

Housing Enforcement Policy

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Introduction

The aim of this policy is to allow the consistent and fair enforcement of housing legislation to raise standards in the private housing sector.

The policy is based around the Enforcement Concordat produced by the Cabinet Office which this Authority has adopted. The general principles of good enforcement which are set out in the concordat are to be adhered to by the Council in its housing enforcement activities and when carrying out enforcement we will have regard to all legal requirements which may apply to our actions.

All enforcement decisions and actions will be made having due regard to the provisions of equal rights and anti-discrimination legislation. Local Authorities have extensive powers to intervene where they consider housing conditions are unacceptable. The options are mostly contained in the Housing Act 1985, the Housing Grants, Construction and Regeneration Act 1996 and the Housing Act 2004. These interventions include:

- enforcement activity (e.g. serving notices on owners to defer action, repair, demolish or prohibit the use of dwellings);
- slum clearance;
- compulsory purchase order (e.g. for empty homes);
- renewal areas;
- works in default;
- disabled facilities grants; and
- house renovation grants.

Enforcement of housing standards is an integral part of the Council's Private Sector Housing Strategy. This policy applies to Registered Social Landlords (now known as Registered Providers) as well as private sector landlords.

This policy sets out to ensure the Council undertakes its housing enforcement role in a consistent, practical, open and transparent manner. When an officer is dealing with a property which is below acceptable standards, this housing enforcement policy will be followed.

The policy takes into account the Code of Practice for Crown Prosecutors.

What to expect from the Housing Team

Landlords

- We will advise you of the legislation and help you understand how you can comply with it.
- We will advise you as to what action you need to take to comply with the legislation and ask you to respond with your proposal of how you intend to comply within a reasonable timescale.
- If we are satisfied with your proposal we will work with you to comply within agreed timescales.
- If we are not satisfied with your proposal or how the work is progressing we will initiate formal action by the service of a notice. We may carry out works in default. Ultimately we can prosecute or impose a civil penalty.
- In making the decision to prosecute or to impose a civil penalty we will have regard to how serious the offence is, the benefit of prosecution and whether some other action would be better.
- A charge will be made for the service of a notice.

Tenants

- We will expect you to advise your landlord of the issues within your property before contacting us.
- We will advise you as to what action we can take and advise you of the expected timescales.
- We will expect you to cooperate with the landlord to get the works carried out and to advise us of any action taken by the landlord.

Owners

- We will expect owners to maintain the properties they live in.
- Enforcement action will be considered if there is a serious risk to a person's health and/or the property is causing a statutory nuisance to neighbouring properties.

Owners of Empty Homes

- We will work with owners of empty homes to bring empty homes back into use.
- Enforcement action (Compulsory Purchase Order, Empty Dwelling Management Order, and Enforced Sale) will be considered if an owner does not cooperate and the empty property has an impact on the neighbourhood.

Legislation

The Housing Act 2004, (“the Act”), together with Regulations made under it, prescribes the Housing Health and Safety Rating System as the means by which Local Authorities assess housing conditions and decide on action to deal with poor housing. It is a risk assessment system of the likely effect of housing conditions on the health of occupiers. 29 potential hazards are assessed and scored for their severity. The scores for each hazard are ranked in Bands. Hazards falling into Bands A to C are more serious, and are classed as Category 1. Less serious hazards fall into Bands D to J, and are classed a Category 2. The Council must take appropriate action in respect of a Category 1 hazard, and may do so in relation to Category 2 hazards.

A ‘Category 1 hazard’ arises when a hazard reaches a score of 1000 or more under the Housing Health and Safety Rating System. A ‘Category 2 hazard’ arises when a hazard reaches a score of 999 or less under the Housing Health and Safety Rating System.

The score is based on the risk to the potential occupant who is most vulnerable to that hazard. However, in determining what action to take, the Council will not only take account of the score, but also whether the Council has a duty or discretion to act, the views of occupiers, the risk to the current and likely future occupiers and visitors and the presence of other significant hazards in the property.

The Housing and Planning Act 2016 confers additional enforcement powers as described in this Policy.

Statutory Action

The Housing Act 2004 is the principal Act covering statutory action. If a Category 1 hazard is identified, the Council has a duty to require the owner to remedy the defect. The Council has discretionary powers to deal with Category 2 hazards and the most appropriate course of action will be decided on a case-by-case basis. Where an improvement notice is served, the Council will require sufficient works to abate the hazard for five years.

