

APPENDIX A - Buckinghamshire Council Private Sector Housing Enforcement Policy – DRAFT November 2019

1. Introduction / Background

- 1.1. One of the primary functions of central and local government enforcement work is to protect residents, consumers and workers through preventative interventions. It has long been established that there is a link between the standard of housing and health. Poor quality housing has a significant detrimental effect on both the physical and mental health and wellbeing of the residents of Buckinghamshire.
- 1.2. Private Rented housing provision in the UK has now outstripped that of the social rented sector, which means that the private sector is increasingly housing vulnerable tenants, families with children, and a significant number of workers. Due to rising housing costs, many residents are living in Houses in Multiple Occupation (HMOs) where facilities are shared with others and standards can be poor
- 1.3. Carrying out enforcement functions across all tenures in an equitable, practical and consistent manner, raising standards and driving out criminal landlords from the sector helps to maintain and promote better health of residents and a thriving local economy.
- 1.4. This policy supports the priorities in the Joint Strategic Needs Assessment for Buckinghamshire and underpins prevention at the heart of private sector housing interventions whilst seeking to reduce the burden on health and social care services.
- 1.5. This policy forms a harmonised enforcement policy for Buckinghamshire Council, and will be reviewed within 2 years or in accordance with changes in legislation.
- 1.6. The policy sits below the general enforcement policy of the Council.
- 1.7. The Council aims to protect and promote the health of the people of Buckinghamshire by improving private sector housing, public health, safety and the environment through the provision of advice, support and formal action where necessary.

- 1.8. Enforcement officers, by necessity, have considerable discretion in decision making and initiating enforcement action. This policy applies to all dealings, formal and informal, between officers and landlords and owners of residential property – all of which contribute to securing compliance with the law. It provides policy standards to aid professional judgements and decision making and ensure both consistent and effective enforcement
- 1.9. The purpose of this enforcement policy is to ensure that a consistent approach is adopted by enforcement officers throughout the District
- 1.10. The Council as the Local Housing Authority has extensive enforcement duties and powers to secure suitable standards in residential housing. The main legislation is summarised in Appendix 1.
- 1.11. 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
- 1.12. Good quality and safe housing is something that every tenant has a right to expect. The key objectives are to;
 - Improve the quality of the private housing stock across all tenures
 - Positively impact the health and wellbeing of those living in poor quality dwellings
 - Actively tackle criminal landlords

2. Complaints Procedure

- 2.1 If you have any comments or questions in relation to this policy, please contact:
- 2.2 INSERT - New Council details for complaints
- 2.3 The Council has a corporate complaints procedure in cases where disputes arising from this policy cannot be resolved.

Principles of Enforcement

- 2.1. The overarching enforcement policy for Buckinghamshire Council outlines the main principles of enforcement.

3. Enforcement Consideration

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

The relevant legislation

Government circulars and Guidance made under Section 9 Housing Act 2004,

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

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

Other relevant statutory guidance notes.

4. Data Sharing Protocols

- 4.1. The Council shall set up appropriate data sharing protocols with partner agencies where appropriate to aid the detection and prevention of crime.

- 4.2. It is our policy to refer breaches of other legislation to relevant enforcing authorities e.g. HSE etc.

5. Authorisation of Officers

- 5.1. 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 [insert role] 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

6. Enforcement Options

6.1. 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/Demolition
- Simple Caution
- Rent Repayment Order
- Banning Orders.
- Interim and Final Management Orders

7. Informal Action

7.1. 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 property manager/owner

- 7.2. It is not always possible to adopt an informal approach especially where the legislation requires formal action to be taken straight away. Informal advice may be issued in verbal format, or within a letter or email which states
- 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
- 7.3. It is not always possible to adopt an informal approach especially where the legislation requires formal action to be taken straight away.

8. Statutory Notices and Orders

- 8.1. 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.
- 8.2. The Council is under a legal duty to take appropriate enforcement action if a Category 1 hazard is present in a dwelling.

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

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

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

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

8.4. 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

8.5. Where the property is let to tenants or occupied by vulnerable persons, action will usually be taken in respect of significant Category 2 hazards.

