

Huntingdonshire

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ENVIRONMENTAL & COMMUNITY HEALTH SERVICES

PRIVATE SECTOR HOUSING POLICY STATEMENT

April 2006

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HUNTINGDONSHIRE DISTRICT COUNCIL

ENVIRONMENTAL AND COMMUNITY HEALTH SERVICES

PRIVATE SECTOR HOUSING POLICY STATEMENT

1. INTRODUCTION

- 1.1 The purpose of this policy is to express the commitment and intention of Huntingdonshire District Council (“the Council”) to the principles of consistent and effective enforcement legislation relating to Private Sector Housing.
- 1.2 The policy sets out what owners, agents, landlords and tenants can expect from enforcement officers and commits the Council to good enforcement policies and procedures. It is designed to set out the arrangements by which the principles of the Enforcement Concordat, to which the Council is a signatory, will be incorporated into actions.
- 1.3 Officers who carry out the enforcement functions of the Council are authorised in accordance with the Council’s Scheme of Delegation. Appropriate means of identification will be carried.

2 GENERAL PRINCIPLES

- 2.1 To ensure the effective implementation of national and local policies, to comply with all legislative requirements and fulfil the statutory duties imposed on the Council.
- 2.2 To protect the public by reacting promptly to complaints about issues that are within the Council’s remit and by delivering a balanced programme of inspection, education and enforcement designed to achieve compliance with relevant legislation in an equitable, practical and consistent manner.
- 2.3 The Council recognises that most businesses and individuals want to comply with the law and officers will, therefore, take care to help them meet their legal obligations without unnecessary expense, whilst taking firm action, including prosecution where appropriate against those who flout the law or act irresponsibly. Prosecutions will be taken in line with the prosecution policy attached as Annex A to this report.
- 2.4 The Council recognises the importance of the precedents set by case law and government guidance and will draw upon them to ensure that effective standards of enforcement are consistently applied
- 2.5 Authorised officers will have regard to this policy when carrying out their assigned duties.
- 2.6 That departures from these policy guidelines will be exceptional and only following agreement with the Head of Environmental and Community Health Services or in his absence the Public Health Manager or the Commercial Services Manager.
- 2.7 The Council will ensure that its officers are competent with respect to the enforcement duties they have been authorised to carry out.
- 2.8 The Council will ensure that all authorised officers are impartial and are able to operate in a manner that is free from conflicts of interest.

3 PRINCIPLES OF ENFORCEMENT

3.1 The enforcement of legislation is guided by the principles of the Enforcement Concordat to which the Council is a signatory. This commits the Council to good enforcement policies and procedures. The principles of the Enforcement Concordat are incorporated into the following:

3.2 Standards

3.2.1 The Council is accountable to the local electorate for its actions and omissions. This means that it will have clear policies and standards against which it can be judged.

3.3 Openness

3.3.1 The Council will provide information and advice in plain language on the law that it enforces and will disseminate this as widely as possible. It will also be open about how it sets about its work, including any charges that are made for specific activities. Officers will discuss general issues, specific compliance failures or problems with individuals or businesses experiencing difficulties.

3.4 Helpfulness

3.4.1 The Council believes that prevention is better than cure and that its role therefore involves actively working with home owners, managing agents, landlords and tenants to advise and assist on compliance. It will provide a courteous and efficient service and the staff will identify themselves by name. Officers will provide a contact point and telephone number for further dealings with the Council and will encourage dialogue with interested parties. The Council will ensure that, wherever practicable, its enforcement services are effectively co-ordinated to minimise any unnecessary overlaps and time delays. The Council will be prepared to discuss any letters, circulars and other correspondence with individuals or businesses to whom they have been sent.

3.5 Complaints about the service

3.5.1 The Council has a complaints procedure that is accessible to all members of the public. The Council will also make available the procedure for a complaint to be made to the Local Government Ombudsman that the Council has acted with maladministration. This is without prejudice to any statutory rights of appeal that are available to businesses or members of the public which will be explained in writing by the Council.

3.6 Proportionality

3.6.1 As far as the law allows, we will take account of the circumstances of the case and the attitude of the person committing the offence when considering action. Both those whom the law protects and those on whom it places a duty expect that compliance action taken by the Council should be proportionate to the risks posed and to the seriousness of any breach of legislation.

3.6.2 In dealing with landlords and small businesses we will make a particular effort to assist them in meeting their legal obligation without incurring unnecessary expense.

3.6.3 Some legal requirements are specific or mandatory, i.e. there is no room for discretion or individual interpretation. However, others require action in line with the principles of "reasonableness" or "appropriateness" and the regulatory system often includes the concept of proportionality through such principles. Deciding what is

reasonable or appropriate to control risks involves the exercise of judgement and, when the law permits, discretion by enforcers based on sound professional judgement. Where agreement cannot be reached, the final determination of what is reasonable in particular circumstances may ultimately be made by the Courts.

- 3.6.4 Some risks may be so serious that they cannot be permitted irrespective of the economic consequences, whilst at the other extreme, some risks may be so trivial that it may not be worth spending more to reduce them. In general, risk-reducing measures must be weighted against the associated costs, unless the cost of a particular action is excessive compared with the benefit of the risk reduction in terms of its magnitude of probability.
- 3.6.5 Although not precisely defined, cost effectiveness is an implicit element of practicality when determining 'due diligence defences.' Authorised officers must have regard to costs and benefits when determining whether a landlord or managing agent has "taken all reasonable precautions and exercised all due diligence" to prevent an offence occurring.

3.7 Consistency

- 3.7.1 Consistency of approach does not mean uniformity, it means taking a similar approach in similar circumstances to achieve similar ends. In dealing with enforcement issues the council will take a consistent approach in the service tendered, response to complaints, the use of powers and decisions on whether to prosecute.
- 3.7.2 The Council recognises that in practice consistency is not a simple matter. Officers are faced with many variables such as the severity of the issue, the attitude and competence of the landlords or agents and the associated previous history of compliance. These factors may vary between individuals/businesses which otherwise appear similar. Decisions on enforcement are matters of sound professional judgement of when the Council, through its officers, will exercise discretion. It will continue to develop arrangements to promote consistency in the exercise of discretion. These will include effective arrangements for liaison with other enforcing authorities.

3.8 Transparency

- 3.8.1 Transparency means helping proprietors of landlords/agents and tenants to understand what is expected of them and what they should expect from the Council. It also means making clear why an officer intends to or has taken a particular course of action. This means distinguishing between compulsory requirements on the one hand and advice and guidance about what is desirable, but not compulsory, on the other.
- 3.8.2 This document sets out the general policy framework within which the Council will operate. Those with whom the council deals need to know what to expect when an officer visits and what rights of complaint are open to them.
- 3.8.3 In the case of informal enforcement action the officer will advise of the legal requirements, explain why they should take a particular course of action, and if asked, distinguish legal requirements from best practice advice. Officers will, if asked, confirm any advice in writing.
- 3.8.4 In cases where the service of a formal notice appears to be necessary, the authorised officer will where appropriate discuss his intentions and, if possible, resolve points of difference before serving it. The Notice will say what needs to be

done, why and by when. Details will also be given of any formal appeal procedure at the same time.

3.9 Targeting

- 3.9.1 Targeting means making sure that resources are targeted primarily on those private sector housing activities that give rise to the most serious problems and that action is focused on those who are responsible for these activities and are best placed to control them.
- 3.9.2 The Council will prioritise compliance inspections in accordance with a risk rating system based on a combination of the factors which determine the likely compliance with housing legislation and the Council's published standards.
- 3.9.3 The priorities for visits in response to complaints from the public will take into account the nature and severity of the allegations.
- 3.9.4 Where formal enforcement action is necessary, it will be directed against the person by whose act default or sufferance the breach occurred. Where several individuals share responsibility, the Council will take action against those who can be shown to be in breach.

4 METHODS OF ESTABLISHING COMPLIANCE

4.1 Education

- 4.1.1 The Council will make every effort to provide information both to landlords, owners, agents and tenants concerning the housing legislation for which the Council is the enforcing authority.
- 4.1.2 The information will be made available through the Council's web-site, leaflets, at public buildings, at landlord's forum, upon request or at the time of an inspection.
- 4.1.3 Where a requirement for information becomes evident either through a particular housing problem or because of a request then specific information will be made available in such a way as to inform those in need.

