

**HOUSING ACT 2004
(Report by Head of Environmental Health Services &
Head of Housing Services)**

1. INTRODUCTION

- 1.1 The purpose of this report is to inform Members that the Housing Act 2004 received Royal Assent on 18 November 2004, to explain the main provisions of the Act and to seek delegated authority for authorised officers to use a range of powers and duties established by the Act.
- 1.2 Some sections of the Act came into force on Royal Assent, some came into force two months after that date but most are to be brought into force by commencement orders to be issued by the Secretary of State.

2. SUPPORTING INFORMATION

- 2.1 The new Act is complex and runs to more than 300 pages. It contains 270 sections spread over 7 parts and is supported by a volume of explanatory notes. Although largely freestanding, the new Act also adapts and extends some of the existing powers of enforcement available to the Local Housing Authority (LHA). The most relevant provisions of the Act are set out below with fuller explanations provided at the appendix together with commentary on the other provisions of the Act.
- 2.2 The Act replaces the existing housing fitness standard with a more objective standard known as the Housing Health and Safety Rating System (HHSRS). This is designed to ensure that LHAs prioritise housing enforcement action on those houses in the worst condition. As explained at the appendix, enforcement action is mandatory in some circumstances.
- 2.3 The Act introduces a mandatory scheme for the licensing of prescribed, high-risk Houses in Multiple Occupation (HMOs) and a discretionary scheme for other HMOs known as an additional licensing scheme. An additional scheme can be made by designation subject to local consultation and ODPM approval.
- 2.4 The Act also has provisions to allow LHAs to introduce selective licensing of other privately rented properties in areas of low housing demand that attract unscrupulous landlords or in areas that suffer from anti-social behaviour.
- 2.5 In certain circumstances, as explained at the appendix, the LHA can take over the management of residential properties licensed under the provisions of this Act.
- 2.6 The Act contains provisions that allow the LHA to intervene to bring long-term empty properties back into occupation, subject to certain strict limitations as explained at the appendix.

- 2.7 The Act contains new provisions related to overcrowding in residential properties and these are explained in more detail at the appendix. It also extends the disabled facilities grants regime to caravans and introduces requirements for LHAs to consider Gypsies who live in their area when reviewing housing needs.
- 2.8 Also included is a range of supplementary provisions requiring the maintenance of registers of licences and management orders, changes to availability of mandatory disabled facilities grants (DFGs), the approval of codes of management practice and regulations related to HMOs, documents to be produced in relation to Parts 1 to 4 of the Act, powers of entry to residential properties, prescribed forms and information concerning the establishment of the Residential Property Tribunal (RPT). These provisions are set out more fully at the appendix.

3. IMPLICATIONS

- 3.1 Although the Act has received Royal Assent and some provisions are already in force, most require a commencement order and therefore the true extent of the implications will not be felt for some months or possibly years. Nevertheless, it is important to arrange for appropriate delegations to be made to enable the Council as LHA to fulfil its duties and exercise the powers conferred by the Act as they are introduced.
- 3.2 The introduction of the new HHSRS and HMO licensing provisions represent significant changes to current practice and will require Environmental Health staff to be trained in the application of the new procedures and in the use of new software and hand-held data collection devices which are expected to become available during 2005.
- 3.3 An MTP bid for an additional Environmental Health Officer post has been approved to cover the anticipated increase in enforcement work resulting from this Act. The report on the House Condition Survey undertaken from November 2004 to February 2005 indicates that the number of private houses requiring enforcement intervention in Huntingdonshire is likely to double as a result of the introduction of the HHSRS. A further report for the release of MTP funds will be made when full the implications of the Act become clearer.

4. CONCLUSION

- 4.1 The Housing Act 2004 is a complex piece of legislation that will radically alter the private sector housing enforcement work carried out by Environmental Health staff and has significant implications for the Council in carrying out its private sector housing enforcement work as the LHA.

5. RECOMMENDATION

- 5.1 It is RECOMMENDED that delegated authority be given to:
- (a) The Director of Operational Services to appoint Environmental Health Officers and Environmental Health Protection Officers for the purposes of Parts 1, 2, 3, 4, 6 and 7 of the Housing Act 2004.
 - (b) Appointed Environmental Health Officers and Environmental Health Protection Officers to exercise the powers and duties set

out in Parts 1, 2, 3, 4, 6 and 7 of the Act and any regulations made under the Act, including authority to:

- ◆ Serve improvement notices under sections 11 and 12 of the Act.
- ◆ Make prohibition orders under sections 20 and 21 of the Act.
- ◆ Serve hazard awareness notices under sections 28 and 29 of the Act.
- ◆ Take emergency remedial action under section 40 of the Act.
- ◆ Make an emergency prohibition order under section 43 of the Act.
- ◆ Initiate action to recover charges under sections 49 and 50 of the Act.
- ◆ Revoke and/or vary notices.
- ◆ Obtain information.
- ◆ Exercising the power of entry to residential property, obtaining a warrant from a Justice of the Peace where necessary.

