2 In addition, failure by the HMO owner or agent to comply with obligations to owners of neighbouring properties for communal maintenance and repair may result in action being taken against them by the Council, under nuisance or building standards legislation. Councils may wish to consider whether their policy would be for this to be taken into consideration in assessing whether the HMO owner or agent is a 'fit and proper' person.

4.18.3 Councils have a power to impose such licence conditions as they think fit which may, for example, require certain standards to be maintained through the period of the licence (Part 4 of the 2016 Act). As any failure to adhere to licensing conditions is an offence, and can result in the Council revoking the licence, these are an important tool in ensuring that HMO owners adhere to reasonable standards. However, given the gravity of the consequences for HMO owners of failing to comply, careful consideration should be given to any proposed condition before including it in a licence. Any condition included must be clearly drafted, so that it is clear as to what is expected of the licence-holder from the outset.

4.18.4 Councils should encourage HMO landlords to agree tenancy agreements with their tenants as good practice which should outline acceptable tenant behaviour and detail tenant activities or practices a landlord would not consider tolerable. Tenants should be made aware of their responsibilities and any possible consequences should they breach the conditions. If anti-social behaviour persists or is severe landlords should consider taking possession proceedings.

4.19 RECOMMENDED LICENSING CONDITIONS

4.19.1 The following key points are recommended as basic licensing conditions to be considered for inclusion in all HMO licences. The wording suggested here should be adapted as necessary depending on the circumstances of the application.

4.19.2 As set out above, the Council should consider carefully the relevance and appropriateness of these, and any other proposed licence conditions, before including them in a licence. Authorities should give careful consideration to the inclusion of additional conditions where this could help to ensure the continuing suitability of the accommodation for occupation as an HMO.

4.19.3 Councils must be mindful of the fact that failure to comply with a licence condition is a criminal offence, and can also result in the licence being revoked. They should therefore consider whether it would be reasonable and proportionate to impose a particular policy as a licence condition, or whether alternative means of securing the same result exist which would not result in criminalising a failure to comply.

4.19.4 The licence holder must take steps to ensure that the property, fittings and furniture,

including fire precautions, plumbing, gas and electrical installations are maintained throughout the period of the licence to the standard required. The HMO owner should hold all necessary certificates.

4.19.5 The HMO owner will be responsible for maintaining the structure of the house and fixtures and fittings for the supply and use of hot and cold water, gas and electricity. He will also be responsible for ensuring that other fixtures, furnishings and equipment provided by him for the use of occupiers are safe and fit for purpose. Specific legislation applies to gas appliances and soft furnishings.

4.19.6 The licence holder must ensure that advice to occupiers on action to be taken in the event of an emergency is clearly and prominently displayed within the living accommodation.

4.19.7 In the event of an emergency, such as a fire, gas leak or injury, it is important that occupiers know what to do and who to contact. The HMO owner must provide this information, with the tenancy agreement, and permanently and prominently display this within the property. In staffed accommodation it should state how to inform staff of an emergency. The information should also cover safety information such as the safe use of gas appliances, regular checking of smoke alarms, not tampering with fire doors, and so on.

4.19.8 HMO owners should consider providing guidance in alternate languages where appropriate.

4.19.9 The licence holder must ensure that the physical standards for HMO living accommodation assessed as suitable by the Council when approving the licence application are met at all times.

4.19.10 The licence holder must ensure that the number of persons residing in the premises shall not exceed the number of occupiers permitted.

4.19.11 An HMO licence should generally be granted for a specific number of occupiers within the property. Exceeding this number would be an offence as a breach of this licensing condition. It is open to the HMO owner to apply to the Council for a variation to their licence where the licence holder wishes to increase the number of occupiers. This request could incur an additional cost levied by the Council.

4.19.12 The licence holder must make the licence, including any conditions, available to occupiers, within the premises where it can be conveniently read by residents.

4.19.13 The licence holder must ensure that actions to secure repossession must be only by lawful means.

4.19.14 Where a Council has grounds to believe that the HMO owner may attempt unlawful eviction, but these grounds are not sufficient to warrant the HMO owner failing the 'fit and proper' test, then it may be appropriate to include a licensing condition to ensure that repossession can only be by lawful means.