4.2 Investigations

- 4.2.1 Information on possible offences often results from complaints from tenants whose housing conditions are being adversely affected by the actions or inactions of others.
- 4.2.2 Provided that it will not prejudice their inquiries Officers will identify themselves at the premises they visit and will show their Council identification.
- 4.2.3 The Council will respond to, and where appropriate, commence investigations into complaints within 3 working days. The response time may vary according to the nature of the allegation and its severity.
- 4.2.4 The owner, landlord or agent subject to complaint may be informed of the complaint prior to, part way through or at the end of the investigation as may be considered appropriate depending upon such facts as the nature of the complaint, the need for covert surveillance and the risk of intimidation of the complainant.
- 4.2.5 Complainant's details will not be released without either the complainant's permission or following a legal requirement to do so. This will be decided on a case-by-case basis.

- 4.2.6 The complainant will be kept informed as considered appropriate of progress with the investigation and of the eventual outcome.
- 4.2.7 Where it has been considered appropriate to advise an alleged offender that an investigation is in progress that person will be kept advised of the progress of the investigation. At the end of the investigation, they will be informed of the outcome and whether the Council will take any further action.
- 4.2.8 Where as a result of a routine inspection or a complaint investigation, action of an informal or formal nature may be taken, the alleged offender will be advised as soon as practicable upon completion of the investigation

4.3 Routine inspections

- 4.3.1 Under normal circumstances, routine compliance visits will usually be arranged in advance. Spot check visits may be made without prior warning particularly when information has been obtained suggesting a breach of housing law.
- 4.3.2 The main purpose of a compliance visit is to ensure the requirements of housing law are being met.
- 4.3.3 Officers will make the purpose of the inspection clear at the start of the visit with the person in control at that time. Inspections will normally involve discussions with landlord or managing agent at the time of the visit. At the conclusion of all inspections, officers will normally offer to discuss, as may be appropriate, the findings and follow this up in writing.
- 4.3.4 The Council have a number of leaflets or guidance notes that may assist in the understanding of legal housing requirements which will normally be provided free of charge. Some written information may be available from other sources and where this is the case the officer will supply details of where the information can be obtained. Letters can be translated into other languages and interpreters can be used if considered appropriate.
- 4.3.5 Action of an informal or formal nature may be taken as a result of an inspection and the alleged offender will be advised as soon as practicable upon completion of the investigation

5 ENFORCEMENT OPTIONS

- 5.1 There are a number of enforcement options available where contraventions of housing law have been identified. Part 6 and 7 of the policy provides detailed guidance on when each of the options may be considered. The options are:-
- Take no action;
 - Take informal action;
 - Emergency Remedial Action;
 - Take formal action, e.g. Improvement, Prohibition, Hazard Awareness Notice, Remedial Action, Demolition Order, Declare a Clearance area;
 - Use formal cautions;
 - Revoke a licence;
 - Prosecute (can sometimes be taken in addition to serving notices);

- Co-ordinate action with other Agencies;
- Any combination of the above.

5.2 Generally, enforcement will be undertaken in a graduated approach, unless immediate action is required. In the first instance, a discussion of requirements will take place with the operator or appropriate person or other person by whose act default or sufferance the breach occurs.

5.3 No Action

5.3.1 Where an inspection, observation or investigation reveals that, on the basis of evidence, there is a breach of legislation then no further action will be taken if after taking into account all relevant circumstances enforcement would disproportionate or otherwise inappropriate. Confirmation of the results of the investigation will be given to any complainant and to the person or business complained of if they had previously been made aware of the investigation.

5.4 Informal Action

5.4.1 Informal action may consist of any of the following:

- Advice
- Verbal Warnings
- Warning letter requesting action and setting out the consequences of failure to comply with legal requirements.

5.4.2 Officers will use informal procedures as long as they believe such actions will secure compliance with the requirements of legislation within a timescale judged reasonable depending upon the relevant facts.

5.4.3 Offences of a less serious nature may be dealt with in a number of appropriate ways including advice, verbal warning, observations, follow up letter, a re-visit or any combination of these. Persistent failures will result in more formal enforcement action.

5.4.4 Where an officer offers verbal advice following an inspection, then if requested it will be confirmed in writing.

5.4.5 While the action taken by the officer will depend on the circumstances of any particular case, for guidance purposes only, the Council considers that informal action is likely to be appropriate in the following circumstances:

- a) The offence is not serious enough to warrant formal action e.g. an offence which can be immediately remedied and poses no risk;
- b) From the past history, it can reasonably be expected that informal action will achieve compliance; or
- c) There is reason to be confident that the breach will be dealt with promptly without the need for formal action.

5.4.6 Informal letters sent following inspections will distinguish legal requirements from advice, give a time period for compliance and state the offences being committed. They will also give the details of who to contact if there are any queries, or issues the recipient wishes to discuss.

- 5.4.7 Normally informal post inspection letters will be sent out within 10 working days of the date of inspection. Where appropriate, copies of letters will be sent to the registered head offices. Recommendations as to good practice that go beyond the basic legal minimum standard are not subject to enforcement, however adherence to good practice may influence the officer's assessment of confidence in management.
- 5.4.8 If significant contraventions of legal requirements are found, then rather than taking immediate formal action the officer may arrange for a further visit to be carried out to determine compliance. The time period between the original inspection and any revisit will be proportionate to the risks identified. Such informal action will not necessarily preclude formal action.

5.5 Formal action

5.5.1 When considering formal enforcement, account will be taken of:-

- The extent of non-compliance
- The risk(s) posed
- Failure to hold or apply for a licence;
- Failure to notify the enforcing authority of the transfer of a licence;
- Failure to comply with an informal approach to remedy breaches of legislation;
- Failure to comply with a Statutory Notice
- Cumulative breaches of legislation
- Any act of obstruction

6. HMO LICENSING

6.1 Introduction

6.1.1 This section of the policy sets out the framework for the application and licensing of Houses in Multiple Occupation (HMO). The policy will guide the Council in making fair, considered, consistent and transparent decisions that can be explained to our customers and, if necessary, defended on appeal.

6.1.2 This policy takes into account the prescription contained within the Housing Act 2004 and the relevant statutory instruments which will at times take precedence. The contents of the policy will automatically be amended at the instruction of the Secretary of State. Section 6.2 contains the general principles of the Council's Licensing Scheme and section 6.3 the specific details.

6.2 General Principles

6.2.1 Licensing: The Legal Framework

The different types of licences introduced in the Housing Act 2004 are:

- Mandatory Licensing for HMOs
- Additional Licensing for HMOs not subject to Mandatory Licensing.

- Selective Licensing of private rented property under certain conditions.

6.3 What is an HMO?

6.3.1 The Housing Act 2004 has introduced a new definition of an HMO. In summary, a house is an HMO if it is one of the following:

- **A shared house** lived in by people who belong to more than one family¹ and who share one or more facilities².
- **A house in bedsits** lived in by people who belong to more than one family¹ and who share one or more facilities².
- **An individual flat** lived in by people who belong to more than one family¹ and who share one or more facilities².
- **A building of self-contained flats** that do not meet 1991 Building Regulation standards.

¹ Family – husband, wife, co-habitee, child, step-child, foster-child, grandchild, parent, step-parent, foster-parent, grandparent, brother, half-brother, sister, half-sister, aunt, uncle, niece, nephew, cousin.

² Facilities – basic amenities: wc, wash hand basin, shower, bath; cooking facilities.

6.3.2 Exemptions:

A house is not an HMO:

- If it is occupied by only two people.
- If it is occupied by the owner (and their family if any) and one or two lodgers.
- If it is occupied by a religious community.
- If the occupiers have their main residence elsewhere³.
- If no one in the property is required to pay rent.
- If the owner or manager is a public body.
- If the owner or manager is an educational institution.
- If it is a building of self-contained flats and two thirds or more of the flats are owner-occupied.
- If the property is part of a guest house or hotel (unless an 'HMO Declaration' is made).

³ Accommodation used by full-time students while they are studying is taken to be

their main residence.

