

HOUSES IN MULTIPLE OCCUPATION (HMO) AND THE REGULATION OF THE PRIVATE RENTED SECTOR (PRS)

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Abstract: Social housing in Northern Ireland has followed similar trends as in the United Kingdom despite the absence of direct democratic control and the substitution of one organisation for a multiplicity of local authorities. Owner occupation has increased substantially and the proportion which remains in the public sector has reduced as a result of a combination of similar policies introduced in Great Britain. Whilst much of the existing housing legislation has mirrored legislation from Great Britain, there are also many provisions that have not been introduced due to the special circumstances that exist in Northern Ireland.

Key words: real estate, private rented sector, multiple occupation

Houses in Multiple Occupation

In Northern Ireland the Housing Executive has estimated that there are 9,700 Houses in Multiple Occupation housing 30,000 people. These are mainly to be found in Belfast, Londonderry and Portrush/Portstewart. (NIHE 2000). HMOs can include premises in the private rented sector, social rented sector and owner occupation although policy and enforcement concerns about HMOs tend to focus on private rented premises. HMOs play a vital role in the housing market by providing affordable flexible accommodation in areas of high demand where rents are high. In the light of the growing numbers of single person households and changing lifestyle patterns, demand for single person housing is expected to grow in the Province and HMOs will therefore remain a significant feature of the housing market for the foreseeable future.

Physical conditions and management standards are often worse for HMOs, however, and they pose the most significant fire risks to occupants. There is also public concern in some areas not just about the conditions to which HMO residents may be exposed but also about the impact of the residents themselves on the area and its amenities.

According to the Housing Executive some growth of HMO activity has been noted in a number of district towns in the Province and although this growth is small in terms of the total housing stock single persons are moving into private rented sector properties in areas such as Dungannon, Omagh and North Down.

Law and Policy

In trying to arrive at a definition of a HMO the first question that needs to be addressed is 'what actually is a HMO?' As currently defined in housing legislation a 'house in multiple occupation' means 'a house which is occupied by persons who do not from a single household'. There is a considerable amount of case law as to what constitutes a 'house' and what constitutes a 'household' for HMO purposes. There have

been a number of legal cases about whether the mode of living of particular groups of people sharing a house constitutes a single household or not and doubts still remain over how the definition is applied.

In England, the law on houses in multiple occupation is provided by the Housing Act 1985, as amended by the Housing Act 1996 which introduced certain new schemes at the discretion of local authorities, however, these have not been taken up. As mentioned above the current legal definition of a HMO is “a house which is occupied by persons who do not form a single household”. In *Barnes v Sheffield City Council (1995)*, the Court of Appeal significantly muddled this definition by overlaying it with nine separate non-exhaustive considerations which local authorities were required to take into account in assessing whether a dwelling was an HMO within the statutory definition. (Gray, Hillyard, McAnulty and Cowan 2002)

- Whether the persons living in the house came to it as a single group or whether they were independently recruited;
- What facilities are shared;
- Whether the occupants are responsible for the whole house or just their particular rooms;
- Whether individual tenants can lock other tenants out of their rooms;
- Whose responsibility it is to recruit new occupiers when individuals leave;
- Who allocates rooms;
- The size of the property;
- How stable is the group composition; and
- Whether the mode of living is communal.

This has led to local authorities restricting the types of property which it will include. For example, many authorities will no longer regard student lettings as HMOs. Once a property has been defined as an HMO, the local authority may set up a registration scheme through which it essentially controls the standards in it. Other than this, there is a duty on the person managing the property to keep the premises fit for the number of occupants.

The regulatory systems appear to be broadly similar between Northern Ireland and England. Indeed, recent Consultation Papers issued by the DETR (1999) have been mirrored by similar documents issued by the NIHE (2000). The major difference is that mandatory grant is no longer available in England and the level of use varies from authority to authority.

The Housing Act 1996 gives local authorities in England discretion to adopt registration schemes for HMOs making it a duty for houses to be registered for which the scheme applies. There are three types of scheme:

- **Simple Notification Scheme:** This allows the authority to obtain information about HMOs in their area and to enforce standards using the powers available to them. The registration fee is £80 per property.
- **Scheme with Control Provisions:** Allow the authority to refuse an application if the house is unsuitable and incapable of being made suitable for the number of occupants stated in the application or if the manager is not a fit and proper person. The registration is £60 per habitable room (bedrooms and living rooms.)
- **Scheme with Special Control Provisions:** Allows the authority to refuse to register the property where the house is adversely affecting the amenity or character

of the area. The authority can take in the number of HMOs in the area in deciding the outcome of the application.

