

EAST AYRSHIRE COUNCIL

HOUSING COMMITTEE 6 SEPTEMBER 2006

HOUSING (SCOTLAND) ACT 2006

Report by Executive Director of Neighbourhood Services

1. PURPOSE OF REPORT

- 1.1** To inform Members about the contents and implications of the new housing legislation contained within the Housing (Scotland) Act 2006, hereinafter called the Act.
- 1.2** To seek the necessary authority to undertake preliminary work to ensure that the Council is ready to undertake the new duties, as and when, the various parts of the legislation are implemented.

2. BACKGROUND

- 2.1** The Act received Royal assent on 6 January 2006. Implementation of the various parts of the Act are expected to take place over the period 2007 to 2008. The Act deals with many of the recommendations made by the Scottish Executive's Housing Improvement Task Force (HITF).
- 2.2** The Act's main provisions include, inter alia:
- (i) New council powers to deal with poorly maintained private sector property
 - (ii) Provision for local authorities to provide advice, practical assistance and loans for home improvements
 - (iii) The introduction of a single survey and property information pack for those selling and buying a domestic dwelling
 - (iv) New rights for private tenants in terms of the basic standard of accommodation they can expect from a landlord

3. OVERVIEW OF THE ACT

- 3.1** The Act is in ten Parts:

Part 1 Deals with various aspects of housing standards, as explained below. Chapter 8 deals with appeals and other matters of particular interest to local authorities, including the power to carry out work or demolition by agreement with the owner; obstruction; recovery of expenses; provisions on listed buildings; certification of the completion of work; and the service of documents. Chapter 9 defines some of the terms

used in Part 1 and explains that this Part is applicable to non-residential premises forming part of a building containing a house.

Part 2 Sets out the details of the scheme of assistance for housing purposes.

Part 3 Gives the Scottish Ministers powers to require sellers of houses or their agents to provide specified information to potential buyers. These powers will be used to establish mandatory schemes, under which the Purchaser's Information Pack and single survey will have to be supplied when a house is placed on the market. Ministers also have powers to require additional information to be provided to tenants of local authorities and registered social landlords who request a valuation in connection with the right to buy.

Part 4 Gives the Scottish Ministers powers to establish conditions for, and to approve, a scheme or schemes for the protection of tenancy deposits in the private rented sector.

Part 5 The system of licensing of houses in multiple occupation, which is presently founded in secondary legislation under the Civic Government (Scotland) Act 1982, is re-enacted in primary legislation, with some changes to its details.

Part 6 Amends legislation relating to occupiers of mobile homes who let stances, in order to increase the protection given to them.

Part 7 Gives a local authority power to use repayment charges to recover amounts due to it for certain activities carried out in relation to living accommodation.

Part 8 Contains provisions relating to private landlords, registered social landlords and home energy efficiency.

Part 9 Deals with rights of local authorities and others to enter land and premises for specified purposes, such as identifying potential Housing Renewal Areas, deciding whether to serve a work notice or demolition notice, deciding whether to make a maintenance order, or carrying out work.

Part 10 Deals with various technical matters, including equal opportunities requirements for Ministers and local authorities and powers for local authorities to obtain information in relation to land and premises.

3.2 A copy of the Housing (Scotland) Act 2006, the Explanatory notes and the Circular can be found online at respectively:

www.opsi.gov.uk/legislation/scotland/acts2006/asp_e.pdf
www.opsi.gov.uk/legislation/scotland/en2006/aspenn_e.pdf
www.scotland.gov.uk/Publications/2006/07/18162031

4. CHANGES BY POLICY AREA

4.1 The Act has been described as one of the largest and most complex laws the Scottish Parliament has produced to date. It impinges on significant areas of work currently undertaken by local authorities and will, in some areas, radically affect how some “housing” services are delivered to the public.

4.2 The following paragraphs highlight a number of the policy areas that will be affected. These are currently covered in general terms as the full extent of the changes will only become apparent as the authority receives the particular secondary legislation and guidance from the Scottish Executive and Communities Scotland. The guidance and secondary legislation will be subject to consultation via COSLA.

