

HAMBLETON DISTRICT COUNCIL

Report To: Cabinet
4 June 2019

Subject: RENT REPAYMENT ORDERS

All Wards
Portfolio Holder for Environmental Health, Waste and Recycling: Councillor S Watson

1.0 PURPOSE AND BACKGROUND:

- 1.1 The purpose of this report is to introduce and implement the use of rent repayment orders the powers for which are available to local housing authorities from the Housing and Planning Act 2016.
- 1.2 The private rented sector is an important part of the national housing stock, housing some 4.7 million households in England. In the past decade the private rented sector has seen substantial growth with improvement in the quality of the housing stock.
- 1.3 The Government has over the last two years introduced a range of measures to deal with rogue/criminal landlords to protect tenants, support good landlords and improve housing standards in the private rented sector.
- 1.4 The Housing Act 2004 originally introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed – in particular offences in relation to licensing of Houses in Multiple Occupation.
- 1.5 Rent repayment orders have now been extended under the Housing and Planning Act 2016 to cover a wider range of offences including failure to comply with Improvement Notices and Prohibition Orders under the Housing Act 2004; illegal eviction under the Protection from Eviction Act 1977 and breaches of banning orders made under the Housing and Planning Act 2016.
- 1.6 A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent which can be up to 12 months' rent following an application by the tenant or the local housing authority. An order can be applied for when a landlord has committed a specified offence (whether or not convicted) examples of which are mentioned in 1.5 above.
- 1.7 Where a landlord has been convicted of an offence the First-tier Tribunal will order that the maximum amount of rent is repaid.
- 1.8 A rent repayment order can be granted to either the tenant or the local housing authority following separate application to the First-tier Tribunal. The local housing authority would consider applications under the following circumstances:
 - Where the rent was paid through housing benefit or the housing element of Universal Credit.
 - Where the rent was paid both through housing benefit/housing element of Universal Credit and by the tenant. In this case the rent would be repaid on an equivalent basis.

The local housing authority would not apply for a rent repayment order where the tenant had paid the rent.

- 1.9 It is in the financial interests of a local housing authority to make an application for a rent repayment order but there is also an expectation that the local housing authority will provide advice, guidance and support to tenants to enable them to make their own applications where appropriate.
- 1.10 The Environmental Health service will consultant with the Council's Revenues and Benefits service and/or the Housing Options team when it is considering an application for a rent repayment order.
- 1.11 The Environmental Health service will put in place a policy and procedure for the application of rent repayment orders and this power will be provided for in the Private Sector Housing Enforcement Policy. This will ensure that only suitably qualified and competent officers are authorised to carry out this power in accordance with the Council's Scheme of Delegation and delegated powers. The Private Sector Housing Enforcement Policy is provided at Appendix A and should be read in conjunction with the Environment Directorate Enforcement Policy.

2.0 LINK TO COUNCIL PRIORITIES:

- 2.1 The implementation of rent repayment orders will contribute to the delivery of three of the Council's key priorities: Enhancing Health and Well Being, Driving Economic Vitality and Providing a Special Place to Live.

3.0 RISK ASSESSMENT:

- 3.1 There are no key risks with implementing the recommendation.
- 3.2 The key risk is in not approving the recommendation as shown below:-

Risk	Implication	Prob*	Imp*	Total	Preventative action
Failure to enforce the new requirements and not fulfil the Council's statutory duty.	Landlords who have committed specified offences are able to benefit from committing offence/s, for example providing substandard accommodation.	4	3	12	Put in place a policy and procedure for the Council to make applications for rent repayment orders.

Prob = Probability, Imp = Impact, Score range is Low = 1, High = 5

- 3.3 Overall the risk of agreeing with the recommendation outweighs the risk of not agreeing with the recommendation and is considered acceptable as the Council is a local housing authority and should carry out the requirements of relevant legislation.

