

Housing Act 2004 and West of England local authorities: a common approach

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1 West of England local authorities and the Housing Act 2004

1.1 West of England local authorities – a common approach

Officers from the four West of England local authorities (Bath & North East Somerset Council, Bristol City Council, North Somerset Council, South Gloucestershire Council) authorities have been working together to bring as much consistency to the implementation of the Act across the sub-region as possible. As well as procedures and standards other aspects of the implementation of the new legislation are being planned together (publicity, consultation with landlord organisations, staff and landlord training, etc).

1.2 Consultation with landlords and the West of England Landlords' Panel

The four authorities have begun consultation with landlords and letting agents at a sub-regional level by engaging with the local landlord and letting agent representative organisations in the West of England Landlords' Panel. The panel is made up of representatives of:

- National Landlords Association (Wessex branch)
- South West Landlords Association (Bristol branch)
- Guild of Residential Landlords (North Somerset branch)
- Bristol Association of Letting and Managing Agents
- Association of Residential and Letting Agents
- Bath & North East Somerset Council
- Bristol City Council
- North Somerset Council
- South Gloucestershire Council

In addition to discussion at this panel each local authority has been consulting with its own local landlords' forum and groups of landlords participating in the various initiatives run in each of the areas (eg HMO Registration Scheme landlords in North Somerset, Accreditation Scheme landlords in Bristol, etc.).

1.3 Consultation with other agencies

The following are also being consulted on these new arrangements:

Shelter

University and college accommodation offices

Avon Fire and Rescue

Avon and Somerset Police

Government Office of the South West

Other departments of the West of England local authorities

1.4 Equalities

Appropriate actions will be taken to protect any vulnerable tenants of the properties to which these policies apply and a close working relationship will be maintained with Social Services, Tenancy Relations services and homelessness services.

2 Background to the Housing Act 2004

2.1 HHSRS provisions

The HHSRS is a replacement for the fitness-for-human-habitation assessment of houses that has been in force now for many decades. The fitness assessment emphasised the repair of the fabric of a dwelling; later amendments to the fitness system added factors to deal with the level of basic amenities. The new HHSRS is a risk assessment designed to show the degree to which a building can have damaging effects on the health or safety of occupants across a comprehensive range of 29 risk factors. The system considers the likelihood of impact on an occupant's health or safety and the severity of any harm that does occur.

The system uses statistical evidence to calculate a score for each of the risk factors. The scores are grouped into bands (Bands A to J with Band A being the most severe). The scores can be compared across different types of hazard and for the first time give surveyors an objective method of identifying the highest risk factors in a property. Results of early assessments have shown that factors such as extreme temperatures (normally cold), trips and falls are at least as significant as those which have traditionally been concentrated upon such as disrepair or fire safety.

The HHSRS is designed to be applied to all residential properties regardless of tenure. Local authorities are obliged to consider appropriate intervention if an HHSRS assessment produces a result in bands A – C for any factor. Local authorities also have the discretion to consider intervention in the case of lower bands (Bands D – J).

2.2 HMO provisions

The Act brings a new definition of House in Multiple Occupation with most self-contained flats leaving the definition and shared houses (notably most student shared houses) now being included in the definition.

The Act also brings mandatory licensing for higher risk HMOs – those three storey properties which have five or more occupants. Owners will be obliged to apply to the local authority for a licence. Before issuing a licence the local authority will need to be satisfied that the licence holder is a fit and proper person and that the building has sufficient facilities for the number of occupants. The licence lasts for up to five years and within the first five years the local authority needs to have made an HHSRS assessment of the building to ensure that the building presents no unacceptable hazards to the occupants. There are mandatory conditions that are attached to the licence (the provision of a minimum level of amenities, the need to have gas and fire alarm installations certified periodically, etc.); in addition a local authority has the discretion to apply its own conditions.

There are fines of up to £20,000 for owners of licensable HMOs who do not apply for a licence and an obligation on local authorities to take over management of licensable HMOs where there is no prospect of the owner making a licence application by making an Interim and then a Final Management Order (IMOs and

FMOs). A set of national minimum standards for *licensable* HMOs is to be published (allowing local authorities the discretion to set higher standards if they see fit) and there will be new Management Regulations for *all* HMOs. An Approved Code of Practice for the management of HMOs is also to be published.

In general fire protection in HMOs will no longer be dealt with by prescriptive national codes and guides but instead within the all-encompassing scope of the HHSRS. However there are some specific fire protection requirements for licensable HMOs which will need smoke alarms before a licence can be issued and where the national minimum standards for licensable HMOs require a fire door and fire blanket in kitchens.