It is for the Council to determine the most appropriate course of action in relation to the hazard in all circumstances. Consideration is to be given to all relevant factors of the case, to published guidance from central government & professional organisations and to the views of owners and tenants, before formal action is taken.

There are a number of different notices available to the Council which require a person, business or organisation to comply with specific requirements relating to Category 1 and 2 hazards:

Hazard Awareness Notice

- Hazard Awareness Notice relating to Category 1 Hazards; section 28
- Hazard Awareness Notice relating to Category 2 Hazards; section 29

This is used where a hazard has been identified but it is not necessarily serious enough to take more formal action. It is a way of drawing attention to the need for remedial action. This notice should not be used if the situation is considered serious enough for follow up inspections to be made. This notice is not registered as a land charge and has no appeal procedure.

Improvement Notice

- Improvement Notices relating to Category 1 Hazards; section 11
- Improvement Notices relating to Category 2 Hazards; section 12

An improvement notice will provide the most appropriate action for most Category 1 hazards where reasonable remedial works can be carried out to reduce the hazard sufficiently.

Prohibition Order

- Prohibition Orders relating to Category 1 Hazards; section 20
- Prohibition Orders relating to Category 2 Hazards; section 21

A prohibition order may be appropriate where conditions present a risk but remedial action is unreasonable or impractical e.g. where there is inadequate natural light to a room or no protected means of escape in case of fire. The order may prohibit the use of part or all of a premises for some or all purposes. It may also be used to limit the number of persons occupying the dwelling or prohibit the use of the dwelling by specific groups. In an HMO it can be used to prohibit the use of specified dwelling units.

Suspended Notices and Suspended Prohibition Orders

- Suspension of Improvement Notice; section 14
- Suspension of Prohibition Order; section 23

These may be suspended where enforcement action can safely be postponed until a specified event or time. This can be a period of time or a change in occupancy. Current occupation and wishes may be taken into account. These may also be used where there is programmed maintenance. The suspensions must be reviewed at the

very least every 12 months. The advantage of suspending a notice is that there is a record of the LHA's involvement and the situation must then be reviewed. It is also recorded as a land charge.

As an alternative to the notices and orders listed above, the Act also provides for the following options to deal with Category 1 hazards:

Emergency Remedial Action, Section 40

When the Council is satisfied that a Category 1 hazard exists on any residential premises and is further satisfied that the hazard involves an imminent risk of serious harm to the health and safety of any occupiers or visitors and no Management Order is in force under Chapter 1 or 2 of Part 4 of the Act. Emergency Remedial Action may be taken by the Authority in respect of one or more Category 1 hazards on the same premises or in the same building containing one or more flats. The action will be whatever remedial action the Council considers necessary to remove an imminent risk of serious harm.

This is likely where the Council considers it is immediately necessary to remove the imminent risk of serious harm, there is no confidence in the integrity of any offer made by the owner to immediately address the hazard, and the imminent risk of serious harm can be adequately addressed through remedial action to negate the need to use an Emergency Prohibition Order. If this action is taken, a notice will be served within 7 days of taking the Emergency Remedial Action, detailing the premises, the hazard, the deficiency, the nature of the remedial action, the date action taken, and the rights of appeal.

Emergency Prohibition Orders, Section 43

When the Council is satisfied that a Category 1 hazard exists on any residential premises and is further satisfied that the hazard involves an imminent risk of serious harm to the health and safety of any occupiers of those or any other residential premises and no Management Order is in force under Chapter 1 or 2 of Part 4 of the Act, action may be taken by the Authority in respect of one or more Category 1 hazards on the same premises or in the same building containing one or more flats. The order specifies prohibitions(s) on the use of part or all of the premises with immediate effect.

This is likely where the imminent risk of serious harm cannot be adequately addressed through the use of emergency remedial action for whatever reason. Where this action is taken the Council will, if necessary, take all reasonable steps to help the occupants find other accommodation when the tenants are not able to make their own arrangements.

Demolition Orders, Section 46 of The Housing Act 2004, and part 9 of The Housing Act 1985

When the Council is satisfied that a Category 1 hazard exists in a dwelling or HMO which is not a flat, and a Management Order is not in force, or in the case of a building containing one or more flats where the Council is satisfied that a Category 1 hazard exists in one or more of the flats contained in the building or in any common parts of the building, and the circumstances of the case are circumstances specified or described in an Order made by the Secretary of State. At the time of writing this policy, no such order has been made.