4.19.15 In the great majority of cases occupiers will leave the property at the end of their lease. Indeed, HMO occupiers generally stay for relatively short periods of time in any one property. However, if difficulties arise, it is important that HMO owners follow the law in acting to remove an occupier. Where a formal tenancy exists, it is usually necessary for the HMO owner to obtain a court order requiring the occupier to leave. The HMO owner must always follow the procedure set out in the occupancy agreement. It is in all cases illegal to use any form of harassment to try to make an occupant leave. The illegal eviction or

harassment of occupiers are police matters and should be reported to them.

PART 5 IDENTIFICATION, ENFORCEMENT AND COMPLAINTS

5.1 IDENTIFYING UNLICENSED HMOs

5.1.1 Councils have various functions under the 2016 Act in relation to the enforcement of the HMO licensing regime, ranging from powers to vary and revoke licences, to powers to impose Fixed Penalty Notices and summary convictions offences.

5.1.2 To assist in the exercise of these enforcement functions, it is suggested that Councils should also take active steps to publicise the licensing regime to encourage all owners of HMOs to seek a licence as well as to increase the likelihood of unlicensed HMOs being brought to the Council's attention (e.g. by occupiers or neighbours). A wide range of methods and sources of information can be used.

- Most HMO owners will be happy to comply with the law when they know about it. Advertising the regime and making sure that information is readily available from relevant information points is a primary way of reaching this group. Active engagement with HMO owners' groups or forums can also be helpful.
- Identifying individual HMOs is key to effective enforcement of the regime. Various written and on-line sources may be available, including local advertising of rooms for rent, letting websites or approved lists of university accommodation.
- One of the best sources of information about unlicensed HMOs is people who live in and around or visit HMOs. Enquiries from current or prospective occupiers, complaints from neighbours and intelligence from other departments or partner agencies who visit the property in the course of their activities can all be harnessed to build up a database of possible unlicensed HMOs for further investigation.
- A Council has the power under section 49 to serve a notice on occupiers of a property, and any person receiving rent in relation to it (such as agents) to provide information to assist it in determining whether the living accommodation is an HMO. Failure to provide information is an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale. Councils should take account of potentially vulnerable occupiers who may fear retaliation from the HMO owner such as eviction or violence, and should carefully consider whether it is proportionate to serve a notice in those circumstances, and whether the information might be sought by an alternative means (e.g. requesting information from neighbours or other departments or partner agencies, or even inviting or requesting the occupier to volunteer information in a safe environment, without resorting to service of a formal notice under section 49).

5.1.3 In taking enforcement action to identify unlicensed HMOs, Councils should also take steps to identify any agent acting in relation to an unlicensed HMO - it is a criminal offence for anyone to act as such by doing anything "which directly permits or facilitates the occupation of that house" as an HMO. The maximum penalty is the same as for the unlicensed owner, a Fixed Penalty Notice of up to £5,000 fine or up to £20,000 on conviction.

5.2 ENFORCEMENT ACTION

5.2.1 There are a wide variety of enforcement options available to Councils;

- A Council can revoke a licence at any time, if the owner or agent are no longer suitable (e.g. as not fit and proper), the living accommodation is no longer suitable and cannot be made so by varying the licence conditions, or any condition of licence has been breached;
- A Council can vary the terms of a licence at any time;
- Section 30 of the 2016 Act creates a number of criminal offences relating to HMO licensing. An owner of a licensable HMO without a licence is committing an offence (unless the owner has a reasonable excuse). A person who acts as an agent for an HMO which is not licensed also commits an offence. And where the owner of an unlicensed HMO instructs an agent to act in relation to that house, the owner commits an offence;
- Section 34 sets out some circumstances in which the owner of an HMO has a reasonable excuse for the purposes of sections 30(1) and 31(2) and (3). The Council may decide to require a licence holder to take action to rectify or prevent a breach of a licence condition;
- A Council has a general power, in order to enable or assist it to exercise its functions under the Act, to require a person owning, occupying or receiving rent in respect of land or premises to provide information about the land or premises, including the nature of that person's interest and the name and address of any other person with an interest. When this is done to establish whether there is a licensable HMO on the land or premises, the notice may also require the person to state their relationship to other occupants;
- A Council has a right of entry to any land or premises for the purpose of enforcing the HMO licensing regime, which is enforceable by court warrant.

