

Private Sector Housing Enforcement Policy (Reviewed 11/03/2019)

1. Private Sector Housing Team

- 1.1 The Private Sector Housing Team aims to protect and promote the health of the people of Wycombe District by improving private sector housing, public health, safety and the environment through the provision of advice, support and formal action where necessary.
- 1.2 The purpose of this enforcement policy is to ensure that a consistent approach is adopted by Enforcement Officers throughout the District
- 1.3 This Division has adopted the Enforcement concordat principals of good enforcement. Included in the term “enforcement” are advisory visits and assisting with compliance as well as formal action. By adopting the concordat, we commit ourselves to the following policies and procedures.
- 1.4 The policy sets out what businesses and other regulated parties and individuals can expect from enforcement officers. It commits us to good enforcement policies and procedures. Additional statements of enforcement policy may supplement it.
- 1.5 The primary function of central and local government enforcement work is to protect the public, the environment, and groups such as residents, consumers and workers. It has long been established that there is a link between the standard of housing and health. Housing is a contributory factor in the health and wellbeing of the residents of Wycombe District, and enforcement of standards supports the priorities in the Joint Strategic Needs Assessment for Buckinghamshire. In poorer residential properties, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote better health and a thriving national and local economy. We are committed to these aims and to delivering the council commitment that in 2026 Wycombe District will be economically strong, and a good place to live, work and visit.
- 1.6 The effectiveness of legislation in protecting individuals and communities depends crucially on the compliance of those regulated. We recognise that most landlords, managing agents and individuals want to comply with the law. We will, therefore take care to help those who are regulated to meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All interested parties will reap the benefits of this policy through better information, choice and safety.
- 1.7 The purpose of this policy is to outline the Council’s approach to securing compliance with the law in relation to private sector housing while minimising the burden on private sector landlords. In particular, the policy outlines the extent to which the Council will intervene to make use of the powers in Part 1 of the Housing Act 2004 as a result of the introduction of the Housing Health and Safety Rating System (HHSRS), and its approach to the licensing of Houses in Multiple Occupation under Part 2 of the Act. It

sets out what owners, landlords, their agents and tenants of private sector properties can expect from officers.

2. Principles of Enforcement

2.1 There are four main principles of enforcement which will be followed by Officers. These are as follows:

- Proportionality - action taken by enforcing authorities should proportionally reflect any risks and the seriousness of any breach.
- Consistency - a similar approach should be taken in similar circumstances to achieve similar results. It does not mean uniformity.
- Transparency - duty holders should be helped to understand what they have to do and what they should expect from Officers. The differences between statutory requirements and advice or guidance about what is desirable should be made clear.
- Targeting - inspections or visits should be aimed primarily at activities that give rise to the most serious risks or where hazards are least well controlled. Action should be focused on those responsible for the risk and who are best placed to control it.

3. Enforcement Considerations

3.1 The following must be considered by Officers when deciding the most appropriate course of action to take:-

3.2 The relevant legislation

3.3 Government circulars and Guidance made under Section 9 Housing Act 2004, and other relevant statutory guidance notes.

3.4 Best practice notes (Building Research Establishment (BRE), Chartered Institute of Environmental Health (CIEH), Institute of Housing (IOH) etc)

3.5 All investigations into alleged breaches of legislation will follow best professional practice and the requirements of:

- The Human Rights Act 1998
- The Regulation of Investigatory Powers Act 2000
- The Police and Criminal Evidence Act 1984 – Codes of Practice
- The Criminal Procedures and Investigations Act 1996
- The Code for Crown Prosecution
- Enforcement Guidance issued under section 9 of the Housing Act 2004

4. Authorisation of Officers

4.1 Only officers who are competent by training, qualification and/or experience will be authorised to undertake enforcement action. The Council's Constitution sets out matters delegated to the Head of Environment under various pieces of legislation including the Housing Act 2004. The internal

scheme of delegation sets out the detail of the delegated powers given to Officers.

