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**HOUSING ACT 2004 – DELEGATED DUTIES**

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**Responsible Cabinet Member(s) - Councillor Dixon**

**Responsible Director(s) - Cliff Brown, Director of Community Services**

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**Purpose of Report**

1. This report seeks approval to amend delegated powers with respect to the Director of Community Services.

**Information and Analysis**

2. The Housing Act 2004 received Royal Assent on the 18th November 2004 and its extensive provisions relate largely to private sector housing. The delegated powers referred to in this report are the provisions contained within the new Housing Act. The report also contains a limited number of provisions in the Housing Act 1985 for which delegated powers are now needed to ensure we maximise new powers within the Housing Act 2004.
3. The delegated powers requested are necessary for the Housing Renewal Team to carry out its mandatory enforcement functions and other regulatory functions required by the Housing Act 2004. It should be noted that the Housing Act 2004 has given local authorities many extended powers that were not previously available.
4. The delegated powers being sought relate to the enforcement of private sector housing conditions. Many of the related provisions in the Housing Act 1985 have now been repealed and replaced by new enforcement provisions. The Housing Act 2004 introduces a completely new way of inspecting properties for defects that affect the health and safety of the occupiers (The Housing, Health and Safety Rating System). Other powers relate to the mandatory licensing and control of certain Houses in Multiple Occupation. Powers also extend to additional and selective licensing of other private sector housing. Provisions include the capacity to manage poorly run Houses in Multiple Occupation (Interim and Final Management Orders) and new powers to manage long term empty properties (Interim and Final Empty Dwelling Management Orders). The Housing Act also introduces new provisions for local authorities to charge for their regulatory and enforcement functions.

5. The delegated powers under the Housing Act 1985 which require deletion are detailed in **Appendix 1**.
6. The new delegated powers required under the Housing Act 1985 and Housing Act 2004 are detailed at **Appendix 2**.
7. Certain powers will require approval by Cabinet due to their significant potential impact and these are identified in **Appendix 3**.

### **Outcome of Consultation**

8. This report concerns legislation which is predominantly mandatory. However, both formal and informal consultation has taken place with private landlords about these changes.

### **Legal Implications**

9. This report has been considered by the Borough Solicitor for legal implications in accordance with the Council's approved procedures. There are no issues which the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the report.

### **Section 17 of the Crime and Disorder Act 1998**

10. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. It is considered that the contents of this report will contribute to the Council's ability to tackle crime and disorder by extending powers available to address issues such as anti social behaviour in the private sector.

### **Council Policy Framework**

11. The issues contained within this report are required to be considered by Council.

### **Recommendations**

12. It is recommended that: -
  - (a) The delegated powers identified in **Appendix 1** of this report be deleted from 6 July 2006.
  - (b) The delegated powers detailed at **Appendix 2** be given to the Director of Community Services and identified authorised officers from 6 April 2006.

## **Reason**

13. The recommendation is supported to enable the Department of Community Services to carry out its regulatory and enforcement functions in private sector housing.

**Cliff Brown**  
**Director of Community Services**

## **Background Papers**

- (i) Housing Act 2004 (HMSO Website)

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DC/SL

## **APPENDIX 1**

### **HOUSING ACT 1985 – DELEGATED DUTIES WHICH REQUIRE DELETION**

32. Under the Housing Act 1985 :-
- (a) serve notices in respect of Unfit Houses (Sections 189 and 190);
  - (b) serve notices requiring works to make fit for occupants (Section 352);
  - (c) serve notices applying limits upon the number of individuals, or households or both, who should occupy a house or part of a house (Section 354);
  - (d) accept undertakings to carry out works to make houses fit, or that they are not to be used for human habitation (Sections 264 and 368);
  - (e) cancel undertakings and revoke Closing Orders where houses have been made fit (Sections 264 and 278);
  - (f) approve the use of a house subject to a Closing Order (Section 267);
  - (g) grant or revoke a licence regarding occupancy in excess of the permitted number (Section 330);
  - (h) serve, revoke or vary notices regarding overcrowding (Sections 331, 335, 338, 358, 363 and 364);
  - (i) serve notices regarding information on the occupancy of a house (Section 356);
  - (j) require works to comply with the Housing (Management of Houses in Multiple Occupation) Regulations 1990 (Section 372);
  - (k) serve notices to remedy overcrowding (Section 358);
  - (l) consider applications for registration under Houses in Multiple Occupation Registration scheme (Section 346);
  - (m) approve, refuse or require additional works before approval of registration (Section 348);
  - (n) make a Closing Order in respect of part of a House in Multiple Occupation (Section 368);

- (o) serve notices to vary a Direction (Section 357); and
  - (p) make and revoke or revoke Management Orders (Section 370).
33. Consider representations made under the Housing (Fitness Enforcement Procedures) Order 1996;
  34. Consider representation made under the Housing (Fitness Enforcement Procedures) Order 1996; and