6.4 HMOs licensable under the Mandatory Scheme

6.4.1 An HMO must have a licence if all three of the following apply:

- it is an HMO
- it is three storeys or more (includes basements)
- it is occupied by five people or more.

6.4.2 All HMOs occupied by five or more persons forming two or more households on three or more floors, and otherwise not exempted are required to be licensed. HMOs consisting entirely of fully self-contained flats, which are not occupied as flats in multiple occupation, are exempt.

6.4.3 When assessing the number of storeys in a premise, account will be taken of:

- All storeys of residential accommodation, whether above or below adjoining ground level, including attics.
- Any commercial storey at or above adjoining ground level.

6.4.4 Whilst Mandatory licensing excludes most self-contained flats, the exceptions to this will be where:

- it is a single flat above commercial premises or
- where the flat itself is arranged on 3 storeys.

In both cases the flat would have to be occupied by 5 persons or more living as more than one household.

Guidance also indicates that all residential parts of a dwelling will be subject to these provisions where the property as a whole is eligible for licensing.

6.5 Exemptions from Mandatory Licensing

6.5.1 A House is exempt from mandatory licensing if:

- the whole property is in self-contained flats.
- the basement is in commercial use and there are only two residential storeys above.

6.6 Implementation

6.6.1 Mandatory licensing comes into force with effect from 6 April 2006. On that date, applications are required in respect of all HMOs subject to Mandatory Licensing.

6.7 Necessary Conditions for the Granting of a Licence

6.7.1 On receipt of a licence application, the Council must either grant, or refuse to grant a licence within a reasonable period.

6.7.2 A licence is to be granted where:

- The house is reasonably suitable for occupation having regard to amenity levels, available living space and general health and safety considerations
- Management arrangements are satisfactory. "Management arrangements" includes arrangements for monitoring and maintaining the property, ordering works, finance, and general manager competence.
- The licensee, manager and others involved in the running of the property are fit and proper persons. There are certain criteria to be met before an applicant can be considered to be a fit person to manage a HMO. When deciding whether an individual is a fit and proper person the Council has to consider whether there is evidence that they have committed an offence of fraud, dishonesty, violence or drugs or an offence under Schedule 3 of the Sexual Offences Act 2003. The Council also has to consider whether there is evidence that they have practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in connection with any business, or evidence that they have contravened housing or landlord and tenant law, or a breach of applicable codes of housing practice. An applicant will not have to declare any spent convictions. The Council reserves the right to consult with the Criminal Records Bureau and other agencies in cases of doubt.

6.7.3 In granting a licence, the Act prescribes mandatory licence conditions relating to:

- provision of annual gas safety certificates
- safety of electrical appliances and furniture
- provision and maintenance of smoke alarms
- provision of written tenancy agreements

6.7.4 In addition, the Council will:

- where it considers appropriate, impose its own licence conditions
- grant a licence for a lesser period than the standard period (normally 5 years) where it considers it appropriate
- make a charge for the costs incurred in granting a licence
- follow the appropriate route for consultation on the licence and its contents with relevant people described by the Act and within relevant guidance.

6.7.5 When the Council is satisfied that the premise is in a satisfactory condition, the people controlling and managing it are fit to do so and the management arrangements are satisfactory, a licence will be prepared for issue to either the applicant or some other person, by agreement. Where it is not satisfied that these conditions are met, the licence application will be refused.

6.7.6 Only the person having control of an HMO can be issued with a licence. A separate licence is required for each property they control.

6.8 Offences

6.8.1 The Act lays down a number of licensing-related offences and corresponding penalties, including:

- Operating an unlicensed HMO or allowing an HMO to be occupied by more persons than a licence allows: fine of up to **£20,000**
- Breach of a licence condition: fine of up to **£5,000**
- Supplying incorrect information in a licence application: fine of up to **£5,000**

6.8.2 In addition, a landlord who operates an unlicensed HMO can be made the subject of a Rent Repayment Order (RRO) by a Residential Property tribunal. An RRO requires the repayment of rent received by the landlord over a period of up to 12 months.

6.9 HMO Licensing: Policies

6.9.1 Property Standards

In approving a licence the Council will determine whether the HMO is suitable for occupation by the number of persons stated in the application form. If the arrangements are unsatisfactory, then a licence may be granted for a lesser number, or a licence condition imposed requiring that specified works be carried out.

The standards that will be considered include those relating to bathrooms, showers, WCs, wash hand basins, cooking facilities, and living space. Until such time as definitive national standards are determined the Council's own published standards for Houses in Multiple Occupation will form the basis for licensing HMOs. The exception to this will be the fire safety standards which will be assessed using the HHSRS. The guidance standard for fire safety will be those agreed by the housing authorities within Cambridgeshire and the Cambridgeshire Fire and Rescue Service.

Compliance with standards set by other legislation, for example the Approved Documents to the Building Regulations, will not imply compliance with the standards for licensing of HMOs.

6.9.2 "Fit and Proper Person"

The Council will assess whether the applicant, any manager or any person associated with them or formerly associated with them are fit and proper people to manage an HMO. A person will be considered fit and proper if the Council is satisfied that:

- they have no unspent convictions relating to offences involving fraud, dishonesty, violence or drugs, or sexual offences
- 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

- they have no unspent convictions relating to housing or landlord and tenant law
- 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 S233 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 work in default carried out by a local authority within the preceding five years
- they have not been subject to legal proceedings by a local authority for breaches of planning, compulsory purchase, environmental protection legislation or other relevant legislation
- there is no evidence of any offence referred to above having been committed within the previous five years.

An applicant must supply, as part of the application, details of any unspent convictions that may be relevant to the application and the Council reserves the right to carry out further checks with the Criminal Records Bureau and others.

Where simultaneous applications are made for the same person to be the licence holder of more than one property, only one disclosure will be necessary provided that no more than 12 months has elapsed between applications.

Where the Council have cause to question the 'fit and proper' status of an applicant, it will invite applicants to submit an explanation of their circumstances. The applicant will be required to account for the failure to comply with legislation, and satisfy the Council that this will not recur.

The decision to accept them as being a fit and proper person will be taken on the basis of:

- The severity of the breach
- The number of breaches
- The time which has elapsed since the last breach and their conduct since it occurred
- The relevance of the breach to the management of HMOs and their occupation
- The evidence that the applicant has accepted the need to conduct his business in accordance with the appropriate standards (including whether there have been satisfactory arrangements made for the repayment of debts associated with statutory responsibilities)
- The training received since the breach occurred.

6.9.3 Management Arrangements

The Council will at all times be guided by The Management of Houses in Multiple Occupation (England) Regulations 2006 as may be amended by the Secretary of

State. Specifically, the Council will require an applicant/licensee to have satisfactory arrangements and funding in place for the management of an HMO.

These arrangements include but are not limited to:

- a system for tenants to report defects, including in emergencies
- arrangements for periodic inspections to identify where repair or maintenance is needed
- arrangements to respond to defects reported by tenants and found during periodic inspections
- a protocol for dealing with anti-social behaviour occurring within the HMO by tenants or their visitors
- where the licence holder is a managing agent, the clear delegation of authority to make decisions (including those related to expenditure) on all matters concerning the health, safety and wellbeing of occupiers and good management.

In addition, the Council require the applicant/licensee to have arrangements in place for ensuring that employees, contractors and others having occasion to visit the HMO in connection with its management and/or maintenance are fit and proper persons for the functions they carry out. Licence applicants will be required to declare as part of the application that proper funding arrangements for the HMO exist. The Council will need to be satisfied that adequate financial resources to maintain the HMO are available. In verifying declarations, the Council will have regard, amongst other things to:

- outstanding debts for work in default and charges for statutory notices
- County Court judgements
- outstanding debts for Council Tax, Housing Benefit and other services

Where there are indications that the applicant will have insufficient funding or authority to manage the property, the Council will seek further clarification through the use of Credit Referencing organisations. Where satisfactory assurances cannot be provided then there is a duty to refuse the application.

6.9.4 Applications

Although it is the responsibility of the landlord to apply for a licence, there is a duty on the Council to ensure that applications are made.

Together with any direction from the Secretary of State, a valid application for an HMO licence will comprise:

- The application form, fully completed, signed and dated.
- Inclusion of all required forms or schedules, duly completed, signed and dated.
- Inclusion of all required documents as proof of compliance with relevant standards or regulations.
- The relevant fee, in full.