5.2.2 In addition to the Council's own enforcement powers, Councils should compile evidence in relation to suspected unlicensed HMOs or other HMO offences to support any prosecution

5.2.3 Councils may develop their own policies for enforcement of the HMO licensing regime. It is however suggested that the Council should take into account the suggestions the following;

5.2.4 In many cases where an unlicensed HMO is identified, Councils should consider contacting the owner to inform them of the licensing requirement and request that they submit a licence application within a set period of time e.g. 14 days.

5.2.5 Any additional enforcement action to be taken will depend on the circumstances, in particular whether there are any occupiers of the property and whether there are any risks to their safety and security or the property is otherwise unsuitable for them to occupy.

Rectification or Hazard Notices

5.2.6 The Council may inspect the living accommodation (using rights of entry under section 78 of the 2016 Act where necessary) to assess the state of the property and to ascertain whether there is any need to serve a notice. Such a notice would require the owner to carry out work in order to make it reasonably fit for occupation. If the owner fails to do so, the Council is entitled to carry out the work and recover any costs incurred from the owner. Schedule 3 Part 2 Section 5 (1) of the 2016 Act applies to HMO rectification or hazard notices.

5.2.7 Where a hazard notice is served, or the Council otherwise requests that work is carried

out in order for a licence to be granted (without considering that a hazard notice is necessary) and the property is occupied prior to the grant of licence, the Council should work closely with the owner to ensure that any necessary works are completed quickly and so as to allow swift grant of licence e.g. 3 months from time of application.

5.2.8 There will inevitably be some owners who do not respond to such approaches, and against whom enforcement action must be taken. There will also be some who apply for a licence but are refused and others who have their licences revoked or suspended. These cases must be monitored to ensure the property does not continue to operate without a licence.

5.2.9 An owner who is unwilling or unable to obtain a licence may agree to cease operating the premises as an HMO. However, it may not be possible to do this immediately, because of the terms of tenancy agreements, either statutory or contractual.

Temporary Exemption Notice

5.2.10 A Council can grant a temporary exemption order in response to an application by the owner of an unlicensed HMO that requires to be licensed. This could prevent the owner from committing an offence while they make arrangements to move the occupiers out of the premises. The owner must explain the steps to be taken to stop the premises from being an HMO, and the Council must be satisfied that these steps will be successful. The HMO does not need a licence during the term of the order, which is three months unless extended for no more than one further period of three months in exceptional circumstances. The notice may require the owner to carry out work to improve the safety or security for the occupants for the duration of the notice. This could involve minor works or the provision of removable equipment where licence conditions would normally require permanent, fixed items.

Fixed Penalty Notices

5.2.11 Section 64-66 of the 2016 Act gives Councils the power to issue Fixed Penalty Notices which tends to be conferred in respect of lower level offending note **Annex B** attached. 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.

5.2.12 Councils should note the issuing of a notice is an alternative to prosecuting the offender. A commonly used formulation is that the giver of the notice has reason to believe that a person has committed an offence and there are grounds for instituting proceedings for an offence.

Prosecution

5.2.13 The ultimate sanction in the licensing regime is prosecution. Licensing officers should take care in carrying out inspections or investigations into suspected unlicensed HMOs, that any evidence is collected in such a way that it would be admissible in court, if necessary. For example, to demonstrate that living accommodation which is suspected to be an unlicensed HMO does indeed satisfy the definition of HMO in the 2016 Act.

5.2.14 Councils may also find it beneficial to verify ownership of a property. It is the owner who should apply for a licence, but where the HMO owner has a criminal record or would likely be considered not to be a 'fit and proper' person, they may seek to appoint an agent.

5.2.15 Prosecution can be a lengthy process, and occupiers should not be subject to dangerous or unfit conditions in the meantime. If necessary, Councils should also consider

using other powers, or asking the Northern Ireland Fire and Rescue Service to use their powers, to require improvements to be made or that the property be closed down.

5.3 DEALING WITH COMPLAINTS

5.3.1 Serious complaints may lead directly to enforcement action against the owner. Alternatively, a record of more minor complaints about a particular HMO may have an effect on the Council's decision when a subsequent application for a licence in respect of the premises is submitted. It may be helpful to establish liaison arrangements with teams responsible for the Clean Neighbourhood and Environment Act 2011. Similarly, some complaints made to HMO licensing officers may be more appropriately dealt with by anti-social behaviour teams or the police.

