

Summary of responses for the

‘Consultation on Housing (Standards) Regulations 2013, Housing (Registration) Regulations 2013

&

Housing (Definition of House or Flat in Multiple Occupation) Order 2013’

Issued by:

John Howie
Manager of the Environmental/Public Health Unit
Environment Directorate
Department of Environment, Food & Agriculture
Thie Slieau Whallian
Foxdale Road
St John’s
IM4 3AS

Report Date: 20th September 2013

Introduction

- 1.1 A consultation was undertaken on proposals for the introduction of regulations requiring flats and houses in multiple occupation (HMOs) to be registered and regulations setting standards of amenity in both. An Order was also proposed defining what constitutes a house or flat in multiple occupation (HMO). The consultation commenced 13th February 2013 and ended on 10th May 2013.
- 1.2 The Housing (Miscellaneous Provisions) Act 2011 replaces the regulatory and enforcement provisions of the Housing (Amendment) Act 1990 and the Housing (Multi-Occupancy) Act 2005 in a single framework covering flats and HMOs. The 2011 Act provides for the making of regulations in respect of flats and HMOs.
- 1.3 The main proposals in the consultation document were to a) introduce regulations to control the standards of accommodation, occupancy levels, amenity and facilities within flats and HMOs, b) introduce regulations that will require that flats and HMOs are registered with the local authorities and c) define what constitutes flats and HMOs.
- 1.4 The consultation papers are available from the Department's website www.gov.im/daff/consultations
- 1.5 This paper summarises the responses received.

2. List of respondents and summary of responses

2.1 Written responses

DEFA received 13 responses to this consultation which closed on 10th May.

Department of Social Care	Graih (Homelessness Charity)
Marown Parish Commissioners	Chief Secretary's Office
Lowey & Co., (Property Management)	Ramsey Town Commissioners
Ian Abrahams (Private Landlord)	Planning & Building Control Directorate (Department of Infrastructure)
Patrick Parish Commissioners	Department of Home Affairs
Office of Fair Trading	Dandara Group of Companies
Lezayre Parish Commissioners	

2.2 Responses

A full compilation of responses is available in Appendix 1.

Responses were largely in favour of the proposals but some concerns were expressed relating to the details and requirements etc,. The following is a précis of the responses received and the intentions of DEFA to address any queries, where appropriate.

3 Specific comments

3.1 The Department of Social Care (DSC)

The DSC fully supports the proposed legislation and understands the need to provide control and protection for persons living in this currently unregulated sector of accommodation. Advice was also provided regarding typographical and drafting faults.

DEFA response: The Department welcomes the support of the DSC and will continue to try to protect vulnerable people in their living accommodation whether publicly or privately owned. DEFA will address the typographical and drafting faults.

3.2 Marown Parish Commissioners

The Commissioners are concerned that they are not able to enforce and inspect premises that are the subject matter of the proposed legislation and that they do not have the resources or expertise to deal with such premises.

DEFA response: The Department intends that its Environmental Health Officers will act as agents and authorised officers of the Commissioners to ensure the proper investigation/enforcement of the proposed legislation. This arrangement already exists with other public health and housing legislation.

3.3 Lowey & Co., Property Management

Whilst the response is entitled "Landlord's Register" the contents do **make mention of 'the matter of all Government Acts concerning flats, Housing and multiple occupation.....this is a system that has worked for several decades'. The response appears to intimate that such matters are already legislated for adequately.**

DEFA response: HMOs are currently illegal. They do, however, exist and continue to provide unregulated accommodation. The purpose of the proposed regulations is to update the existing Housing (Flats) Regulations 1982 and to introduce similar controls relating to HMOs.

3.4 Ian Abrahams (Private Landlord)

The respondent is vehemently opposed to the proposed new legislation and claims - "These new regulations would not stand up in Court, and are in breach of European Law on several counts, and I respectfully suggest that you take legal advice on this point." A comment, however, is made - "Whilst many of your proposals are valid and necessary, they only duplicate existing legislation.."

DEFA response: The proposed Regulations etc., are subject to drafting and scrutiny from the Attorney General's Chambers prior to submission to Tynwald and their advice will be sought regarding the response. We are satisfied that the proposals are not duplicated in existing legislation.

3.5 Patrick Parish Commissioners

The Commissioners were concerned and confused as to the fact that DEFA were conducting a public consultation on HMOs etc., **and "housing regulations"** at the same time that the Department of Social Care (DSC) were doing similar related to the proposed Landlord Registration Scheme.

DEFA response: The Commissioners have been advised that there are two separate initiatives currently underway, the first being the Landlord and Tenant (Private Housing) Bill 2013 – promoted by DSC - which seeks to introduce a registration scheme for landlords to allow those landlords to be monitored for compliance with, for the most part, existing management standards for their rental housing. Whilst the second initiative, through the Housing (Miscellaneous Provisions) Act 2011 part of which falls under the remit of DEFA, seeks to legalise a specific sub set of the rental housing market, which are HMOs and then define and monitor the standards for those premises.

3.6 Office of Fair Trading

The OFT welcomes and approves of the principle of 'legalising' HMOs but raised some queries related to the proposals:

Consultation on legislation relating to houses or flats in multiple occupation

- a) Why are the regulations etc., being enforced by local authorities and not the Department?
- b) Will the increased workload cause difficulties to the Environmental Health Officers?
- c) Are the proposed levels of fines too low?
- d) Is there a risk that enforcement of the proposed regulations etc., may increase homelessness?
- e) Why is there no proposal to charge fees for the registration process?

DEFA response: The proposed Regulations are similar to those that currently exist i.e. the Housing (Flats) Regulations 1982. These Regulations are currently enforced by the local authorities. Environmental Health Officers (EHOs) from DEFA investigate/enforce/advise on the Regulations on behalf of the local authorities, as their agents and authorised officers.

Bearing in mind the current workload of the EHOs, it is expected that there will be an initial increase in activity towards registering HMOs for the first time. Prioritisation of work should enable officers to cope.

