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**WYRE FOREST DISTRICT COUNCIL**

**CABINET MEETING**  
**25<sup>th</sup> AUGUST 2005**

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**The Housing Act 2004**

<b>OPEN</b>	
<b>COMMUNITY STRATEGY THEME:</b>	Improved Health and Wellbeing
<b>CORPORATE PLAN THEME:</b>	Enabling Community Wellbeing
<b>KEY PRIORITY:</b>	Housing and Independent living
<b>CABINET MEMBER:</b>	Councillor Maureen Aston
<b>RESPONSIBLE OFFICER:</b>	Head of Planning, Health and Environment
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<b>APPENDICES:</b>	Appendix 1 - Housing Act 2004 Summary of Parts

**1. PURPOSE OF REPORT**

- 1 To set out the key elements of the Housing Act 2004 (the Act) and to agree how the Council implements the powers and duties of the Act.

**2. RECOMMENDATION**

**The Cabinet is asked to DECIDE that:**

- 1 **The Head of Planning, Health and Environment, in consultation with the Cabinet Member for Housing, Health and Rural Affairs, Head of Legal and Democratic Services and the Head of Financial Services acts to introduce the new policy framework, administration and charging arrangements for Licensing of Houses in Multiple Occupation.**
- 2 **Any matter arising from the Act needing further approval by Cabinet be brought to them in due course, including the revision as necessary of the Constitution regarding Scheme of Delegation of Powers.**
- 3 **That members be kept updated on the commencement dates for parts of the Act and details of further guidance and regulations issued through the monthly Members Bulletin.**

### **3. BACKGROUND**

- 1 The Act responds to the recognised connections between housing conditions and the health, safety and wellbeing of individuals and the local community.
- 2 The Act sets out duties and powers for Councils to act in relation to the condition of properties, the licensing of certain rented accommodation, dealing with empty properties and other matters.
- 3 The Act received Royal Assent in November 2004 with various parts still yet to be enacted and official Codes of Practice and Guidance still awaited on the various parts. The Office for the Deputy Prime Minister has consistently advised that the provisions will be enacted in autumn 2005.
- 4 The Government sees the Act as part of the strategy for Local Authorities to achieve the target that 70% of vulnerable people living in the private sector are living in 'Decent Homes'. The Office of the Deputy Prime Minister set out this target in the five year housing plan 'Homes for All' in January 2005. ('Vulnerable' people are generally those who are elderly or on benefits and the 'Decent Homes' standard is a measure of the basic standard of the accommodation structure and facilities including the energy efficiency rating.).

### **4. KEY ISSUES**

- 1 The existing 'fitness standard' for houses based upon the physical condition of property elements is replaced by the Housing Health and Safety Rating Scheme (HHSRS). This gives a mechanism to assess the impact of the property upon the health and safety of occupants or potential occupants and guides to appropriate enforcement action based upon the severity of potential harm and the likelihood of occurrence. Provisions regarding enforcement include improvement notices, prohibiting the use of part or all of a property and carrying out emergency repairs where necessary. The powers under the Act will require the Scheme of Delegation of Officers to be amended accordingly in due course.
- 2 Certain categories of Houses in Multiple Occupation (HMO) are provided with a mandatory licensing scheme. This includes discretion for the Council in setting additional requirements above any national minimum standards set and the ability to charge fees for the work carried out in connection with the licensing. The Council already has a scheme in place for HMOs that can in effect be adapted to meet the new system. It is recommended that the Head of Planning, Health and Environment, in consultation with the Cabinet Member for Housing, Health and Rural Affairs, Head of Legal and Democratic Services and the Head of Financial Services introduce the new policy framework, administration and charging arrangements through adaptation of the existing registration scheme wherever practical. There are 212 known HMOs, of which 50 properties are in the current registration scheme. It is anticipated that

approximately 30 properties will meet the criteria for inclusion in the new licensing scheme. Given some flexibility in the Act in how applications are dealt with, it is anticipated that transfer into the new licensing scheme of known HMOs will be achieved by April 2006 given a commencement date and guidance being issued in October 2005.

