

Houses in multiple occupation in Northern Ireland

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Size of the HMO sector in NI

(Source NIHE, November 2015)

No of HMOs identified	No of registered HMOs	No exempt from registration	Registration pending
6144	5455	323	366

HMOs – the current law

- The current law is based on the Housing (NI) Order 1992 as amended by the Housing (NI) Order 2003.
- The 2003 Order provides for a registration scheme run by the Northern Ireland Housing Executive (NIHE).
- The current scheme is the amended scheme operative from 1 June 2016.

Current definition of a HMO

- HMO is defined as “a house occupied by more than 2 *qualifying persons, being persons who are not all members of the same family and for that purpose “family” includes uncle, aunt, nephew and niece.*”
- This is contained in article 75 of the Housing (NI) Order 1992. The definition was changed in the Housing (Amendment) (NI) Act 2010 with effect from 31 July 2010.

Houses in multiple occupation in Northern Ireland - issues

- There have been issues with the definition of a house in multiple occupation, notably in the case of *Re Judicial Review by the Landlords Association of Northern Ireland*. [2005] NIQB 22

Houses in multiple occupation in Northern Ireland

- Consultation on a fundamental review of the regulation of HMOs in Northern Ireland was issued by the Department for Social Development in June 2012.
- Drivers for change were noted to be:
 - Increased need for HMO's due to the ongoing welfare reforms
 - A need to review the regulatory standards (in place since 1992)
 - Lack of integration between the regulatory and registration systems
 - Issues highlighted in the 2005 judicial review of the HMO registration scheme

New legislation – Houses in Multiple Occupation Act

- This is an Act of the Northern Ireland Assembly, known as the Houses in Multiple Occupation Act (NI) 2016.
- The purpose of the Act is to introduce a new system of licensing and a new provision about standards of housing. It also attempts to streamline the definition of HMOs and make some other provisions.

Main provisions in the 2016 Act

- Introduces a licensing system rather than a registration scheme, with a fit and proper person test.
- The licensing authority is the local council rather than the NIHE reflective of the transfer of housing powers to councils in the province.
- Enforcement mechanisms include provision for fixed penalty notices as an alternative to court enforcement by the local councils.

New definition of a HMO (s1 & 2)

A HMO consists of

- Living accommodation (capable of being let as a separate dwelling or building in single ownership) and its occupants share one or more basic amenities with each other (i.e. a toilet, personal washing facilities or facilities for the preparation of cooked food).
- Occupied by
 - ≥ 3 persons
 - as their only or main residence
 - who form > 2 households and
 - rent is paid by ≥ 1 of those persons.

Definition of a HMO continued (s 3,4)

- Persons occupying the property as *main residence* include:
 - Someone who is in full-time education
 - Person engaged in seasonal work
 - Person occupying accommodation that is managed by a voluntary organisation and is used for the temporary accommodation of persons who have left their home due to physical violence or mental abuse or the threat of such abuse.
- Members of the same household are
 - Members of the same family – couple or a relative (means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece but not a cousin).
 - person providing domestic help or personal care and who occupies the accommodation.

Exemption from HMO legislation (Sch1)

- Exceptions from HMO legislation are
 - Accommodation *managed or controlled* by the NI Policing Board, NI Fire and Rescue Service or a health and health and social care body
 - Accommodation *managed* by NIHE or a registered housing association
 - Care homes
 - Student accommodation managed by an educational establishment
 - Religious communities
 - Armed forces accommodation
 - Prisons
 - Buildings occupied by owners

Definition of owner and managing agent (s88)

- **Owner** is defined as a person other than a mortgagee (not in possession) who is entitled to receive the rack rent for the accommodation
- **Managing agent** – a person who
 - Receives the rent from the persons who occupy the accommodation BUT if an agent introduces a tenant or occupier and they enter into a tenancy and the agent receives only the first rent payment he is not a managing agent for the legislation or
 - Arranges for any repairs or refurbishment of it or
 - Receives communications from the occupants or council relating to it

Licensing of HMOs

- All HMOs have to be licensed under the new legislation unless they are exempt.
- A HMO licence can last for up to 5 years.
- There are restrictions on when an applicant can reapply for a HMO licence if he or she has been refused one.