8.6. Where the service of a Notice/ Making of an Order requires Statutory Consultation (e.g with the Fire Authority) , this will be undertaken in advance of the Notice / Order being served/issued

9. Suspended Improvement Notices / Prohibition Orders

9.1. The Council has the power to suspend an Improvement Notice or Prohibition Orders issued under the Housing Act 2004 and will consider this course of action where it is reasonable, in all the circumstances, to do so.

9.2. 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

9.3. 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 as defined in HHSRS, is present)

10. Recovery of Expenses relating to serving Notices and Orders

10.1. The recovery of expenses incurred are enabled under s49 of the Housing Act 2004, and any monies recovered must be utilised

solely to fund housing enforcement purposes as defined under the Act.

- 10.2. 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
- 10.3. The charge for the service of a Hazard Awareness Notice may be waived with the agreement of the appropriate Senior Officer, if there are extenuating circumstances for this and there is confidence the owner / person in control is taking action.

11. Other Statutory duties / powers

- 11.1. There may be occasions where enforcement action is appropriate using other associated legislation in order to address issues in domestic dwellings such as the Environmental Protection Act 1990, Public Health Acts, Building Act 1984, Prevention and Damage by Pests,, Local Government (Miscellaneous Provisions) Act 1982 and others.
- 11.2. In particular, where a more expedited course of action is required or necessary, consideration will be given to utilising the provisions of these and other relevant statutes to secure improvements or action.

12. Service of Housing Act 2004 Notices/Orders on owner-occupiers

- 12.1. Enforcement decisions will be made in full consultation with the owner and having regard to the owner's circumstances and eligibility for any financial assistance where available.
- 12.2. Formal action will not be limited to the service of Hazard Awareness Notices. The service of statutory notices and orders and the carrying out of emergency works will be considered where the condition of an owner-occupied property is such that:
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 - It is a danger or a serious health risk to the occupier or members of the public, or
 - It is having a detrimental effect on adjoining properties

13. Demolition Orders / Compulsory Purchase /Clearance Areas

- 13.1. 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.
- 13.2. Detailed consideration of a range of factors should to be undertaken in partnership with other departments and agencies 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 Councils relevant constitutional arrangements. Any of these courses of action would be regarded as a last resort.

14. Simple Cautions

- 14.1. 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.
- 14.2. 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 Senior Officer in consultation with the [insert role].
- 14.3. 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.
- 14.4. Before issuing a caution the following questions will be considered
- 14.5. 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?
- 14.6. Where an individual chooses not to accept a simple caution the Council will normally prosecute.
- 14.7. 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 etc.

15. Default Works

- 15.1. Where the legislation permits work in default and the Officer is of the opinion that this is the appropriate course of action, the case must be discussed with the relevant Senior Officer as per the scheme of delegation
- 15.2. The decision whether to undertake such a course of action will depend upon:-
- 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
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- 15.3. Works in default may be considered as well as prosecution or civil penalty notice.

16. Determining appropriate Sanction – Prosecution or Civil Penalty

- 16.1. The Authority may seek to apply a civil penalty charge as an alternative to prosecution for certain relevant offences under the Housing Act 2004 as defined in Schedule 9 of the Housing and Planning Act 2016
- 16.2. 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 –failure to license an HMO
 - Section 139(7) – failure to comply with an overcrowding notice
 - Section 234 –Breach of Management regulations in respect of HMOs
- 16.3. Additionally a civil penalty may be levied for :
- Breach of a banning order (s23 of HPA16).
- 16.4. 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.
- 16.5. 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.

16.6. 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. Prior to referring a case to the District Solicitor for a prosecution or civil penalty, the case officer must discuss the details of each case with the Senior Officer.

16.7. 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
- 16.8. Whichever option the Authority wishes to pursue the decision will be made on the merits of each case.
- 16.9. The final decision whether to prosecute or impose a civil penalty shall be made after consultation with the District Solicitor.
- 16.10. The Council may also seek to recover monies under the Proceeds of Crime Act as part of a prosecution case
- 16.11. Should a successful prosecution be undertaken and a conviction secured, then the details of the offence will be recorded in the Rogue Landlords database.

17. Determining the Level of Civil Penalty Charges

- 17.1. Local housing authorities have the power to impose a civil penalty of up to £30,000. The Authority has agreed this will be the level of maximum penalty
- 17.2. Where 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
 - h) whether the offender admitted the offence at an early stage

- 17.3. 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.
- 17.4. 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.
- 17.5. Appendix B of this document gives detailed guidance on factors to be taken into account when determining the penalty level. A departmental procedure note and matrix based on relevant and current guidance and case law precedents will be used to assist this process .
- 17.6. 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.