Further consideration will be given to the proposed level of fines when the final draft of the Regulations is prepared.

There is an inherent risk of exacerbating any current housing problems but the Department is of the view that the benefits of further protection of vulnerable persons outweigh this risk.

Section 12(6) of the Housing (Miscellaneous Provisions) Act 2011 provides for a fee to be payable for the registration process.

3.7 Lezayre Parish Commissioners

The Commissioners support the introduction of legislation to introduce minimum standards for HMOs but are concerned that the legislation should be enforced by the DSC and not local authorities.

DEFA response: The Commissioners have been advised that they already enforce the fundamental housing legislation including the Housing (Flats) Regulations 1982 and that the DSC do not have any enforcement responsibilities other than that appertaining to social housing.

3.8 Graih (Homelessness Charity)

The organisation is very supportive of the proposals, especially the intended exemption for "premises provided by a charity for persons who are homeless". Some queries were raised:

- a) **Why use 5 persons as the 'cut-off' when defining a HMO, and will the 5 persons have to be single and not related?**

- b) Will entry to HMOs be solely through the use of warrants to enter?
- c) Why can tourist flats only be occupied for a month?
- d) Is there going to be any link between these proposals and those proposed by DSC related to the Landlord Registration Scheme?

DEFA response: During the debates on the Housing (Miscellaneous Provisions) Act 2011 concerns were expressed as to enforcement of standards etc., on occupants of 'genuine house-shares'. Taking this into consideration, and using guidance from the Chartered Institute of Environmental Health amongst others, it was acknowledged that occupation of domestic dwellings by more than 5 unrelated persons increases the risk to their wellbeing. The concern of DEFA largely relates to the unregulated occupation of ex-guest houses by a 'large' number of unrelated persons. Entry by EHOs to people's homes will generally be by invitation from the occupier(s). In accordance with a published enforcement policy, EHOs would only ever use their powers of entry and/or warrants to enter if there was suspicion of serious risk and obstruction from the owner/agent. According to the existing Housing (Flats) Regulations "no person shall occupy, or permit another person to occupy, a flat which is registered as a tourist flat for a continuous period of one month". This relates solely to the fact that tourist flats have a smaller maximum occupancy compared to those set for permanent flats - related to the net floor area of the flat. The ratio of occupancy compared to floor area is greater in tourist flats i.e. 2 persons in a permanent flat requires between 45 square metres and 57 square metres, whereas a 2 person tourist flat only requires 25 square metres to 33 square metres. In other words, people are not expected to reside in small tourist flats on a permanent basis. They are suitable for occupation on a short term basis only. This provision is continued in the proposed Regulations as it is still considered appropriate. The link between the two initiatives is that both intend to protect vulnerable persons in their homes by ensuring standards of decency appropriate to landlords and the accommodation they provide. The EHOs from DEFA will enforce the requirements of both.

3.9 Chief Secretary's Office

The CSO offered no comments on the proposals.

3.10 Ramsey Town Commissioners

The Commissioners are supportive of the proposed legislation.

3.11 Planning & Building Control Directorate (Department of Infrastructure)

The DOI support the introduction of legislation but have expressed some minor concerns:

- a) Clarification is sought related to the “classes of HMOs”, the exemptions proposed in the Regulations and the definition of HMOs in the Order.
- b) **Why is the ‘cut-off’ for defining a HMO referring to 5 persons or less, when English planning precedents refer to 6 persons or less?**
- c) What is the rationale behind the restrictions on occupation of a tourist to one month?
- d) The Regulations (and the Order) as proposed may have implications to current **planning policies and makes specific comments about proposed “space standards for permanent and temporary flats”.**

*DEFA response: A great deal of what is proposed already exists in current legislation e.g. space standards in permanent and tourist flats have been stipulated in regulations since 1979. The concern about occupation of tourist flats **and the ‘cut-off’ of 5 persons are both addressed in 3.8 above. DEFA, however, will ensure that separate consultation between officers of both Departments occurs prior to the creation of the final draft Regulations (and the Order) to attempt to keep the standards, requirements etc., in harmony.***

3.12 Department of Home Affairs

DHA support the introduction of legislation regarding HMOs but have expressed some minor concerns:

- a) **Is the definition of HMO as proposed “too restrictive”?** A suggested alternative is contained in the Housing (Scotland) Act 2006.
- b) Can amendments be considered to Regulations 9 and 10 to take into consideration requirements of the Fire Precautions Act 1975?
- c) **Is the exemption for “premises provided by a charity for persons who are homeless” open to abuse by unscrupulous landlords?**
- d) **What is the “justification for why a tourist flat.....should be exempt from the registration requirement”?**
- e) DHA requests that “registered children’s homes” would have to meet the standards envisaged by the regulations despite not being required to register.

*DEFA response: Further research will be carried out to assess the definition of HMOs as proposed, compared to the Scottish version. Liaison with the Fire and Rescue Service will **continue in order that our proposals ‘fit in’ with the Fire Precautions Act 1975. DEFA does not consider that the exemption for homelessness charities is likely to cause any concerns. The matter of tourist flats appears to have been misinterpreted and is as explained in 3.8 above. Such flats have been required to be registered (and in compliance with regulations) since 1979 and it is intended that this will continue. The matter of registered children’s’ homes is not a matter for these regulations as they are subject to other restrictions and scrutiny.***

3.13 Dandara Group of Companies

There is no indication of support or otherwise but a number of concerns are raised:

- a) The phrase "flat or house in multiple occupation" makes the proposals difficult to read and understand.
- b) **There is no definition of "owner" in the Regulations and concerns, therefore, will arise related to long leasehold properties and management companies.**
- c) Is the Fire Precautions Act 1975 going to be amended to permit issue of certificates of compliance for HMOs as required by Regulation 10?
- d) **Are owners going to be required to display "buildings insurance" policy documents in order to comply with the same Regulation?**
- e) Confusion appears to exist as regards flats in multiple occupation.
- f) **The exemptions, as proposed, appear to make registration of "the vast majority of properties not relevant".**
- g) Should the registration authority be DEFA and not the local authorities?
- h) **The definition in the Order "is much clearer than that of 'family member' in Section 5 (3) of the Landlord & Tenant (Private Houses) Bill 2013 and should be construed in a review of that provision".**

DEFA response: The Department will discuss all points raised in this response with the legislative draftsman in the Attorney General's Chambers prior to the preparation of the final draft of the Regulations etc., DEFA will liaise with the Department of Home Affairs in relation to the matter of the Fire Precautions Act 1975.