In addition to mandatory licensing for higher risk HMOs the Act gives local authorities the discretion to apply licensing to additional categories of HMO or selectively to other parts of the private rented sector where it can be shown that this would be the only way of bringing improvements. There is further provision to apply licensing to individual properties where there have been repeated problems of anti-social behaviour.

2.3 Enforcement in the private rented sector

Existing enforcement powers with respect to the private rented sector are being replaced with new notices and orders that will allow improvement or prohibition of unsatisfactory conditions.

The new arrangements include powers to recover reasonable costs for enforcement work. Throughout the new legislation it is clear that adherence to the government's Enforcement Concordat is expected with owners of private rented properties being given every opportunity to comply with legal obligations before formal enforcement action is taken.

2.4 Special Interim and Final Management Orders (SIMOs)

A local authority may impose a Special Interim Management Order (SIMO) on any private rented property where there are problems of anti-social behaviour affecting health and safety (irrespective of the dwelling size or number of occupants) and where the property is not otherwise be subject to licensing or selective licensing.

2.5 Empty dwelling management orders (EDMOs)

Where residential properties have been left empty for a substantial period and the owner has failed to take up offers of advice and assistance from the local authority to bring the property back into use there will be the power for the local authority to take the property into their own management.

2.6 Tenancy Deposit Schemes

In October 2006 provisions in the Act with regard to tenancy deposits is to be implemented. Landlords will need to take one of two routes when taking deposits from their tenants: either by paying the money over to an independent, approved agency which will hold the money on behalf of the landlord and tenant for the duration of the tenancy; or by joining an approved insurance scheme which will enable a tenant who can demonstrate that a deposit has been unreasonably withheld to recover their money.

2.7 Home Information Packs

In 2007 vendors of residential properties will need to supply any purchaser with a pack giving information on the condition, energy efficiency etc of the building as part of the sale process.

3 West of England local authority proposals

3.1 Proposals for the use of the HHSRS

The new arrangements allow little discretion in the implementation of this new assessment process. The West of England authorities are sharing experience in its application and training of staff and are taking steps to ensure that the system is operated consistently.

The West of England authorities are also proposing to exercise local authority discretion to intervene at Hazard Band D in addition to the mandatory Bands A, B and C. The inclusion of Band D will bring the approximate 'intervention level' in line with current arrangements.

3.2 Proposals for the implementation of HMO licensing

3.2.1 'Fit and Proper person'

Landlords applying for an HMO licence will be required to declare that they have no unspent convictions for relevant offences and to sign up to a code of good management practice. (Copy of Code of Good Management practice attached). Each local authority will make its own arrangements to investigate suspected breaches of this declaration. Written evidence in support of the declaration may be sought from the applicant where a local authority has reasonable suspicion that an unspent conviction exists or in the case of particular property uses (for example where B&B accommodation is provided for homeless families or vulnerable adults). Any false statement or activity conflicting with the management code which subsequently comes to light will be taken into consideration when deciding whether a landlord is no longer a fit and proper person and should have their licence revoked.

In normal circumstances acceptance by one of the West of England authorities that a landlord is a 'fit and proper person' as part of an HMO licence application will be accepted in succeeding licence applications from that owner across any of the four authorities. Similarly a refusal by one authority on the grounds that an applicant is not a fit and proper person would be followed by the other three authorities in considering licence applications. If information subsequently comes to light which raises a question about whether an already licensed landlord is 'fit and proper' the issue will be considered jointly by all four authorities so that there is a uniform West of England approach on any licence revocation.

There will be a review process that involves all four local authorities to enable a landlord who is dissatisfied with a 'fit and proper person' decision to have the decision reviewed.

3.2.2 Licence fees

There will be a basic fee of £330 for a five person HMO plus a one-off 'fit and proper person' £30 fee. The basic £330 fee will rise by £30 increments for each additional unit of accommodation in a property. The 'fit and proper person' £30 fee will be payable only for a landlord and/or manager's first application within the five year licensing period (a £30 fee will apply to each person needing to be checked) – it will not be payable on any succeeding applications for licences on properties in any of the West of England authority areas. There will be an additional £30 fee where an application has to be resubmitted because the original application was incomplete.

There will be a 10% discount for membership of a recognised landlord or agent organisation. Each individual local authority may apply additional discounts in support of its own initiatives (likely examples are for properties which are part of an existing HMO Registration Scheme or Accreditation Scheme). Late applications will not normally attract discounts. (A late application will be one that is received later than 3 months after from the commencement of licensing or later than one month after a landlord begins to let a licensable HMO.

3.2.3 Licence conditions

The West of England authorities are proposing that the following conditions are attached to HMO licenses in addition to the national mandatory ones.