4.3 Housing Renewal Areas (HRA)

HRAs replace the previous method (Housing Action Areas) of dealing with sub-standard housing on an area basis. While East Ayrshire did not use the previous method, the concentration of right to buy owners within potential landlord improvement areas may make this new power more useful than that previously available. It is anticipated that the new powers will be in place by early 2008.

4.4 Local Housing Strategies (LHS)

The LHS is the document by which the local authority, as the Strategic Housing Authority, articulates all its housing policies across all tenures. It was introduced by the Housing (Scotland) Act 2001. East Ayrshire’s current LHS covers the period 2004 to 2009. The Act strengthens the position of the LHS by requiring it to clearly state how an authority will deal with houses below the tolerable standard, how it will go about identifying HRAs and finally how it will strategically use the scheme of assistance to improve the house conditions in its area.

4.5 Tolerable Standard

The Tolerable Standard is up-dated to include, among other things, thermal efficiency of a dwelling. These changes are estimated, on a Scottish level, to increase the number of dwellings failing the standard from 20,000 to 65,000. Guidance is expected between mid 2007 and early 2008.

4.6 Repairing Standard for Private Rented Housing

Extends the existing duties on a private landlord to include:

- Fixtures, fittings & appliances must be in reasonable repair and working order
- Ensuring Furnishings provided can be used safely
- Satisfactory provision for fire detection

In some limited instances an authority may be subject to this duty.

In addition there will now be a Private Rented Housing Panel to which tenants can report breaches by their landlord. If the landlord cannot or fails to deal with a repairing breach, the local authority can undertake the work and re-charge the landlord. Any breach by the landlord can be taken into account when the local authority is dealing with the registration of private landlords. It is anticipated that the new Private Rented Housing Panel will be in place by early 2007 at which stage the repairing standard can then be implemented.

4.7 Repair, Improvement & Demolition of Houses

An authority will have the power to serve a work notice on an owner to carry out works either because the property is in an HRA or is "Sub-standard". However, such a notice will not create a requirement for a mandatory grant but rather mandatory assistance. If the owner fails to comply the authority can undertake the work and recover costs. In terms of repair or improvement, there will be no requirement for the authority to acquire the property. The date for implementation is estimated as mid-2007 to early 2008.

4.8 Maintenance

This links to paragraph 4.6. This is a new power that allows the authority to stop property falling into disrepair, as opposed to the previous power of dealing with disrepair once it had occurred. The power can be used for individual houses or groups of houses and includes common parts. It extends to gardens, garages, out houses etc. The order will expect the owner or owners to draw up a maintenance plan which the authority can accept or amend. The order will be registered by the authority in the Land Register. In some limited circumstances the authority will be able to financially assist. The date for implementation is estimated as mid-2007 to early 2008.

4.9 Right to Adapt Rented Houses

This is a new right for private tenants. They now have the right to carry out work to make the property suitable for a disabled occupant or to install central heating etc. While the right is subject to landlord's consent, such consent cannot be unreasonably withheld. Such works will qualify for mandatory assistance, although the full extent of mandatory assistance is still to be decided. A Code of Practice will be published by the Disability Rights Commission. This section will be implemented on 4 December 2006.

4.10 Scheme of Assistance

The new scheme is based on the principle that the owner is primarily responsible for maintaining their property and that it should only be in limited circumstances that the public purse, through grant aid, should financially assist property owners. It is expected that the local authority will assist owners in terms of house repairs, improvements, adaptations etc but that the assistance will be by way of information and advice, by providing or facilitating

standard or subsidised loans, and by practical assistance etc. The local authority in terms of Section 72 of the Act is required to prepare and make available to the public a statement of its policy on what form of assistance it will offer and the rules and regulations governing its scheme. The powers under this section are estimated to be available between early and mid-2007, with the regulations covering Disabled Assistance complete after early 2008.

4.11 Purchaser's Information Pack & Single Survey

Any person (seller or agent) marketing a house must provide any potential buyer with a Purchaser's Information Pack. The contents of the pack will be prescribed by Ministers. Social landlords, including local authorities, where they have a landlord function, will require to provide similar information to tenants requesting a house valuation. In all events the authority, through its trading standards function, will be expected to enforce this aspect of the legislation. The scheme is provisionally estimated to begin early to mid-2008.

4.12 Tenancy Deposits

Ministers have been given powers to set out regulations governing Tenancy Deposit Schemes. Arrangements could be operational by mid-2008.