18. Rent Repayment Orders (RRO)

- 18.1. 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
- 18.2. 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 to underpin the principle that benefits should not be used to finance substandard accommodation.

18.3. 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.

18.4. 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 :

- 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

- Deter the Offender from repeating the offence

The level should be high enough to deter further offences being committed

- Dissuade others from committing similar offences
- Remove any financial benefit the offender may have obtained as a result of committing the offence

18.5. 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.

19. Banning Orders

19.1. 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. If such a conviction has been obtained, it will be usual practice to apply for a Banning Order, taking into account all relevant guidance.

19.2. Any non-housing related banning order offence will be assessed in accordance with the relevance of the offence to the letting of residential accommodation and the likely risks posed to tenants.

20. Houses in Multiple Occupation (HMOs)

General

- 20.1. The Council will seek to ensure minimum standards are met in all HMOs (whether licensable or not) in relation to condition, fire precautions, amenities and management, as set out above in Section 2.00.
- 20.2. It will do this by undertaking regular routine inspections of all known HMOs in its area, by providing informal advice and by taking enforcement action where appropriate. The frequency of inspection will be determined by a risk rating system.

21. Identification of HMOs

- 21.1. The Council will seek to identify those properties which are being occupied as HMOs. It will do this by utilising powers under Section 237, by information in the public domain and other Council records.

22. Licensing of 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 or renewal to be accompanied by a fee fixed by the Council..
- 22.3. An application will only be treated as being made when all of the necessary documents have been provided and the fee paid.
- 22.4. 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.

23. Fit and Proper Persons

- 23.1. 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. Further guidance on assessing Fit and Proper can be found in Appendix C

Duration of HMO Licence

23.2. Licences will usually be valid for five years. 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 for a Renewal of a Licence is received after the original Licence expired
- 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.

24. Assessing Maximum Number of Occupiers

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

24.2. Regard will be had to national amenity standards, the statutory minimum room sizes and the Council's 'Standards in HMOs'

guide when assessing the maximum number of occupants to be permitted.

25. Procedure for Issuing a Licence

- 25.1. An applicant must complete an Application form for a Licence for a House in Multiple Occupation accompanied by all relevant documentation and appropriate fee.
- 25.2. The Licence shall be issued in accordance with the Statutory Provisions under the Housing Act 2004 and associated legislation

26. Contents of Licences

General

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

27. Mandatory Conditions

- 27.1. Conditions as contained in Schedule 4 of the Housing Act 2004 specify conditions which must be included in licences.

28. Discretionary Conditions

- 28.1. 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.
 - The Council may also apply additional conditions if they are relevant to a particular property.

29. Temporary Exemption from Licensing Requirements

- 29.1. 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.
- 29.2. 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.
- 29.3. Previous actions by the person in control or managing the property may be taken into account to assess such confidence.
- 29.4. Further considerations will also be made to the arrangements for meeting the needs of occupiers including those likely to be displaced.
- 29.5. A further (and final) TEN can only be granted in exceptional circumstances, which would normally be unforeseen.

30. Mandatory HMO Licence Enforcement

- 30.1. 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.
- 30.2. The Housing Act 2004 stipulates a number of offences and penalties regarding mandatory licensing.

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.
- 30.3. If any of these offences are suspected, an investigation will be undertaken in accordance with this policy.
- 30.4. 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.
- 30.5. Where there is no prospect of an HMO being licensed, the Act requires the Council to serve an Interim Management Order (IMO).

31. Enforcement of Conditions

- 31.1. All Licences will be subject to mandatory conditions as specified in the Act, and may be subject to discretionary conditions where appropriate.
- 31.2. 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.

32. Variation or Revocation of Licences

- 32.1. 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)

33. Management of HMOs

- 33.1. All HMOs (whether subject to licensing or not) must be properly managed in accordance with the Houses in Multiple Occupation (England) Regulations 2006.
- 33.2. 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.