5. **Enforcement options**

5.1 There are a number of stages and options in the process of enforcement to be considered, including (but not restricted to):-

- Inspections
- Informal Action
- Statutory Notices and Orders (including Emergency Action)
- Default work
- Prosecution
- Issue of Civil penalty charge notice
- Compulsory Purchase/Clearance
- Simple Caution
- Rent Repayment Order
- Banning Orders

6. **Housing Act 2004: Housing Health and Safety Rating System (HHSRS)**

6.1 The Housing Act 2004, (“the Act”), together with Regulations made under it, prescribes the HHSRS as the means by which Local Authorities assess housing conditions and decide on action to deal with poor housing. It is a risk based assessment system of the effect of housing conditions on the health of occupiers. Twenty nine (29) potential hazards are assessed and scored for their severity. The scores for each hazard are ranked in Bands.

6.2 Hazards falling into Bands A to C are more serious, and are classed as Category 1. The Council has a Statutory duty and therefore must take appropriate action in respect of a Category 1 hazard. (The Council has a power and therefore may take action in relation to Category 2 hazards).

Category 2. Less serious hazards fall into Bands D to J.

7. **Powers of Entry**

7.1 Inspection of dwellings can be undertaken by Officers of the Private Sector Housing Team who are authorised under the Council’s scheme of delegation.

7.2 Authorised officers have a power of entry to properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004 provided that:

- The Officer has written authority from an appropriate officer within the internal scheme of delegation stating the particular purpose for which entry is authorised
- The Officer has given 24 hours notice to the owner (if known) and the occupier (if any) of the premises they intend to enter.

- 7.3 No prior notice is required where entry is to ascertain whether an offence has been committed under sections 72 (offences in relation to licensing of HMOs), 95 (offences in relation to licensing of houses) or Section 234(3) (offences in relation to HMO management regulations).
- 7.4 If admission is refused, premises are unoccupied or prior warning of entry is likely to defeat the purpose of the entry then a warrant may be granted by a Justice of the Peace on written application. A warrant under this section includes power to enter by force, if necessary.

8. Power to Require Information

- 8.1 The Council has a power under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with:
- Any purpose connected with the exercise of its functions under Parts 1-4 of the Housing Act 2004
 - Investigating whether any offence has been committed under Parts 1-4 of the Housing Act 2004
- 8.2 The Council also has powers under Section 237 of the Housing Act 2004 to use the information obtained above and Housing Benefit and Council Tax information obtained by the authority to carry out its functions in relation to these parts of the Act.
- 8.3 Additional powers are provided under the Housing and Planning Act 2016 to require information from persons, This may be used when determining whether to apply for a Rent Repayment Order or Banning Order or whether to make an entry in the Rogue Landlord and Property Agent database, or when considering the level of Civil Penalty to apply.
- 8.4 A Requisition for Information may also be served under section 16 of the Local Government (Miscellaneous Provisions) Act 1976.

9. Informal Action

- 9.1 Informal action, that is either verbal advice, requests or warnings, or letters and inspection reports can be used when:-
- the breach is not of a serious nature
 - past experience has shown that such action will be effective
 - there is not a significant risk to the safety or health of the occupant (or the public)
 - informal action will be more effective and/or quicker than formal action
 - there is confidence in the Manager/owner
- 9.2 Following an inspection, a written response may be provided, usually in the form of a letter or an email. It will include confirmation of:
- what legislation is contravened
 - what works are required and why
 - wherever possible agreed timescales

- the nature of the enforcement action the authority may take in the future if the matter is not satisfactorily addressed.

10. **Statutory Notices and Orders**

10.1 Where action is to be taken following the identification of a Category 1 or 2 hazard under the Housing Health and Safety Rating System, the most appropriate course of action must be taken in accordance with Government Guidance issued under Section 9 of the Act. A statement of reasons under section 8 of the Housing Act 2004 will be provided if a Notice or Order is served.

10.2 The Council is under a legal duty to take appropriate enforcement action if a Category 1 hazard is present in a dwelling.

