

Report to: District Council of Easington

Date: 10th January 2008

Report of: Executive Member for Housing

Subject: Private Sector Housing Renewal: Delegation of powers contained within the Housing Act 2004.

Ward: All

1. Purpose of Report

- 1.1 To advise Council Members of the new duties and powers contained within the Housing Act 2004 and to request that the necessary powers to enforce these new regulations are delegated to the relevant Council Officers.

2. Consultation

- 2.1 Management Team and the Monitoring Officer have been consulted in the writing of this report. The Monitoring Officer advised that changes to the constitution are necessary to take account of the new legislation that has been introduced over the recent years.

3. Background

- 3.1 The Housing Act 2004 (the Act) came into force on 6th April 2006 and makes provision for dealing with conditions within private sector housing. The Act replaces many of the powers contained within the Housing Act 1985 and as a result delegations will need to be agreed.
- 3.2 The main thrust of the act is to create a better housing market for all those who own, rent or let residential property whilst protecting those most vulnerable residents from the effects of poor quality housing. The Act changes the ways that local authorities tackle unsatisfactory housing, primarily in the private sector. It introduces a new way of assessing the condition of dwellings, based upon a risk assessment of the hazards faced by the occupants rather than the standard of housing fitness.
- 3.3 The Act places a duty on the Council to deal with poor housing conditions through a new range of enforcement powers and enables the Council to make a reasonable charge as a means of recovering certain expenses for the service of statutory notices.
- 3.4 The Act also alters the appeals process where landlords and other property owners do not agree with the decisions of a local authority. Instead of costly proceedings in the County and Magistrates courts, appeals will be heard at Residential Property Tribunals. These tribunals will also hear applications from local authorities in respect of management orders for empty dwellings and houses in multiple-occupation.

4. Position Statement: Key Changes in Legislation Under the Act

- 4.1 The Housing Act 2004 repeals many of the powers contained within the housing Act 1985 and gives local authorities new statutory powers for enforcement of housing standards. Four parts of the Act are relevant to dealing with poor housing condition and are covered in this report.
- 4.2 **Part 1 of the Act** introduces the Housing Health and Safety Rating System (HHSRS), which replaces the Housing Fitness Standard (one of the criteria used in the Governments Decent Homes Standard). The Fitness Standard was based on criteria introduced 80 years ago and its replacement represents an important shift in thinking, from a system that primarily deals with physical condition of a property, to one that is concerned with the risk posed to the occupants by the condition of the property.
- 4.3 The HHSRS is a complex scoring system based on the surveyors professional judgement. It has most relevance to the Councils Housing Renewal Unit, which is involved in disputes between landlords and their tenants relating to the condition of rented accommodation.
- 4.4 Part 1 also introduces a new range of enforcement powers to deal with unsatisfactory housing conditions. These powers range from simple hazard awareness notices to emergency powers to resolve matters that pose a serious and imminent risk to the occupiers. If a dwelling is found to have hazards that pose sufficient risk to the health and safety of the occupants then the Council has a duty to take the most appropriate form of action.
- 4.5 In accordance with the Enforcement Concordat and the Council's Enforcement Policy it is considered reasonable to give owners the opportunity to carry out any necessary works prior to serving a formal statutory notice.
- 4.6 **Part 2** introduces new licensing powers relating to Houses in Multiple Occupation (HMO). This only covers certain HMO's that are three storey or more and with five or more occupants. Each local authority has the power to extend licensing to other categories of HMO depending on their condition. The fact that the Easington District area has no recorded evidence of HMO's means that this is not for consideration at this time.
- 4.7 **Part 3** gives the authority powers to designate areas for selective licensing. The conditions for designation are that the area suffers from low demand housing or has high levels of anti social behaviour or both. The Housing Renewal Unit is currently preparing a submission to the Secretary of State to introduce selective licensing for the Wembley area of Easington Colliery. This will be presented to the Executive in the near future.
- 4.8 **Part 4** gives the Authority the power to take control of certain dwellings. This includes empty dwelling management orders which will enable the council to take over the running of an empty property, carry out works, set up a tenancy and receive the rent. These powers form part of our Empty Homes Strategy Statement, which was agreed by the Executive in September 2007.

