

CLACKMANNANSHIRE COUNCIL

Report to Council of 18 December, 2008

Subject: Housing (Scotland) Act 2006, Part 3

- 1. Arrangements for reviewing penalty charge notices**
 - 2. Authorisation of Trading Standards Officer**
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Prepared by: Amanda Inglis, Solicitor, Law & Administration Services

1.0 SUMMARY

- 1.1. Part 3 of the Housing (Scotland) Act 2006 ("the 2006 Act") will come into force on 1 December 2008.
- 1.2. Council requires to hold hearings, if requested, by parties served with penalty charge notices under the 2006 Act.
- 1.3. Arrangements for the holding and conduct of such hearings need to be put in place.
- 1.4. In order to exercise certain powers in terms of the 2006 Act, the Council's Trading Standards Officers must be properly authorised.

2.0 RECOMMENDATIONS

- 2.1. That Council agrees to delegate to the Regulatory Sub-Committee the holding of reviews under Schedule 3 of the 2006 Act.
- 2.2. That Council agrees to delegate to the Director of Development and Environmental Services the power to serve penalty notices in terms of Part 3 of the 2006 Act
- 2.3. To give effect to Paragraphs 2.1 and 2.2 that Council agrees to amend the Scheme of Delegation as set out in Paragraph 4.3 of this report.

3.0 BACKGROUND

- 3.1. In terms of the Housing (Scotland) Act 2006, from 1 December 2008 the seller of a house or seller's agent, must compile three documents before marketing a property. These documents are commonly described as a Home Report and are:-

- (a) a single survey which consists of an assessment by a surveyor of the condition of the home, a valuation and an accessibility audit for people with particular needs;
 - (b) an energy report which contains an assessment, by a surveyor, of the energy efficiency of the home and its environmental impact; and
 - (c) a property questionnaire completed by the seller of the home or their authorised representative. This will contain information thought useful for buyers including the Council Tax Band, parking arrangements, alterations/extensions and factoring arrangements.
- 3.2. There is also a duty on the seller or the agent to possess the Home Report if he/she does anything with the intention of marketing a house even although the house is not placed in the market.
- 3.3. Section 109 of the 2006 Act places a duty on every local weights and measures authority to enforce Part 3 in their own area. Clackmannanshire Council is the local weights and measures authority for Clackmannanshire. This translates into the Trading Standards Service enforcing the legislation.
- 3.4. Authorised officers of the enforcement authority are empowered to give penalty charge notices to persons breaching the 2006 Act by not possessing or providing documents as required or by not ensuring copies of documents are authentic. The amount of this penalty charge has been set at £500. A person has 28 days from the service of the notice to make payment, but this may be extended by the Council.
- 3.5. A person receiving a penalty charge notice may request a review by the Council, so the Council must set up a process for carrying out reviews.
- 3.6. The Regulatory Sub Committee is the most appropriate body to deal with penalty charge notice appeals under the 2006 Act. It is an existing sub committee of the Council established to hold hearings for the purpose of the Civic Government (Scotland) Act 1982. This includes the hearing of appeals against Officer decisions in respect of licences issued under the 1982 Act and hearings in relation to fixed penalty notices under the Smoking, Health & Social Care (Scotland) Act 2005. The Regulatory Sub Committee has experience of holding hearings of a type which will be required. Hearings of this nature fit well with its current role.
- 3.7. It is not possible at this stage to give a realistic indication of how many hearings may be generated. In the period immediately following the legislation coming into force, the emphasis will be on education, advice and warnings.
- 3.8. The legislation does not provide a specific time within which hearings must be heard. Officers will endeavour to have hearings dealt with by the Regulatory Sub Committee within four/six weeks of a request for a hearing.

- 3.9 Development & Environmental Services are currently responsible for the Trading Standards Officers who will be responsible for enforcing the provisions of the 2006 Act within Clackmannanshire. Trading Standards Officers require to be authorised to enable them to exercise powers to require production of prescribed documents and to take copies thereof and to give penalty charge notices.
- 3.10 Council is requested to delegate power to the Director of Development and Environmental Services to grant authorisation to Trading Standards Officers for the purposes of the 2006 Act.

4.0 CONCLUSIONS

- 4.1. The Council is required to hold hearings in respect of penalty charge notices, if requested, under the 2006 Act. The Regulatory Sub Committee is best placed to fulfil this role.
- 4.2. The Council requires to authorise Trading Standards Officers to enable them to exercise powers under the 2006 Act. The most appropriate way of doing so is to delegate powers to the Director of Development & Environmental Services to authorise the appropriate officers.
- 4.3 To give effect to these changes, the Scheme of Delegation should be amended as follows:
- (i) Insert a new Paragraph 7.5 to the remit of the Regulatory Sub-Committee to read "Hearing and determining reviews of penalty notices issued in terms of Part 3 of the Housing (Scotland) Act 2006", and
- (ii) Insert in Paragraph 18.13 of the delegation to the Director of Development and Environmental Services, after the words "Weights and Measures Acts 1979 and 1985" the words "and the serving of penalty notices in terms of Part 3 of the Housing (Scotland) Act 2006."

5.0 SUSTAINABILITY IMPLICATIONS

- 5.1 None

6.0 FINANCIAL IMPLICATIONS

- 6.1 None

6.2 Declarations

- (1) The recommendations contained within this report support or implement Corporate Priorities, Council Policies and/or the Community Plan:

- **Corporate Priorities (Key Themes)** (Please tick ☒)

Achieving Potential	<input type="checkbox"/>
Maximising Quality of Life	<input type="checkbox"/>

Securing Prosperity	<input type="checkbox"/>
Enhancing the Environment	<input type="checkbox"/>
Maintaining an Effective Organisation	<input checked="" type="checkbox"/>

- **Council Policies** (Please detail)

- **Community Plan (Themes)** (Please tick ☒)

Community Safety	<input type="checkbox"/>
Economic Development	<input type="checkbox"/>
Environment and Sustainability	<input type="checkbox"/>
Health Improvement	<input type="checkbox"/>

(2)	In adopting the recommendations contained in this report, the Council is acting within its legal powers. (Please tick <input checked="" type="checkbox"/>)	<input checked="" type="checkbox"/>
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(3)	The full financial implications of the recommendations contained in this report are set out in the report. This includes a reference to full life cycle costs where appropriate. (Please tick <input checked="" type="checkbox"/>)	<input type="checkbox"/>
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Head of Service

Chief Executive



Report to Council

To accompany all Reports to Council

To: Head of Administration And Legal Services

Author: Amanda Inglis

Date: 25 November 2008

Service: Law & Administration Services

Date of Meeting: 18 December, 2008

Title of Report: Housing (Scotland) Act 2006, Part 3

Recommendation that the attached report be:

1. Given unrestricted circulation

✓

(tick appropriate box)

2. Taken in private

By virtue of paragraph ____ of schedule 7A, Local Government (Scotland) Act 1973.

Appendices attached to this report (if none, state "none")

1. None

2.

3.

4.

List of Background Papers (if none, state "none")

1. None

2.

3.

4.

Note: All documents specified must be kept available by the author for public inspection for four years from the date of the meeting at which the report is considered.

