



**REPORT of  
DIRECTOR OF PLANNING AND REGULATORY SERVICES**

---

**to  
COMMUNITY SERVICES COMMITTEE  
10 JULY 2018**

**PRIVATE SECTOR HOUSING LEGISLATIVE CHANGES**

**1. PURPOSE OF THE REPORT**

- 1.1 To provide Members with an update on recent legislative changes regarding Private Sector Housing Enforcement.

**2. RECOMMENDATION**

- (i) Members note the content of the update on recent legislative changes.

**3. SUMMARY OF KEY ISSUES**

**3.1 Mandatory HMO (Houses in Multiple Occupation) Licensing.**

- 3.2 Mandatory licensing has been extended to include all HMOs with five or more occupants. The legislation has been published and comes into force on the 1st October 2018, effectively giving landlords a 6 month grace period to make applications. In order to decide whether properties are suitable the Council has regard to provision of amenities, fire precautions and a fit and proper test for the manager/landlord. The fee for a licence (of five years) in the Maldon District is currently £696.00 for a five roomed house plus £36.00 for each additional room. The Government has also introduced a minimum room size of 6.52sqm and has stated that statutory guidance will be issued in due course.

- 3.3 The service has carried out a short project to explore where properties that now fall within the legislative changes are operating and the numbers that are likely to be affected by the changes. The project identified up to 50 properties that will require an inspection to confirm whether a licence is required. The process will require additional resource albeit funded by the licence fee.

- 3.4 It is the responsibility of landlords to make valid applications. They must either hold a licence or have made an application for one by 1st October 2018. The maximum penalty (upon summary conviction) for the offence of running a licensable HMO without a licence is an unlimited fine.

- 3.5 The HMO licensing regime is totally separate from the Planning regime.

- 3.6 A basic press release relating to this requirement was issued by MDC on 12th April 2018 and the Maldon and Burnham Standard published an article on the issue on 13th

April 2018. Once the full guidance from Central Government has been issued more detailed publicity will be issued.

- 3.7 Officers will continue to try and identify properties likely to fall under this new requirement in order to help target the requirements introduction more specifically to those landlords who will be affected.
- 3.8 **Civil Penalties for non-compliance with Housing Act 2004 offences.**
- 3.9 When the Housing Act 2004 was introduced, the penalty for non-compliance with legal notices was through criminal prosecution. The Housing and Planning Act 2016 introduced provisions allowing a civil penalty (fixed penalty notice) to be issued for certain Housing Act offences as an alternative to criminal prosecutions. The penalty is available for a range of offences relating to non-compliance with Housing Act notices, failure to license licensable properties, contravention of overcrowding notices, failure to comply with HMO Management Regulations and a breach of a banning order. The use of these powers became possible on 6th April 2017.
- 3.10 Because civil penalties are an alternative to prosecution, the same burden of criminal proof will apply i.e. the Council will need to be able to demonstrate beyond reasonable doubt that the offence has been committed. As with a prosecution, the Council needs to consider the evidence and the public interest in order to secure a conviction.
- 3.11 To make use of these powers, local housing authorities are expected to develop and document their own policy on when to prosecute and when to issue a civil penalty and should decide which option it wishes to pursue on a case-by-case basis in line with that policy. Councils should develop and document their own policy on determining the appropriate level of civil penalty in a particular case, the maximum amount to be reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord's previous record of offending. Local housing authorities should consider the following factors to help ensure that the civil penalty is set at an appropriate level:
- a) Severity of the offence.
  - b) Culpability and track record of the offender.
  - c) The harm caused to the tenant.
  - d) Punishment of the offender.
  - e) Deter the offender from repeating the offence.
  - f) Deter others from committing similar offences.
  - g) Remove any financial benefit the offender may have obtained as a result of committing the offence.
- 3.12 MDC would therefore need to create a number of policy documents and formulate a "penalty matrix" in order to utilise the civil penalty option.
- 3.13 There is a right of appeal against such penalties to a first-tier tribunal and the Council retains the income from civil penalties, although it is ring-fenced for private sector housing enforcement purposes.

- 3.14 In the last five years the Council has not found it necessary to prosecute a landlord under these provisions so the use of civil penalties would be minimal if at all. In view of this the service has not formulated a policy or fee matrix but will raise the issue before a future Committee if the need arises.
- 3.15 **Banning Orders**
- 3.16 The Housing and Planning Act 2016 introduced the ability for Local Authorities to apply for a “banning order” against a person (landlord) or a corporate body if either has committed a “banning order offence”. These came in to force on 6th April 2018.
- 3.17 Banning order offences primarily include failing to comply with Improvement Notices, Prohibition Orders, HMO licensing and management offences and overcrowding notice offences.
- 3.18 Written notice must be given to a landlord or corporate body of an intention to apply for an order, including details of the length of the proposed ban, the reasons why and giving opportunity for them to make representations within 28 days. Such written notice must be given within six months of conviction.
- 3.19 The Local Authority applies for a banning order to the first-tier tribunal who must consider:
- a) the seriousness of the offence of which the person has been convicted,
  - b) any previous convictions that the person has for a banning order Offence,
  - c) whether the person is or has at any time been included in the database of rogue landlords and property agents, and
  - d) the likely effect of the banning order on the person and anyone else that may be affected by the order.
- 3.20 A banning order lasts for a minimum of 12 months and may include exceptions, e.g. to allow existing tenancies to come to an end or to allow letting agents to wind down current business.
- 3.21 Breach of a banning order is an offence for which a prosecution may be taken or a civil penalty issued. Prosecution penalty is imprisonment up to a maximum of 51 weeks and/or an unlimited fine or to a civil penalty fine maximum of £30,000.
- 3.22 **Rogue Landlord Database.**
- 3.23 The Housing and Planning Act 2016 introduced the intention for the Government to create a national Database of Rogue Landlords and Property Agents. This database came in to force on 6th April 2018. It is operated by the Ministry of Housing, Communities and Local Government (MHCLG) but responsibility for entering and removing data is that of Local Authorities.
- 3.24 Local Authorities are **required** to enter details on to the database of any person or organisation upon whom a “banning order” is issued. Entries must be for a minimum of two years, although the exact period that an offender should remain on the database is to be determined by the Local Authority based upon a number of factors.