Clearance Areas, Section 47 of the Housing Act 2004, and part 9 of the Housing Act 1985

This may be declared when the Council is satisfied that each of the residential buildings in the area contains a Category 1 hazard and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area, or when the Council is satisfied that the residential buildings in an area are dangerous or harmful to the health or safety of the inhabitants of the area as a result of their bad arrangement or the narrowness or bad arrangement of the street and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area.

Rent Repayment Orders, Section 40 of The Housing and Planning Act 2016

This confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed certain offences, including: failure to comply with an improvement notice; failure to comply with a prohibition order; control or management of an unlicensed HMO; breach of a banning order. A rent repayment order is an order requiring the landlord under a tenancy of housing in England to: repay an amount of rent paid by the tenant, or pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

Statement of Reasons

All Notices and Orders will have a Statement of Reason attached to them as appropriate. The Statement should include why one type of enforcement was taken over another. A copy of the Statement must accompany the Notice or Order. Before formal enforcement action is taken regarding a fire hazard, the Council will consult with the Fire Authority regarding works required to abate the hazard.

Rights of Appeal

There is a right of appeal against most notices, orders or decisions made by the Council. Where there is an appeal, the appropriate authority may confirm, quash, vary or suspend any notice, order or decision.

Vacated Premises

In cases where properties are subject to a statutory notice and the property is subsequently vacated, all Notices or Orders will be reviewed to consider whether the notices or orders may be varied, suspended or revoked. The Council will seek to deter landlords from undertaking retaliatory eviction and will not consider that removal of a tenant achieves compliance with any Notice served, except in overcrowding situations where it was a specific requirement of the notice.

Charging for Notices and Recovery of Costs

Local Authorities can make a charge as a means of recovering expenses incurred in serving an Improvement Notice, making a Prohibition Order, serving a Hazard Awareness Notice, taking Emergency Remedial Action, making an Emergency Prohibition Order or making a Demolition Order under the Housing Act 2004. These costs are in relation to re-inspection of premises, the subsequent consideration of action to be taken and the service of Notices etc. No maximum charge has been set by a Government in England. In South Lakeland the standard charge for a Housing Act Notice will be £308.00 for each Notice or Order made, although a lower charge or no charge being made may be determined by the Principal Housing Standards Officer depending on the personal circumstances of the person or persons against whom the enforcement action is being taken.

In accordance with Sections 49 and 50 of the Housing Act 2004, the Council will exercise the right to charge and recover the reasonable expenses incurred in taking enforcement action when serving the following notices:

- an improvement notice;
- a hazard awareness notice;
- a prohibition order;
- a suspended improvement notice or suspended prohibition order;
- emergency remedial action notices;
- making an emergency prohibition order; and
- making a demolition order

Costs will only be waived in exceptional circumstances such as deficiencies caused by tenant neglect and owner occupied premises and only at the discretion of the Principal Housing Standards Officer.

From the time that a 'demand for payment' becomes operative the sum will be recorded as a legal charge against the property which is a local land charge. The charge will remain on the property until the sum is repaid in full.

When enforcement costs exceed £500, the Council will normally exercise its rights and remedies under the Law of Property Act 1925 (c.20) which includes by deed having powers of sale and lease, or accepting surrenders of leases and of appointing a receiver to recover costs.

When enforcement costs do not exceed £500, the Council will seek to recover enforcement costs through the small claims court and will use court remedies such as the use of the court bailiff to recover enforcement costs.

The Council will make a charge to cover the cost of carrying out a review of Suspended Improvement Notices or Suspended Prohibition Orders, and for serving a copy of the Council's decision on a review and that charge will also be registered as a charge against the property.

All enforcement costs incurred and recovered will be based upon the activities listed within section 49 of the Housing Act 2004, and will be charged at an hourly rate. The hourly rate will be based on the actual cost incurred to the Council of performing the chargeable activity.

Issuing Monetary and Civil Penalties and Banning Orders

Under The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014, where an enforcement authority (local authority) is satisfied on the balance of probabilities that a person has failed to comply with the requirement to belong to a redress scheme under article 3 (requirement to belong to a redress scheme: lettings agency work) or article 5 (requirement to belong to a redress scheme: property management work), the authority may require the person to pay a **monetary penalty** of such amount as the authority may determine, up to a maximum of £5,000.