(c) The Head of Environmental Health Services, following consultation with the executive Councillor, to:

- ◆ Institute legal proceedings for offences under Parts 1, 2, 3, 4, 6 and 7 of the Act.
- ◆ Make interim, final and special interim management orders under Part 4 of the Act.
- ◆ Make arrangements to take over the management of empty private homes in accordance with the provisions of Part 4 of the Act, through the service of interim and final EDMOs.
- ◆ Make a demolition order under the amending provisions of section 46 of the Act (amends the existing provisions of the Housing Act 1985).
- ◆ Declare a clearance area under the amending provisions of section 47 of the Act (amends the existing provisions of the Housing Act 1985).
- ◆ Determine to purchase a property in lieu of a demolition order or prohibition order under the amended provisions of section 300 of the Housing Act 1985.

(d) The Head of Environmental Health Services to review the need for the introduction of an additional HMO licensing scheme under the provisions of Part 2 of the Act and to report to Cabinet if this is considered necessary in the future.

(e) The Head of Environmental Health Services to review the need for the introduction of selective licensing under the provisions of Part 3 of the Act and to report to Cabinet if this is considered necessary in the future.


(f) The Head of Environmental Health Services to keep a register of all Part 2 or 3 licences which are in force; all exemption notices served under section 62 or section 86 which are in force and all management orders made under Part 4 which are in force.

5.2 It is further RECOMMENDED that cabinet note and approve:

- (g) The extension of the availability of mandatory DFG grants to include those occupying caravans in the district as their only or main residence.
- (h) The requirement to consider the needs of Gypsies and Travellers who currently live in the district when reviewing housing needs in accordance with statutory requirements and other relevant corporate strategies.

BACKGROUND INFORMATION

Housing Act 2004
Explanatory Notes to the Housing Act 2004

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Housing Act 2004

Part 1

Part 1 replaces the existing housing fitness standard contained in the Housing Act 1985 with a Housing Health & Safety Rating System (HHSRS) designed to ensure that enforcement action is targeted at the worst homes.

Under the new HHSRS, any hazards found to exist will be classed as either category 1 or category 2 (details in regulations yet to be issued). The LHA has a **duty** to take enforcement action on category 1 hazards and a **power** to do so on category 2 hazards. Enforcement action can include:

- ◆ Serving an improvement notice.
- ◆ Making a prohibition order or an emergency prohibition order.
- ◆ Serving a hazard awareness notice.
- ◆ Taking emergency remedial action.
- ◆ Making a demolition order.
- ◆ Declaring a clearance area.

There is a right of appeal against enforcement action to a Residential Property Tribunal (RPT). These tribunals are new and the details are covered later in the Act.

Part 2

Part 2 introduces a mandatory scheme for the licensing of prescribed, high-risk, Houses in Multiple Occupation (HMOs) and a discretionary scheme for other HMOs known as an additional licensing scheme. An additional scheme can be made by designation subject to local consultation and ODPM approval. These provisions will be introduced by commencement order on a date still to be decided.

LHAs will have a **duty** to introduce licensing for HMOs of three or more storeys occupied by at least five people. Under the scheme, LHAs can refuse licences to the worst HMOs or impose conditions on the owner. These conditions can include making improvements and reducing anti-social behaviour. A fine of up to £20,000 can be imposed by the courts for breach of licence or operating an HMO without a licence and landlords who operate an HMO without a licence lose the automatic right of possession on an assured shorthold tenancy. Where a licence application is refused the LHA must make a management order as described in Part 4 below.

Part 3

Part 3 provides discretionary powers for the selective licensing of other privately rented property in areas of low housing demand that attract unprofessional landlords or in areas that suffer from anti-social behaviour. Any such scheme must be demonstrably co-ordinated with the local authority's wider strategies for dealing with anti-social behaviour and regeneration, and requires to be approved by the Secretary of State following local consultation. The Secretary of State may also prescribe by regulations other circumstances in which these

discretionary powers can be used. These provisions will be introduced by commencement order on a date still to be decided.

Part 4

Part 4 introduces provisions for the LHA to take over the management of properties licensable under Parts 2 and 3 of the Act or of individual properties where an RPT is satisfied that a property, which does not require a licence, should be subject to housing intervention by the LHA. An Interim Management Order is valid for a maximum of 12 months from the date it is made and a Final Management Order is valid for a maximum of 5 years from the date it is made. These provisions will be introduced by commencement order on a date still to be decided.