Howie, John

From: Gough, Nick
Sent: 15 February 2013 10:21
To: Howie, John
Subject: Introduction of Regulations regarding Houses or Flats in Multiple Occupation Consultation
Attachments: Consultation response on Housing Regs.docx

Hi John

Just a few comments on the above – on the drafting of the Regulations and Order rather than the policy behind the legislation.

Hope what I've said helps.

Nick Gough
Policy and Legislation Manager
Social Security
Department of Social Care
Markwell House
Market Street
Douglas
Isle of Man IM1 2RZ

Tel 01624 685223

Housing (Registration) Regulations 2013

Regulation 4 - Register of premises

Regulation 4(5)(b)

I found "the matters referred to in paragraph (4)" obscure. Which matters are being referred to?

Regulation 4(8)

Is this better? –

"A registration authority must notify its decision on an application under paragraph (4) to the applicant"

Regulation 5 – Occupation of tourist flats

Do you need to define what a "tourist flat" is in the Regulations?

Regulation 6 – Cancellation of registration

Regulation 6(1)

"paragraph (2) and (3)" should say "paragraphs (2) and (3)"

Regulation 6(3)

Can you omit the comma between "the registration, of any premises"?

Regulation 10 – offences

Regulation 10(2) refers to offences arising on the contravention of regulations 6, 7 and 10(1). But what offences are there under regulations 6 and 7?

Regulation 10(6)

The phrase "commits an offence" is used here whereas "is guilty of an offence" is used elsewhere. Presumably there is no difference in effect?

Regulation 13 – Revocation

Should the title in fact be "Revocations"?

Also there is a full stop missing at the end of the regulation.

Housing (Standards) Regulations 2013

Regulation 3 – Interpretation

“house in multiple occupation” and “habitable room” are in the wrong places in the alphabetical order.

Footnote 13 on page 18

Redundant “(” after “Gas Safety”.

Regulation 12 – Offences

“commits an offence”. See earlier comment.

Schedule 2 – Minimum standards for premises

In the title of paragraph 12 there is a full stop at the end which is not needed.

Housing (Definition of House or Flat in Multiple Occupation) Order 2012

Articles 1 and 2

Presumably the Order’s title and commencement date will change?

Article 3 – Interpretation

Definition of “Registration Regulations” refers to “the Housing (Registration) Regulations 2012” not 2013. See footnote 17 too.

Articles 4 and 5 – House or flat in multiple occupation and Persons not forming a single household

Article 4(a) to (c) uses the phrase “one household” whereas regulation 5 uses “single household”.

Article 5(4)(a) refers to “subsection (2)(a)”. Do you mean “paragraph (3)(a)”?

Howie, John

From: McCauley, Sam (DSC)
Sent: 07 May 2013 17:18
To: Howie, John
Cc: Reeve, Deborah
Subject: Consultation on legislation relating to houses or flats in multiple occupation

Categories: NEEDS ATTENTION

Dear John

We work closely with colleagues in DEFA in relation to housing issues and therefore the Department of Social Care wanted to respond formally to the current consultation on the proposed legislation relating to houses or flats in multiple occupancy.

The proposed legislation has the full support of the Department of Social Care. It reflects the changes that have occurred in relation to HMO's and will provide greater control and protection for those living in this currently unregulated sector of accommodation. In addition it will ensure that flats and HMO's meet certain requirements, providing reasonable and safe accommodation for occupants.

Best wishes
Sam

Sam McCauley
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MAROWN PARISH COMMISSIONERS

Clerk to the Commissioners
Mr I. J. MAULE BSc DipLaw
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For the attention of John Howie, Manager
Isle of Man Government,
Department of Agriculture, Fisheries and Forestry,
Environment Directorate,
Thie Slieu Whallian,
Foxdale Road,
ST JOHN'S
Isle of Man

2013 Agricul
22 FEB 2013

21 February 2013

Dear Sir,

CONSULTATION: VARIOUS HOUSING REGULATIONS

The Commissioners considered your proposals in respect of the above at their meeting on Wednesday last.

Observations were made in respect of clause 4.5 of the document: it is not clear who would enforce the Regulations and how. It is noted that a Registration Certificate is issued (or at least signed) by the Local Authority, but presently that appears to be the limit of the Local Authority's direct involvement. The Commissioners have concerns that they would be expected to visit premises which are flats or Houses in Multiple Occupation (or suspected of being so) and they do not presently have the staff or expertise to carry out any enforcement. The Commissioners believe therefore that this requires clarification and that care should be taken in passing responsibility to a local authority without the necessary expertise or training being provided also.

The Commissioners trust that this is helpful. Thank you for consulting this authority.

Yours Faithfully

IAN MAULE
Clerk to the Commissioners

LOWEY and Co.

ESTATE, LAND, FARM AND BUSINESS AGENTS, PROPERTY MANAGERS AND INSURANCE AGENTS
27 NELSON STREET DOUGLAS ISLE OF MAN IM1 2AN

Telephone: DOUGLAS 01624 621337
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Our Ref: DML/WC

27 February 2013

Mr. John Howie,
Department of the Environment,
The Sliheu Whallian,
Foxdale Road,
St. Johns.
IM4 3AS

Dear John,

Re: Landlord's Register

Thank you for speaking to me the other day over the new proposed rules. As you are aware there is to be a meeting of Landlords on the 11th March next.