4.13 Licensing of Houses in Multiple Occupation (HMO)

The Act re-enacts in primary legislation the system of licensing HMOs. It allows Ministers powers to set national standards and local authorities the right to exempt specific types of HMOs from licensing. In addition local authorities will have the power to serve amenity notices on the owner of an HMO to make the living accommodation reasonably fit for occupation by a specific number of persons. The new scheme will not be implemented until 2008.

4.14 Mobile Homes

The Act extends the protection for people who occupy a mobile home and let a stance from a site operator. It improves the situation in regard to tenancy conditions, security of occupation and the selling of mobile homes. It is anticipated that the new schedule of rights for renters of mobile homes will come into force in mid-2007.

4.15 Repayment Charges

Repayment charges are updated versions of charging orders, most of which they will replace. The Act allows the local authority to use repayment charges where it is entitled to recover certain expenses and payments. These can be recorded in the property registers.

4.16 Miscellaneous (Six Items)

The 2 most significant items under these provisions are (i) the possible introduction of a “Letting Code” for landlords and agents - if required this will be introduced in late 2008 - and (ii) that Ministers are required to publish a strategy for improving home energy efficiency and that a report on its implementation must be made within five years.

5. IMPLICATIONS BY POLICY AREA FOR EAST AYRSHIRE COUNCIL

5.1

| Policy Area | Implications |
|------------------------|---|
| Housing Renewal Areas | <p>This change from HAAs to HRAs will provide useful powers to the authority as it takes forward regeneration work in a number of the former council estates. There will no longer be the requirement for the majority of the houses to be below the tolerable standard but rather it can be on the basis of property being sub-standard or the appearance or state of repair is adversely affecting amenity.</p> <p>Designation of an HRA will require Ministerial approval.</p> |
| Local Housing Strategy | <p>The legislation adds on additional elements to the LHS in that the authority must clearly identify within its LHS how it will deal with BTS properties, how it will identify and deal with HRAs and finally how it will use its Scheme of Assistance to deal with the needs of private housing sector, including the disabled. These additional elements will now have to be factored into the current work plan for producing the next up-date of the LHS.</p> |
| Tolerable Standard | <p>With the changes to the standard it is likely from the Scottish figures quoted in the regulation that this will become an increasing problem for the authority. If the local situation follows national trends, there is the potential to increase from the current estimated figure of 240 to 780 i.e. a threefold increase.</p> <p>The current sample survey of the private sector being undertaken by consultants on behalf of the Council is complete and analysis is underway; this should provide a more accurate picture of the additional work that the authority will face.</p> <p>As indicated in the regulation, the authority must produce a strategy on how it will ensure that BTS properties are closed, demolished or upgraded within a reasonable period of time.</p> |

| | |
|---|--|
| <p>Repairing Standard for Private Houses</p> | <p>The regulations require the authority to check if any of its properties are covered by Repairing Standard. Preliminary investigations indicate that there will be some, but it is not thought, at this stage, to be a major issue.</p> <p>However in terms of the private sector the authority will have to come to a view on how it will deal with any case brought to its attention by the Private Rented Housing Panel, how it will recover any expenses involved and how it will publicise the scheme.</p> |
| <p>Repair, Improvement and Demolition of Houses</p> | <p>It is anticipated that with the removal of linking mandatory grant assistance with the serving of the various notices, there will be an increase in the number of notices issued. This links in with the requirement to have in place a strategy to deal with BTS and sub-standard houses within a reasonable period of time.</p> |
| <p>Maintenance</p> | <p>This new power is to ensure that owners maintain their property and its environs to a suitable standard. This will be especially helpful in dealing with common repairs. The authority will therefore have to decide which properties to serve orders on, how to deal with non co-operative owners and how it will deal with the financial aspects of maintenance accounts.</p> |
| <p>Right to Adapt Rented Houses</p> | <p>This new right for private tenants will involve the authority in having to prepare and advertise information and advice on the subject, assess applications for financial assistance to adapt properties and in some instances applications for financial assistance to re-instate properties back to their original state.</p> <p>This is likely to result in an increase in the number of applications.</p> |
| <p>Scheme of Assistance</p> | <p>This is likely to be the most fundamental of changes brought about by the Act. It moves away from the presumption of grant aid to the owner making use of their own resources or assets to fund repairs, improvements or adaptations.</p> <p>The authority will be expected to produce and advertise its policy and procedures on how it will deal with this new regime, assist and advise owners on how they can fund the works and provide loans either direct or through working with a not-for-profit partner. It will be necessary to incorporate the policy within the LHS.</p> <p>The new regime will be available to more</p> |