10.3 The courses of action which are available are to:-

- serve an Improvement Notice (including suspended Notices)
- make a Prohibition Order (including Suspended Orders)
- serve a Hazard Awareness Notice
- take emergency remedial action
- make an Emergency Prohibition Order
- make a Demolition Order
- declare a Clearance Area

10.4 In determining the most appropriate enforcement action, consideration should be given to:-

- the current occupant(s) of the property (if any)
- the mode of ownership/tenure
- the views and wishes of the owners/landlords/tenants
- the past record of compliance by the owner/landlord
- the severity of the risk
- the extent of the remedial action required
- the views of other Agencies, eg the Fire Authority
- the potential occupancy/tenancy arrangements of the property
- the practicability of the remedial action required

10.5 The Council also has a power to take enforcement action where a Category 2 hazard is present in a dwelling.

10.6 The courses of action which are available are to:-

- serve an Improvement Notice (including suspended Notices)
- make a Prohibition Order (including suspended Orders)
- serve a Hazard Awareness Notice

10.7 In determining whether to take formal enforcement action in relation to a Category 2 hazard, consideration should be given to:-

- the banding of the hazard
- the severity of the risk
- the nature of the hazard
- the current occupant(s) of the property
- the mode of ownership/tenure
- the views and wishes of the owners/landlords tenants
- the past record of compliance by the owner/landlord
- the extent of the remedial action required
- the wider priorities and policies of the Council
- the practicability of the remedial action required

10.8 Any course of action taken may be subject to review if circumstances change or suitable progress is not made to mitigate the hazard.

11. **Suspended Improvement Notices / Prohibition Orders**

11.1 The Council has the power to suspend an Improvement Notice or Prohibition Order and will consider this course of action where it is reasonable, in all the circumstances, to do so.

11.2 The following are situations in which it may be appropriate to suspend a Notice or Order:

- The need to obtain planning permission (or other appropriate consent) that is required before repairs and/or improvements can be undertaken
- Works which cannot properly be undertaken whilst the premises are occupied and which can be deferred until such time as the premises falls vacant or temporary alternative accommodation can be provided
- Personal circumstances of occupants, for example, temporary ill-health, which suggests that works ought to be deferred

11.3 When deciding whether it is appropriate to suspend a Notice or Order the Council will have regard to:

- The level of risk presented by the hazard(s)
- The turnover of tenants at the property
- The response or otherwise of the landlord or owner
- Any other relevant circumstances (e.g. whether the vulnerable age group is present)

12. **Demolition Orders**

12.1 The Housing Act 2004 has retained the power to make Demolition Orders but has amended Section 265 of the Housing Act 1985 to align it with the new method of hazard assessment and enforcement provisions.

12.2 Demolition Orders are a possible response to a Category 1 hazard (where they are judged the appropriate course of action). In determining whether to issue a Demolition Order the Council will take account of Government guidance and will consider all the circumstances of the case.

13. **Simple Cautions**

13.1 Under certain circumstances, a simple caution may be used as an alternative to prosecution and will usually be considered before making a decision to prosecute.

13.2 A simple caution is a serious matter. It may be used to influence any decision whether or not to prosecute should the individual, organisation or business offend again and it may be referred to in any subsequent court proceedings. The decision whether to offer a simple caution will be made by the Head of Environment in consultation with the District Solicitor.

13.3 Simple cautions are intended to:

- deal quickly and simply with certain, less serious offences where the offender has admitted the offence;
- avoid unnecessary appearance in criminal courts;
- reduce the chance of offenders re-offending
- Record an individual's criminal conduct for possible reference in future criminal proceedings.

13.4 Before issuing a caution it would be prudent to ask the following questions

- Has the suspect made a clear and reliable admission of the offence either verbally or in writing?
- Is there a realistic prospect of conviction if the offender were to be prosecuted in line with the Code of Crown Prosecutors? Is it in the public interest to use a simple caution as the means of disposal?
- Is a simple caution appropriate to the offence and the offender?

13.5 Where an individual chooses not to accept a simple caution the Council will normally prosecute.

13.6 The Officer shall ensure that decisions to issue a simple caution are notified to all known interested bodies, including tenants, managers, freeholders, leaseholders and mortgagees.

14. **Recovery of Expenses relating to enforcement action**

14.1 A charge will normally be made where it has been necessary to take one of the enforcement actions listed from a) to i) below:

- a) serving an improvement notice under section 11 or 12
- b) making a prohibition order under section 20 or 21
- c) serving a hazard awareness notice under section 28 or 29
- d) taking emergency remedial action under section 40
- e) making an emergency prohibition order under section 43

- f) making a demolition order under section 265 of the Housing Act 1985(c.68)
 - g) declaring a slum clearance area under section 47
 - h) reviewing a suspended improvement notice under section 17
 - i) reviewing a suspended prohibition order under section 26
- 14.2 The recovery of expenses incurred are in connection with the provisions under s49. The charge for the service of a Hazard Awareness Notice may be waived with the agreement of the Private Sector Housing Team Leader, if there are extenuating circumstances for this and there is confidence the owner / person in control is taking action.