Other Sanctions

34. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

- 34.1. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 give a power for the authority to impose a financial penalty where a landlord has failed to comply with a Remedial Notice. The Council's agreed Statement of Principles in respect of imposing financial penalties under these regulations is contained in Appendix 1

35. The Estate Agents Redress Scheme

- 35.1. From 1 December 2014, any person engaged in letting agency or property management work must join one of the two government approved redress schemes.
- 35.2. Where a local authority is satisfied on the balance of probabilities that someone is engaged in letting or management work and is required to be a member of a redress scheme but is not, they can impose a fine of up to £5000.

36. Energy Efficiency (Private Rented Property) Regulations 2015.

- 36.1. From 1 April 2018,, landlords of privately rented domestic and non-domestic property must ensure that their properties reach at

least an Energy Performance Certificate (EPC) rating of E before granting a new tenancy to new or existing tenants.

- 36.2. The Council can issue fines of up to £5000 for landlords who do not comply with the regulations, including failing to properly register an exemption.

Appendix 1: Summary of Housing Legislation

Legislation	Summary of Powers
Protection from Eviction Act 1977	
Section 1	This section creates the offences of unlawful eviction and harassment of a residential occupier. The Local Housing Authority is a prosecuting authority for the purposes of this section and it is Housing Officers who investigate claims of unlawful eviction and harassment. The Council can prosecute landlords, agents or others who contravene this section.
Environmental Protection Act 1990	
Section 80	<p>Section 79 of this Act relates to statutory nuisances</p> <p>Once the Council is satisfied that a statutory nuisance exists or is likely to occur, it is under a duty to take action to deal with it. Officers must serve a notice requiring the abatement of the statutory nuisance within certain time limits or preventing the occurrence of a statutory nuisance.</p> <p>If such a notice is served and not complied with, the Council is able to carry out the necessary work in default and recharge the person upon whom the notice was served. Breaching the Notice is a criminal offence and the Council is able to prosecute on this matter</p>
Housing Act 1985	
Section 17	<p>Power to make a Compulsory Purchase Order</p> <p>The legal powers are contained in s17 Housing Act 1985 and s93 Local Government and Housing Act 1989.</p> <p>A compulsory purchase order may be served upon the owner of land or property by the Council to acquire the land for the public good, usually at a valuation set by the district valuer.</p>
Section 265	<p>Power to make a Demolition Order</p> <p>Where a Council finds a property that has Category 1 hazards (under the Housing Health and Safety Rating System), it is under a duty to take the most suitable course of action. The service of a Demolition Order is one of the actions that can be taken.</p> <p>A demolition order requires the property to be vacated within a specific time and subsequently demolished. It is a criminal offence to allow the property to be occupied after the demolition order has come into effect. If the person upon whom the order</p>

	<p>has been served does not demolish the building, the Council can demolish it instead and recharge the person accordingly.</p>
Section 289	<p>Declaration of clearance area</p> <p>A clearance area is an area that is to be cleared of all buildings. The Council shall declare an area to be a clearance area if each of the residential building contains a Category 1 hazard and the other buildings in the area are dangerous or harmful to health and safety. The Council is required to consult on the declaration of a clearance area and publish its intentions. Owners and in certain cases occupiers of properties are compensated accordingly.</p>
Housing Act 2004	
Sections 11 and 12	<p>Duty / Power to serve an Improvement Notice</p> <p>Where a Council finds a property that has Category 1 hazards it is under a duty to take the most suitable course of action. The service of an Improvement Notice is one of the actions that can be taken. This course of action is also available where Category 2 hazards exist.</p> <p>An Improvement Notice under this section requires the recipient of the notice to carry out certain works within a specified time scale. If the notice is not complied with, the Council can carry out the work in default and recharge the person upon whom the notice was served. Breaching the provisions of the Notice is a criminal offence and the Council is able to prosecute the person who received the notice, or issue a financial penalty.</p> <p>An Improvement Notice can be suspended, varied or revoked.</p>
Sections 20 and 21	<p>Duty /Power to Serve a Prohibition Order</p> <p>Where a Council finds a property that has Category 1 hazards, it is under a duty to take the most suitable course of action. The making of a Prohibition Order is one of the actions that can be taken. This course of action is also available where Category 2 hazards exist.</p> <p>A Prohibition Order under this section requires persons to cease or limit the use of a property or part of the property for residential purposes. Prohibition Orders may also relate to the use of the premises by a specified number of people.</p>