5. Current Position and need for Delegated Authority to Serve Notices

- 5.1 Since the introduction of the Act in April 2006 all staff in the Housing Renewal Team have been trained by the Government's approved national body in the application of HHSRS and enforcement action.
- 5.2 Issues of unsatisfactory housing condition have until now been dealt with on an informal basis without recourse to the powers available under the Act. Although the majority of Landlords comply to some extent to this informal action, an increasing number are not and in such cases the only way to assure that the housing conditions are improved is to serve a statutory notice.
- 5.3 Although the first course of action will continue to be to contact the property owner and request work to be undertaken on an informal basis, non-compliance after a reasonable time period will result in appropriate notice being served by a council officer. The following is a list of notices for which delegation is sought.

Improvement Notice
Prohibition Order
Emergency Prohibition Order
Hazard Awareness Notice
Emergency Remedial Action

- 5.4 Officer delegation is not being requested for Demolition and Clearance Orders, but it should be noted that the Housing Act 2004 makes the necessary amendments to the Housing Act 1985 to reflect the move to HHSRS rather than unfitness. In accordance with statutory guidance such orders will be subject to formal Council approval as and when they arise.

6. Powers to Charge for Enforcement Action

- 6.1 Section 49 of the Act enables the Council to make a reasonable charge to recover expenses incurred in the service of a statutory notice. The expenses will relate to the inspection of the premises, consideration of the action to be taken and service of notice
- 6.2 It is proposed to charge for notices served. Charges will be based on actual time taken by the relevant Council Officer to carry out each action. Officer time will be accurately recorded in each case and a schedule will be sent to the property owner or managing agent detailing the time spent by Council staff in enforcing the notice together with an invoice.
- 6.3 If the work specified on a notice is not carried out by the landlord within the relevant time period, the Council will arrange for the necessary work to be completed and the costs will be recovered from the landlord, including Officer time in procuring and supervising the work.

7. Power to Require Documents

- 7.1 Section 235 of the Act gives the Council power to request a relevant person to produce documents, which are reasonably required for any purpose connected with parts 1 – 4 of the Act and to carry out investigation into whether any offence has been committed under these parts. These may be certificates relating to gas safety, electrical installation and tenancy agreements amongst other things.
- 7.2 Section 237 of the Act allows the Local Housing Authority to use Housing Benefit and Council Tax records for the purposes described above, notwithstanding the Data Protection Act.

8. Implications

8.1 Financial

Charging for serving notices will bring in additional revenue. However, it is difficult to predict the amount as this a new way of working.

Works carried out in default of a notice will be met from existing capital budgets and the owner of the property recharged.

8.2 Legal

The Act provides the Council with a range of new powers to introduce more comprehensive controls to improve housing condition within the District.

8.3 Policy

The use of the powers within the Housing Act 2004 will become part of the Council's policy for Housing Renewal and Enforcement, and our approach to dealing with housing condition will be incorporated into the review of the District's Housing Strategy.

8.4 Risk

A risk assessment has been carried out and the necessary actions put in place.

8.5 Communication

The use of the powers contained within the Act will be communicated to anyone who rents out property within the District. The communication plan will include local press and media, residents groups and Landlord and Area Forums.

9. Corporate Implications

9.1 Corporate Plan and Priorities

The use of these enforcement powers will assist in the delivery of several aims and priorities under the Corporate Plan and Community Strategy, particularly "Decent Homes for All", "Clean, Tidy Communities", and "Making the District Safe"

9.2 Equality and Diversity

There are no implications

9.3 E- Government

There are no implications

9.4 Procurement

The procurement of work in default will be in accordance with Council Standing Orders.

9.5 Recommendations

That the Council Members agree to:

- Note the implications of the Housing Act 2004 set out in this report in relation to Private Sector Housing.
- Agree the following delegation to the Director of Regeneration and Development and the Head of Housing
- Amend the constitution to read:

The power to take enforcement action and/or institute legal proceedings to discharge the Councils duties under part 1 of the Housing Act 2004 as detailed in section 4 of this report.

- Agree to charging for notices served.

Background Papers

The Housing Act 2004

Executive report 25th September 2007

National Enforcement Concordat

Policy paper on HHSRS