15. **Determining appropriate Sanction – Prosecution or Civil Penalty**

- 15.1 The criminal standard of proof is required for a civil penalty as for a prosecution. This means that before taking formal action, the Authority should be satisfied that if the case were to be prosecuted in the Magistrates court, there would be a realistic prospect of conviction and that it could be proved beyond reasonable doubt.
- 15.2 Should the Authority decide to proceed, then the Authority will consider whether a prosecution or the imposition of a Financial Penalty (where allowed) is the most appropriate option.
- 15.3 The Authority will take into account the following factors in deciding whether to prosecute or to impose a civil penalty :
- The seriousness of the offence

Prosecution may be the most appropriate option where an offence is particularly serious - for example where there is an imminent risk of serious personal injury; where there are numerous offences, or where the offender has committed similar offences in the past
 - Culpability of the Landlord, Agent and/or Manager

Prosecution may be appropriate where the offender has a history of failure to comply with their obligations

Prosecution may be appropriate where the offence was deliberate, or occurred to make significant financial gain

Prosecution may be appropriate where the offender is operating a relevant business and as such should be expected to be aware of their legal obligations

Prosecution may be appropriate if the offender is deliberately obstructive, deceitful , abusive or threatening
 - Circumstances of the tenant and the harm caused to them

Prosecution may be appropriate where actual harm has occurred , if the tenants are vulnerable , or when a significant number of tenants/persons are placed at serious risk
 - The impact on the wider community

Where prosecution is in the public interest, and would deter others from committing similar offences as it would be in the public domain

- Relevant information from other local housing authorities where a landlord has committed breaches in more than one local authority area

15.4 The Authority may seek to apply a civil penalty charge for certain relevant offences under the Housing Act 2004 as defined in Schedule 9 of the Housing and Planning Act 2016

15.5 Relevant offences as stated in the Act which may attract a civil penalty are :

- Section 30 -Failure to comply with an Improvement Notice
- Sections 72 and 95 –Licensing of HMOs
- Section 139(7) – failure to comply with an overcrowding notice
- Section 234 –Management regulations in respect of HMOs

15.6 Additionally a civil penalty may be levied for :

- Breach of a banning order (s23 of HPA16).

15.7 If a civil penalty is to be imposed, the Authority will consult appropriate Statutory Guidance, and the following factors will be taken into account to help ensure the civil penalty is set at an appropriate level :

- a) Punishment of the offender
- b) Deter the offender from repeating the offence
- c) Deter others from committing similar offences
- d) Remove any financial benefit the offender may have obtained as a result of committing the offence
- e) Severity of the offence
- f) Culpability and track record of the offender
- g) The harm caused to the tenant

15.8 Whichever option the Authority wishes to pursue the decision will be made on the merits of each case.

15.9 Prosecution may be taken or civil penalty imposed in respect of one or more of the following:-

- Where the alleged offence involves a flagrant breach of the law such that public health, safety or the wellbeing of individuals is or has been put at risk.
- Where the alleged offence involves a failure to correct an identified serious potential risk and the person responsible has been given a reasonable opportunity to comply with the lawful requirements of an authorised officer.
- Where the offence involves a failure to comply in full or in part with the requirements of a statutory notice.
- Where there is a history of similar offences relating to risk of public health, safety or the wellbeing of individuals.

15.10 Prosecution may be taken or civil penalty imposed in respect of one or more of the following:-

- Where such circumstances have been identified, all relevant evidence and information must be considered to enable a consistent, fair and objective decision to be made. As part of the process on making the decision whether to prosecute or impose a civil penalty, the officer must discuss the details of each case with the Private Sector Housing Team Leader
- Prior to referring a case to the District Solicitor for prosecution, the officer must discuss the details with the Private Sector Housing Team Leader or other officer as authorised under the Council's scheme of delegation. In the case of a prosecution, it is necessary to establish that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company. There must be a realistic prospect of a conviction: a bare prima facie case is not enough. There must also be a positive decision that it is in the public's interest to prosecute. The Code for Crown Prosecutors, issued by the Crown Prosecution Service should be considered. Similarly, where a civil penalty is to be imposed and an appeal is subsequently made to the First Tribunal, the Authority would need to be able to demonstrate beyond reasonable doubt that the offence had been committed. For the sake of clarity and consistency, the Authority will adopt the same approach when considering a matter for prosecution or civil penalty. The final decision whether to prosecute or impose a civil penalty shall be made in consultation with the District Solicitor and each case must pass the evidential and public interest test.