	<p>Breaching an Order is a criminal offence and the Council is able to prosecute the person who received the notice, if he has intentionally failed to keep to it.</p> <p>An Prohibition Order can be suspended, varied or revoked</p>
<p>Sections 28 and 29</p>	<p>Duty /Power to Serve a Hazard Awareness Notice</p> <p>Where a Council finds a property that has Category 1 hazards it is under a duty to take the most suitable course of action. The service of a Hazard Awareness Notice is one of the actions that can be taken. This course of action is also available where Category 2 hazards exist.</p> <p>A Hazard Awareness Notice advises the person on whom it is served (usually the owner, but not in all cases) of the existence and the nature of the hazards identified, and the works considered to be required to address the hazard. The notice is advisory only - it does not require the recipient to take any action.</p>
<p>Section 40</p>	<p>Power to take Emergency Remedial Action</p> <p>Where a Council finds a property that has Category 1 hazards it is under a duty to take the most suitable course of action. Where they are satisfied that the hazard presents an imminent risk of serious harm to the occupiers of the property or other residential premises, it can take Emergency Remedial Action.</p> <p>This means that the Council can arrange for works to be undertaken to remove the risk of harm. Within 7 days of starting the work, they must serve a notice under section 41 of the Act on the person having control of the house explaining the action taken. The Council have powers to recover expenses incurred in taking emergency remedial action.</p>
<p>Section 43</p>	<p>Powers to make an Emergency Prohibition Order</p> <p>Where a Council finds a property that has Category 1 hazards it is under a duty to take the most suitable course of action. Where they are satisfied that the hazard presents an imminent risk of serious harm to the occupiers of the property or other residential premises, it can take Emergency Prohibition Order.</p> <p>This prohibits the use of the premises or part of the premises for residential use, with immediate effect.</p>

<p>Section 64</p>	<p>Licensing of HMOs and other houses</p> <p>The local authority must licence Houses in Multiple Occupation which meet a specified description They also have a discretion to introduce licensing schemes for other HMOs or other houses to address specific local issues.</p> <p>It is an offence to fail to licence a licensable HMO or house, for which the local authority may prosecute or issue a financial penalty.</p>
<p>Section 73</p>	<p>Power to apply to the FtT for a Rent Repayment Order</p> <p>Where a licensable HMO is not licensed, the Council can apply to the First-tier Tribunal for an order requiring the landlord of the HMO to repay any housing benefit paid in respect of the HMO.</p> <p>The Housing and Planning Act 2016 extended the power to apply for a Rent Repayment Order where a landlord has committed one of the following offences (it is not necessary that they have been convicted):</p> <ul style="list-style-type: none"> - Illegal eviction or harassment - failure to comply with an Improvement Notice - Failure to comply with a Prohibition Order - Control or management of an unlicensed HMO or house - Failure to comply with a Banning Order - Violence for securing entry under the Criminal Law Act 1977 <p>The local authority has a duty to consider applying where it becomes aware that a landlord has been convicted of a relevant offence.</p>
<p>Section 102</p>	<p>Interim Management Orders</p> <p>Where an HMO which is required to be licensed is not licensed and there is no reasonable prospect of it becoming licensed or action is considered necessary to protect the health, safety or welfare of occupants of a HMO or persons living or owning property in the vicinity, the local authority may make an Interim Management Order (IMO).</p> <p>An IMO can last for up to 12 months and enables the local authority to take steps to secure the proper management of an HMO, or to protect the health, safety or welfare of occupants of a HMO or persons living or owning property in the vicinity.</p>

	<p>An IMO gives the council rights to collect rents and carry out works to the property.</p> <p>An IMO may also be made in respect of any other dwelling, but only with the authority of the Residential Property Tribunal.</p>
Section 113	<p>Final Management Orders</p> <p>A local authority can serve a Final Management Order following an Interim Management Order, where, on expiry of the IMO, the HMO is required to be licensed and there is still no reasonable prospect of it becoming licensed or the Order is considered necessary to protect the health, safety or welfare of occupants of a HMO or persons living or owning property in the vicinity, on a long term basis.</p> <p>A Final Management order can last for up to five years.</p>
Section 139	<p>Overcrowding Notices</p> <p>Where the Council considers that excessive numbers of people are (or are likely to be) accommodated in a non-licensable HMO, they may serve an Overcrowding Notice on the owner or a person having control of the house.</p> <p>It is a criminal offence to breach an overcrowding notice, for which the Council may prosecute or issue a financial penalty.</p>
Section 234	<p>HMO Management Regulations</p> <p>Managers of HMOs are required to comply with the HMO Management Regulations which specify duties to keep the property and facilities within it safe, clean and in good repair.</p> <p>It is a criminal offence to breach the management regulations for which the local authority may prosecute or issue a financial penalty.</p>
The Smoke and Carbon Monoxide Alarm Regulations 2015	
Regulation 5	<p>Remedial Notice</p> <p>Where the Council has reasonable grounds to believe that a landlord is in breach of his/her duties under these regulations, they must serve a Remedial Notice on the landlord giving him/her 28 days in which to carry out the actions specified in</p>