| | |
|--|---|
| | potential applicants and will be more complex than the existing scheme. |
| Purchaser's Information Pack & Single Survey | There are three sets of duties arising from this aspect of the Act. The authority in terms of its trading standards function will have to enforce the system to ensure all sellers or their agents are complying with the legislation As a landlord the authority will have to produce and provide a pack and single survey information in connection with the right to buy. Finally in terms of the scheme of assistance, the authority may have to financially assist a house seller who has difficulty in paying for the pack and survey. |
| Tenancy Deposits | Ministers now have powers to regulate tenancy deposit schemes. The only implication is that the current local scheme, administered by the Housing Service may be regulated in future. |
| Licensing of Houses in Multiple Occupation | This is mainly a technical change. However it does introduce the option for an authority to exempt some forms of HMOs and for Ministers to set maximum fees across Scotland. |
| Mobile Homes | This section extends the protection for people who occupy a mobile home and let a stance. |
| Repayment Charges | The authority will have to set out the types of cases that are to be dealt with through this system. |
| Miscellaneous | Should a national Letting Code be introduced this would have to be incorporated into the Council's local procedure for deciding whether or not a private landlord or agent was a fit and proper person. When the energy efficiency strategy is published this will require to be implemented and promoted. The authority will require to ensure its own strategy is in tune with the national agenda. |

6. FINANCIAL IMPLICATIONS

- 6.1 Until more precise regulations and guidance are issued by the Scottish Executive, it is not possible to estimate what the financial implications will be for the authority. However, it is clear from the current SEDD circular that the changes will not be financially neutral to the authority unless specific grant funding is made available to deal with these new or changed duties.

7. LEGAL AUTHORITY/IMPLICATIONS

7.1 The Council requires to comply with the terms of the new legislation as contained in the Act and in particular requires to fulfil the obligations and duties affecting the Council which will be introduced by the legislation.

8. POLICY IMPLICATIONS

8.1 These are covered in sections 4 & 5 above.

9. RISK IMPLICATIONS

9.1 Failure to put in place the necessary policies procedures and structures to meet the changes brought about by the Act will leave the authority open to challenge of maladministration.

9.2 In terms of the LHS, failure to include the necessary additional strategic elements will mean that the document will not be assessed as fit for purpose and would affect the authority's bids for grant funding through Communities Scotland.

10. CONCLUSIONS

10.1 As indicated, the Act is wide ranging in its coverage. It will impinge on a number of services and how the authority delivers housing services.

10.2 It will be necessary to consider each of the changes required by the legislation, and bring forward proposals as to how the authority will adapt and up-date its service delivery to ensure it meets its statutory obligations in line with the timescales highlighted in the circular.

11. RECOMMENDATIONS

11.1 The Committee are recommended to:

- (i) authorise the establishment of an inter-department officer group to review the guidance being issued by the Scottish Executive and to submit proposals for members consideration as appropriate; and
- (ii) otherwise note the contents of the report

William Stafford
Executive Director of Neighbourhood Services

CMCA/JC/LA

8 August 2006.

LIST OF BACKGROUND PAPERS

1. Housing (Scotland) Act 2006
2. Explanatory Notes to Housing (Scotland) Act 2006
3. SEDD Circular Implementing the Housing (Scotland) Act 2006
4. Implementing the new Housing (Scotland) Act 2006, published by Scottish Housing Matters, April 2006
5. A Guide to the Housing (Scotland) Act 2006 published by Shelter on their web site
6. Housing (Scotland) Act 2006, A Briefing from Chartered Institute of Housing in Scotland published January 2006.
7. The Housing (Scotland) Bill 2005, commentary by the Housing Quality Network published on their web site.

Any person wishing to inspect the background papers listed above should telephone 01563 576617 and ask for Joseph Cassidy

Implementation officer – chris.mcaleavey@east-ayrshire.gov.uk