In the meantime I would like some clarification as I am acting Landlord for multiples of flats, houses etc. It would seem that the definition of an actual Government Licensed Estate Agent is a grey area. I hold a licence under the Estate Agents Act 1976. Is there a specific area establishing my rights with regard to the proposed new Register.

There is also the matter of all the Government Acts concerning flats, Housing and multiple occupation. As you know the Government are in a position in every aspect to direct, inspect and give Landlords a period of time in which to put right any defective property. This is a system that has worked for several decades.

Continued



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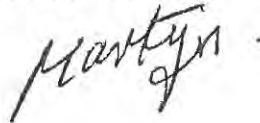


Continued

There is also the issue that my clients would have to be consulted and I cannot guarantee their agreement to the proposed new Register. Additionally asking a Managing Agent to take measurements, compile a report on condition, contents and provide inventories for all properties under our management would prove onerous. The planning Authorities, the Fire Brigade and the Bye Laws together with your Department would have plans on all properties.

Please consider the above and let me know your thoughts. I am happy to meet with you to discuss matters further. I have had indepth talks with Carole Malarkey of Douglas Corporation and with Brian Parmenter an expert in East London property management (retired) to ascertain their views on how this subject is handled.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D. M. Lowey', with a small flourish at the end.

D. M. Lowey

Howie, John

From: Ian Abrahams Antiques [ianabrahamsantiques@manx.net]
Sent: 05 March 2013 10:50
To: Howie, John
Cc: Downie, Alex (MLC)
Subject: Housing Regs.

Follow Up Flag: Follow up
Flag Status: Completed

Categories: NEEDS ATTENTION

Dear John,

You asked me to give you my views on the new housing regulations and having read the first few pages, I regret to say that I have grave concerns over the authorship of the proposed legislation. I agree that we need new legislation but we need something that covers everyone and everything, not just making a target of the few.

The new Acts should cover the Public and Private sector, and not exclude the "chosen few" just because they have written the documents.

These new regulations would not stand up in Court, and are in breach of European Law on several counts, and I respectfully suggest that you take legal advice on this point.

It is painfully clear that the authors of these documents are Julie McNichol and Klemmryk.

Mrs. McNichol is the wife of Douglas Councillor Ritchie McNichol and, although some of the worst properties on the Island are owned by Douglas Corporation, they are EXCLUDED from any legislation. Klemmryk have set themselves up as the provider of LEGAL documents without accepting the responsibility of these documents. Should any fail in Court who will accept the responsibility? Klemmryk or Government? Reading the proposals under 7. Exemptions, "These Regulations do not apply to premises that are (h) provided by a charity for persons that are homeless. I am sorry but I think the proposals are rigged and illegal.

They are like a Union strike ballot where all the votes are cast by retired members and affiliated members and the actual workers involved are outvoted and forced to strike. In this case consultation has been with ALL residents of the Island, not those directly involved, and with an infantile tick list certainly not drawn up by you.

Whilst many of your proposals are valid and necessary, they only duplicate existing legislation and will do nothing whatsoever to eliminate the existing problems. They will just cause more bureaucracy, more paperwork, and run the risk of a dogmatic inspector causing everyone grief.

There is not the remotest possibility that you will be able to police the regulations, now, or in the future, without many extra staff, not even to organise the Register, because it already exists now and is not complete or up to date.

In short, I personally feel that you should try to implement existing regulations without being led by outside sources, some with their own agendas, with proposals, possibly illegal, that you cannot possibly implement.

I am sorry that I seem to be negative but bad legislation is far worse than no legislation, and as you have already stated "There have been no prosecutions over substandard properties" there is obviously no urgent need to bring in more bureaucracy, whilst exempting the probable authors of the proposals.

All these Acts will do is to drive the small handful of bad landlords underground, and place extra burdens on the good landlords, thus increasing their costs and overheads, and ultimately, the price of their rents. It is a sorry day when charities dictate new laws.

Yours Sincerely,

Ian Abrahams.

PATRICK PARISH COMMISSIONERS

Garrantee Skyll Dherick

CLERK OF COMMISSIONERS
IAN MAULE BSc DipLaw

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For the attention of Mr John Howie,
Isle of Man Government,
Department of the Environment, Food and Agriculture,
Environment Directorate,
Thie Slieau Whallian,
Foxdale Road,
ST JOHN'S,
Isle of Man,

March 19, 2013

Dear Sir,

Housing (Standards) Regulations 2013
Housing (Registration) Regulations 2013
Housing (... Multiple Occupation) Regulations 2013

The above were discussed by the Commissioners at their meeting on Monday before last.

The Commissioners are puzzled and concerned that two Government Departments appear to be proposing housing regulations at the same time with the Department of Social Care currently consulting on Landlord and Tenant (Private Housing) Bill. The Commissioners have already sent their response to that consultation, but it appears to them having seen your own documents that a deal of time could be saved and efficiency achieved if all matters could be covered in the same review of housing legislation rather than this apparent piece-meal approach

The Commissioners trust that this is helpful. Please contact the undersigned if you require further information

Yours Faithfully



IAN MAULE
Clerk to the Commissioners

OFFICE HOURS 1000 – 1200 MONDAY TO THURSDAY ONLY

Howie, John

From: maureen rimmer [lezayrecom@manx.net]
Sent: 01 May 2013 11:37
To: Howie, John
Subject: Consultation on legislation relating to houses or flats in multiple occupancy

Dear Mr Howie

The Commissioners would like to submit the following comments on the above consultation.

The Commissioners support the introduction of this legislation as it will introduce minimum standards for HMO's.

They also feel that the register for HMO's should not be held by Local Authorities, but with Social Care, as with other housing.

An all island register will hold more weight and would be open to all, giving better control.