Incomplete applications may be accepted at the discretion of the Council. The only accepted omissions being documents of proof. The applicant must attest, in writing, to the absence of any information. The applicant must also be reminded of the consequences of not providing the information.

6.9.5 Contents of the Application Form

There are certain matters that must be included and appear on an application form, which may, from time to time, be amended by the Secretary of State. At commencement of Mandatory Licensing, these include:

- A prescribed statement telling the applicant that he must inform certain people in writing that the application is being made
- The list of people who must be informed
- The information they must be given
- The name, address, telephone number and e-mail address of the applicant, proposed licence holder, manager, person having control and any other person who has agreed to be bound by a condition on the licence.
- The address of the property to be licensed
- The age of the property (in age bands)
- The type of house for which application is being made
- Details of other properties in the housing authority area that are licensed to the proposed licence holder
- Number of storeys comprising the HMO and the levels on which they are situated
- Number of separate letting units
- The number of habitable rooms
- The number of bathrooms and shower rooms
- The number of toilets and wash basins
- The number of kitchens
- The number of sinks
- The number of households occupying the property.
- The number of people occupying the property
- Details of fire precautions, equipment and procedures including number and location of smoke alarms
- Information regarding compliance of furniture with the regulations
- Information about gas and electrical appliances and their compliance with regulations.

- Details of any building works carried out and copies of planning consent and Building Regulations approval or completion certificates.
- A floor plan of the property
- Details about any person involved in the management of the house
- Information regarding unspent convictions relevant to a proposed licence holder's fitness to hold a licence, in particular offences relating to fraud or dishonesty, violence or drugs, or offences listed in Schedule 3 to the Sexual Offences Act 2003
- Details of findings of a court or tribunal regarding any form of discrimination
- Details of any judgement against the proposed licence holder in relation to breaches of landlord and tenant law
- Information about any property owned by the proposed licence holder
- Details of any refusal by a local authority to issue a licence to the proposed licence holder
- Details of any licence condition the proposed licence holder has breached
- Details of anything the proposed licence holder has done contrary to any relevant Code of Practice concerning a property owned by him
- Details of any proceedings against any property owned by the proposed licence holder, including works in default.
- Details of any property owned by the proposed licence holder which has been subject of an interim or final management order.
- The application must contain a prescribed declaration and be signed and dated by the applicant.

6.9.6 Application Process

All necessary forms will be included in an application pack provided by the Council. There will be clear guidance on the requirements of the application included within the pack.

The pack will include:

- The application form
- A schedule containing a declaration that the applicant has notified various people.
- Guidance on making the application

6.9.7 Verification

When the completed application form is received at the Council offices the receiving officer will examine the document and enclosures to ensure that all relevant paperwork is present, signed and dated.

All the information presented on the application form will be subject to verification processes as required. This will take the form of site inspection, interdepartmental liaison, sample verification and (where there are indications of a misleading application) detailed examination of all information given. Much of this will take place after the application has been approved.

6.9.8 Contents of the Licence

A licence granted by the Council will comprise:

- A licence certificate detailing:
 - The name of the licence holder.
 - The address of the property.
 - Date of issue and duration.
 - Issuing authority.
 - Signature of issuing officer.
 - Licence number.
 - Maximum number of persons.
 - Maximum number of households.
- A schedule of conditions.

6.9.9 Licence Approval, Conditions and Duration

An HMO licence will normally run for a period of 5 years from the date of approval. The Council may, however, issue a licence for such lesser period as we consider appropriate, having regard to:

- any management deficiencies
- the need for works to be carried out to put the house into a satisfactory condition
- concerns as to the Fit and Proper Person status of the relevant person(s)

A shorter term licence may also be granted due to local circumstances, for example if the property is in a designated clearance area. Also the applicant may make a case for a shorter term licence, or the Council may be directed by the outcome of an appeal.

Before granting a licence for a period of less than 5 years, the Council will discuss its decision with the HMO licence applicant. Where a shorter licence is granted, subject to satisfactory performance, a further licence will be issued. The duration of the first and second licence periods will not exceed five years in total. No additional fee will be required for the second licence.

The Council have the right to refuse, vary or revoke a licence. When deciding on any of these courses of action, appropriate notices will be served on the relevant people giving the reasons for the action. There are rights of appeal to these notices, but barring any appeal, the action will be executed at a specified time after the appeal period.

6.9.10 Licence Fees

The Council will charge for HMO licences in accordance with a published fee. Currently this is set at £300.

6.9.11 Appeals

Applicants and licence holders have a right of appeal to the Residential Property Tribunal where they are dissatisfied with decisions made by us in relation to the issue of licences, HMO declarations, notices or orders, including variations, revocations or refusals.

The Council will consult with the relevant persons at all stages of involvement to work to a satisfactory solution to the situation at hand.

Relevant persons will be made aware at all appropriate points where there is a right of appeal, and will be told of the procedure, including time limits, of lodging an appeal. This will normally take the form of notes appended to notices or orders.

Where the Council is dissatisfied with the outcome of an appeal, it will itself consider an appeal to the Lands Tribunal or the Court of Appeal as appropriate.

6.9.12 Specific HMO Actions

The Act gives the Council a range of powers to serve notices and take action within the Mandatory Licensing framework. The following sets out how the Council can use its powers.

6.9.13 Temporary Exemption Notices (TEN)

The Council may grant a TEN where:

- the owner of a licensable HMO states in writing that he/she is acting to make it non-licensable; and
- the Council is satisfied that it will be non-licensable within 3 months of the date of receiving the written notice

In deciding whether to grant a TEN, the Council will have regard to the proposals for the property, any Planning considerations and arrangements for meeting the needs of occupiers including those likely to be displaced. The Council will only grant a second TEN in exceptional and unforeseen circumstances.

Where a TEN is not issued, the Authority must inform the manager or person having control by way of a notice, stating the decision and why it has been made, and providing details of rights of appeal.

Licences are not transferable. Provisions exist to treat the licence as a Temporary Exemption Notice for a period of 3 months following the licence holder's death. During that three month period, the representatives of the licence holder may request an extension of time of three months. If this is agreeable, the Council will serve notice to this effect.

6.9.14 Rent Repayment Orders

Where the Council is satisfied that a landlord has operated a licensable HMO without the benefit of a Licence and the rent is paid as Housing Benefit, it will usually apply to the Residential Property Tribunal for a Rent Repayment Order. In

such circumstances, the Council will advise tenants of their rights, which may include that of applying for a Rent Repayment Order in respect of non-Housing Benefit rental payments.

6.9.15 Interim Management Orders

The Council will make an Interim Management Order (IMO) where it considers it necessary to secure that appropriate measures are in place in relation to the management of an HMO which is required to be licensed.

An IMO may be made to take steps to protect the health, safety or welfare of occupants of the house, or of neighbours or people having an interest in neighbouring properties, or any other management steps the Council consider appropriate pending the grant of a licence or issue of a final management order.

The Council will make an IMO where the property is an HMO which is required to be licensed but is not and it is considered that there is no reasonable prospect of it being licensed in the near future, or that the making of an interim management order is necessary to protect the health, safety or welfare of occupants of the house or neighbouring occupants or those having an interest in neighbouring properties. This could include the threat to evict a tenant in order to avoid the need to licence a property.

When an IMO is made, the Council will take any immediate steps to protect the health, safety and welfare of the occupants of the house and its neighbours and the proper management of the house.

Whilst an IMO is made, the Council will collect rents and can deduct from this income any relevant expenditure and sums due in compensation to a third party. Any residual income, with interest if relevant, must then be paid to the landlord or other recognised recipient at a frequency determined by us.

An IMO may be varied where appropriate.

An IMO may be revoked where the house ceases to be a HMO, a licence is subsequently issued, a Final Management Order is made or in other circumstances as appropriate.

An IMO when in force is a local land charge.

The Council reserves the right to appoint an agent to fulfil these functions.

6.9.16 Final Management Orders

The Council will consider making a Final Management Order (FMO) to secure the long term management of an HMO in accordance with a management scheme detailed in the order.