The Governments expectation is that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances. Therefore, South Lakeland District Council shall charge a penalty of £5,000 in respect of a failure to belong to a redress scheme,

unless extenuating circumstances exist. Such extenuating circumstances shall be decided at the discretion of the Principal Housing Standards Officer after discussion with the Housing Strategy and Delivery Manager.

Under The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, enforcement authorities (local authorities) are required to issue a remedial notice where they have reasonable grounds to believe a landlord has not complied with one or more of the requirements of the regulations. The landlord must comply with the notice within 28 days. If they do not, the local authority must carry out the remedial action (where the occupier consents) to ensure the requirements in the regulations are met and can issue a **civil penalty** of up to £5,000. South Lakeland District Council, working in partnership with the other 5 Cumbrian Authorities, have agreed a penalty of £1000 plus costs to be charged in such circumstances, which is based on a Statement of Principles agreed by Cabinet in January 2016. This can be found in Appendix 1.

The Housing and Planning Act 2016 includes the following measures to tackle rogue landlords and property agents:

An alternative to prosecution for certain offences under the Housing Act 2004, whereby local housing authorities will be able to impose a civil penalty for the following offences:

- Failure to comply with an Improvement Notice;
- Offences in relation to licensing of Houses in Multiple Occupation;
- Offences in relation to licensing of houses under Part 3 of the Act;
- Offences of contravention of an overcrowding notice;
- Failure to comply with management regulations in respect of Houses in Multiple Occupation.

Banning orders (to be introduced from 1 April 2018) meaning an order, made by the First-tier Tribunal, banning a person from: letting a house in England; engaging in English letting agency work; engaging in English property management work; or doing two or more of those things. A local authority in England may apply for a banning order against a person who has been convicted of a banning order offence (as specified in regulations made by the Secretary of State). The local authority can impose a civil penalty up to £30,000 for breach of a banning order. South Lakeland District Council will apply a civil penalties in line with Appendix 2.

Database of rogue landlords and property agents (to be introduced from 1 April 2018) whereby local housing authorities are responsible for maintaining the content of the database. Local housing authorities must make an entry in the database in respect of a person if: a banning order has been made against the person following an application by the authority, and no entry was made under section 30, before the banning order was

made, on the basis of a conviction for the offence to which the banning order relates.

Works in Default of a Statutory Notice

The Council will consider undertaking Works in Default of a statutory notice, either with or without agreement, subject to the following conditions:

- The person responsible for undertaking the works has not complied with the enforcement notice to which the works relate; and
- Works in default powers are provided by the specific legislation being used in relation to the case; and
- The Council will register a charge against the premises for the costs incurred in undertaking the works.

In the majority of cases the council will seek to recover the costs incurred in undertaking works.

Interest Charge for Works Undertaken in Default of Notice

In accordance with the powers available under each specific piece of legislation at our disposal, expenses incurred by the Council by undertaking works in default of a statutory notice will carry a simple interest rate charge above the Bank of England base rate, where the legislation allows interest to be charged. The interest rate charge will commence from the date that the demand for payment notice becomes overdue and will remain until payment of all sums due.

Non-Statutory Inspection Charges

The Private Sector Housing Standards team will charge for inspections that are non-statutory. These include inspections relating to fitness of dwellings for the purposes of immigration requests. The current charge for this service is £102.

Under the Right to Rent, introduced in the Immigration Act 2014, private landlords, including those who sub-let or take in lodgers, must check the right of prospective tenants to be in the country to avoid being issued with a penalty of up to £3000 per tenant. Enforcement rests with the Home Office.

Owner Occupiers

Other than in exceptional circumstances, the Council expects owner-occupiers, including long leaseholders, to take their own action to remedy hazards at their own properties. The Principal Housing Standards Officer will decide whether there are exceptional circumstances in a particular case to justify intervention.

Occasions will arise whereby Category 1 hazards are identified in owner occupied properties where the owner is not eligible for financial assistance, is unwilling to use financial assistance, or where no financial assistance is available from the Council. The duty to take action, as required under Section 5 of the Housing Act 2004 still applies. However it would not generally be in the public interest to enforce compliance unless the hazard in question was adversely affecting an adjoining property or was endangering the health and safety of the public or visitors to the property (such as Postal Service workers).

Where it appears that there would otherwise be little prospect of such a hazard being remedied within the forthcoming 12 months (for example through a grant to install central heating / insulation to remedy the hazard of excess cold) then the hazard will be brought to the attention of the owner by the service of a Hazard Awareness Notice. No charge would generally be made for the service of such a notice. This fulfils the Council's duty under section 5 of the Housing Act 2004 but has no subsequent enforcement consequences.