Kind regards

Maureen Rimmer
Clerk

[Lezayre Parish Commissioners](#)



Isle of Man
Government

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Mr R Lole
Chief Executive,
Department of Environment Food & Agriculture,
Thie Slieau Whallian,
Foxdale Road,
St Johns,
IM4 3AS

Date: 28 February 2013

Dear Mr Lole

Re: Housing Regulations - Consultation

I would refer to your Consultative Document dated 13th February 2013 concerning the proposed Housing (Standards) Regulations 2013, Housing (Registration) Regulations 2013 and Housing (Definition of House or Flat in Multiple Occupation) Order 2013.

At the outset the OFT welcomes the proposed introduction of the proposed Regulations. The present situation whereby Houses in Multiple Occupation clearly do exist but are unlawful under the Housing (Amendment) Act 1990 is unsustainable and it is far better to permit and then regulate Houses in Multiple Occupation. The proposed standards will offer protection to consumers and will, with enforcement as necessary make it possible for consumers to address the activities of unscrupulous landlords.

The OFT would, however wish to comment on the detail of the proposals as follows:-

Role of Local Authorities

Whilst understanding the desire to maximise the role of Local Authorities, the proposal that Houses in Multiple Occupation should be registered with the local authority for their district means that the resultant register will be in multiple parts. This is in contrast to the approach being adopted by the Department of Social Care in relation to the registration of landlords and it is suggested that by adopting these different procedures there is a risk of confusing the general public. Certainly if your Department does decide to adopt Local Authorities as registration authorities there should also be an online all-Island copy of the registers; preferably located alongside the landlords register so that customers can access information without the need to understand whether a matter is dealt with by Government or Local Authorities or if Government, which Department.

Volume of Complaints

The OFT through its consumer advisers is aware that there are significant numbers of complaints about private sector housing, be it tenancies or Houses in Multiple Occupation. By creating proper standards it is likely that initially you will generate a lot of work for your officers; as indeed you will from the landlord registration and standards where your officers will also have an enforcement role. From an OFT perspective it will be good that our consumer advisers will be able to suggest a route that is far more likely to lead to a positive

outcome; but you should not underestimate the volume of work which these two pieces of legislation will, cumulatively, create.

Fine Levels

Owners of Houses in Multiple Occupation would appear to have reasonable businesses and it is suggested that the maximum fine levels are not sufficient to provide a meaningful deterrent. We deal with some of the sort of characters who own Houses in Multiple Occupation in other regards and there is a real risk that they will treat fines as "occupational hazards". It is suggested that the general level of fines should be at least double and preferably more like quadruple the levels proposed. Notwithstanding the general comment it is suggested that the fine for obstruction of an authorised officer (Regulation 10(6) of the Housing (Registration) Regulations) is totally inadequate and should be higher than the fine for the substantive offences.

Closure of Premises

Whilst the primary objective of the Regulations is to improve standards it does seem likely that by enforcing those standards you will end up dealing with some non-compliant operators and, between your Department and the Department of Social Care you will have to deal with people who become homeless.

Registration Fees

It is surprising that there is no registration fee. Since as proposed the administration of registration will sit with Local Authorities the cost of implementation will fall on ratepayers which seems unfair. Houses in Multiple Occupation are commercial businesses and there should be a registration fee which, at the very least, recovers the costs incurred.

I hope that these comments are helpful.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Mike Ball", is written over a printed name and title. The signature is stylized and somewhat illegible.

Mike Ball
Chief Officer

Copy to: John Peet, Chief Inspector of Trading Standards, OFT

Howie, John

From: Michael Manning [michael@graih.org.im]
Sent: 25 April 2013 15:50
To: Howie, John
Subject: Response to Consultation on Housing Regulations

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Business

Dear Mr Howie,

Thank you for the invite to participate in the Consultation on Housing Regulations. Having read through the consultation document please find my responses below.

- 1) Housing (Registration) Regulations, Regulation 5. This stipulates that tourist accommodation is to be only for one month. Is this too short a time? Perhaps a period of three months to cover, for example, a summer season, would be more appropriate.
- 2) Housing (Registration) Regulations, Regulation 7(b). I welcome the exclusion of genuine house shares in the regulations but question why this is only applied to five persons or fewer. What about a large property that may easily house more than five persons in a genuine house share? I think it's important that house shares are excluded but I think the numbers are too constricting.
- 3) Housing (Registration) Regulations, Regulation 7(h). I welcome the exclusion of charities serving the homeless. I think this is an important and crucial point that allows such charities much greater flexibility in their service.
- 4) Housing (Registration) Regulations, Regulation 9. Would the designated officers require a written warrant to enter premises? I think that any officer desiring to enter a premises without the consent of the owner or tenant needs to have a written warrant to do so.
- 5) Housing (Definition of House or Flat in Multiple Occupation) Order, Regulations 3 and 5. I presume the number of five persons is tied to the exemption above. My comments above apply. I would also question why these people need only be single. A married couple (or couples) in genuine houseshares with either other families, couples or single people should surely be included in the exemption.
- 6) Has the Department cross-referenced these regulations with the Department of Social Care's proposed Regulation of Landlords legislation? It would seem that this would a good thing to do, and that the administrative burden on either local authorities or landlords is not unnecessarily burdensome.
- 7) Graih welcomes the introduction of these regulations, and the introduction of any minimum standards for the as yet unregulated boarding houses on the island. We have been hoping for and calling for such regulations for some years and the department should be commended on bringing these into force as quickly and efficiently as possible.

Thank you very much for your consideration.

God bless, Michael

--

Michael Manning

Graih

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Howie, John

From: Christian, John (Chief Secretary's Office)
Sent: 17 April 2013 17:23
To: Howie, John
Cc: Greenhow, Will
Subject: FW: Consultation on Housing Regulations
Attachments: Consultation on Housing Regulations.pdf

Will – for info

Response sent on behalf of Chief Secretary

Thank you for the invitation to contribute to the Consultation on Housing (Standards) Regulations 2013, Housing (Registration) Regulations 2013 and Housing (Definition of House or Flat in Multiple Occupation) Order 2013. The Chief Secretary's Office has no additional comments to offer in regard of this consultation at this time.