**HOUSING ACT 2004 – NEW DELEGATED DUTIES  
APPENDIX 2**

<b>Delegated Powers</b>	<b>Authorised Posts</b>
32. Under the Housing Act 2004:-	
<p><b><u>Part 1 – Housing Conditions</u></b></p> <p><b>(a) Utilise all powers relating to Category 1 and Category 2 Hazards under the Housing, Health and Safety Rating System namely but not limited to:</b></p> <p><u>Category 1 Hazards</u></p> <p>i) Serve improvement notices and suspend and vary an improvement notice (section</p> <p>ii) Make prohibition orders and suspend and vary a prohibition order (section 20)</p> <p>iii) Serve hazard awareness notices (section 28)</p> <p>iv) Take emergency remedial action (section 40)</p> <p>v) Make a prohibition order (section 43)</p> <p><u>Category 2 Hazards</u></p> <p>vi) Serve improvement notices and suspend and vary an improvement notice (section 12)</p> <p>vii) Make prohibition orders and suspend and vary a prohibition order (section 21)</p> <p>viii) Serve hazard awareness notices (section 29)</p> <p><u>Category 1 and 2 Hazards</u></p> <p>ix) Introduce a charge for serving improvement notices, making an prohibition order, serving a hazard awareness notice, taking emergency remedial action, making an emergency prohibition order. (Section 49(6))</p> <p>x) Introduce a reasonable charge for other remedial action and all other enforcement action taken by the authority (section 49)</p>	<p>Director of Community Services Assistant Director – Housing Housing Strategy and Renewal Manager Housing Renewal Manager</p>

<p>xi) Recover charges from debtors under section 49 (6) (section 50)</p>	
<p><b><u>Part 2 – Licensing of Houses in Multiple Occupation</u></b></p> <p><b>(b) Promote and operate a Licensing scheme for Houses in Multiple Occupation under part 2 of the Act namely but not limited to:</b></p> <p>i) Operate a Mandatory Licensing Control Scheme for Houses in Multiple Occupation as specified in Part 2 of the Housing Act (section 55)</p> <p>ii) Issue license applications and refuse applications for licenses (section 63 and 64)</p> <p>iii) Issue licences for a time period of up to 5 years (sections 60 and 68)</p> <p>iv) Charge a fee for the issue of license that pays for the running costs of the licensing scheme (section 63 (6 &amp;7))</p> <p>v) Utilise powers to ensure that licensed Houses in Multiple Occupation are:</p> <ul style="list-style-type: none"> <li>• Suitable for Multiple Occupation and prescribed standards exist (section 65)</li> <li>• Satisfactory management arrangements exist (section 66)</li> <li>• Local Authority License Conditions are adhered to (section 67)</li> <li>• National license conditions are adhered to (section 65)</li> </ul> <p>vi) Refuse, revoke or vary a license (section 64, 69 and 70)</p> <p>vii) Issue temporary exemption notices for HMO's (section 62)</p> <p>viii) Pursue prosecution for those controlling or managing a Houses in Multiple Occupation without a license (section 72)</p> <p>ix) Utilise powers to obtain Rent Repayment Orders for Unlicensed Houses in</p>	<p>Director of Community Services Assistant Director – Housing Housing Strategy and Renewal Manager Housing Renewal Manager</p>

<p>Multiple Occupation. (Section 73 and 74)</p> <ul style="list-style-type: none"><li>x) Consider and review the introduction of additional licensing for other Houses in Multiple Occupation in addition to the Mandatory Licensing Scheme. (Section 56 and 57)</li><li>xi) Charge a fee for the issue of license that pays for the running costs of the additional licensing scheme (section 63)</li></ul>	
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<p><b>(c) Consider the introduction of selective licensing and introduce selective licensing under Part 3 of the Housing Act to other private sector properties in certain areas of the borough, namely but not limited to:</b></p> <ul style="list-style-type: none"> <li>i) Consider other circumstances for selective licensing (section 81)</li> <li>ii) Seek approval for additional licensing (section 82)</li> <li>iii) Satisfy notification requirements of additional licensing areas (section 83)</li> <li>iv) Specify the duration of the licensing and review and revoke the additional licensing areas (section 84)</li> <li>v) License all houses in the designated areas except those exempt under Part 2 of the Housing Act.</li> <li>vi) Provide temporary exemption from the licensing requirement (section 86)</li> <li>vii) Provide application facilities for licenses (section 87)</li> <li>viii) Grant or refuse a license (section 88)</li> <li>ix) Ensure that the license holder is a ‘fit and proper person’ (section 89)</li> <li>x) Impose reasonable licensing conditions (section 90)</li> <li>xi) Vary or revoke a license (section 92 and 93)</li> <li>xii) Charge a fee for the issue of license that pays for the running costs of the selective licensing scheme (section 63)</li> </ul>	<p>Director of Community Services Assistant Director – Housing Housing Strategy and Renewal Manager Housing Renewal Manager</p>
<p><b>(d) Under Part 4 of the Housing Act exercise additional control provisions, namely but not limited to:</b></p> <p><u>Interim and Final Management Orders</u></p> <ul style="list-style-type: none"> <li>i) Introduce and operate Interim and Final Management Orders where a licensed</li> </ul>	<p>Director of Community Services and Assistant</p>