15.11 Should a successful prosecution be undertaken and a conviction secured, then the details of the offence will be recorded in the Rogue Landlords database.

15.12 Should a conviction be secured for an offence listed under relevant Regulations as a Banning Order offence, then the Authority will consider making an application to the First Tier Tribunal for a Banning Order against that person or company under the Statutory provisions.

16. **Determining the Level of Civil Penalty Charges**

16.1 Local housing authorities have the power to impose a civil penalty of up to £30,000

16.2 The Authority will use powers available to it under the legislation to make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty. Generally, the maximum amount will be imposed for the very worst offenders. The actual amount levied in any particular case will reflect the severity of the offence, as well as taking account of the landlord's previous record of offending. Each case will be analysed on its facts and the relevant evidence (as discussed above) A departmental procedure

note and matrix based on relevant and current guidance and case law precedents will be used to assist this process .

- 16.3 The following factors will help ensure that the civil penalty is set at an appropriate level:
- a) Severity of the offence: The more serious the offence, the higher the penalty for example:
 - 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
- 16.4 See Appendix A for fuller information on the relevant penalty criteria
- 16.5 The Authority will seek to make an assessment of the offender's assets and any income (not restricted to rental income) in order to determine an appropriate penalty.
- 16.6 Appendix A of this document gives detailed guidance on factors to be taken into account when determining the penalty level.
- 16.7 In accordance with Statutory procedure, the Authority will serve a Notice of Intent, and consider any representations made within 28 days from when the Notice of intent was given before deciding whether to impose a financial penalty.
- 16.8 Should the Authority determine to issue a penalty, then final Notice will be issued.
- 16.9 The Authority will seek to recover the amount of the Civil Penalty in accordance with recovery procedures, which may include forced sale of assets.

17. Rent Repayment Orders(RRO)

- 17.1 The Authority has a legal duty to consider applying for a Rent Repayment Order if it becomes aware that a person is convicted of a relevant offence. These offences include :
- Breach of Improvement Notice
 - Breach of Prohibition Order
 - Operating or managing an unlicensed HMO
 - Breach of Banning Order
 - Illegal eviction/harassment
- 17.2 Under the provisions of the Housing and Planning Act 2016, the Authority may choose to apply to the First Tier Tribunal to make a Rent Repayment Order in the event it has sufficient evidence that a relevant offence has been committed, but without first obtaining a conviction. Where rent has

been paid further to an award of Universal Credit or Housing Benefit, an application for a RRO will generally be considered appropriate.

- 17.3 To underpin the principle that benefits should not be used to finance substandard accommodation.
- 17.4 An RRO would also be generally considered where there is evidence of harassment and/or illegal eviction. Additionally the Authority may consider a prosecution under the Protection From Eviction Act 1977.
- 17.5 If an application for a Rent Repayment Order is to be made, the following factors will be taken into account when considering how much rent the Authority will seek to recover :
- a) Punishment of the Offender
 - This should have a real economic impact on the offender, and the conduct of the offender, offending history and their financial circumstances will be considered
 - b) Deter the Offender from repeating the offence
 - The level should be high enough to deter further offences being committed
 - c) Dissuade others from committing similar offences
 - d) Remove any financial benefit the offender may have obtained as a result of committing the offence
- 17.6 As per legal procedures, the Council will first issue a Notice of Intent stating they intend to apply for a RRO and consider any representations made during the notice period before determining whether to apply to the Residential Property Tribunal for the RRO.

18. **Banning Orders**

- 18.1 Where a person has been convicted of a Banning Order Offence as defined in Regulations, the Authority may apply to a First Tier Tribunal for a Banning Order to be made.