A FMO can be for a maximum duration of 5 years.

A FMO when in force is a local land charge and, the Council can also apply to the Chief Land Registrar for the entry of an appropriate restriction in the register in respect of the order.

If it is necessary to protect the health, safety and welfare of the occupants and neighbours on a long term basis, FMOs will be made to replace IMOs on their expiry if the property is required to be licensed but cannot be licensed or if it is not required to be licensed.

New FMOs will be made to replace existing ones under the same circumstances.

An FMO will contain a management scheme for the property.

When a FMO is made, the Council will take appropriate steps in relation to the long term management of the property. The Council will periodically review the order and the management scheme contained in it, and consider whether keeping the order in force is the best course of action.

Following the review we may vary or revoke the order or issue a licence in respect of the property.

When a FMO is in place, the Council have the right to:

- Take possession of the house
- Do anything, and authorise a delegated person to do, which a person having an interest in the house would be entitled to do.
- Create a leasehold or occupancy licence. Such tenures cannot extend beyond the period of the FMO, nor can the notice to quit or termination be more than 4 weeks.
- Create an assured shorthold tenancy as long as it starts more than 6 months before the expiry of the order.

(The time elements in the 3rd and 4th bullet can be waived with the written consent of the person who would be managing the property if the order were not in force.)

The Council reserves the right to appoint an agent to fulfil these functions.

6.9.17 Registers

The Council will maintain registers of Licences, Temporary Exemption Notices, Interim and Final Management orders. These registers will contain all the relevant information required by regulation as well as any other information the Council consider relevant.

The information will be stored electronically with the ability to be transcribed when required.

The information will generally be made available to the public in accordance with the relevant provisions of the Data Protection Act and the Freedom of Information Act.

Personal callers will be advised of the availability of any paper versions of the relevant registers for inspection. This will be during office hours at the council building housing the offices of the department responsible for the management of the HMO licensing scheme.

6.9.18 Enforcement

The Council's enforcement policy appropriate to a Housing Health and Safety Rating System (HHSRS) is set out at section 6 and will be followed where relevant.

In deciding on the most appropriate enforcement action in any particular case, the Council will follow the parameters of this private Sector Housing Enforcement Policy.

This policy includes general powers of entry, requisition of documents, issue of documents and any other relevant matter.

HHSRS does not have to be considered before a licence is issued.

The Council will consider whether it has a duty to act under HHSRS (i.e. for an identified category 1 hazard) as soon as practicably possible but in any case not greater than 5 years following the issue of a licence.

The assessment of hazards in HMOs is made for each unit of accommodation, and each assessment will reflect the contribution of conditions in the common parts.

If an enforcement notice is served on an HMO and it reverts to a single occupation, the Council will consider whether the impact of the hazard has diminished and take appropriate action.

6.9.19 Other Requirements

As part of a general revision of housing standards legislation the existing Housing Fitness Standard is replaced by a Housing Health and Safety Rating System (HHSRS), which involves a risk assessment of the effect of housing conditions on the health of occupiers.

The HHSRS involves the assessment of 29 potential hazards and scoring their severity to decide whether improvements are needed. If more serious "Category 1" hazards are found the Council has a duty to require the owner to take appropriate action. If less serious "Category 2" hazards are found, the Council is obliged to take appropriate action as provided for within its enforcement policies. Councils are required to assess licensable HMOs to ensure that there are no Part 1 (HHSRS) functions that ought to be exercised by them. This has to be done within five years of a licence being issued. These deficiencies may be dealt with in accordance with the Enforcement Policy before a licence can be issued

7 HOUSING HEALTH AND SAFETY RATING AND ENFORCEMENT

7.1 Introduction

7.1.1 This section describes the application of the Council's Housing Enforcement Policy in relation to the Housing Health and safety rating System (HHSRS) established by the Housing Act 2004. Any housing enforcement action taken by the Council under the HHSRS, in the form of informal Notices, formal Works Notices, prosecution action or works in default will be primarily based upon an assessment of risk that a house poses to either the tenants or the general public. Any actions taken will, where appropriate, follow specific guidance on enforcement contained in Statute and through government Circulars and guidance.

7.1.2 Inspection of a house may take place for a number of reasons, for example, a complaint about a property from a private tenant or following information supplied by another agency etc. In addition, Local Authorities have a statutory duty under Section 3 of the Housing Act 2004, which requires them to consider the housing conditions in their district, determining what action to take under the Act. All authorised officers, when making enforcement decisions, will be bound by this enforcement policy.

7.2 Housing Health and Safety Rating System

- 7.2.1 The HHSRS is a tool for assessing the living conditions of a property. The system is based on 29 possible hazards to the most vulnerable occupier.
- 7.2.2 The process is structured around an evidence based risk assessment process. Local Authorities have a duty to act on Category 1 hazards. They also have the power to take action in the case of Category 2 hazards. HHSRS is a technical assessment. It is a two-stage process, addressing first the likelihood of an occurrence and then the range of probable harm outcomes. The assessment will be based on the potential occupant who is the most vulnerable to that risk.
- 7.2.3 The two stages are combined to give a rating in respect to each hazard, which is a numerical score. Hazards are then banded from A to J, A being the most severe. The HHSRS does not provide a single score for the dwelling as a whole.
- 7.2.4 A Category 1 hazard means a hazard of prescribed description that after a numerical calculation using national statistical information is banded A, B or C. Category 2 hazards are those banded D or lower.

7.3 Enforcement

- 7.3.1 All enforcement must follow the principals of the enforcement concordat adopted by the Council and prevailing Guidance from the Office of the Deputy Prime Minister (ODPM).
- 7.3.2 A full property survey will normally be undertaken as good practice to determine all the extent of HHSRS hazards, however, when urgent action is considered necessary or there is no co-operation from a landlord or owner, action will be taken based on the evidence available rather than, for instance, pursuing a warrant to effect a whole property assessment.
- 7.3.3 Before coming to any decision in respect of enforcement it is necessary to consider many criteria. These include:
- The seriousness of the offence
 - The past history of the property
 - Confidence in the management
 - The consequences of non-compliance
 - The likely effectiveness of the various enforcement options
- 7.3.4 When the Council becomes aware of a hazard or defect that is not so serious that immediate action is required, it will follow the procedure below:
- a) Informal stage: write to the owner or landlord outlining the nature of the problem and asking what remedial action will be taken to remedy the hazard or defect within 10 days (in accordance with prescribed regulation which may from time to time be amended by the Secretary of State). Where an owner or landlord indicates their intention to take action the Council will have regard to this and the timescales involved. If the action is considered to be reasonable progress will be monitored to ensure the works are carried out to a satisfactory standard. However, if no response is given or works are not progressing satisfactorily the matter will pas on to the next stage of enforcement.

- b) Prioritisation stage: will risk assess the property and prioritise action according to:
- The number of Category 1 and Category 2 hazards
 - The vulnerability of the current occupiers
 - The hazard scores
 - In the case of HMOs, whether they are licensable and the number of storeys

This stage will be monitored on a monthly basis.

- c) Formal stage: A schedule of works will be drawn up and formal notice served within 28 days of the start of the formal stage unless there are good reasons for delay.

7.3.5 There may be occasions when the Council considers that the risk to the occupant is high enough to consider formal action without the informal stage. Factors include the cost of repair, whether the current tenants are vulnerable tenants, and whether the property exercises any imminent risk to the occupiers.

7.4 Enforcement Options

7.4.1 It is for the Council to determine the most appropriate course of action in relation to the existence of hazards in all circumstances. The following options are available to the Council when considering the most appropriate action:

- Serve an Improvement Notice
- Make a Prohibition Order
- Serve a Hazard Awareness Notice
- Take emergency remedial action
- Make an Emergency Prohibition Order
- Make a Demolition Order
- Declare a clearance area

7.4.2 The Council cannot take more than one of these actions (unless it is an emergency action) at one time but can vary the action required if the action taken has proved unsuccessful. Emergency procedures cannot be used for Category 2 hazards.

7.4.3 All Notices and Orders will have a Statement of Reason attached to them. The Statement will include why the type of enforcement taken has been pursued. A copy of the Statement will accompany the Notice or Order.