	the notice.
Regulation. 7	<p>Duty to arrange remedial action</p> <p>Where a local authority is satisfied, on the balance of probabilities, that a landlord has failed to comply with a Remedial Notice, it must arrange to undertake the actions in the Notice.</p>
Regulation 8	<p>Power to issue Penalty Charge Notice</p> <p>Where a local authority is satisfied, on the balance of probabilities, that a landlord has failed to comply with a Remedial Notice, they may require the landlord to pay a penalty charge.</p>
Housing and Planning Act 2016	
Sections 14-27	<p>Power to apply for a Banning Order</p> <p>The local authority may apply to the First tier Tribunal for a banning order in respect of any person or corporate body who has been convicted of a banning order offence on or after 1 April 2018.</p> <p>The effect of a Banning Order is to ban that person/company from being involved in letting and/or management of property or being involved in any company which carries out those activities.</p>
Sections 28-29	<p>Database of Rogue Landlords and Agents</p> <p>A local authority has powers to maintain the database and must include details of any landlord who has received a banning order.</p> <p>They may include landlords who have been convicted of banning order offences, or who has received at least two financial penalties in 12 months for banning order offences, but authorities must first give notice to the landlord which may be appealed.</p>

Appendix B

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

Appendix C

Policy for assessing Fit & Proper Persons

The aim of this policy is to ensure that all licensable HMOs have appropriate arrangements in place to ensure that they are satisfactorily managed by Fit and Proper persons.

In deciding whether a licensable property can be licensed, the Council must be satisfied that there are acceptable management arrangements in place or that such satisfactory arrangements can be put in place by the imposition of conditions in the licence.

In considering whether the management arrangements are satisfactory, the Council must have regard to the following:

- The suitability of the proposed licence holder and manager (if different) and any other person involved in the management of the property; that is to say that they are in each case a 'Fit and Proper Person'
- The competence of the proposed licence holder/manager to manage the building
- The suitability of management structures
- The adequacy of financial arrangements

This Policy considers the meaning of Fit and Proper Person, the Council's approach to deciding whether a person is Fit and Proper and the factors that the Council will take into account when making such decisions.

This policy relates to applications for new licences, as well as to existing licences and applications for their renewal.

What is a fit & proper person test?

Before issuing an HMO licence, the Housing Act 2004 states that the Council must be satisfied that the proposed licence holder and manager of the property are a Fit and Proper Person. If not, the licence must be refused unless other satisfactory arrangements can be agreed.

The test is designed to ensure that those responsible for holding the licence and managing the property are of sufficient integrity and good character to be involved in the management of an HMO and that as such, they do not pose a risk to the welfare or safety of persons occupying the property.

A licence may be revoked where the Council no longer considers the licence holder to be a fit and proper person and/or that the management of the house is no longer being carried out by persons who are in each case fit and proper to be involved in its management.

What properties does this policy affect?

All properties within the Council's area requiring a licence under the Housing Act 2004.

What is meant by 'involved in the management'?

The Council must consider licence holders, managers and others involved in the management of the property.

A person involved in the management, is a person who is able to comply with any licence conditions and deal with the day-to-day issues that arise within an HMO as well as being able to deal with longer term management issues. Typically but not exclusively, these will include such matters as:

- Emergency repairs and other issues
- Routine repairs and maintenance of the property and its grounds
- Cyclical maintenance
- The management and the provision of services to the building and its grounds
- The management of tenancies or occupants, including dealing with rent matters and tenants' enquiries
- The management of the behaviour of tenants, occupants and their visitors to the property
- Neighbourhood issues (including disputes)
- Engagement with the local authority, Police and other agencies, where appropriate.

