

TITLE: HOUSING ACT 2004- PRIVATE RENTED HOUSING SECTOR ISSUES

TO/ON: THE CABINET / 29TH MARCH 2006

BY: ACTING CHIEF EXECUTIVE

PORTFOLIO HOLDER: CABINET MEMBER FOR HOUSING

STATUS: FOR PUBLICATION

1. PURPOSE OF THE REPORT

- 1.1.1 To set out the implications for the Council of the Governments introduction of the Housing Act 2004 of which Parts 1 to 4 relate to the private housing sector. These are expected to come into force on 6 April 2006.

2. RECOMMENDATIONS

- 2.1 Part 1 – That Members note the introduction of the Housing Health and Safety System under the Housing Act 2004.
Part 2 – That Members note the introduction of mandatory licensing under the Housing Act 2004 and approve a fee of £500 per property for up to ten units of accommodation and £50 per additional let.
Part 3 – That members note the introduction of discretionary selective licensing and the research proposals in this report.
Part 4 – That Members note the additional control provisions available to the Council in relation to empty properties and failing landlords of rented property.

3. REPORT AND REASONS FOR RECOMMENDATIONS AND TIMETABLE FOR IMPLEMENTATION

The Housing Act 2004 makes significant changes to the regulation of residential property and is the outcome of much discussion and debate. It radically overhauls the way Councils are required to regulate standards in the private rented sector.

3.1 Part 1: Housing Health and Safety Rating System

- 3.1.1 This deals with housing conditions and is a system of identifying faults in dwellings and evaluating the potential effect of any faults on the health and safety of the occupants or visitors. The principle behind the system is that every dwelling should provide a safe and healthy environment free from unnecessary and unavoidable hazards. It will replace the current test of fitness for human habitation contained in the Housing Act 1985.

3.1.2 There are 29 housing hazards and during an inspection of a dwelling all 29 hazards will be assessed. If any of the hazards are assessed to be worse than average then the hazard is given a score. The score given will fall within a band A to J. If the hazard score falls within bands A to C this will be classed as a Category 1 hazard and the local authority will have a mandatory statutory duty to take the appropriate enforcement action. Any hazards scored within bands D to J will be Category 2 hazards and requirement to take enforcement action will not be mandatory.

3.1.3 The list of possible enforcement action available comprises:

- Serving an improvement notice
- Making a prohibition order
- Serving a hazard awareness notice
- Taking emergency remedial action
- Making an emergency prohibition order
- An amended version of the existing powers to make a demolition order
- An amended version of the existing power to make a slum clearance declaration

3.2 Part 2: Mandatory licensing of Houses in Multiple Occupation (HMO)

3.2.1 Mandatory licensing means that landlords or managing agents of houses in multiple occupation which have three storeys or more and five or more occupants from more than one household will be required to apply for and obtain a licence to continue operating. A licence will last for 3 years and it will be a criminal offence to operate without a licence and the penalty will be a fine up to £20,000.

3.2.2 The council must grant a licence if the proposed licence holder is a fit and proper person, the HMO isn't overcrowded and the management arrangements are satisfactory. To assess if the applicant is a fit and proper person and has satisfactory management arrangements the matters to consider include offences of fraud, dishonesty, violence, drugs, unlawful discrimination in business and contravention of housing law. Also whether the person involved in the management of the property has a sufficient level of competence will need to be assessed. The applicant will not need to disclose spent convictions.

3.2.3 It is a requirement that a fee must be paid when the completed application form is submitted to the Council. The fee should be at a level to cover all the council's administration and professional costs throughout the span of the licence.

3.2.4 The Housing market Renewal Pathfinder is funding the coordination of local authority private rented sector practices to provide some consistency in this sector. The Homesure project has carried out research into the cost of the work involved in mandatory licensing and the agreed licence fee across all five east Lancashire authorities should be £500 per property for up to ten units of accommodation and £50 per additional let. Our records to date show that there are only two HMOs in Rossendale which will require a mandatory licence. One property has 6 units of accommodation and the other has 15.

3.2.5 If the council is not satisfied that it can grant a licence it must refuse and make an Interim Management Order (Part 4). It will be a criminal offence if the person controlling or managing an HMO subject to mandatory licensing does not have the required licence and if found guilty will be subject to a fine of up to £20,000. This fine also applies if after a licence is granted the HMO is occupied by more persons than the licence permits. It is also an offence if a condition which is attached to a licence is breached and it is punishable by a fine up to £5,000.

3.2.6 A licence will have to include the following conditions requiring the licence holder to:

- Produce an annual gas safety certificate for the property
- To keep electrical appliances and furniture (if supplied) in a safe condition
- To ensure the proper working order of fire and smoke detectors
- Supply the occupiers with a written statement of terms on which they occupy it

The licence may also contain other conditions that the Council consider appropriate for regulating the management, use or occupation of the property.

3.3 Part 3: Selective licensing of landlords of other residential accommodation

The Act also provides the council with discretionary powers to licence private landlords or managing agents of single let residential property in areas of low housing demand or areas with significant and consistent levels of anti-social behaviour. This is designed to raise standards in private renting and/or drive out criminal or unscrupulous landlords.

3.3.1 In making a decision about the level of housing demand the Council must consider

- The comparative value of residential properties
- The turnover of occupiers
- The number of properties available to rent or buy
- The length of time they remain unoccupied.