7.4.4 Consideration will be given to the views of owners, landlords and tenants before formal action is taken. Examples of these considerations include:

- When an owner-occupier brings to the attention of the Council that they do not wish for formal action to be taken because they could not cope with the upheaval. In this situation the Council may need to consider whether the benefits of carrying out the works outweigh the health benefits once the work

is complete. If the hazard were one that might cause harm to a visitor, this would override this consideration.

- If the Landlord is a large registered social landlord the Council will consider whether the repair may be dealt within a large programme of work in a group repair scheme. The Council would have to be convinced that a programme of work existed.
- Tenants can sometimes worry that the landlord may increase the rent as a result of the improvements that the landlord is asked to carry out. The following may need to be considered; the type of tenancy agreement i.e. what rights the tenants have, the types of risks associated with the hazards, whether the actual tenants are vulnerable⁴, or whether children reside in the premises, etc. HHSRS is based on a potential risk to the most vulnerable group specified in the HHSRS guidance. However, if the Council decide to take action we will be taking into consideration the current occupiers and, where appropriate, any potential occupants.

⁴ Vulnerable: excludes those who could be registered as chronically sick or disabled. Registered disabled would have the potential need for specialist adaptations to make dwellings suitable. The vulnerable groups in HHSRS are based on age and this can be found in the technical guidance.

7.4.5 When enforcement action is taken and there is a change in circumstances, where the recipient is no longer responsible, the notice will be enforced on their successor. However any outstanding liabilities such as fines will remain with the original person.

7.5 Appeals

7.5.1 There is a right of appeal against any Notice, Order or Decision made by the Council. All appeals are made to the Residential Property Tribunal (RPT). The RPT may confirm, quash or vary the Notice, Order or Decision.

7.6 Improvement Notice

7.6.1 An Improvement Notice can be served on all category 1 and 2 hazards. The minimum consequence must be the removal of all Category 1 hazards, which should not recur within 12 months of the Notice. Where practicable, all Category 1 and moderate Category 2 hazards will be included in the same Notice.

7.6.2 Timescales for remedial works must be 28 days or more from the date of serving a notice. Once the work has been completed, the Notice will be revoked formally in writing. Improvement Notices are registered as local land charges.

7.6.3 Any appeal must be made within 21 days of the service of a notice.

7.7 Prohibition Order

7.7.1 A Prohibition Order can be served for both Category 1 and 2 hazards. It would become effective after 28 days. It may prohibit the use of part or all of the premises for some or all purposes or place restrictions on the numbers of occupants. A Prohibition Order would be used, for example:

- Where remedial action is unreasonable or impractical and conditions present a high risk
- To specify the maximum number of persons that should occupy a dwelling
- specify the maximum number of persons who should occupy the dwelling where there is insufficient facilities
- To prohibit the use of a dwelling to a specific group of people

7.7.2 In determining whether to serve a Prohibition Order, consideration will be given to the risk of social exclusion, whether the premises is listed or in a conservation area, whether the owner proposes to consider alternative uses, the effects on the community, and the effect on the availability of local accommodation for re-housing any displaced occupants. However, the health, safety and well being of the occupants and their visitors will be an over-riding consideration.

7.7.3 Prohibition Orders will be registered as local land charges. Any appeal against a Prohibition Order must be made within 28 days.

7.8 Suspending a Notice

7.8.1 The Council may suspend the action specified in an Improvement Notice or Prohibition Order. The notice to suspend may specify certain trigger points such as non-compliance to an undertaking given to the Council or a change in occupancy. The trigger points will be clearly stated in the notice.

7.8.2 The Council will consider the likely tenants who in the next 12 months could potentially occupy a premise before deciding to suspend a notice.

7.9 Emergency Measures

7.9.1 Where the Council are satisfied that a hazard presents an imminent risk to the occupants of premises, emergency measures can be taken. It is for the Council to determine what constitutes an imminent risk.

7.9.2 Emergency measures include emergency remedial action or an Emergency Prohibition Order.

7.9.3 Any appeal must be made within 28 days. An appeal will not prevent emergency action from being taken.

7.10 Emergency Remedial Action

7.10.1 Where a Category 1 hazard exists and there is an imminent risk of harm to the occupier, the Council may enter premises (by invite or with a warrant) to take remedial action to remove the imminent risk of serious harm. The Council will serve a notice within 7 days of taking emergency remedial action.

7.11 Emergency Prohibition Orders

7.11.1 If, in the view of the Council, a hazard involves a serious risk of harm to the occupant the Council may enter a premises to prohibit part of a premises. The order will take effect immediately. It is for the Council to consider whether the action carried out gives grounds to revoke or vary the order.

7.12 Hazard Awareness Notice

7.12.1 The Hazard Awareness Notice is discretionary and may be used as a response to a minor hazard. There is no appeal and the notice is not registered as a local land charge. It may be considered where the Landlord has agreed to the carryout repairs informally.

7.12.2 A Hazard Awareness Notice may also be considered for Category 1 hazards where the Council wish to inform an owner-occupier of a particular hazard. In consideration of this, the Council must take account of the likelihood of harm to people who may visit the property and the vulnerability of the occupants. The Council must be able to justify why it took a more lenient approach. It may not be appropriate to serve a Hazard Awareness Notice where there are risks of falling objects such as slates from a roof. This is because there would be a clear risk to those visiting the premise as well as the owner-occupier.

7.13 Demolition Orders

7.13.1 Demolition Orders provide a possible response to a Category 1 hazard and in deciding on this enforcement option, the Council will take account of:

- The health and safety of the occupants.
- The options for re-housing of occupants.
- The demand for and sustainability of the accommodation if the hazard was remedied.
- The prospective use of the cleared site.
- The local environment and the impact of a cleared site on the appearance and character of the neighbourhood.

7.14 Clearance Areas

7.14.1 The Council can declare a clearance area if it is satisfied that each of the residential buildings in the area contains one or more Category 1 hazard (Or if these buildings are dangerous/harmful to the health and safety of the occupants as a result of bad arrangements) and other buildings, if any, in the area are dangerous or harmful to the health of the inhabitants. A clearance area can also be declared in circumstances set out under section 47 of the Housing Act 2004.

7.15 Powers of Access

7.15.1 The Council will exercise its Power of Entry into properties to carry out relevant duties under the Housing Act provided that:

- The officer concerned is authorised in writing by the Council.
- The officer has given 24 hours notice to the owner or occupier of the premises they intend to enter.

7.15.2 If this proves unsuccessful, the Council will apply for a magistrates' warrant to effect the power of entry by force if necessary. The Council will also seek a magistrates' warrant if it is considered that prior warning is likely to defeat the purpose of the entry.

7.15.3 The Council also has the power to require documentation to be produced in connection with its duties contained within Parts 1 – 4 of the Housing Act 2004.

Such Notice will specify the consequences of not complying. Copies of documents can be retained by the Council.

7.16 Non-Compliance

7.16.1 If a Notice served by the Council in relation to its duties under Parts 1 – 4 of the Housing Act 2004 is not complied with, the Council will consider the following options:

- Prosecution
- Carry out the works in default
- Carry out the works in default and prosecute
- Consider whether a formal caution is appropriate

7.17 Prosecutions

7.17.1 Prosecution may result if there is a failure to comply with any Statutory Notice or Order. Authority to prosecute for non-compliance of a Notice or Order will be sought in accordance with the Council's prosecution policy as set out at the annex to this policy.

7.17.2 When the circumstances of a case are considered to warrant prosecution, all relevant information and evidence will be considered to enable a consistent, fair and objective decision to be taken, in accordance with the code for Crown prosecutors.

7.18 Power to Charge for Enforcement Action

7.18.1 Local authorities have the power to make a reasonable charge as a means for recovering expenses incurred in serving an Improvement Notice or making a Prohibition or Demolition Order. The Council will levy a charge for these services based on the time spent by officers in determining a Notice to be necessary. Charges will include, but will not be limited to time spent:

- Inspecting the premise.
- Drafting a Notice and requisite schedules.
- Administration costs in serving the Notice and securing payment.

7.18.2 A schedule will be sent detailing the time spent by Council staff in enforcing any Notice together with an invoice. Time spent carrying out work in default or remedial action will be covered separately. Officers will not charge for their time in circumstances that were not in the owner or landlord's control such as when a tenant or builders fails to attend a pre-arranged meeting.