The licence holder and the manager can be two different people. Where this is the case, a decision will be made for each of them about whether they are a fit and proper person.

How will the Council decide if I am fit and proper?

Each licensing application must be accompanied by a Basic Disclosure certificate from Disclosure Scotland for each licence holder and all persons involved in the management of the licensable property.

The licence holder and manager (if different), and any other person involved in the management of the HMO must also sign the official declaration on the HMO licensing application form.

The Council may consult with other Councils and with council departments and may use any information contained within the database of rogue landlords and property agents under Chapter 3 of the Housing and Planning Act 2016.

The Council will consider a person to be 'Fit and Proper' if satisfied that:

- They have not committed an offence involving fraud or other dishonesty, or violence of drugs, or any offence listed under Schedule 3 to the Sexual Offences Act 2003 (Section 66(2)(a) of the Housing Act 2004).
- They have not practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in or in connection with the carrying on of any business (Section 66(2)(b) of the Housing Act 2004).
- They have not contravened any provision of the law relating to housing or landlord and tenant law (Section 66(2)(c) of the Housing Act 2004).
- They have not acted otherwise than in accordance with a Code of Practice under section 233 of the Act (regarding management of HMOs) (Section 66(2)(d) of the Housing Act 2004).
- They are not subject to a banning order under Section 16 of the Housing and Planning Act 2016

In addition to the above, the Council will consider any contravention of legislation relevant to housing. This may include where the Council has served a statutory notice, carried out works in default of a notice, taken a prosecution or issued a civil penalty. The nature of the contravention and its relevance to the management of an HMO and the potential harm associated with the contravention will be taken into consideration.

In relation to any contravention of a provision of the law relating to housing, the Council will take into account whether a proposed licence holder or manager:

- Has had a licence revoked or refused, or been convicted of breaching the conditions of a licence under Parts 2 or 3 of the Housing Act 2004
- Owns or manages, or has owned or managed an HMO or house which has been the subject of a control order under section 379 of the Housing Act 1985 in the five years preceding the date of the application; or any appropriate enforcement actions described in section 5(2) of the Housing Act 2004 (in relation to category 1 hazards).
- Owns or has previously owned a property that has been the subject of an interim or final management order whilst in their ownership, or a special interim management order under the Housing Act 2004.
- Is subject to a banning order under section 16 of the Housing and Planning Act 2016.
- Owns or has previously owned a property for which the Council has taken action as described in S5(2) of the Housing Act 2004, which includes the service of an Improvement Notice, Prohibition Order, Emergency Prohibition Order, Hazard Awareness Notice, Demolition Order or Emergency Remedial Action.

Each case will be decided on its own merits, taking into consideration the circumstances surrounding the contravention, where there has been more than one contravention, repeating nature of contraventions and of any evidence demonstrating good character since the contravention(s).

How will the Council make their decision?

Where there is evidence of a relevant offence, unlawful discrimination, contravention, banning order or breach of the Code of Practice, the Council may decide that the person is not fit and proper. Each case will be decided on its own merits and such evidence will not necessarily lead to a conclusion that a person is not a fit and proper person. The Council will act reasonably, proportionately and consistently in its approach to making a decision. It will take into account those factors considered to be relevant to a person's fitness to hold a licence and/or manage an HMO and disregard those which it considers are not relevant.

Consideration of 'persons associated or formerly associated' with the proposed licence holder or manager

Where there is evidence that a person associated, or formerly associated with a proposed licence holder or manager has committed any offence specified in Section 66(2) of the Housing Act 2004, that evidence may be taken into account in determining the proposed licence holder's or manager's fitness. The purpose of this requirement is to ensure that only fit and proper persons hold licences or are in any way involved in the management of licensed properties. It would not be appropriate for a licence to be granted to someone, or for someone to be the manager of a property, if that person was merely acting as a front for someone else, who would be considered to be unfit to be the manager or licence holder.

Duration

If someone is determined by the Council not to be a Fit and Proper Person, this will usually remain the case for a period of 5 years.

The Council may consider it appropriate (in the event of lesser offences or particularly relating to management failings) to apply a condition to the licence to allow the licence to operate for a reduced term, e.g. 12 months. The conduct of the licence holder can then be monitored and this taken into consideration in subsequent licensing applications. The Council will, in doing so, have regard to this policy and the applicant will need to provide sufficient evidence that they are now a fit and proper person.