Kind regards
John

John Christian
Office Manager
Chief Secretary's Office
Government Office
Bucks Road
Douglas
Isle of Man
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Tel: (+44) 01624 687066
Fax: (+44) 01624 685710
E-mail:john.christian@csso.gov.im

From: Webb, Linda **On Behalf Of** Greenhow, Will
Sent: 14 February 2013 09:27
To: Christian, John (Chief Secretary's Office)
Subject: FW: Consultation on Housing Regulations

Morning John

For your attention and necessary action please.


Regards

Linda

Mrs Linda Webb - Personal Assistant to the Chief Secretary
Chief Secretary's Office
Government Office
DOUGLAS ISLE OF MAN IM1 3PN
British Isles

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 please don't print this e-mail unless you really need to.

From: Lockwood, Liz
Sent: 13 February 2013 10:39
Subject: Consultation on Housing Regulations

Dear Sir/Madam

**Re: Housing (Standards) Regulations 2013
Housing (Registration) Regulations 2013 and
Housing (Definition of House or Flat in Multiple Occupation) Order 2013**

The Department proposes to introduce regulations requiring flats and houses in multiple occupation (HMOs) to be registered with the local authority and regulations controlling the standards of amenity within both types of accommodation. An Order setting out the definition of what constitutes a house or flat in multiple occupation is also proposed.

The consultation on these proposals commences on 13 February 2013 and closes on 10 May 2013.

I would welcome your comments on all aspects of the proposals and if you wish to discuss any of the details, please do not hesitate to contact me.

Yours faithfully



J W Howie
Manager, Environmental/Public Health Unit
Environment Directorate
Department of Environment, Food and Agriculture
Thie Slieau Whallian
Foxdale Road
St John's
IM4 3AS
email:John.Howie@gov.im

Howie, John

From: Peter Whiteway [peter.whiteway@rtc.gov.im]
Sent: 02 May 2013 16:10
To: Howie, John
Subject: Housing Standards etc Regulations

Dear John

I refer to the consultation documents issued in relation to the Housing (Standards) Regulations; the Housing (Registration) Regulations and the Housing (Definition of House or Flat in Multiple Occupation) Order, which have recently been discussed by the Ramsey town Commissioners.

I am instructed to advise that the Commissioners are supportive of the proposed legislation,

Kind regards

Peter Whiteway

T. P Whiteway
Town Clerk & Chief Executive, Commissioner for Oaths
Ramsey Town Commissioners
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Howie, John

From: Brooks, Ian
Sent: 01 May 2013 15:59
To: Howie, John
Subject: HMO Consultation
Attachments: Sc280_6252513050113580.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: NEEDS ATTENTION

Dear John,

Please find attached the Planning Division's formal response to your HMO consultation. I will send a paper copy of our response in the internal post.

If you have any queries, please do not hesitate to contact me

Kind regards

Ian

Murray House,
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IM1 2SF.
email: ian.brooks@gov.im
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Director of Planning & Building Control
Michael Gallagher, MRTPI

Mr. J. Howie
Manager of the Environmental/Public Health Unit
Environment Directorate
Department of Environment, Food & Agriculture
Thie Slieau Whallian
Foxdale Road
St John's
IM4 3AS

Date: 01/05/2013

Dear Mr Howie,

Re: Consultation on legislation relating to houses or flats in multiple occupation

This response is on behalf of the Planning and Building Control Division of the Department of Infrastructure.

The Division supports the principle of setting standards and definitions for houses or flats in multiple occupations. The legislation rightly recognises that this type of accommodation meets a real need and that such accommodation should meet acceptable standards.

The Division has a number of queries in relation to the precise details of the provisions, as they potentially have a number of implications for planning.

Should the secondary legislation be approved by Tynwald, it will need to be considered whether it is appropriate to bring forward new planning legislation, or make changes to existing legislation to bring it in line with that of Environmental Health and make it easier for users.

The Division therefore raises the following queries about the proposed legislation:-

- Are the following uses to be exempt from registration, but be classed as HMO's or are they not going to be classed as HMO's
 - o Ball hostels
 - o Properties occupied by students which are managed by education establishments, e.g. ICT University (if it comes to fruition).
 - o Those occupied for the purpose of a religious community whose main occupation is prayer, contemplation, education and the relief of the suffering

The reasoning for this is that the Planning Authority may consider exempting them in any new Use Classes Order as not being HMO's. The above uses are not classed as HMO's in English Planning legislation.

In general the legislation needs to provide clearer definitions of:

- o HMO's that need to be registered;
- o HMO's that are exempt from registration; and
- o Uses that are not classed as HMO's

This would assist the Planning Authority to develop a Use Classes Order that is better aligned to Environmental Health legislation.

- The HMO regulations are proposing to exempt dwellings occupied by 5 persons or fewer as not being houses in multiple occupation. However, in England, the planning legislation sets a House in Multiple Occupation as being a "Use of a dwellinghouse by not more than six residents as a house in multiple occupation". What is the rationale for setting the limit been set at 5 persons?

If the Planning Authority follows the English line, i.e. not more than six, the Division would need to make sure people who are exempt from the proposed HMO regulations by having 5 persons or less still obtain planning approval as we would still class them as houses in multiple occupation. Furthermore, those with more than six people sharing are unclassified by the English use classes order and are therefore considered to be "sui generis", i.e. a use that does not fall within any use class. The Planning Authority considers it would be useful for a meeting to take place to discuss how a joint definition for Houses in Multiple Occupation can be drawn up so as to prevent any confusion for the general public.

- The proposed regulations are proposing to restrict the occupation of tourist flats as follows: "No person must occupy, or permit another person to occupy, for a continuous period exceeding one month, premises which are registered as a tourist flat." However, this provision will conflict with existing planning condition where the planning authority usually allow stays for up to 4 weeks in the summer from Easter to October and longer lets in winter. Is one month a realistic length of time for tourist flats? What is the rationale for having a one month limit? The Planning Authority considers the one month time period could in some instances be too restrictive, but also confusing for property owners and/or tenants.
- It is proposed in the draft Housing (Definition of House or Flat in Multiple Occupation) Order that a HMO is occupied by more than one household as the only or main residence. The Regulations then defines persons not forming a single household i.e. those not be members of the same family.