7.19 Works in Default

7.19.1 If a Works Notice has not been complied with and/or prosecution action has been taken, the Council has the power to carry out the works in default. This course of action will be authorised by the Head of Service or by the Public Health Manager. If a decision is made to carry out works in default the officer will contact the person on whom the Notice was served indicating the Council's intentions and prepare a Specification of Works. The specifications will convey the exact works required by the Notice, e.g. quantities, quality and type of repairs, replacements, components

etc., to ensure contractors are tendering for the same work. Specifications giving alternatives for individual items are not appropriate.

- 7.19.2 If Building Regulation Approval or Planning Permission is required, appropriate arrangements will be made, including suitable plans and application forms. Works will be procured in accordance with the Council's Code of Procurement.
- 7.19.3 If further works become apparent during the course of the contract, a decision will be taken as to whether they are essential and valid in connection with the total works being undertaken.
- 7.19.4 If they can be classified as being "unforeseen" in relation to works already being undertaken, the builder will be asked to amend his price. This might involve works not originally considered necessary but subsequently found to be necessary to ensure satisfactory completion of an item and are within the terms of the notice, for example:
- An original specification for replacement of 5m² of plasterwork. Once wall coverings are removed more extensive replastering is considered necessary.
 - More extensive treatment required to cure dry rot.
 - Replacement of windows required for windows that were thought feasible to repair.
- 7.19.5 Any new works identified will require the service of new Works Notices.
- 7.19.6 On completion of the works, the contractor should submit an invoice for the works carried out which will be checked against the original tender. Any unforeseen works carried out will require additional documentary evidence. If satisfactory, it will then be passed for payment.
- 7.19.7 Any guarantees, etc procured are to be passed to the owner on payment of the outstanding debt.
- 7.19.8 Demands for payment would be similar to the above procedure and would comprise the cost of the contractor carrying out the work plus the Local Authority officer costs as indicated previously for works such as administration, site visits, mileage etc.

7.20 Risk Assessment

- 7.20.1 Where a Category 1 hazard exists, the Council has a duty to take action. However the Council does have discretion on how to prioritise action - the greater the hazard, the higher the risk to the most vulnerable occupant and the greater the urgency for action. It may be necessary for the Council to prioritise their cases on the highest risk first. The number of individual Category 2 hazards will also be considered in the officer decision.
- 7.20.2 The Council has discretion to enforce the rectification of Category 2 hazards and this will be left to the professional judgement of the authorised officer handling the investigation. In determining enforcement against such hazards, the officer will have regard to, amongst other things:
- The local Housing Stock Condition Survey findings
 - Whether the Council is already taking action to deal with Category 1 hazards in which case moderate Category 2 (D and E) hazards will be enforced at the same time.

- The potential for the hazard to become a Category 1 hazard within a short duration (under 2 years)

7.21 The HHSRS Link to HMO Licensing

- 7.21.1 The Council does not need to consider HHSRS before an HMO licence is issued. However, if during the licensing process the Council have reason to be concerned about the health and safety of the occupants and the likelihood of Category 1 hazards, it will take action as described within this policy. The Council also has a duty to ensure that no licensed property has any Category 1 hazards within 5 years of the licence being granted. The Council cannot attach conditions to the licence on the expectations of the works being carried out.
- 7.21.2 In HMOs the assessment of hazards is made for each unit of accommodation, which will reflect the contribution of conditions in the common parts.
- 7.21.3 If an Enforcement Notice is served on an HMO and it reverts to single occupation, the Council will consider whether the impact of the hazard has diminished and take appropriate action.

HUNTINGDONSHIRE DISTRICT COUNCIL

PROSECUTION POLICY

In keeping with its preventative role, the Council will use a variety of means to ensure that the law, which it is required to enforce, is complied with within the Huntingdonshire District. These means will include education, advice, guidance, warning letters, Improvement Notices, Prohibition Notices, other Statutory Notices issuing a caution and prosecution.

The Council will use discretion in deciding whether to initiate a prosecution and recognises that the decision to prosecute is significant and could have far reaching consequences on the offender. Before deciding to recommend a prosecution, they will take account the criteria set out below.

The authority to make a decision to prosecute is generally set out in the Council's Scheme of Delegation. It is usually delegated to the Director of Operational Services or Head of Service after consultation with the Chairman of the appropriate Panel or Executive Member. However in the case of failure to comply with a statutory notice prosecution is at the discretion of the Director of Operational Services or the Head of Environmental and Community Health Services.

In determining whether or not to institute legal proceedings the public interest will be of paramount consideration. The following matters will be taken into account in addition to any other matter that may be considered relevant in any particular case.

Whether the evidence available is sufficiently reliable, admissible and substantial to provide a realistic prospect of conviction, having regard to the evidential and public interest tests set down in the Code for Crown Prosecutors and any other prosecution code or government guidance for the time being relevant to the case under consideration. Such consideration will include:-

- The general record and attitude of the offender.
- The attitude and reliability of any witnesses.
- The gravity of the offence (including where the alleged offence involves a flagrant breach of the law such that public health, safety or well-being is put at risk).
- The failure by offenders to comply with lawful written directions of Officers provided the offenders having been given reasonable opportunity to comply with those directions.
- The failure by defendants to comply in full or in part with the requirements of a Statutory Notice.
- Whether it is desirable to deter others from similar failures to comply with the law.

- Whether it is more appropriate after consideration of all the circumstances and on being satisfied of a person's guilt and the offender accepting that guilt to offer a formal caution in accordance with guidance laid down in Home Office Circular 18/1994 as may be amended from time to time.

This prosecution policy also relates to the prosecution of individuals and individual managers or directors where the Council consider that a conviction is warranted and it can be shown that the offence was committed with their consent or connivance or to have been attributable to neglect on their part.

In consultation with their supervising officer and, where appropriate, the Council's legal advisor, the investigating officer(s) will gather appropriate evidence and prepare the case on behalf of the Council. Where, having considered all the evidence, it is considered that a prosecution may be warranted, a written report will be prepared for consideration and authorisation. Following written authorisation to proceed, the Council's legal service will instigate the prosecution. Regard will be had to the requirements of Police and Criminal Evidence Act 1984(PACE) and the Criminal Procedure and Investigation Act 1996 (CPIA) and the Regulation of Investigatory Powers Act 2000 (and associated orders) and any relevant procedural documents.

Officers of the local authority have a variety of powers available to them for the purpose of the discharge the functions of the enforcing authority. These include, in appropriate cases as permitted by statute, the power of entry to relevant premises at any reasonable time (or at any time if it appears that there is serious problem), to seize equipment, seize documents, and to take any other suitably authorised person or a constable and any equipment or materials required for any purpose for which the power of entry is being exercised.

If it is believed that entry may be refused, or entry by force may be necessary a warrant to enter will be sought from the magistrates. Refusal of entry, as permitted by the law, is obstruction and will lead to prosecution in all but exceptional circumstances.

Having decided to prosecute, the policy of the Council is to proceed without any unnecessary delay. Once the prosecution has been determined by a court of law, the Council will contact all its witnesses to inform them of the outcome.

DRAFT HMO LICENSING CONDITIONS

HUNTINGDONSHIRE DISTRICT COUNCIL

HMO LICENCE CONDITIONS

Mandatory Conditions in accordance with Housing Act Requirements

1. If gas is supplied to the house the Gas Safety (Installation and Use) Regulations 1998 shall be complied with in all respects. In particular an annual safety check shall be carried out by a CORGI registered engineer on each gas appliance/flue.

A current Gas Safety Certificate (obtained within the last twelve months) in respect of the house shall be supplied with the application to Huntingdonshire District Council and annually thereafter.

2. Electrical appliances made available in the house by the licence holder shall be kept in a safe condition. A declaration, on demand, shall be supplied to Huntingdonshire District Council as to the safety of such appliances.
3. The furniture made available by the licence holder shall be kept in a safe condition. A declaration, on demand, shall be supplied to Huntingdonshire District Council as to the safety of such furniture.
4. A fire detection and alarm system designed to meet the requirements of BS5839 – 6:2004 shall be installed in the house. The fire detection and alarm system in the property shall be inspected, tested and serviced (where relevant) in accordance with BS 5839 – part 1:2002, sections 6 and 7. In particular the following shall be carried out:
 - every six months checks on the system shall be carried out in accordance with clause 45.3
 - every twelve months checks on the system shall be carried out in accordance with clause 45.4
 - Where provided independent smoke alarms shall be cleaned periodically in accordance with the supplier's instructions.