4.0 FINANCIAL IMPLICATIONS:

- 4.1 Applications for rent repayment orders will be met within the Environmental Health service revenue budget. If the Council has paid rent to a landlord whose property is noncompliant with the relevant standards then a successful application for a rent repayment order would be of financial beneficial to the Council.

5.0 LEGAL IMPLICATIONS:

5.1 As a local housing authority the Council has a statutory duty to implement the requirements of relevant legislation and must consider applying for a rent repayment order when a landlord has been convicted of a specified offence.

6.0 EQUALITY/DIVERSITY ISSUES

6.1 Equality and Diversity issues have been considered however there are no implications associated with this report.

7.0 RECOMMENDATIONS:

7.1 That Cabinet approves and recommends to Council:

- (1) the introduction of a policy and procedure for the application of rent repayment orders in accordance with the Housing and Planning Act 2016 and associated guidance.
- (2) the Private Sector Housing Enforcement Policy attached at Appendix A.

PAUL STAINES
DIRECTOR OF ENVIRONMENT

Background papers:

Housing and Planning Act 2016
<http://www.legislation.gov.uk/ukpga/2016/22/contents/enacted>

Rent repayment orders under the Housing and Planning Act 2016 -
Guidance for Local Housing Authorities
<https://www.gov.uk/government/publications/rent-repayment-orders-under-the-housing-and-planning-act-2016>

Housing Act 2004
<https://www.legislation.gov.uk/ukpga/2004/34/contents>

Environment Directorate Enforcement Policy

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Private Sector Housing

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Housing is a key social determinant of health and the impact of housing conditions on health and wellbeing outcomes is recognised. Therefore the aim is to address housing inequality and maintain and improve the housing conditions in privately owned property and deal with housing matters arising from privately owned land through fair and consistent enforcement.

Enforcement is particularly relevant to the private rented sector to ensure compliance with regulatory requirements as tenants are not in control of improving their housing conditions. Enforcement action may be taken against owner occupiers if there is a significant risk to themselves or others; where there is a hazard that prevents the occupier receiving suitable treatment in the home or where occupiers have requested assistance. Particular consideration will be given to vulnerable tenants and occupiers.

Enforcement action will be taken to ensure that:

- Tenants live in homes free of significant risks to their health and safety including application of the housing health and safety rating system.
- Houses in Multiple Occupation are identified and are subject to the licensing regime.
- Privately owned land or property does not present a statutory nuisance to other land owners or occupiers; does not directly or indirectly present an unacceptable risk to public health, safety or the environment; or does not directly present an unacceptable risk to the health and safety of the occupants.
- Empty properties are brought back into use.

The table below provides details of enforcement action to be taken in different circumstances. This is not intended to be an exhaustive list and each case will be considered on its individual merits; may involve the use of several enforcements options and; may require deviation from this policy and the Environment Directorate Enforcement Policy in particular circumstances. However this would be agreed with senior officers as appropriate.

Option	Criteria and Matters to be Consider for Option
No Action	Enforcement options shall not be considered where there is no risk to the health or safety of the occupiers or others from private sector residential properties.
Advice	Advice and guidance will be provided to promote legal compliance and best practice to prevent the need for enforcement action. This will be achieved by: <ul style="list-style-type: none"> • Regular communication with landlords to inform them of changes to regulations, notifying them of grant funding opportunities and attending the Landlords Forum. • Providing guidance and sign-posting to other organisations on specific tenancy related issues such as illegal eviction, gas safety and energy efficiency. • Providing advice and guidance for tenants to ensure they are suitably