Therefore, what happens when there are two persons, who are unrelated, sharing a house would this be a HMO? The draft registration regulations exempt them being registered as a HMO. However, are they still a HMO, as defined under the draft Housing (Definition of House or Flat in Multiple Occupation) Order, but exempt from registration?

If it is a HMO and we use this definition, the planning authority would be expected to deal with applications for a change of use. If they are not classed as a HMO, then there would be no confusion. The proposed legislation is unclear about their status. This further demonstrates that the Definitions Order should be self-contained and should not cross reference to exemptions in the registrations regulations. The Definitions Orders should clearly define:

- o HMO's that need to be registered;
- o HMO's that are exempt from registration; and

- o Uses that are not classed as HMO's
- All of this should be contained in one document.

The Planning Authority may class them as a dwellinghouse, which could cover genuine house shares, and define them using the English definition of a dwellinghouse, which is as follows: "Use as a dwellinghouse (whether or not as a sole or main residence) by –

- (a) a single person or by people to be regarded as forming a single household;
- (b) not more than six residents living together as a single household where care is provided for residents.
- (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4 [Houses in Multiple Occupation])

Other implications on planning

- If an application comes in as flats but may actually be a HMO, the Planning Authority will need to re-advertise the application as being a HMO. It is important to prevent this from occurring and therefore it is considered that a joint announcement between DEFA and DOI takes place so as to ensure the general public is aware of the difference about dwellings/flats and HMO's
- What happens if we do not identify an application is a HMO and grant planning approval for a dwelling or flats? What are the implications of this for DEFA and/or the Planning Authority?
- These changes are a perfect opportunity for the Planning Authority to understand the standards for HMO's so that the Authority can identify HMO applications. The Division therefore invites relevant officers of DEFA to give a presentation on the final standards for HMO's to officers of the Planning Division.
- The Planning Authority would need to explore new policies for HMO's, for which we would welcome input from Environmental Health.
- The regulations are proposing space standards for permanent and temporary flats. The regulations also set out minimum standards for premises, e.g. light and ventilation etc. What is the rationale for these standards? The Planning Authority may need to consider incorporating them into planning policies for continuity purposes.

In summary, the Division feels that a meeting between relevant officers of the Department of Environment, Food and Agriculture with officers of the Division would be useful to co-ordinate a joint approach on definition/standards of Houses in Multiple Occupations under Environmental Health and Planning legislation.

If you have any queries, please do not hesitate to contact me on the above telephone number.

Yours faithfully



Ian Brooks BA(Hons) DipTP MRTPI
Planning Officer

Howie, John

From: Rowaichi, Siamack
Sent: 15 March 2013 14:54
To: Howie, John
Cc: Gallagher, Michael; Craig, Amanda; Callister, Maurice
Subject: Housing (Standards) Regulations 2013, Housing (Registration) Regulations 2013 and Housing (Standards) Regulations 2013
Attachments: Consultation on Housing Regulations.pdf

Dear John

Thank you for sending me a copy of your consultation Document. These are very good legislation and they should help us a great deal in providing decent homes for the public in the rented sector.

Please see below my comments on draft Regulations indicated above for your information. My Comments/additions shown in red.

My suggestion below are to prevent unwanted discussion as what is adequate provision.

HOUSING (STANDARDS) REGULATIONS 2013

PART 3 — STANDARDS OF REPAIR ETC.

(3) The owner must arrange for electrical, gas and oil installations and appliances to be regularly inspected as follows

(a) electrical installations protected by miniature circuit breakers and residual current circuit breakers must be inspected every 10 years, or more frequently where advised by the National Inspection Council for Electrical Installation Consulting; **by a person member of Isle of Man Building Regulations Part P Competent Persons Scheme for electrical installations.**

12 Sound proofing.

(1) In the case of flats, a wall which separates a flat from another flat or the common parts of the building must resist the transmission of airborne sound **to a level set by Building Regulations at the time of construction of the premises or conversion of the building to propose use.**

(2) A floor or stair which separates a flat from another flat or the common parts of the building must resist the transmission of airborne and impact sound to a level set by Building Regulations at the time of building of the premises or conversion of the building to propose use (Material Change of Use).

14 Provisions of stop taps

Stop taps must be provided on the service pipes to enable gas and water supplies to be turned off independently to each flat, with exception of water supply to a sprinkler system for purpose of fire fighting for the whole building containing flats or HOMs.

References are made to adequate provisions, however there is no definition for this. Perhaps you could refer to Isle of Man Building Regulations in respect of lighting, ventilations etc.

Please note that I will be on leave from today and would not be back until 2nd of April. Please contact Maurice Callister for any clarifications.

Best regards

Siamack

Siamack Rowaichi FCIOB, FBEng, MIFireE
Building Control Manager

**Isle of Man Government, Department of Infrastructure, Planning & Building Control Division
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**Isle of Man
Government**

Reillys: Eilan Yunnin

Department of Home Affairs

Rheynn Cooishyn Sthie

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Environment Directorate
Department of Environment, Food and Agriculture
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E-mail: karl.cubbon@dha.gov.im

www.gov.im/dha

Contact: Karl Cubbon

Your ref:

8 May 2013

Dear Mr Howie

Re. Consultation on Housing Regulations

Thank you for providing the Department with an opportunity to comment on the above consultation. In drafting this letter I have sought the views of senior officers from the various Services within the Department before preparing this summarised and consolidated officer level response.

The views received have indicated support for the introduction of legislation in this area, particularly with regard to houses in multiple occupation. Officers have been concerned for some time about the lack of regulation in this market and the likelihood that some property is neither decent nor safe.

However, some minor concerns have been raised regarding the detail of these regulations, particularly with regard to the definitions used.

