These notes refer to the Houses in Multiple Occupation Act (Northern Ireland) 2016 (c.22) which received Royal Assent on 12 May 2016

Houses in Multiple Occupation Act (Northern Ireland) 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Supplementary

Section 62: HMO register

Section 62 requires councils to keep an HMO register containing details of each application for an HMO licence, the decision made on the application and subsequent progress of the licence. An entry in the register is to be available to any person who is associated with, or who has a genuine interest in the HMO, as determined by the council.

Section 63: Code of practice

This section creates a power for the Department to make regulations approving a code of practice laying down standards of conduct and practice to be followed with regard to the management of houses in multiple occupation.

Section 64: Fixed penalty: service of notice

Sections 64 to 66 provide for fixed penalty notices to be issued, instead of criminal proceedings. Section 64 allows an authorised officer of the council, who has reason to believe that an offence has been committed, to serve a fixed penalty notice. The notice must set out the offence which is alleged to have been committed, and state the amount of the fixed penalty.

Section 65: Fixed penalty: effect of notice

Where a fixed penalty notice is served on a person in respect of an offence, no criminal proceedings may be commenced against the person for the offence before the time specified in the notice has elapsed. The person may not be convicted of the offence if the person pays the fixed penalty notice.

Section 66: Fixed penalty: power to alter amounts

Section 66 allows for the Department for Communities to alter the amounts of fixed penalty notices.

Section 67: Appeals

Section 67 lists the decisions against which an appeal may be made. Any person on whom the council is required to serve notice of a decision has the right to appeal against the decision to the county court. They must do so within 28 days (or within 7 days of receiving notice of the decision, if later), although the county court may decide to hear a late appeal if there are special circumstances.

Section 68: Council's statement of reasons for decisions which may be appealed

This Section specifies that when any decision to which Section 67 applies is made, then the council must include a statement informing the person (a) that they may request an explanation of the council's reason for the decision and (b) of the right to the appeal of this decision under Section 67. Where a statement of reasons is requested, the council must supply that statement within time for the person to be able to appeal the decision. This right to a separate statement of reasons does not apply where the reasons for the decision are included in the original notice of the decision.

Section 69: Powers of court on appeal

An appeal under Section 67 is to be by way of re-hearing, but may be determined taking into account matters of which the council were not originally aware. The county court may confirm, vary or quash the decision of the council, or may remit it back to the council for reconsideration.

Section 70: Powers to require information and documentation: introductory

The powers conferred on the council by Section 71, 72 and 73 are for the purpose of enabling the council to exercise any function on it conferred by this Act and/or investigating whether any offence has been committed under this Act.

Section 71: Power to obtain information from persons connected to the premises

This section allows a council to serve notice on certain persons (defined as "relevant persons") to provide them in writing with details such as: the nature of the person's estate in the premises, the name and address of any other person known to them to have an estate in the premises, any other information which the council may reasonably require and may be known to the person. The notice may also require the person to disclose the relationship between themselves and any other occupiers for the purpose of establishing households and whether the premises are, or contain, an HMO. "Relevant persons" include licence holders, owners, occupiers and agents in relation to premises.

***Section 72*: Power to require persons connected with the premises to produce documents**

This section allows the council to serve a notice on a "relevant person" (which has the same meaning as in section 71) requiring the person to produce documents which the council requires and believes are in the person's custody or control.

***Section 73*: Power to obtain information from other persons**

This section outlines that the council may require a "relevant person" to provide the council, in writing, any "relevant information" under that person's custody or control. The section then goes on to list those considered as "relevant persons" for this purpose (which are different from those for purposes of sections 71 and 72) e.g. NIHE, educational institutions, estate agents, etc. The section also sets out what is considered "relevant information" e.g. information which indicates a building or part of a building may be an HMO.

***Section 74*: Sharing of information between councils**

This section allows for the exchange of information between councils for the purposes of carrying out their functions under this Act.

***Section 75*: Failure to provide information or provision of false information**

A person commits an offence if they refuse or fail to provide information or a document requested under Sections 71, 72 or 73 and do not have a reasonable excuse for that failure, or if they supply false information or falsify a document.