19. **Default Works**

- 19.1 Where the legislation permits work in default and the Environmental Health Officer or, Technical Officer or Housing Inspector is of the opinion that this is the appropriate course of action, the case must be discussed with either the Environmental Health Manager or the Divisional Environmental Health Officer.
- 19.2 The decision whether to undertake such a course of action will depend on:-
- The risk to public health, safety or wellbeing of individuals.
 - Whether reasonable progress has been made by the owner with regard to the works.
 - The ability of the owner to arrange for the works to be done.
 - The time which has elapsed for compliance with the notice.
 - The history of the owner with regard to compliance with notices.

- Whether default work may afford greater benefit than prosecution.

20. **Compulsory Purchase / Clearance**

20.1 An Assessment would be required in accordance with guidance contained in Government Circulars. Detailed consideration of many factors would have to be undertaken in association with other Directorates to ensure that it was the most satisfactory method of dealing with a property or an area, with ultimately the decision being made by the Council's Cabinet. Either of these courses of action would be regarded as a last resort.

21. **Review**

21.1 This procedure will be reviewed where there is a change in legislation, case law, or guidance. This will be undertaken in consultation between the Head of Environment and the Cabinet Member.

22. **Houses in Multiple Occupation (HMOs)**

22.1 The Council will seek to ensure that all Houses in Multiple Occupation that are required to be licensed under the provisions of the Housing Act 2004 and associated legislation are properly licensed and that they comply with their licence conditions.

22.2 The Council will require the licence application to be accompanied by a fee fixed by the Council. The fee takes into account all costs incurred in processing and issuing the licence.

22.3 Licences will be granted where the house is reasonably suitable for occupation as an HMO, or it can be made so suitable by the imposition of conditions; the management arrangements are satisfactory, and the licensee and manager are fit and proper persons. The applicant must be the most appropriate person to hold the licence.

22.4 The Council is required to assess whether the applicant and any manager and any person associated with them or formerly associated with them* are fit and proper people to own or manage an HMO.

22.5 A person will generally be considered fit and proper if the Council is satisfied that:

- They are not subject to a Banning Order
- they have no unspent convictions** relating to offences involving fraud, dishonesty, violence or drugs, or sexual offences
- they have no unspent convictions relating to unlawful discrimination on grounds of sex, race, or disability
- they have no unspent convictions relating to housing or landlord and tenant law
- they have no unspent convictions for breaches of planning, compulsory purchase, environmental protection or other legislation enforced by local authorities
- they have not been refused an HMO licence, been convicted of breaching the conditions of a licence, or have acted otherwise than in

accordance with the approved code of practice under section 233 of the Act within the last five years

- they have not been in control of a property subject to an HMO Control Order, an Interim Management Order (IMO) or Final Management Order (FMO) or had work in default carried out by a local authority.

*If a person associated or formerly associated with the applicant or any manager, has done any of the things stated above, the Council will only take these issues into account if they are relevant to the applicant or manager being a fit and proper person to manage the house.

**A conviction where the penalty is a fine is spent after five years.

22.6 Licences will usually be valid for five years and will specify the maximum number of occupiers.

This period may be reduced if the Council is concerned that:-

- there is a history of problems at the property with regard to conditions or facilities or disrepair;
- there is a history of statutory enforcement action against the owner or manager;
- there are concerns about the current or proposed management arrangements for the property;
- the owner, licence holder or manager has unspent convictions other than those considered in the fit and proper person assessment;
- the owner or manager has failed to meet their statutory obligation, ie failed to make a licence application as required.
- the owner or manager has only made the application as a result of a written warning letter from the Council.
- If an application has been made for the Renewal of a Licence and the conditions of the existing licence have not been met at any relevant time during the period of the licence.
- If an application has been made for the Renewal of a Licence and Statutory Enforcement Action has been taken at any relevant time during the period of the existing licence.

The occupancy number will depend on the number and size of rooms and the kitchen and bathroom facilities.

23. Procedure for Issuing a Licence

23.1 An applicant must complete an Application form for a Licence for a House in Multiple Occupation. Once the Council has received a complete application (including the relevant fee), it will be allocated to a Case Officer

23.2 An inspection of the property will be undertaken where necessary to determine the suitability of the property and assess the facilities provided (including the fire precautions).