If the licence holder or manager is found to not be Fit and Proper, the Council will notify them in writing.

What happens if the licence holder fails the Fit and Proper test during the duration of the licence?

Should the Council become aware that a licence holder or manager of an HMO commits an offence or breach which would result in the failure of the Fit and Proper test during the duration of the licence, the Council may revoke the licence. At all times the Council will consider all evidence available and make decisions in accordance with this policy.

Should the licence holder be subject to a banning order under section 16 of the Housing and Planning Act 2016 during the duration of an existing licence, the licence holder will fail the fit and proper test and the Council must revoke the licence.

Residential Property Tribunal

Where a proposed licence holder has been refused a licence they can appeal directly to the residential property tribunal, this application must be made within 28 days of the notification of the Council's decision.

Extent of any determination

Where any person involved in the management of a licensable property is deemed not to be a Fit and Proper person then that determination will apply not only to the licence application under consideration but to all licences to which that person is a party. This information may also be shared with other Councils which may have an involvement with the persons assessed.

Data sharing

Information obtained and used for the purpose of determining whether a licence holder or manager is a fit and proper person may be shared with other Councils, council department or statutory bodies. Licence applicants agree to this when they sign the application form.

Appendix D

Statement of Principles in respect of Smoke and Carbon Monoxide Regulations

The Council has agreed the maximum level of £5000 as a penalty for this offence

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Appendix E Statement of Principles: Determining the amount of a Financial Penalty under the Energy Efficiency (Private Rented Property) Regulations 2015

Background

From the 1st April 2018, landlords of relevant domestic private rented properties may not grant a tenancy to new or existing tenants if their property has an EPC rating of band F or G (as shown on a valid Energy Performance Certificate for the property). From the 1st April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating of band F or G (as shown on a valid Energy Performance Certificate for the property). In both cases this is referred to in the Regulations as the prohibition on letting sub-standard property.

Where a landlord wishes to continue letting property which is currently sub-standard, they will need to ensure that energy efficiency improvements are made which raise the EPC rating to a minimum of E. In certain circumstances landlords may be able to claim an exemption from this prohibition on letting sub-standard property. This includes situations where the landlord is unable to obtain funding to cover the cost of making improvements, or where all improvements which can be made have been made, and the property remains below an EPC rating of Band E. Where a valid exemption applies, landlords must register the exemption on the national PRS Exemptions Register.

The local authority enforces compliance with the domestic minimum level of energy efficiency. A local authority may check whether a property meets the minimum level of energy efficiency, and may issue a compliance notice requesting information where it appears to them that a property has been let in breach of the Regulations (or an invalid exemption has been registered in respect of it).

Where a local authority is satisfied that a property has been let in breach of the Regulations it may serve a notice on the landlord imposing financial penalties. The authority may also publish details of the breach on the national PRS Exemptions Register.. A local authority may also serve a penalty notice for the lodging of false information on the Exemptions Register.

The suggested starting penalty levels are as follows:

Letting a substandard property for less than 3 mnths	£2000
Letting a substandard property for more than 3 months	£4000

Registering false or misleading information on the exemptions register	£1000
Failed to comply with a compliance notice	£2000

The maximum fine per breach is £5000.

Principles in relation to decision to serve a penalty notice

The authority will seek to serve compliance notice on the most appropriate person in all cases where a rented property is identified to be in a Band F or G and there does not appear to be a valid exemption registered on the Exemption Register.

The authority will proceed to issue a penalty **unless** satisfactory evidence is provided within the stated compliance period that either:

- The Regulations do not apply (eg no requirement for an EPC, the tenancy is outside of the regulations)
- The person on whom the compliance notice is served is not responsible for carrying out energy efficiency measures/registering an exemption
- There have been technical or other mitigating reasons why an exemption has not been registered
- An up to date EPC shows that the property is no longer sub-standard

Principles in relation to level of penalty

The fine levels will be determined on a case by case basis by taking into account the culpability of the offender, the severity of the breach, the ability for the penalty to act as a punishment and a deterrent to repeat offending.

The recommended starting penalty levels will be initially assessed by the use of the table above, taking aggravating and mitigating factors into account.