There are now proposals to introduce a mandatory licensing scheme for HMOs in England and it is intended that the following will be included:

- A statutory definition of HMO to include shared houses and current student exemptions;
- Each licence will have a named individual licensee who will be a 'fit and proper person';
- Uniform standards will be set out in legislation which will apply across all local authorities;
- Licensees will contribute to the cost of the scheme.
- There will be more severe penalties for failure to comply.

In Scotland, local authorities have a wide range of powers available to take action on HMOs under existing primary and secondary legislation. The Housing (Scotland) Act 1987 empowers local authorities to control HMOs by imposing '**management orders**' which apply a code of management set out in regulations obliging landlords to keep the HMO in repair and good order; '**works orders**' which can be used to compel works to ensure compliance with the management code; and notices to require other improvements to rectify defects and to require the provision of means of escape from fire and notices and directions to limit or reduce overcrowding.

Local authorities have had discretionary powers since 1991 to establish a licensing scheme for HMOs in their area although many have still not introduced a scheme. In 2000 legislation was introduced to implement a mandatory licensing scheme for all HMO properties in Scotland. Under the scheme owners of HMOs are required to apply for a licence which can be refused by Councils where there are concerns over factors such as fire safety, physical condition and bad management standards. Councils also have powers to search properties suspected of operating without a licence and instigate prosecutions in such cases. Only properties owned by local authorities and residential and nursing homes are exempt as they are already subject to an equivalent regulatory scheme. The licensing scheme is being phased in with a threshold set for licensing those properties with more than five occupants for the first year. This threshold is being reduced each year until properties with more than two occupants will require a licence by 2003.

In the Republic of Ireland legislation does not distinguish between HMOs and other private rented properties. The main provisions applicable to the private rented sector are contained in the following regulations:

- The Housing (Rent Book) Regulations 1993
- The Housing (Standards for Rented Houses) Regulations 1993
- The Housing (Registration of Rented Houses) Regulations, 1996 (and amended in 2000).

In summary these regulations provide for a registration scheme, similar to the Scheme with Control Provisions in England, to be applied by the local authorities. The standards in this scheme, however, are acknowledged to be basic and local authorities have not been active in enforcing statutory regulations.

There is also no grant available for owners to carry out works required to bring properties up to standard. There is, however, a form of tax relief available for new build properties and for providing student accommodation. Tax relief is currently available to both tenants and landlords.

The Private Rented sector in the Republic has traditionally consisted of unfurnished dwellings - which were formally rent controlled - and uncontrolled accommodation, generally furnished. Up to the 1980s legislation in the Republic virtually mirrored legislation in Northern Ireland with regulated, restricted and controlled tenancies.

In July 1999 a Commission on the Private Rented Residential Sector was set up with the following Terms of Reference.:

"To examine the working of the landlord and tenant relationship in respect of residential tenancies in the private rented sector and to make such recommendations, including changes to the law, as the Commission considers proper, equitable and feasible with a view to:

- *Improving the security of tenure of tenants in the occupation of their dwellings;*
- *Maintaining a fair and reasonable balance between the respective rights and obligations of landlords and existing and future tenants;*
- *Increasing investment in, and the supply of, residential accommodation for renting, including the removal of any identified constraints to the development of the sector.*

The Commission reported in July 2000 and conclusions were as follows:

- *Legislation should be introduced within two years to establish a Private Residential Tenancies Board (PRTB) to deal with disputes between landlords and tenants. It will be mandatory for landlords and/or tenants to refer such disputes to the Board. Registration of properties will be to the Board rather than to local authorities although enforcement will continue to be a local authority responsibility. The Board will have a quasi-judicial role, in that its findings in the event of a dispute can only be appealed to a Court, and even then only on a point of law. The Board will also provide research, monitoring, policy advice, model leases, good practice guidelines and general advice.*
- *The legislation will also improve security of tenure for tenants so that, where the tenancy has lasted a minimum of six months, the tenant is entitled to continue in occupation of a dwelling for four years.*
- *Set rents at no greater than the market rate, with rent reviews no more frequently than once a year. For low income tenants there will be a system of refundable tax credits.*

It is also proposed that the facility to write off construction costs or refurbishment costs against rental income for tax purposes should be extended to all types of private rented sector properties. (Department of the Environment and Local Government 2000)

In Northern Ireland, responsibility for overseeing the management of HMOs is in the hands of the NIHE which sets certain standards similar to those in place in England. The same definition of HMO is used, with the same complications. Current NI law in relation to HMOs is covered by the Housing (Northern Ireland) Order 1981, the Housing (Northern Ireland) Order 1992 and the Housing (Management of Houses in Multiple Occupation) Regulations (Northern Ireland) 1993.