<p>property or property owner fails to operate the license correctly within the requirements of the licensing control scheme. (Section 101 to 107)</p> <p>ii) Under specified and certain circumstances operate Special Interim Management Orders (section 103)</p> <p>iii) Vary and revoke Interim Management Orders (section 111 and 112)</p> <p>iv) Make Final Management Orders and operate Final Management Orders (section 113 and 114)</p> <p>v) Operate a management scheme and its accounts (section 119)</p> <p>vi) Vary and revoke Final Management Orders (section 121 and 122)</p> <p>vii) Exercise powers of entry to carry out works in buildings subject to Management Orders (section 131)</p>	<p>Director – Housing</p> <p>Director of Community Services</p> <p>Assistant Director – Housing</p> <p>Housing Strategy and Renewal Manager</p> <p>Housing Renewal Manager</p>
<p><u>Interim and Final Empty Dwelling Management Orders</u></p>	
<p>viii) Introduce and operate Empty Dwelling Management Orders (section 132)</p> <p>ix) Apply to a Residential Property Tribunal to obtain Empty Dwelling Management Orders (section 133)</p> <p>x) Manage properties and other duties where an Empty Dwelling Management Order is in place (section 135)</p> <p>xi) Introduce and operate Final Empty Dwelling Management Orders (section 136)</p> <p>xii) Carry out general duties relating to the operation of a Final Empty Dwelling Management Order (section 137)</p>	<p>Director of Community Services and Assistant Director – Housing</p> <p>Director of Community Services</p> <p>Assistant Director – Housing</p> <p>Housing Strategy and Renewal Manager</p> <p>Housing Renewal Manager</p>

<p><u>Overcrowding Notices</u></p> <p>For properties and HMO's that are not subject to Mandatory Licensing.</p> <p>xiii) Prepare suitable notices and serve notices in HMO's that are subject to overcrowding (section 139 and 140)</p> <p>xiv) Vary or revoke an overcrowding notice (section 144)</p> <p>xv) Take appropriate action relating to overcrowding in a dwelling (section 216)</p>	
<p><b><u>(e) Supplementary and Final Provisions</u></b></p> <p>i) Introduce and maintain a register of all mandatory licensed HMO's and those HMO's subject to a management order (section 232)</p> <p>ii) Approve and introduce a code of practice for the management of HMO's and other buildings (section 233)</p> <p>iii) Approve and introduce regulations to secure satisfactory management conditions in HMOs' (section 234)</p> <p>iv) Exercise powers to require documents to be produced and the enforcement of powers to obtain information (section 235 and 236)</p> <p>v) Use information held by the Local Authority to carry out its functions and duties under Parts 1 to 4 of the Housing Act 2004 (section 237)</p> <p>vi) Exercise powers of entry without force under Parts 1 to 4 and Part 7 of the Housing Act 2004 (section 239)</p> <p>vii) Apply to a Justice of the Peace for a warrant to enter premises with force if required (section 240)</p>	<p>Director of Community Services Assistant Director – Housing Housing Strategy and Renewal Manager Housing Renewal Manager</p>

<p>viii) Exercise the right to serve documents by electronic form (section 246 to 248)</p> <p>ix) Declare a building a HMO where the building is not exclusively occupied by people as their main or only home where other the building would satisfy the HMO tests (section 255)</p> <p>x) Revoke a HMO declaration (section 256)</p> <p>xi) Make provisions to calculate the numbers of persons within a dwelling (section 264)</p>	
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### **APPENDIX 3**

#### **POWERS WHICH REQUIRE APPROVAL BY COUNCIL**

##### Under the Housing Act 1985

##### Category 1 and 2 Hazards

- (i) Make a Demolition Order (Section 265(2) or (2) and Section 46 of this Housing Act 2004.
- (ii) Declare a clearance area (Section 289(2) and Section 47 of the Housing Act 2004.

##### Under the Housing Act 2004

##### **Part 2 – Licensing of Houses in Multiple Occupation.**

- (i) Introduce a Licensing Scheme for Homes in Multiple Occupation under Part 2 of the Act.

##### **Part 3 – Selective Licensing**

- (ii) Designate areas for selective licensing (Section 80)