Option	Criteria and Matters to be Consider for Option
	<p>informed about matters such as gas safety, excess cold and energy performance ratings.</p> <ul style="list-style-type: none"> • Providing housing advice on the Council's website.
Liaison	Liaison will be considered and carried out where there is a shared or complementary enforcement role with other services or agencies, for example, North Yorkshire Fire and Rescue Service.
Obtaining information/ provision of documents	Documents/information will be required to exercise relevant functions for example under the Housing Act 2004 and for the purpose of investigating whether an offence has been committed.
Informal Action	<p>Informal action is generally preferred to resolve most cases and landlords and occupiers will be given the opportunity to makes representations and time to rectify any contraventions identified. The following factors will be considered:</p> <ul style="list-style-type: none"> • The act or omission is relatively minor. • From the landlords past history it can be reasonably expected that informal action will achieve compliance. • Confidence in the landlord's management practices is high. • The consequence of non-compliance will not pose a significant risk to the occupiers or others. • The tenant does not wish for action to be taken and it is considered appropriate in the particular circumstances. • The landlord has presented their property for inspection through the Councils Bond application scheme. • Where action is required to support owners or occupiers who are vulnerable and unable to support independent living to live in accommodation which is free of significant risks to their health and safety. • To tackle the symptoms from empty properties to ensure that the amenity of the surrounding area is not affected, the property is safe and secure and not causing a statutory nuisance.
<p>Formal Action</p> <p>For example:</p> <ul style="list-style-type: none"> • Hazard Awareness Notices • Improvement Notices • Prohibition Order 	<p>Formal action will be taken when:</p> <ul style="list-style-type: none"> • There is a serious risk to health and safety; for example no heating in cold weather. • An agreement cannot be obtained, from the landlord to carry out the necessary works requested. • The landlord fails to make satisfactory progress to complete works in a timely manner. • There is a recent history of failure to meet requests or a record of criminal convictions. • Recent failures to manage a property in line with legal requirements. • It is necessary to safeguard and protect health and safety of future tenants for example when the existing tenant does not wish for works to proceed or when the existing tenant is being evicted. • There is a duty to serve a notice or take a specified action. • There is a history of non-compliance. • Formal action is proportionate to the risk to public health. • There are grounds that an informal approach will not be successful.

Option	Criteria and Matters to be Consider for Option
Housing Health and Safety Rating System	<p>The Housing Health and Safety Rating System is set out in Part 1 of the Housing Act 2004. It is a method of assessing how likely it is that the condition of a property will cause an unacceptable hazard to the health of the occupant(s) and is applicable to all housing tenures.</p> <p>There are two categories of possible hazards:</p> <ul style="list-style-type: none"> • Category 1 hazards (Hazard Score Rating Bands A to C) represent a serious danger to health and there is a duty to take appropriate action to deal with these. • Category 2 hazards (Hazard Score Rating Band D to J) represent a lesser danger and there is no duty to take action although the power exists to take action. <p>However it is deemed appropriate that enforcement action will be taken to deal with Hazard Score Rating Bands A to D and discretion will be used in taking enforcement action in relation to hazards rated E – J; this will depend on circumstances of the individual case to ensure that the hazard is reduced to an acceptable level.</p>
Emergency Action For example: • Emergency Prohibition Notice • Emergency Remedial Action	<p>Emergency action will be taken when:</p> <ul style="list-style-type: none"> • There is an imminent risk of serious harm to the health or safety of the occupiers of that or any other premises. • Where there is a duty to take action when there is an imminent risk to health or safety to the occupiers of a property.
Penalty Charges	<p>Fixed penalty notices may be issued where the legislation allows and where there is a reason to believe an offence has been committed under specific legislation and there is sufficient evidence to meet any subsequent prosecution. The notice will give the offender the opportunity to avoid prosecution for that offence by the payment of a fixed penalty. Notices will be issued with verbal guidance and where possible written advice.</p>
Works in Default (taking action with and without agreement)	<p>Works in default may be carried out under the following circumstances:</p> <ul style="list-style-type: none"> • Where the requirements of the legal notice are not met. • Works in default are considered a more appropriate or effective remedy than prosecution. • The person served with a statutory notice starts work but then does not make satisfactory progress in accordance with stipulated timescales. • Work in default is carried out in agreement with and on behalf of the person responsible where a written request and an undertaking to pay has been received. • Inspection has deemed that the works carried out are not suitable to ensure compliance with the notice. <ul style="list-style-type: none"> • Consideration will also be given to the following: <ul style="list-style-type: none"> • The ongoing risk to health posed by the hazard in respect of which work is required to remove. • Where known, the wishes of the person responsible. • There is a realistic prospect of recovering reasonable costs.