Regulation of the Private Rented Sector

Concern over the quality of housing in the private rented sector has been growing over recent years. Whilst data exists on unfitness, it is more difficult to assess what has been happening with disrepair, largely due to changing definitions and problems in measuring likely costs of repairs. Homes that are most likely to be affected

often belong to those on the lowest incomes like single parents, the unemployed and the elderly. There has been a proven correlation in the past between inadequate housing conditions and poor health.

The statutory standard of unfitness in England, Wales and Northern Ireland is based on a minimum habitable condition as defined in the Local Government and Housing Act 1989 with its detailed implementation set out in the DoE Circular 17/96. Structural stability, freedom from damp, adequate heating, lighting and ventilation, the piped supply of wholesome water and adequate drainage, facilities to prepare and cook food and a WC and bath/shower and hand basin with cold and hot water are all statutory requirements. Failure to meet just one of these criteria, making the property 'not reasonably suitable for occupation', renders it unfit for human habitation and requires the local authority's environmental health officers (EHOs) to use cost benefit analysis to decide on repair, deferred action, closure or demolition.

In Scotland there is the 'below tolerable standard (BTS)' defined in the Housing (Scotland) Act 1987; it closely resembles legislation for the rest of the UK but also requires satisfactory access to all external doors and outbuildings.

Levels of enforcement of the existing fitness standards are low, perhaps because of the problems, both political and for the individual, which can follow the serving of a notice. The DETR is working on a new Housing Health and Safety Rating System (HHSRS). Its underlying principle is that any dwelling should be a safe and healthy environment both for its occupants and visitors, and has identified 24 hazards (compared to nine in the fitness standard); it covers houses, flats and bedsits, including any shared access areas. Legislation is required to enact its provisions but the new system will be employed alongside the fitness standard for the time being.

The current legislation affecting the Private Rented Sector in Northern Ireland dates primarily from 1978 although the history of the sector goes back to the beginning of the 20th Century and in 1939, about 90% of the housing stock was privately rented. The current make-up of the sector is unique and has not followed developments experienced in other parts of the UK or in the Republic of Ireland.

The private rented sector can be divided into four different market sectors:

- ***Regulated and Restricted Properties.***
The Rent Register, held by the Department of Social Development for properties controlled under the 1978 Rent Order, currently records a total of 6,498 properties: 6,109 regulated tenancies and 384 restricted tenancies. There is no compulsion for landlords to register their properties.
- ***Uncontrolled Furnished Sector***
This component tends to be dominated by young upwardly mobile tenants mainly in the form of HMOs. These tenants tend to move into the owner occupied sector in the longer term.
- ***More Expensive Dwellings***
There have been a number of city centre and water edge developments as well as apartments in areas like Belfast, Derry/Londonderry, Fermanagh, The North Coast and North Down for the purposes of letting.
- ***Lower Cost New Build and Sold Housing Executive Dwellings***
This relies on lower cost new dwellings and Housing Executive Right to Buy properties being bought as an investment. These dwellings are providing for a group which would normally been housed in the social rented sector.

The Rent (Northern Ireland) Order 1978 applies to older properties in the lower end of the private rented sector, with the aim of ensuring that rents reflect house conditions and that tenants have a considerable security of tenure. The DSD is responsible for setting rents for controlled regulated tenancies, for maintaining a register of these rents and for reviewing these rents as appropriate. The Rent Order also defines the role of the rent officer who is confined to assessing rents on controlled regulated tenancies when these are the subject of appeal by either tenant or landlord.

District Councils have powers to investigate cases of harassment or illegal eviction or to deal with issues of disrepair. Environmental Health Departments can issue Certificates of Disrepair on Regulated tenancies, or Public Health notices on all types of tenancies. The Northern Ireland Housing Executive responsibilities lie in the administration of housing benefit and the private sector grants schemes.

The most notable affect of the subsequent Housing (NI) Order 1983 was to introduce shorthold tenancies, to extend rent regulation to certain unregistered housing associations and to modify the regulated tenancy standard. The regulated standards have again been revised in the 1992 Housing Order and now correspond to the NIHE fitness standard.

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