Part 4 also contains provisions for LHAs to make interim and final Empty Dwelling Management Orders (EDMOs) enabling them to take long-term empty properties under their management to bring them back into occupation, subject to strict limitations. Under an interim EDMO, the LHA must obtain the consent of the owner before it can grant anyone a right to occupy the dwelling, whereas under a final EDMO such consent is not required.

Before making an interim EDMO, the action must first be approved by an RPT and does not apply to property owned by public bodies, including social landlords. Approval cannot be given where a property is the principal home of an absent owner, a second or holiday home, a property under renovation, on the market for sale or letting, or owned by someone who has recently died. Once an interim EDMO has been made, the LHA is required to take any steps it considers appropriate to secure occupation and proper management of the dwelling pending either the making of a final EDMO or the revocation of the interim EDMO. These provisions will be introduced by commencement order on a date still to be decided.

This part of the Act also contains provisions related to overcrowding which enable the LHA to specify the number of people sleeping in a room or to say that a particular room is not to be occupied as sleeping accommodation. There is more on overcrowding generally in Part 6 of the Act. These provisions will be introduced by commencement order on a date still to be decided.

Part 5

Part 5 introduces a new legal duty on people marketing residential properties in England and Wales. Before marketing a property, the seller or their agent must have a home information pack of standard documents available for prospective buyers. The term home information pack has replaced the term "Sellers pack" previously introduced by Part I of the Homes Bill 2000. These provisions will be introduced by commencement order on a date still to be decided.

Part 6

Part 6 introduces a range of miscellaneous provisions including:

- ◆ Further tools for dealing with anti-social behaviour in social housing. These are complimentary to those introduced by the Anti-Social Behaviour Act 2003. These provisions will be introduced by commencement order on a date still to be decided and include:

- ◆ Withholding consent to mutual exchange for someone who has an ASB injunction, an ASBO or possession order for ASB.
- ◆ Provision for the Right to Buy to be suspended by court order on grounds of ASB.
- ◆ Suspending a landlord's obligation to complete a Right to Buy sale if someone's tenancy is demoted.
- ◆ Extending introductory tenancies for a further 6 months.
- ◆ Easing information exchange on ASB.
- ◆ Changes to the right to buy scheme designed to tackle exploitation of the rules by property developers and tenants. These provisions came into effect on 18 January 2005.
- ◆ Provisions for the protection of mobile home occupiers, including protection from harassment and unlawful eviction, which came into effect on 18 January 2005.
- ◆ Extension of the powers of the Housing Corporation to allow them to give grants to bodies other than Registered Social landlords for specific purposes. These provisions will be introduced by commencement order on a date still to be decided.
- ◆ Extension of eligibility for mandatory disabled facilities grants (DFGs) to include those occupying caravans as their only or main residence. The Regulatory Reform (Home Assistance) (England and Wales) Order 2002 made the DFG available to disabled occupants of "qualifying park homes" but this definition excluded some groups of caravan occupants including the majority of Gypsies and Travellers. This provision came into effect on 18 January 2005 but does not apply to applications for DFG made before that date.
- ◆ A tenancy deposit scheme. This scheme requires all landlords who require a deposit for an assured shorthold tenancy to put the money with a Tenancy Deposit Scheme, which is to be established. Failure to do so means the landlord will not be able to get the property back on the two-month notice provision. This provision will be introduced by commencement order on a date still to be decided.
- ◆ Termination of the rent to mortgage scheme. This provision was introduced with Royal Assent, but with an eight-month period of grace for existing eligible tenants.
- ◆ Giving protection, including length of notice and protection from harassment and unlawful eviction to county council sites providing accommodation for Gypsies. This provision came into effect on 18 January 2005.
- ◆ Requiring local authorities to take account of the needs of Gypsies and Travellers who currently live in their area when reviewing housing needs. This provision will be introduced by commencement order on a date still to be decided.
- ◆ Enabling the Secretary of State to make provision by order for determining whether a dwelling is overcrowded for the purposes of Part 10 of the Housing Act 1985. The order, when made, may also modify the operation of the overcrowding provisions related to HMOs not licensed under Part 2 of the Act and in respect of which a management order is in force under Part 4. The order may also remove the discretion of LHAs to serve overcrowding notices except under the provisions of the (modified) Part 10 provisions.

Part 7

Part 7 contains a number of supplementary provisions related to the repeal of earlier legislation, definitions and provisions relating to the earlier parts of the Act, such as:

- ◆ LHAs to keep registers of licences and management orders.
- ◆ The approval of statutory codes of management practice and management regulations related to HMOs.
- ◆ Documents and other information to be produced in relation to the provisions of Parts 1 to 4 of the Act.
- ◆ Powers of entry to property.
- ◆ Prescribed forms, licences and other documents.
- ◆ Clarification that a Residential Property Tribunal is in fact a Rent Assessment Committee with extended powers.

These provisions will be introduced by commencement order on a date still to be decided.