Throughout the period of the licence, inspection and servicing certificates in the format recommended by BS 5839 – part 1:2002 should be submitted to the Council upon demand by an authorised officer of the Council. The above mentioned checks shall be carried out by a competent person. (NNICEIC, ECA or BFBSA contractors who are familiar with all British Standards relating to automatic fire detection systems are normally acceptable in this respect. Other contractors will be asked to demonstrate their competence to the Council before acceptance of such certificates.

A declaration, on demand, shall be supplied to Huntingdonshire District Council as to the condition and position of any smoke alarms in the property.

5. The licence holder shall supply to the occupiers of the house a written statement of the terms on which they occupy it.

6 Additional Licence Conditions Considered necessary by Huntingdonshire District Council

- 6.1 This is not an exhaustive list and the Council may attach other licence conditions which it reasonably considers necessary in order to ensure effective management, maintenance and operation of a House in Multiple Occupation.

1. The licence holder shall comply with The Management of Houses in Multiple (England) Regulations 2006 (as from time to time may be amended) and any Approved Code of Practice issued under Section 233 of the Housing Act 2004.
2. The electrical installation shall be kept safe and in proper working order and:
 - a periodic check shall be undertaken in accordance with BS 7671 at intervals of no more than five years.
 - a periodic inspection report in the format recommended in Appendix 6 of BS 7671 shall, at any time during the period of the licence, be submitted to the Council, upon demand by an authorised officer. The report shall be issued by a competent person. (A competent person in this respect includes NICEIC enrolled contractors of ECA members who regularly inspect, and are qualified to inspect domestic electrical installation systems and whose work is subject to regular assessment).
3. The licence holder shall ensure at all times, gardens, yards and other areas within the curtilage of the house are kept in a reasonably clean and tidy condition and free from rodent infestation.
4. The licence holder shall notify all occupants at the beginning of their occupancy of the arrangements in place to deal with emergency and other repairs.
5. The licence holder shall at all times comply with relevant landlord and tenant legislation.
6. The licence holder shall maintain the exterior of the property in reasonable decorative order and reasonable repair.
7. The licence holder shall make suitable and adequate provision for refuse storage and collection at the house.
8. The escape lighting in the property shall be inspected, tested and serviced generally in accordance with clause 12 of BS 5266 – 1:1999. In particular the following shall be carried out:
 - every six months checks on the system shall be carried out in accordance with clause 12.4.4
 - every twelve months checks on the system shall be carried out in accordance with clause 12.4.5

- for self contained luminaries with sealed batteries, after the first three yearly test, the three yearly test shall be carried out annually in accordance with clause 12.4.6

Throughout the period of the licence, periodic and test certificates in the format recommended by BS 5266 – part 1:1999 shall be submitted to the Council upon demand by an authorised officer of the Council. The checks shall be carried out by a competent person. (NICEIC, ECA or BFPSA contractors who are familiar with all British Standards relating to emergency escape lighting systems are normally acceptable in this respect. Other contractors will be asked to demonstrate their competence to the Council before acceptance of the certificates.)

9. The licence holder shall comply with the (following)(attached) schedule of (restrictions)(and/or)(prohibitions) on the use or occupation of the house (and/or) (particular parts of the house) by persons occupying it.
10. The licence holder shall supply occupiers with a written statement of the terms of the tenancy which incorporates details of how deposits will be held and terms of return, an inventory of contents and condition at the commencement of the tenancy; details of rent and dates due, rent payment methods, and how and when rent may be increased and provide for a means of contact for repairs, reporting etc.
11. The licence holder shall take reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house:
 - The licence holder shall ensure that each occupier is made aware of any conditions imposed by the Council relating to the behaviour of occupants, and that compliance with any such conditions is made a condition of occupancy. Those conditions are that the occupants shall:
 - not cause nuisance and annoyance to other occupants or to neighbouring residents
 - comply with arrangements made by the manager for the storage and disposal of refuse
 - not cause damage to fixtures, fittings, fire precautions, or premises
 - not use abusive or threatening behaviour
 - allow access to the agent/landlord to maintain communal areas and, with reasonable notice, to carry out works within the occupants own accommodation

DRAFT HMO STANDARDS

7 Standards for Bedsits

Each unit of accommodation shall have adequate means of space heating.

Each kitchen area shall be fitted with:

- mechanical extract ventilation;
- adequate refuse disposal facilities;
- suitably sited fire blanket;
- adequate provision of fire doors and fire detection.

Each bathroom shall be adequately heated and ventilated. Ventilation should include humidistat-controlled extraction.

Appropriate fire detection and fire precaution equipment shall be fitted to the property..

Bedsit with sole use of:	
Item	Size or number
Cooker	4 hot rings and grill and oven (one household) or 2 hot rings and grill and oven (for single person household)
Sink	Sink and drainer with hot & cold water supply
Worktop	A minimum of 1 metre run x 0.6 metre deep
Electrical sockets, over worktop	A minimum of 4 sockets, excluding those for refrigerators and other fixed equipment
Dry food storage	Single wall unit or single base unit for one person. For more than one person proportionately more storage space is needed
Refrigerator, with freezer compartment	Standard size refrigerator
Bath/shower	1 for each household with hot & cold water supply
Wash hand-basin	1 for each household with hot & cold water supply
Toilet	1 for each household

Bedsit with shared use of:

If the above facilities are not provided within each bedsit, the following shared standards apply.

Item	Size or number	
Cooker	4 hot rings and grill and oven for each 5 occupants	Where items are specified for each 5 occupants and there are 6-10 occupants
Sink	Sink and drainer with hot and cold water supply for each 5 occupants	

Electrical sockets, over worktop	4 sockets for each 5 occupants, excluding those for refrigerators and other fixed equipment	
Dry food storage	Wall unit or base unit for each occupant	
Refrigerator, with freezer compartment	one standard size refrigerator for each 5 occupants	
Bath/shower	1 for each 5 occupants with hot & cold water supply	
Toilet	1 for each 5 occupants	
Wash-basin	1 for each 5 occupants with hot & cold water supply	

Each shared kitchen must be no more than one floor away from any letting – except where a suitable equipped communal dining room is provided next to each shared kitchen facility.

For advice and more information contact:

Environmental Health Services, Pathfinder House, St Mary's Street, Huntingdon, PE29 3TN

8 Standards for Shared Houses

The accommodation shall have adequate means of space heating.
 Each kitchen area shall be fitted with:
 mechanical extract ventilation;
 adequate refuse disposal facilities;
 suitably sited fire blanket;
 adequate provision of fire doors and fire detection.
 Each bathroom shall be adequately heated and ventilated. Ventilation should include humidistat-controlled extraction.
 Appropriate fire detection and fire precaution equipment shall be fitted to the property.

Item	Size or Number	
Cooker	4 hot rings and grill and oven for each 5 occupants	Where items are specified for each 5 occupants and there are 6-10 occupants then the landlord should double the number/size to be provided
Sink	Sink and drainer with hot and cold water supply for each kitchen/5 occupants	
Worktop	0.5 metre run per occupant plus 0.5 metre x 0.6 metre deep	
Electrical sockets, over worktop	4 sockets for each 5 occupants, excluding those for refrigerators and other fixed equipment	
Dry food storage	Single wall unit for each occupant	
Refrigerator, with freezer compartment	A minimum of one standard size refrigerator for each 5 occupants	
Bath/shower	1 for each 5 occupants with hot & cold water supply	
Toilet	1 for each 5 occupants	
Wash hand-basin	1 for each 5 occupants with hot & cold water supply	

A suitable equipped communal dining room should be provided next to each shared kitchen facility.

For further advice and more information:

Contact

Environmental Health Services, Pathfinder House, St Mary's Street, Huntingdon, PE29 3TN

Phone: 01480 388302, email : EnvHealth@huntsdc.gov.uk