Requirements for a HMO licence

- Occupation of the property must not breach planning control
- Owner and any managing agent have to be fit and proper persons
- Proposed management arrangements for the property are satisfactory
- Not cause overprovision of HMOs in the area
- The accommodation is fit for human habitation
- Suitable for the no of persons specified in the licence or can be made so.

Requirements for a HMO licence – fit and proper person

- Applies to an owner and managing agent who must not be subject to a disqualification order.
- Council will take account of the following:
 - Offence involving fraud (dishonesty), violence, drugs, human trafficking, a firearm
 - Sexual offences
 - Unlawful discrimination in carrying on any business
 - Contravention of law relating to housing or landlord and tenant law
 - Acted otherwise than in accordance with the code of practice issued by the Department
 - Anti-social behaviour by the person and conduct by the person re anti-social behaviour by the occupants while in the accommodation or affecting the occupants of the accommodation

Licence may be subject to conditions re the following

- Management, use and occupation of the HMO
- Condition and contents of the HMO
- In particular conditions may include:
 - Restrictions or prohibitions on use or occupation of parts of the HMO
 - Taking reasonable and practical steps to prevent or reduce anti-social behaviour
 - Facilities and equipment to be made available or maintained in repair and proper working order (works to be carried out in a specified period)
 - Obliging the owner or managing agent to attend training courses in relation to any code of practice approved by the Department
 - Other conditions may be imposed in the licence

The HMO Act also provides for

- Measures against overcrowding
- Suitability notices - re number of persons who can reside in a HMO
- Hazard notices – health and safety notices

The HMO register

- While the register currently maintained by NIHE is freely accessible the new HMO register operated by the councils will not be.
- Every council must maintain a register of HMOs. Those who can request extracts from the register are those who
 - Have an interest or prospective interest in the HMO
 - Resident of the HMO
 - Be otherwise sufficiently concerned with the information contained
 - Be a statutory authority;
 - E.g. Chief Constable, DSD, NIFRS, NIHE

Introduction of the 2016 Act

- The Houses in Multiple Occupation Act (NI) 2016 is expected to come into force in 2018.
- There will be significant secondary legislation and guidance to support the Act.

Private Rented Sector proposals for change

- The legislation regarding HMOs has to be seen in the wider context of private tenancy reform in Northern Ireland. The Department for Communities issued a consultation paper on proposals for change in January 2017. The objectives are:
 - Assess the contribution the private rented sector could make to increase housing supply, meet demand and need.
 - Identify key enablers to support the current and future role of the private rented sector
 - Evaluate the effectiveness of current regulation
 - Check if there are any unintended consequences in the current system and address these
 - Assess the contribution the private rented sector could make towards more shared housing.

PRS Proposals for change

- Consider supply issues
- Rent increase only once in a 12 month period
- Mandatory written tenancy agreements
- Enhanced notice to quit period
- Introduce a fast track eviction scheme
- Review the CIH landlord course
- Fund a dedicated landlord advice line
- Develop a tenant information pack
- Include a fitness declaration as part of landlord registration
- Regulation of letting agents and ban letting fees
- Provide mandatory smoke and carbon monoxide detectors
- Legislation re EPC ratings
- All unfit properties built before 1956 subject to rent control
- Examine the financial case for establishing an independent housing panel for Northern Ireland

Notes

- Please note that the material in this paper is given as general guidance only. This legislation will be further expanded and clarified by means of secondary legislation.
- The law in this area is subject to change, sometimes at very short notice. Therefore before giving any advice to clients to take a particular course of action or not to take a particular course of action the exact current legal position should be investigated and confirmed.

Published works by Charles O'Neill

- The Law of Mortgages in Northern Ireland, (2008).
- The Law of Private Tenancies in Northern Ireland, (Spring 2013).
- Both published by SLS Legal Publications (NI) and available from the Law Society of Northern Ireland.