Option	Criteria and Matters to be Consider for Option
	<ul style="list-style-type: none"> The statute allows cost recovery by placing a charge on the property.
<p>Licensing:</p> <ul style="list-style-type: none"> Grant and Refusal Temporary Exemption Notice Variation Revocation 	<p>Houses in Multiple Occupation are required to be licenced in accordance with the regulations and statutory guidance.</p> <p>Licence applications can be refused on prescribed grounds which include:</p> <ul style="list-style-type: none"> The house is not reasonably suitable for occupation by not more than the maximum number of households or persons. The maximum occupancy is not the occupancy specified in the application. There is a banning order in force against a person who has an interest in the house. The proposed licence holder is not a fit and proper person. The manager of the house does not meets various tests including being a fit and proper person. The house fails to meet prescribed standards for occupancy. The house is not reasonably suitable for occupancy even if the prescribed standards are met. The proposed management arrangements are unsatisfactory. <p>Temporary Exemptions can be granted as follows:</p> <ul style="list-style-type: none"> Where a licensable House in Multiple Occupation is not licensed but steps are being taken to ensure that the house will no longer be required to be licensed. Following the death of the licence holder. <p>Licenses can be varied when there has been a change of circumstances including the discovery of new information.</p> <p>Licenses can be revoked on prescribed grounds which include:</p> <ul style="list-style-type: none"> In circumstances related to the licence holder or other person. In circumstances related to the House in Multiple Occupation concerned. In any other circumstances prescribed by relevant regulations. <p>The power to revoke a licence lies with the Council's Licensing and Appeals Hearings Panel.</p>
Simple Caution	<p>Simple Cautions will be used under the following circumstances:</p> <ul style="list-style-type: none"> To deal quickly and simply with less serious offences. To divert offenders where appropriate from appearing in criminal courts; and to reduce the likelihood of re-offending. Simply cautions are issued in accordance with Home Office Circular 30/2005.
Prosecution	<p>Prosecutions may be taken under one or more of the following circumstances including:</p> <ul style="list-style-type: none"> The offence is serious. There is a poor history of compliance. There has been a failure to comply with an improvement notice. There has been a failure to comply with a prohibition order. There is a breach of the House in Multiple Occupation Management Regulations.

Option	Criteria and Matters to be Consider for Option
	<ul style="list-style-type: none"> • There is a breach of a House in Multiple Occupation license condition. • Operating a licensable House in Multiple Occupation without a license. • Failure to provide documents required by notice. • There has been a repetition of a breach that was subject to a simple caution. • False information has been supplied wilfully, or there has been intent to deceive, in relation to a matter which gives rise to significant risk. • Officers have been intentionally obstructed in the lawful course of their duties.
<p>Applications to the First-tier Tribunal For example:</p> <ul style="list-style-type: none"> • Rent Repayment Orders • Banning Orders 	<p>Applications to the First Tier Tribunal will be in accordance with the relevant statute, including the Housing Act 2004 and the Housing and Planning Act 2016 and will follow the relevant guidance provided by the Ministry of Housing, Communities and Local Government.</p>

Relevant legislation and guidance includes:

Housing Act 2004

Housing and Planning Act 2016

Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018

Houses in Multiple Occupation and residential property licensing reform - Guidance for Local Housing Authorities

Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018

The Management of Houses in Multiple Occupation (England) Regulations 2006

Housing Health and Safety Rating Scheme Enforcement Guidance

Housing Health and Safety Rating System Operating Guidance

Housing Act 2004 - Guidance about inspections and assessment of hazards

Public Health Acts 1936/1984

Rent repayment orders under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

The Environmental Protection Act 1990