In order to introduce selective licensing of an area because it is experiencing problems caused by anti-social behaviour the Council must consider that

- The anti-social behaviour is causing a significant and persistent problem
- Some or all of the private sector landlords who have let premises in the area are failing to take appropriate action to combat the problem and
- That designation will, in conjunction with other measures taken in the area lead to a reduction in, or the elimination of the problem.

3.3.2 Selective licensing can only operate in designated areas and cannot go ahead unless the Council has considered whether there are other courses of action available to them to achieve the same objective and making the designation will significantly assist them achieving that objective. The National Authority must approve designations of areas for selective licensing.

3.3.3 The options available to the council are to have

- A qualifying pilot area to trial selective licensing,
- include all the rented properties in the Bacup and Stacksteads housing market renewal area or

- go borough wide, however the consultation paper on selective licensing rejected licensing of the whole of the private rented sector due to the size of the sector and the risk to supply in high demand areas.

3.3.4 In view of this it is recommended that further work is carried out by the Strategic Housing Team before any recommendations are made as to whether selective licensing should be introduced.

3.4 Part 4: Additional control provisions in relation to residential accommodation – Interim and Final Management Orders and Empty Dwelling Management Orders

3.4.1 The Act gives local housing authorities (LHAs) powers to step into the shoes of a failing landlord of a rented property or the owner of an empty property and manage the property on their behalf. These enforcement measures are not designed to punish the landlord but to ensure that the property is managed responsibly and safely for the benefit of occupiers or potential occupiers and others living or owning property in the vicinity. These are additional provisions for the enforcement of licensing under Part 2 and Part 3 of the Act and in limited circumstances they provide a mechanism for ensuring appropriate management of properties which are not licensable.

3.4.2 The definition of local housing authority (LHA) refers to the Council where it retains management of its housing stock or a Council working in partnership with an appointed Housing Association.

3.4.3 The objective of Empty Dwelling Management Orders (EDMOs) is to give LHAs discretionary powers to bring back into occupation long term empty private sector dwellings where owners are unable to do so either of their own volition or with the assistance of the LHA.

3.4.4 There are two types of EDMO – interim and final. They both allow the LHA to manage the property on behalf of the owner but the LA does not become the legal owner of the property and cannot sell or mortgage the property.

3.4.5 The LHA can take over management of the property, where they cannot issue a licence, for a period of 12 months in the case of an Interim Management Order (IMO) and for a period of up to 5 years in the case of a Final Management Order (FMO). In such instances the LHA would take over the duties of a landlord, collecting the rent, effect repairs, grant tenancies and can charge for management time. Any surplus of rent after expenses would be paid to the landlord.

3.4.6 For the duration of a Management Order the owner can sell the property but has limited powers to do anything else. Under an IMO the LHA can only grant a tenancy with the permission of the owner. With an FMO they can grant a tenancy without the permission of the owner providing the tenancy expires before the expiry of the FMO.

3.4.7 If a mortgage lender repossesses the property they can apply for the management order to be quashed as part of the court proceedings.

3.4.8 The use of FMOs and IMOs could act as a deterrent for landlords and lettings agents who do not manage their properties well, as well as a potential opportunity for efficient and well managed agents to arrange with the LHA

to manage properties subject to IMOs or FMOs.

3.4.9 To gain an interim EDMO a LHA must apply for authorisation to a Residential Property Tribunal (RPT) for assessment. The RPT must be satisfied that:

- the property has been empty for at least 6 months
- the owner does not take immediate steps to secure occupation of the property
- it is unlikely that the property will become occupied if the EDMO isn't made
- the LHA has complied with legislation in applying for an EDMO

Once an EDMO is granted it can only be made to replace an interim EDMO if the LHA considers the property would have become or remained unoccupied. Final EDMOs can last for up to 7 years.

3.4.10 EDMOs may not be suitable for all properties but can be an effective tool in an LHAs Empty Homes Strategy when used in areas suffering low demand where empty properties are compounding the problem.

4. CORPORATE IMPROVEMENT PRIORITIES

4.1 FINANCE AND RISK MANAGEMENT

4.1.1 The fee should be at a level to cover all the councils administration and professional costs throughout the span of the licence but it may not be high enough to cover costs.

4.2 MEMBER DEVELOPMENT AND POLITICAL ARRANGEMENTS

4.2.1 None

4.3 HUMAN RESOURCES

4.3.1 The licensing administration and inspections under the HHSRS will be carried out by the councils Housing Standards Officer. The issuing of EDMO's will be carried out by the Accreditation and Empty Property Officer. However, if demand increases or selective licensing is introduced more staffing resources are likely to be needed.

4.4 ANY OTHER RELEVANT CORPORATE PRIORITIES

4.4.1 None

5. RISK

5.1 None

6. LEGAL IMPLICATIONS ARISING FROM THE REPORT

6.1 Some legal input will be required.

7. EQUALITIES ISSUES ARISING FROM THE REPORT

7.1 None

8. WARDS AFFECTED

8.1 All wards are affected.

9. CONSULTATIONS

9.1 Portfolio Holder, Acting Chief Executive, Director of Resources and other East Lancashire authorities.

Background documents:
Private Rented Sector and Empty Homes files.

For further information on the details of this report please contact:

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