5.3.2 The Councils are likely to receive complaints about HMOs or suspected HMOs for a number of reasons. Occupiers may make complaints about the condition of the property or the actions of the owner. Neighbours may be concerned about the number of people in the property and their living conditions, or about noise and disturbance or anti-social behaviour attributed to the residents of the HMO or people visiting the property. In apartment block situations, in particular, neighbours may also make complaints about maintenance, cleaning of common areas, accumulations of refuse and water ingress.

5.3.3 Councils should keep a record of complaints, and investigate where this is considered appropriate. Complaints may bring to light HMOs which the Council were not previously aware of. They may also lead to the discovery of breaches of licensing conditions.

5.4 DATA PROTECTION AND SHARING OF INFORMATION

5.3.4 Councils should ensure all employees involved in the operation and administration of the HMO regulatory function who have access to any personal information are fully aware of and abide by their duties and responsibilities under the Data Protection Act 1998. Before sharing personal information, staff will ensure all sharing is in line with statutory requirements as outlined in Sections 73-76 of the 2016 HMO Act.

ANNEX A

TECHNICAL SPECIFICATIONS FOR PHYSICAL STANDARDS

(See also SECTION 4.3)

SPACE AND LAYOUT

The space standard and occupancy of each room within the house shall be based on the use made of the room.

Floor space should only be counted where there is a ceiling height of at least 1.5m.

The space standard is contravened when the number of persons who sleep in the HMO exceeds the permitted number for that HMO. In determining for the purpose of subsection (1) the number of persons who sleep in an HMO—

- (a) no account is to be taken of a child under the age of one, and
- (b) a child aged 11 or less (but aged at least one) is to be counted as one-half of a person.

To calculate the permitted number for an HMO—

- (a) for each room in the HMO which is available as sleeping accommodation, determine, by reference to what type of room it is, which of Tables 1, 2 or 3 applies to that room,
- (b) determine, by reference to the floor area of the room, the permitted number of persons for that room, and
- (c) add together the permitted numbers for each of the rooms in the HMO.

The total is the permitted number for the HMO.

Table 1

Rooms which are a bedroom (only)

Floor area of room	Permitted number for the room
Less than 6.5m ²	No account is to be taken of the room
6.5m ² or more but less than 11m ²	1
11m ² or more but less than 15m ²	2
15m ² or more but less than 19.5m ²	3
19.5m ² or more	4 plus one additional person for each 4.5m ² in excess of 19.5m ²

Table 2

Rooms which are a bedroom and living room

Floor area of room	Permitted number for the room
Less than 10m ²	No account is to be taken of the room
10m ² or more but less than 15m ²	1
15m ² or more but less than 19.5m ²	2
19.5m ² or more	3 plus one additional person for each 4.5m ² in excess of 19.5m ²

Table 3

Rooms which are a bedroom, living room and kitchen

Floor area of room	Permitted number for the room
Less than 13m ²	No account is to be taken of the room
13m ² or more but less than 20.5m ²	1
20.5m ² or more	2 plus one additional person for each 4.5m ² in excess of 20.5m ²

For the purpose of HMO Act 2016, a room is available as sleeping accommodation if it is of a type normally used in the locality as a bedroom, as a bedroom and living room or as a bedroom, living room and kitchen (as the case may be).

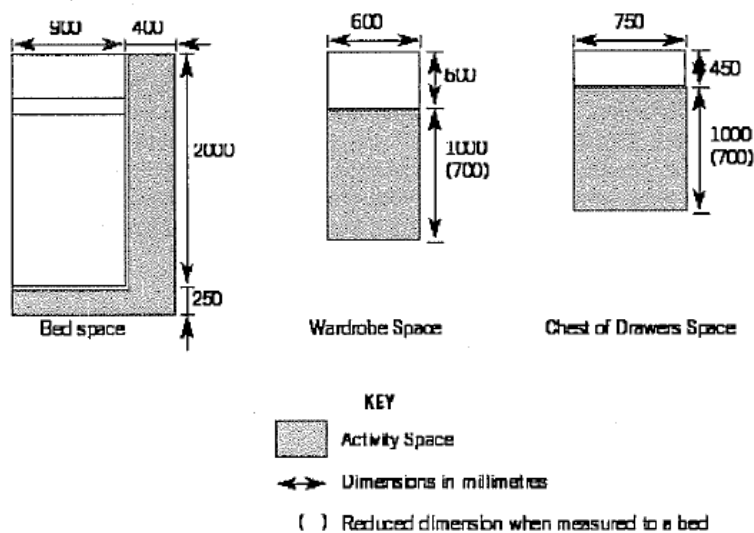
A certificate of the Council stating the number and floor areas of the rooms in an HMO, and that the floor areas have been determined in the manner specified in regulations, is evidence for the purposes of legal proceedings of the matters stated in it.