Housing (Definition of House or Flat in Multiple Occupation) Order 2012

Concern has been raised regarding the definition of the term "household" in the above regulations. It is felt that the definition proposed is too restrictive in light of modern relationships which may involve children from previous marriages for the respective partners.

For example, Mr A and his two children from his first marriage are sharing a home with Ms B and the two children from her first marriage. It would seem clear they may well consider themselves a single household, but, would fall outside of the definition of "household" set out in the proposed regulations. Similar concerns have also been expressed for a variety of other circumstances regarding cohabiting partners and house guests (both short and long-term).

It is therefore suggested a model for this definition could be based upon that used in section 125 of the Housing (Scotland) Act 2006. In addition, or alternatively, it may also be useful for consideration to exemptions from these regulations upon application.

Housing (Standards) Regulations 2013

There have been two minor points raised with regard to the above regulations.

With regard to regulation 9 (general safety), it is suggested a further paragraph could be added similar to that quoted below. This would serve to emphasise and support the requirement to maintain fire safety.

"(3) The owner must also maintain the premises in accordance with any applicable provisions of the Fire Precautions Act 1975 and secondary legislation further to this Act."

With regard to regulation 10 (Duty to display notices), it is suggested that subparagraph (b) be removed. Fire Certificates are not issued to flats nor single private dwellings (particularly flats and houses in multiple occupation) under the Fire Precautions Act 1975 and thus would not be able to be displayed as required by this regulation.

Housing (Registration) Regulations 2013

Concern has also been raised with regard to the proposed regulation 7 (Exemptions) of the above regulations.

First among these is the concern that regulation 8(h) (exemption for charities sheltering homeless persons) is a loophole which may be abused unless careful controls are put in place. It would seem that, under the present drafting, a person may create a charity to own property purely to exempt themselves from the registration requirements for properties which would typically house poorer and highly vulnerable people in most need of these regulations.

Secondly, there did not seem to be a clear justification for why a tourist flat (as defined under regulation 5) should be exempt from the registration requirement. Again this would seem to be a potential loophole to the registration requirements, as it would seem onerous to prove a person did occupy the flat for more than a month.

Finally, the Department would be grateful for assurance that registered children's homes would meet the standards required for registration despite their not being required to be registered.

Aside from the above minor points I would like to re-iterate the Department's support for the intended effects of the above regulations.

Thank you once again for providing the officers in the Department with an opportunity to respond to this consultation.

Yours sincerely,



Karl Cubbon
Legislation Development Executive



dandara

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Our ref : GSK/pec

8 May 2013

Mr John Howie
Manager of Environmental / Public Health Unit
Environment Directorate
Department of Environment, Food and Agriculture
Thie Slieau Whallian
Foxdale Road
St Johns
MI4 3AS

Dear Mr Howie

Re **Response to consultation document relating to Housing (Standards) Regulations 2013
Housing (Registration) Regulations 2013 and Housing (Definition of House or Flat in
Multiple Occupation) Order 2013**

I enclose herewith the response of the Dandara Group of Companies in connection with the above mentioned consultation for your consideration in the consultation process.

If any further clarification is required regarding the points made please do not hesitate to contact me.

Yours sincerely

**Graham Kirkpatrick - Advocate
Dandara Group Legal Department
For and on behalf of
DANDARA GROUP OF COMPANIES**

COMMENTS ON HOUSING (MISCELLANEOUS PROVISIONS) ACT 2011 REGULATIONS

1. Housing (Standards) Regulations 2013

- (a) The combination of the regulations to include both flats per se and flats and houses in multiple occupancy does not make for very clear reading for lay persons trying to interpret the regulations. It is submitted that the use of the phrase “**flat or house in multiple occupancy**” could easily lead persons to believe it only applied to a flat in multiple occupancy as opposed to a flat per se. This is further exasperated by the spread of the materials across three documents. It is submitted that flats per se should be separated out in their regulations from houses and flats in multiple occupation.
- (b) There is no definition of “**owner**” in the regulations – are we therefore to assume that the definition of “**owner**” in the Act is intended to apply?

Regulation 6 places an obligation on the owner to maintain the building of which the premises form part in a good state of repair. This may be fine for a freehold house in multiple occupation but is far from satisfactory for say a long leasehold property with a 999 years lease and a Management Company of shareholding tenants either owning the freehold or holding under a lease of common parts with an obligation to maintain the same. In these later cases the ability to ensure compliance is beyond that of the individual long leaseholder. The same problem also arises in Regulation 7.

It also creates wider problems even in freehold houses where the parties wish to make provision for the tenant to be responsible for structure repair by voluntary agreement and curtails contractual freedoms.

- (c) There are at present no express “**fire certificates**” for flats or flats and houses in multiple occupancy – is it therefore intended to change Section 1 of the Fire Precautions Act 1975 to introduce such certificates in light of Regulation 10?
- (d) On Regulation 10 (c) is each owner intended to have to display his buildings insurance policy to comply? Surely the giving of a written copy would suffice as opposed to a certificate style display.

- (e) The inter-relationship between Schedule 1 Parts 1 and 3 is not made clear in respect of a flat in multiple occupation.

2. **Housing (Registration) Regulations 2013**

- (a) The exceptions to registration in Regulation 7 para (a) and (b) would render registration for the vast majority of properties not relevant. These exceptions look like they have perhaps got confused in thinking between flats, per se and properties in multiple occupancy. Why should a luxury flat with three bathrooms require registration as opposed to a very poor flat with just the one? This looks like a ratio confusion between persons and facilities as opposed to the premises and its facilities.
- (b) Are local authorities the best body to be the registration authority? Would it perhaps not be better for this to be organised by the Department being responsible for inspection?

3. **Housing (Definition of House or Flat in Multiple Occupation) Order 2012**

- (a) This definition of “**household**” is much clearer than that of “**family member**” in Section 5 (3) of the Landlord & Tenant (Private Houses) Bill 2013 and should be construed in a review of that provision.