- 3 The Council will need to carry out an assessment of the district private sector stock in 2006, based upon the Decent Home standard. The current level of Decent Homes for vulnerable people in the private Sector is estimated to be 63%. The target for 2010 is to achieve 70% of vulnerable people in private sector accommodation living in homes meeting the Decent Homes standard. A Housing Market Assessment will be carried out in 2006 and will include consideration of the needs of gypsies and travellers.
- 4 The Disabled Facilities Grants policy will need to be amended to incorporate the new potential for caravans to be eligible dwellings for adaptation grants.
- 5 The new powers to deal with empty dwellings will need to be investigated. The Empty Property Strategy and the Private Sector Housing Assistance Policy will be amended to include any relevant changes.
- 6 The post of Private Sector Initiatives Officer will be used to draw together local data and build procedures and mechanisms to enable the new powers to be used as part of an overall strategy for improving the private sector stock and dealing with problem properties.
- 7 The Act enables the use of information from Housing Benefits and Council Tax in investigating and enforcing using powers in the Act. Officers have already met to make arrangements for sharing of information.
- 8 Officers are working with neighbouring authorities on developing model standards and principles regarding the use of powers wherever practical.

## **5. FINANCIAL IMPLICATIONS**

- 5.1 There are significant resources to be dedicated from within the Housing Section, for example officer time, as well as training needs in addition to the limited Government funded training available. There is a need for new information technology provision by way of hand held computers to run the survey and assessment software for the HHSRS. These resources are expected to be met from within existing budgets

## **6. LEGAL AND POLICY IMPLICATIONS**

- 6.1 The Council is required to meet the duties set out in the Act. It is also enabled to use powers set out in the Act. Relevant policies, authorities and delegations are under review. The Empty Property Strategy, Private Sector Assistance Policy, Enforcement Policy, Constitution and Scheme of Delegation will be amended in due

course.

## **7. RISK MANAGEMENT**

- 1 Failure to act in response to the duties under the Act or the powers available could put members of the public at risk from poor housing conditions.
- 2 Unless the Council carries out the stock condition survey and uses the powers available, including the provision of grants, the Council may fail to meet the set target of 70% for vulnerable persons in the private sector living in 'Decent Homes' by 2010.

## **8. CONCLUSION**

- 1 The Council is obliged to respond to the new powers and duties in the Act from a legal perspective and for the benefit of the communities of Wyre Forest.
- 2 The Act introduces new ways of working that will impact upon the work of the Private Sector Housing Team and the Council as a whole.
- 3 Policies, procedures and internal mechanisms will be developed in response to the new powers and duties and members kept informed of any matters requiring their attention.

## **9. CONSULTEES**

- 9.1 Corporate Management Team.

## **10. BACKGROUND PAPERS**

- 1 Given the size of the Housing Act 2004 and official guidance notes to the Act, the following links are provided as a route to the same:  
The Housing Act 2004: <http://www.opsi.gov.uk/acts/acts2004/20040034.htm>  
Official Guidance Notes: <http://www.odpm.gov.uk/thehousingact2004>

2<sup>nd</sup> August 2005

## *APPENDIX 1*

### HOUSING ACT 2004 SUMMARY OF PARTS

#### **PART 1 - Housing conditions**

This Part of the Act introduces the Housing Health and Safety Rating System instead of the existing fitness standard set out in the Housing Act 1985. The idea is that local councils should be able to prioritise action on the worst homes.

##### **In more detail**

The existing fitness standards are replaced by a new system of Category 1 and Category 2 Hazards; local authorities have a duty to inspect and calculate the risk to the most vulnerable person who might potentially occupy the property, not just who is actually living there.

Local authorities have a **duty** to take enforcement action on a Category 1 Hazard and a **power** to do so on a Category 2. 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 to a Residential Property Tribunal; appeals are dealt with in more detail in Schedules 1, 2 and 3.

#### **PART 2 - Licensing of houses in multiple occupation**

This Part introduces a mandatory licence scheme for HMOs. There is a power for local authorities to extend the licensing requirement to all HMOs in their area, upon agreement by the Secretary of State.

##### **In more detail**

Local authorities will have a **duty** to introduce licensing for HMOs of three or more storeys occupied by at least five people. This will enable them to refuse licences for the worst HMOs or impose conditions on the owner. These can include making improvements and reducing anti-social behaviour (ASB). A fine of up to £20,000 can be imposed for breach of licence or operating an HMO without a licence. However, perhaps of more interest to landlords is the loss of the automatic right of possession on an assured shorthold tenancy for operating without a

licence.