Where the amendments to space standards for ceiling heights, minimum bedroom widths and for communal living room, excluding any area used as a kitchen, represent an increase in standards, this is not viewed as a safety issue and should only be applied to new applications.

Annex A

Activity Spaces

Activity Spaces for bedrooms

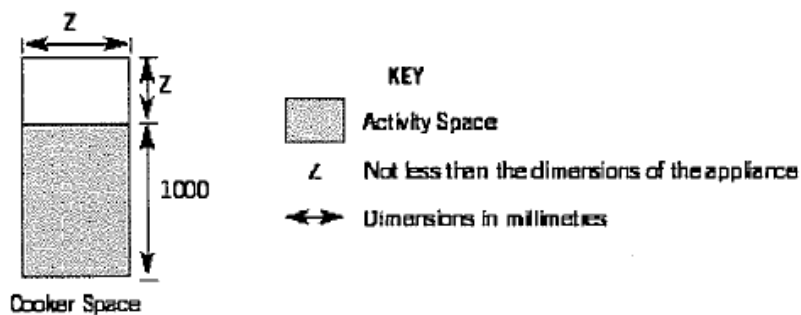


Notes:

1. An activity space is measured at floor level.
2. The shaded area of an activity space may overlap only the shaded area of another activity space.

KITCHENS

Activity Space for Cookers



Annex B

No	Offence	Location in Act	FPN	Criminal Penalty	Daily Fine
1	Unlicensed HMO: Agent	30(1)	£5,000	Subject on summary conviction of a fine up to £20,000 (Equivalent to Level 5)	Daily fine of £50
2	Unlicensed HMO: Owner	30(2)	£5,000	£20,000	Daily fine of £50
3	Breach of occupancy specified in licence	31(1)	£5,000	£20,000	Daily fine of £50
4	Contravention of overcrowding notice	60(1)	£5,000	£20,000	Daily fine of £50
5	Contravention of occupancy requirement of suitability notice	60(2)	£5,000	£20,000	Daily fine of £50
6	Uses or permits use of HMO subject to a hazard notice	60(4)	£5,000	£20,000	Daily fine of £50
7	Unauthorised disclosure of information obtained under section 73	75(1)	N/A	£20,000 and/or on conviction on indictment, to imprisonment for a term not exceeding 2 years	N/A
8	Unlicensed HMO: Owner authorises person to act on his behalf	30(3)	£2,500	Subject on summary conviction of a fine up to £10,000 (Equivalent to Level 4)	
9	Breach of licence conditions: owner/agent	31(2)	£2,500	£10,000	
10	Breach of licence conditions: person not named on licence	31(3)	£2,500	£10,000	
11	Person represents HMO as licensed when it is not	32	£2,500	£10,000	
12	Agent operating but not named on licence - other	33(1)	£2,500	£10,000	
13	Agent operating but not named on licence - owner	33(2)	£2,500	£10,000	
14	Failure to comply with rectification notice	37(1)	£2,500	£10,000	
15	Unlawful occupation	Para 8 of Sch 3	£500	Subject on summary conviction of a fine up to £1,000 (Equivalent to Level 3)	
16	Owner fails to complete works specified in hazard notice	60(6)	£500	£1,000	
17	Obstruction of a relevant person	80(5)	£500	£1,000	
18	Obstruction of works needed, under a Part 4 notice, TENs & rectification notices	82(4)	£500	£1,000	
19	Failure to comply with information notice	49	£200	Subject on summary conviction of a fine up to £500 (Equivalent to Level 2)	
20	Refusal to provide information under 68 & 70	74	£200	£500	
21	Providing false or misleading information	Para 17 of Sch 2	£200	£500	

DRAFT

Proposed Guide to the Licensing of Houses in Multiple Occupation in Northern Ireland: Guidance for Local Government (Xxx 2018)

Proposed Comments

Mid Ulster welcomes the opportunity to comment on the proposed “Guide to the Licensing of Houses in Multiple Occupation in Northern Ireland: Guidance for Local Government (draft Xxx 2018)” forwarded to Councils for comments on 30th January 2018.