National mandatory conditions:

- Annual production of gas safety certificates.
- Electrical appliances and furniture to be kept in a safe condition – to supply on demand a declaration as to safety.
- Smoke alarms to be installed and kept in working order – to supply on demand declaration of condition and positioning.
- Tenants to be supplied with written terms of their tenancy.

Additional West of England discretionary conditions:

- To supply on demand a five yearly inspection report of the electrical installation
- The use of the property to be in accordance with a specified room-by-room schedule of occupation levels (includes limits on number of persons who can sleep in each bedroom and an overall permitted number for the property).
- There should be no obligate sharing of bedrooms (where two strangers are obliged to share a room).
- 24 hour direct access to all cooking, sanitary and personal washing facilities and equipment to be provided.

- All facilities or equipment which are required as part of the licence application to be provided within specified period.
- The licence holder and the manager (if there is one) to attend a recognised course on the Approved Code of Practice with regard to the management of HMOs within 5 years of the licence approval or publication of the code (whichever is the later).
- Where board is provided, food handlers to receive training commensurate with the level of food handling involved.
- A list of all occupants to be provided to the local authority on request.

3.2.4 Standards in licensable HMOs

The nationally prescribed minimum standards for licensable HMOs will be followed largely with a few West of England additions. With regard to these West of England specific standards the existing HMO standards of the four authorities have been compared and a new common approach is proposed, (copy of proposed standards attached).

The new legislation allows local authorities to set their own maximum occupancy levels having regard to both the facility standards and room sizes. The proposed West of England room size standards are laid out in the attached standards. In principle, the aim has been to avoid introducing standards above those that exist at present.

3.2.5 Licence application process and form

An application form will be available from each of the four authorities or by downloading it from the joint website. Completed forms will need to be returned to the local authority in which the property in question is located.

The draft application form is attached.

3.2.6 Interim and Final Management Orders

It is proposed that each local authority will make its own arrangements for dealing with Interim and Final Management Orders. Formal arrangements for the procurement of the services of an RSL or private letting agents are being undertaken by some of the authorities so that arrangements will be in place on implementation of licensing in April.

3.2.7 Additional licensing

It is proposed that each local authority will consider, in consultation with its landlords, whether additional licensing is appropriate in its own area.

3.2.8 Selective licensing

This provision is designed for areas of low demand and not considered applicable in areas of high demand such as the West of England.

3.3 Proposals for use of new enforcement powers

3.3.1 Enforcement for hazards identified by HHSRS

Normally consideration of appropriate action to remedy HHSRS deficiencies will be required where a hazard falling into Bands A, B, C or D is found.

In normal circumstances landlords will be given the opportunity to remedy hazards before the resort to formal enforcement action. Exceptions are where a landlord has a continuing history of non-compliance within the past five years or where urgent health and safety issues are involved.

There will normally be a charge where formal action has to be taken. Discretion will be exercised in making these charges in exceptional circumstances, for example where immediate formal action has had to be taken because of a health and safety issue which is urgent and could not have been reasonably foreseen by the landlord.

In general the appropriate action in the case of a Band A, B, C or D hazard in an owner-occupied property will be limited to the service of a hazard awareness notice. However enforcement action may need to be taken against an owner-occupier if the hazard presents a risk to neighbours or passer-by and they have not responded to initial informal contact.

3.3.2 HMO licensing enforcement

Failure to hold a licence carries heavy penalties, including a £20,000 maximum fine. The action taken will range from an informal request to submit an application through to prosecution. The factors to be taken into account in deciding which is most appropriate will include evident knowledge of the scheme and its obligations through the licensing of other properties and previous warnings. Regard will be had to any exceptional reasons for non-compliance. In the first year of the scheme a less rigorous approach will be followed until awareness builds.

A breach of conditions is a lesser offence and an informal initial approach is likely to be more appropriate. However, a prosecution would be considered to be more in the public interest if the breach is causing serious health and safety implications or if there have been persistent breaches or warnings ignored.

3.4 Special Interim and Special Final Management Orders

Each local authority will consider whether to use these powers in the light of local circumstances.

3.5 Proposals for the use of Empty Dwelling Management Orders

Each local authority will consider whether the use of these powers in the light of local circumstances.

3.6 Preparation for tenancy deposit schemes

Local authorities have no specific role to play in these provisions. This is a significant change to the way that landlords and tenants deal with deposits and is clearly a major issue for landlords across the sub-region. The West of England authorities propose to provide information on the new arrangements for landlords in the lead-up to implementation in October 2006.

3.7 Home information packs

Local housing authorities have no specific role to play in these provisions and there are no proposals to take any action with regard to them.