Authorities will have a **power** to extend this to all HMOs in all or part of their area, if this will help them to develop a co-ordinated approach to homelessness, empty property and ASB. The extension will need the approval of the appropriate Secretary of State.

### **PART 3 - Selective licensing of other residential accommodation**

This Part enables local authorities to introduce selective licensing for other privately rented property.

### **In more detail**

This provision is primarily aimed at areas of low demand where some private landlords fail to manage their properties. It can also be implemented in other areas where anti-social behaviour is a problem. A local authority may designate all or part of their area for licensing private landlords; as with the extension on HMOs, designation will need the approval of the appropriate Secretary of State.

## **PART 4 - Additional controls in relation to residential accommodation**

Provision to enable local authorities to take empty private homes into management, subject to strict limitations. There are also powers to serve overcrowding notices on HMOs not licensed under Part 2 of the Act.

### **In more detail**

There are two circumstances where a local authority can step in and manage a private property. First, where a private landlord cannot be licensed or there is some other management problem and second, where the owner of the property has left it empty for at least six months. This action must be approved by a Residential Property Tribunal 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; being renovated; on the market for sale or letting; or owned by someone who has recently died.

## **PART 5 - Home information packs**

This Part introduces Sellers' Packs for owner occupiers selling their property.

### **In more detail**

The requirement to provide a Home Information Pack falls on the seller (or their estate agent) when a property is put on the market (this should exclude RTB sales, as the property is not generally being marketed and the potential vendor is not the one instigating the sale – but lawyers may disagree). The contents of the Home Information Pack are to be detailed by regulations but are likely to include things like proof of title, terms of sale, condition of the property etc. Enforcement regarding these provisions is to be carried out by County Council Trading Standards Officers.

### **Comes into force**

Home Information Packs are planned to come into force from the beginning of 2007.

## **PART 6 - Other provisions about housing**

Probably the Part of most interest to those working and living in social housing, it is – as its title suggests – a mix of measures ranging from changes to the 'Right To Buy' scheme to tenancy deposit schemes.

### **Right to buy**

Changes which come into effect on **18 January 2005** include:

- Extending the qualifying period from two to five years for new secure tenants

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- Removing RTB from properties due to be demolished
- Extending the period for the discount to be repayable from three to five years
- Seeks to end deferred resale agreements by making discount repayable from the date of the agreement to resell
- Gives the social landlord (or another social landlord if more appropriate) right of first refusal on resale within 10 years
- Extending the RTB changes to voluntary disposals by local authority landlords, housing associations and Housing Action Trusts.

### **Anti-social behaviour**

Changes which require **a commencement order on a date still to be decided** include:

- Withholding consent to mutual exchange for someone who has an ASB injunction, an ASBO or possession order for ASB
- Provision for RTB to be suspended by court order on grounds of ASB
- Suspending a landlord's obligation to complete an RTB sale if someone's tenancy is demoted
- Extending introductory tenancies for a further six months
- Easing information exchange on ASB.

### **Tenancy Deposit Scheme**

This change means all landlords who require a deposit for an assured shorthold tenancy must put the money with a Tenancy Deposit Scheme which will 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 change requires **a commencement order on a date still to be decided**.

### **Social Housing Grant**

This change will enable SHG to be paid to bodies other than housing associations. This can include ALMOs, will include private developers and may well include unregistered arms of existing associations. This is being introduced for the Autumn bidding round to the Housing Corporation.

### **Other main provisions**

- Termination of Rent to Mortgage scheme – from Royal Assent, but with an eight month period of grace for existing eligible tenants
- Requirements on giving notice in advance of agreements or their termination on mobile home sites
- Giving protection, including length of notice and protection from harassment and unlawful eviction to county council sites providing accommodation for gypsies
- Extending protection from harassment and unlawful eviction to other mobile homes sites
- Enabling the relevant national authority to make changes to the current definitions of overcrowding
- Requiring local authorities to take account of the needs of gypsies and travellers who currently live in their area when reviewing housing needs

## **PART 7 - Supplementary and final provisions**

As well as the usual repeals, definitions and commencement provisions, this Part contains a variety of measures relating to earlier Parts of the Act.

### **In more detail**

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The main provisions of this part of the Act are:

- Clarification that a Residential Property Tribunal is in fact a Rent Assessment Committee with additional roles.

Giving powers to a local authority to obtain information in respect of its powers and duties under Parts 1-4 of the Act also gives the authority a power of entry subject to obtaining a warrant.