Part	Comments
Part 1- Introduction	MUDC welcomes the guidance and acknowledges this guidance relates to the Northern Ireland legislation and previous consultations
Part 2 HMO Licensing- General Requirements 2.1 Overview	<p>2.1.3 The guidance on joint owners in 2.1.3 is welcomed. Concerns that where there are joint owners of a HMO that only one will be required to meet the ‘Fit and proper test’ Further clarity required on how to determine the fit and proper test requirement. Further clarity is requested where licenses are applied for jointly. Are all joint owners assessed as fit and proper persons?</p> <p>2.1.5 The wording of the definition of an HMO in this section of the guidance differs to the wording in the legislation which may lead to confusion.</p> <p>2.1.15 Where the guidance refers to offences it would be useful to include reference to the section of the act the offence relates to.</p> <p>2.1.21 Online transactions will create additional costs for Councils. Councils will need to consider how this will be managed within the proposed model for HMO function.</p> <p>2.1.23 Further clarity on refunding of fees on applications relating to the unexpired term of HMOs registered under the scheme is requested.</p>
2.2 Applying for an HMO licence	<p>2.2.1 “Part 2 Section 8 of the Act” should read “Schedule 2(1) of the Act” “any other information the Council should reasonably require” should read “ any other information which the Council may specify by general notice” Further clarity is requested by what is meant by “general notice” to aid consistency</p>

	<p>2.2 Section 8(3) HMO Act (NI) 2016 states that Schedule 2 makes provision about the procedural requirements relating to an application for an HMO Licence.</p> <p>2.2.3 Further regulations should be specified in the guidance and referenced for clarity.</p> <p>2.2.9 Further guidance is requested on what would be considered a “material change in circumstances”</p> <p>2.2.10 Information Sharing protocols may be required for sharing information.</p> <p>2.2.14 Further clarity is requested on the statement “section 14 of the Act-Licence conditions, should give careful consideration to the possibility of granting licences subject to conditions, which may help to ensure that appropriate standards are maintained throughout the period of the licence”</p> <p>2.2.15 Further guidance is needed on what information must be excluded from the register. Additional information is needed in relation to what constitutes a “genuine interest” in the property and “jeopardise the safety or welfare of any person or the security of the premises”.</p> <p>2.2.16 Further guidance is requested on the circumstances where the occupants of the premises must be served a notice.</p> <p>2.2.19 Three months is very limited given that in Scotland the period is 12 months. Further guidance is requested on the circumstances and process for extending the period via a court of summary jurisdiction</p> <p>2.2.23 This section is contradictory with regards to charging of fees for varying a licence</p> <p>2.2.24 Does this mean a new application is submitted? Does this mean a Planning application will be required and does that mean over supply comes into play in areas where the planning limits have been breached? Will this person have to meet Fit and Proper person test?</p>
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	<p>2.2.25 Further guidance should be provided where the licensees personal representatives are not registered landlords.</p>
Part 3 Administration of HMO Licensing	<p>3.2.4 “Nominated Councils” should be explained within the guidance It is the responsibility of Councils to determine the most appropriate administration processes and procedures</p>
Part 4 Standards and Licensing Conditions	<p>4.3.7 Further guidance is requested on what would be considered exceptional circumstances.</p> <p>4.4.7 The Department should ensure the wording in the guidance accurately reflects the wording in Section 13(2) of the Act to avoid confusion</p> <p>4.6 The Condition of the Accommodation. The accommodation standards are set out in the (Accommodation Standards) NI Regulations 2016. The Department should ensure that the guidance accurately reflects the wording of the regulations.</p> <p>4.9 Suitability for Numbers in Occupation HMO (Space Standards) NI Regulations 2016 set these out. The Department should ensure that the guidance accurately reflects the wording of these regulations.</p> <p>4.12 Subdivision of any rooms within the accommodation – We do not have this considered in Section 13 of the 2016 Act.</p> <p>4.13 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 considered in Section 13 of the 2016 Act</p> <p>4.14 Safety and Security Requirements4.14.2 More specific guidance is required.</p> <p>4.14.12 The gas regulations were updated in 2004</p> <p>4.19.15 Councils may also have a role in the enforcement of illegal eviction and harassment.</p>