Section 76*: Unauthorised disclosure of information obtained under *Section 73* or *74

An employee of the council commits an offence if they disclose, without lawful authority, any information which the council has obtained under section 73 or 74 and the employee has acquired through their employment and which relates to accommodation that is, or is believed to be, an HMO. This helps to protect the confidentiality of information obtained from other public authorities under that section, which may have originally been obtained under statutory powers and for other purposes.

***Section 77*: Court to inform council of convictions**

This section applies where a court convicts a person of any offence under this Act, with the exception of an offence under Section 76. It requires the clerk of the court to send to the council details of the conviction and sentence and a note of any revocation or disqualification order made by the court in consequence of the conviction.

Section 78: Powers of entry: without warrant

This section applies where a council considers that an examination of any living accommodation is required to allow them to establish: whether it is an HMO; whether to grant, vary or revoke a licence or whether any other function under this Act should be exercised. A person, authorised in writing by the council, may carry out the examination at a reasonable time and must give at least 24 hours notice to the owner and occupiers of the accommodation if practicable. The person may not use force in the exercise of the power conferred by this Section.

Section 79: Powers of entry: with warrant

A lay magistrate may issue a warrant under this section authorising a person named in the warrant to enter and search the premises specified in the warrant. The warrant may only be issued if two conditions are satisfied:

1) A person acting on behalf of the council, reasonably requires to enter or search the premises to establish whether an offence has been committed, a requirement imposed by a notice has been or is being complied with or any of the matters mention in Section 77(1) (a), (b) & (c) (that is, whether living accommodation is an HMO, whether to grant, vary or revoke a licence, or whether to exercise any function under the Act).

2) The premises are unoccupied or temporarily vacant, or applying to the owners or occupiers for entry would defeat the purpose of the entry or the search, or entry has already been sought under Section 78 but has been refused.

The section sets out a number of safeguards governing the issue and execution of warrants.

Section 80: Powers of entry: supplementary provisions

This section outlines the additional provisions associated with entering premises under Section 78 or 79, including an offence of obstructing the execution of a warrant.

Section 81: Application by owner where consent withheld

This section makes provision for a court of summary jurisdiction to grant the necessary consent to take action where that consent has been unreasonably withheld by a person involved with the property.

Section 82: Obstructions

This section makes provision for where any person required, authorised or entitled to carry out work for, required by, or on behalf of the council is obstructed in carrying out that work. A court of summary jurisdiction may, upon application, order an individual to allow the authorised person to carry out the action in question. Any person failing to comply with this order is guilty of an offence.

Section 83: Effect of moving from accommodation for works to be carried out

This section outlines that where a person vacates a premises for the purposes of allowing works to be carried out as required by any notice under the Act, or a statement of remedial work, their tenancy or other occupancy arrangement is unaffected and is taken to not have been terminated, altered or varied. When the person regains lawful occupation they do so under the same terms.

Section 84: Fees

This section confers power to make regulations concerning fees, including the maximum amounts to be charged, how fees are to be calculated, and circumstances in which no fee is to be payable or in which fees are to be refunded.

Section 85: Guidance

A council must have regard to guidance issued by the Department about the exercise of its HMO licensing functions.

Section 86: Regulations and orders

This section confers a power to make consequential and supplementary provision by regulations. It lists the regulations contained within the Act that are subject to draft affirmative resolution. Regulations which are not listed in the section are subject to negative resolution. The section also lists the bodies the Department must consult with when making certain regulations.

Section 87: General notices

This section directs that any "general notices" issued by a council under the Act must be given in writing and published in such manner as the council considers appropriate.

Section 88: Interpretation

This section defines a number of terms used throughout the Act.

Section 89: Consequential amendments and repeals

This section gives effect to the consequential amendments and repeals set out in Schedules 7 and 8 to the Act.

Section 90: Commencement

Section 90 enables the Department to make provision by order as to the day or days when the provisions of this Act, excluding Sections 84 to 86, 90 and 91, come into operation. The listed sections will come into operation upon receiving Royal Assent.

Section 91: Short title

Section 91 provides that the Act shall be known as the Houses in Multiple Occupation Act (Northern Ireland) 2016.