- 23.3 The Council will also consult with the Bucks Fire & Rescue Service as Statutory Consultees in the licensing process.
- 23.4 If a licence is to be granted, this will be in accordance with the procedure under Schedule 5 Part 1 of the Housing Act 2004 which allows representations to be made by the applicant.
- 23.5 The granting or refusal of a licence will be subject to the Appeals procedure under Schedule 5 Part 3 of the Housing Act 2004.
- 23.6 Whilst local authorities are responsible for implementing mandatory licensing of HMOs and assessing the fire safety risks in all dwellings under the Housing Health and Safety Rating System, the Fire Authority also have responsibilities under the Fire Safety Order 2005 for fire safety in common (shared) parts of HMOs. A Protocol is in place between the Buckinghamshire Fire Authority and the District Council for joint working to secure fire safety in HMOs. The local agreement has regard to the appropriate National Guidance for Fire Safety in Housing issued by LACORS.

24. **Contents of Licences**

General

- 24.1 The licence will specify the length of time for which the licence is valid. This can be for a maximum of five years.
- 24.2 The licence will also specify the maximum number of occupiers and/or households.

Mandatory Conditions

- 24.3 Conditions as contained in Schedule 4 of the Housing Act 2004 specify conditions which must be included in licences. These conditions are:-
- to provide copies of the gas safety certificate annually (if gas is supplied to the property);
 - to keep electrical appliances and furniture in a safe condition and supply a declaration to that effect on demand;
 - to ensure smoke alarms are provided and kept in proper working order and supply a declaration as to their condition and positioning on demand;
 - to ensure that a carbon monoxide alarm is installed in any room in the house which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance and to keep any such alarm in proper working order; and to supply a declaration by as to the condition and positioning on demand
 - to provide tenants with a written statement of the terms on which they occupy the property.

Discretionary Conditions

- 24.4 These can also be included on a licence.
- 24.5 The Council may apply Conditions to a licence to ensure:-

- any works to the property are undertaken to meet the licensing standard within a reasonable period of time as specified by the Council.
 - the management arrangements for the property are suitable.
- 24.6 The Council may also apply additional conditions if they are relevant to a particular property.
- 24.7 Temporary Exemption from Licensing Requirements
- 24.8 The Council may grant a Temporary Exemption Notice (TEN) where:-
- (a) the person having control or managing the licensable HMO states in writing the steps he intends to take to ensure the house is no longer required to be licensed; and
 - (b) the Council is satisfied that it will be non-licensable as a result of taking these steps within 3 months of the date of receiving the written notice.
- 24.9 In deciding whether to issue a TEN, the Council will have regard to the steps proposed, including Planning and Building Regulation issues, the status of any such Planning or Building Regulation applications, and confidence in whether such steps would be taken by the person in control or managing the property in relation to such issues.
- 24.10 Previous actions by the person in control or managing the property may be taken into account to assess such confidence.
- 24.11 Further considerations will also be made to the arrangements for meeting the needs of occupiers including those likely to be displaced.
- 24.12 A further (and final) TEN can only be granted in exceptional circumstances, which would normally be unforeseen.

25. **Mandatory HMO Licence Enforcement**

- 25.1 In order to ensure landlords make an application for a mandatory licence, the Council will:-
- Publicise the HMO licensing requirement through website information, attendance at Landlord Forums and visits to Letting Agents.
 - Produce factsheets to answer questions about the process and requirements.
- 25.2 The Housing Act 2004 stipulates a number of offences and penalties regarding mandatory licensing.
- 25.3 These include:-
- The operation of a licensable HMO without a licence, when a TEN is also not in force.
 - Allowing an HMO to be occupied by more persons than a licence specifies as a maximum.
 - Breach of licence condition.