- 3.25 Local Authorities have the **discretion** to make entries on to the database where a landlord or property agent has been convicted of a banning order offence or has received two or more civil penalties within a 12 month period.
- 3.26 There is a requirement to notify the landlord formally prior to their being entered on to the database, which allows them a period of 21 days to appeal. Appeals are made to the first-tier tribunal.
- 3.27 **Minimum Energy Efficiency Standards (MEES).**
- 3.28 The Energy Efficiency (Private Rented Property (England and Wales)) Regulations 2015 came in to force for all new tenancies (including renewals and rolling over to periodic tenancies) on 1st April 2018, and apply to all existing tenancies from 1st April 2020. There are some exemptions for older properties and the requirements do not apply to Social Housing.
- 3.29 The regulations require a minimum EPC (Energy Performance Certificate) rating of E for a property. Failure to comply with this is liable to a maximum fine of £5,000 through a fixed penalty notice. It is enforced by the Local Authority (MDC) and is a discretionary power rather than a mandatory course of action.
- 3.30 **Draft Private Members' Bill – Fitness for Human Habitation and Liability for Housing Standards Bill.**
- 3.31 This is a draft Bill introduced by Karen Buck MP which has gained cross party (and Government) support and therefore is likely to gain Royal Assent in due course. However, it is currently at Committee Stage in the House of Commons and so some way from introduction. The Bill seeks to update the law requiring rented homes to be presented and maintained in a state fit for human habitation. It would also introduce new means of redress for renters, who will be able to seek action through the courts where a property is in an unfit condition.

#### **4. CONCLUSION**

- 4.1 The above briefing should help to ensure that Members are informed of recent developments in enforcement powers and legislation in the private rented sector, enforced by the Environmental Health Department.
- 4.2 The introduction of the extended mandatory HMO licensing scheme will place a significant additional workload on to the team, although the generation of a licensing fee will help to fund the additional staff resource. Overall though this scheme should help to identify and improve standards in this area of the private rented sector.
- 4.3 Measures to address rogue landlords through banning orders and a rogue landlord database are useful additions to the work of the Council, although their usage is likely to be limited given the generally decent landlords operating within the District.
- 4.4 The use of civil penalties as an alternative to prosecution at first glance would appear to be a simple means of speeding up enforcement action and maximising officer time. However, given the limited level of formal enforcement undertaken using the Housing

Act 2004, when considered against the work required to introduce fixed penalties and the requisite burden of proof and appeals process difficulties, civil penalties are unlikely to offer a meaningful benefit to the work of the Council.

- 4.5 The introduction of the MEES will potentially help to compel improvement in energy efficiency of private rented dwellings, helping to save residents money, and to save energy.

## **5. IMPACT ON CORPORATE GOALS**

- 5.1 The impact of the MEES will strengthen communities by potentially helping to support an ageing population by enabling homes to be kept warmer.
- 5.2 Communities will also be strengthened through stronger controls over private landlords helping to keep people feeling safe from crime.
- 5.3 Improving housing standards helps protect and shape the District by contributing to “meeting housing needs”.

## **6. IMPLICATIONS**

- (i) **Impact on Customers** – Increased protection of residents in private rented properties through tighter controls on landlords. More energy efficient homes can reduce heating costs and reduce instances of mould growth and health impact.
- (ii) **Impact on Equalities** – There is no specific group targeted or impacted by these changes in particular. However, those living in HMOs are frequently more vulnerable people and those with lower incomes, so improved controls over HMOs will help to improve standards for those vulnerable persons. Improved energy efficiency will also aid those with limited incomes.
- (iii) **Impact on Risk** – There is a risk that other functions provided by the Environmental Health Team may suffer due to the increased demand and focus for the introduction and administration of the extended HMO licensing. The other provisions outlined above should sit comfortably alongside existing departmental work.
- (iv) **Impact on Resources (financial)** – The extension of HMO licensing will have a positive financial impact due to revenue generated from licence application fees. However, this will be required to administer the scheme, at best meaning impact is likely to be cost neutral
- (v) **Impact on Resources (human)** – There will be additional enquiries from landlords and residents by telephone, etc. regarding extended HMO licensing. Press releases can help to limit this, but may also generate additional enquiries. Primary impact is likely to be a significant initial influx of licence applications and staff resource required to administer, inspect and oversee HMO licence applications. Additional resource will be required to achieve this if negative impact on departmental work is not to occur.

- (vi) **Impact on the Environment** – The MEES introduction specifically provides a positive environmental impact by reducing energy consumption and reducing CO2 emissions.

Background Papers: None

Enquiries to: Chris Shipham, Environmental Protection Team Leader (01621 875863)