- Supplying false or misleading information to the Council.
 - Obstructing any authorised officer from performing their duties under the Act.
- 25.4 A landlord who operates an unlicensed HMO can be made the subject of a Rent Repayment Order (RRO) by a Residential Property Tribunal. If awarded, the RRO can require the repayment of rent (awarded by Universal Credit or Housing Benefit) received by the landlord over a period of up to 12 months. This would be repaid to the Council.
- 25.5 The Council will also advise tenants of their rights, which may include that of applying for a Rent Repayment Order in respect of non-Housing Benefits rental payments.
- 25.6 Where a landlord fails to licence a licensable HMO, the Council can take also undertake a prosecution or impose a civil penalty. The Council will base any decision in line with the principles laid down in the Enforcement Concordat and the Private Sector Housing Enforcement Policy.
- 25.7 Where there is no prospect of an HMO being licensed, the Act requires the Council to serve an Interim Management Order (IMO). This enables the Council to make arrangements to take over the management of a HMO and become responsible for running the property and collecting rent for up to a year. Further action may be taken at the end of this period.
- 25.8 If the Council becomes aware of a property which it believes should have a Licence and no such application has been made, the following action will be taken:-
- The owner and/or Manager will be advised in writing that the Council considers a Licence is required for the property
 - .
 - The Council may issue a Notice to declare the building or part to be a House in Multiple Occupation, as specified under S.255 of the Act. The Notice will be subject to the Statutory Appeals procedure in the Act. If no Appeal is brought, or the Notice is confirmed upon appeal, then the Notice will come into force.
 - A prosecution or civil penalty proceedings may be instigated against the owner and/or manager for failure to licence the HMO. An application for a Rent Repayment Order may also be made either at this time or upon successful prosecution.

26. **Enforcement of Conditions**

- 26.1 All Licences will be subject to mandatory conditions as specified in the Act, and may be subject to discretionary conditions where appropriate.
- 26.2 The Council will ensure that where a condition specifies that works are to be undertaken by a certain date, that a check will be undertaken as to whether the works have been completed.
- 26.3 If it is found that a licence holder is failing to comply with any of the conditions, the following action will be taken:-

- For less serious breaches, the licence holder will usually be advised in writing that he is failing to comply with a condition, and given a maximum period to ensure compliance. This period may be minimal if there is a significant risk posed to the occupants as a result of the breach.
- If the licence holder fails to comply with the conditions, or the breach is considered serious then prosecution or imposition of a civil penalty may be considered.
- If there is a successful conviction for a breach of a licence condition, or a breach is considered to be serious, or a repeated breach of such conditions occurs, the Council may consider revoking the HMO Licence.

27. Variation or Revocation of Licences

27.1 The Act enables the Council to vary or revoke an HMO Licence either with or without the agreement of the licence holder. The Act specifies the procedure which must be followed should variation or revocation be considered. Management Orders (Interim and Final)

27.2 The Council is under a duty to make an Interim Management Order (IMO) if:-

It is an HMO which is required to be licensed, but is not so licensed and either:-

- there is no reasonable prospect of it being licensed or
- the health and safety condition under S.104 of the Act is satisfied

OR

The HMO licence has been revoked.

The Council may also apply to the Residential Property Tribunal to make an IMO in other specified circumstances.

If an IMO is made or granted, the Council will effectively be given authority to manage the property and collect any rent due.

An IMO can be in force for a period of up to 12 months. After this period, the Council can make a Final Management Order (FMO) which can be in force for a period of 5 years.

If an IMO or FMO is made, the Council may seek the services of a third party to help administer the duties imposed by such an order.

28. Management of HMOs

28.1 All HMOs (whether subject to licensing or not) must be properly managed in accordance with the Houses in Multiple Occupation (England) Regulations 2006.

28.2 Where there is evidence of a breach of the Regulations, enforcement action will be considered; where breaches are considered serious, are repeated breaches, or are numerous, then the imposition of a civil penalty (per offence) or a prosecution may be considered.

Appendix A

Assessment of Culpability and Harm

In assessing seriousness there is a need to consider both culpability and harm.

There are 4 levels of culpability to be considered:

1. The offender has the intention to cause harm, the highest culpability ie where the offence is planned
2. The offender is reckless as to whether harm is caused i.e the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences even though the extent of the risk would be obvious to most people
3. The offender has knowledge of the specific risks entailed by his actions even though he does not intend to cause the harm that results
4. The offender is guilty of negligence

Culpability will be greater if

- The Offender deliberately causes more harm than necessary
- The Offender targets a vulnerable victim

Culpability will be lower if

- The Offender suffers mental illness

Harm will be greater when

- There are multiple victims or potential victims
- The victim(s) are particularly vulnerable
- There is an especially serious physical or psychological effect on the victim, even if unintended

Mitigating Factors

- Offender shows genuine remorse
- Admissions are given in interview
- Ready co-operation with the Council
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