In some exceptional cases, in line with the guidance given by the HHSRS Enforcement Guidance, it will be necessary to serve an Improvement Notice or Suspended Improvement Notice in respect of hazards in owner occupied properties. No charge would generally be made for the service of such a notice and the Service will work with the owner to offer advice and assistance in complying with the requirements of the notice. Other examples of exceptional cases where the Council may take enforcement action include:

- Vulnerable elderly people who are judged not-capable of making informed decisions about their own welfare.
- Vulnerable individuals who require the intervention of the Council to ensure their welfare is best protected.
- Hazards that might cause harm to persons other than the occupants.
- Serious risk of life-threatening harm such as electrocution or fire.
- Any other exceptional case determined by the Principal Housing Standards Officer.

Registered Social Landlords / Registered Providers

RSLs (now called Registered Providers (RPs)) exist to provide suitable and properly maintained accommodation for their tenants. They are managed by Boards (which typically include tenant-representatives) and their performance is scrutinised by the Homes and Communities Agency. RPs normally employ staff to both manage and maintain their properties and will usually have written arrangements for reporting problems, setting out the response times they aim to achieve, and also for registering any complaints about service-failure.

On this basis the Council will not normally take formal action against an RP unless:

- They are satisfied that the problem in question has been properly reported to the RP; and
- The RP has then failed to take appropriate action within a reasonable timescale, taking into account its published or other realistic response targets.

If the Council determines that it is appropriate to take action it will then normally notify the RP that a complaint has been received and/or a hazard identified and seek the RPs comments and proposals. Only in cases where it judges that an unsatisfactory response has been received will the Council take further action, and will then determine which of the available enforcement options is the most appropriate, taking into account the facts of the case. Any exceptions to this approach will be determined by the Principal Housing Standards Officer and the Housing Strategy and Delivery Manager, whom will liaise with the RPs senior management to escalate the case where unsatisfactory progress is being made in dealing with any complaint.

Where we have identified hazards and the Registered Provider has a programme of works to improve or make their stock decent, the officer will take into account the programme when determining the most appropriate course of action, and will liaise with the RP over any works necessary to deal with category 1 and 2 hazards in advance of the planned improvements. In particular, with the Space and Crowding hazard, account will be taken of the availability of suitable alternative accommodation and the priority given to the allocation of alternative accommodation for tenants living in overcrowded conditions which are the subject of a Category 1 or high Category 2 hazard.

Management Orders

If a property should be licensed, but for whatever reason(s) there is no reasonable prospect of granting a licence, the Council must introduce a Management Order. The Council also has a duty to make an Order where the health and safety condition as described in the Section 104 of the Act is met. Similarly, the Council can also decide to

take over the management of some empty properties in order to bring them back into use and those properties where it is decided the Council should intervene for anti-social behaviour reasons.

Management Orders effectively mean that the Council (or its Agent) takes over the running of the property as if it were the landlord, including collecting rents, forming tenancies, carrying out repairs and other management matters; the duties vary between the different orders that can be made. This does not affect the ownership of the property; the owner retains certain rights depending on the type of order including receipt of surplus rental income. Relevant costs are recoverable.

Schedule 3 of the Housing and Planning Act 2016 amends the Housing Act 2004 to allow interim and final management orders to be made in cases where a banning order has been made.

Interim Management Orders

An Interim Management Order (IMO) lasts for no longer than 12 months and will be made on a property if it is a licensable HMO but does not have a licence. The Council must make an IMO if they do not anticipate that the HMO will be licensed in the near future or because the Council have revoked the license. The expiry date of the IMO will be determined when it is made.

Final Management Orders

Final Management Order (FMO) lasts for no longer than 5 years and must be made on expiry of the IMO where a licence cannot be granted. When a FMO expires a new one may be made if necessary.

Special Interim Management Orders

A Special Interim Management Order (SIMO) is an Order authorised after a successful application to a Residential Property Tribunal (RPT) where circumstances fall within a category of circumstances prescribed by the national authority and it is necessary to protect the health, safety and welfare of occupants, visitors or neighbours. A FMO can follow a SIMO to protect persons on a long term basis as described in the Order

Interim Empty Dwelling Management Order

An Interim Empty Dwelling Management Order (interim EDMO) is an Order authorised after a successful application to a RPT. The dwelling must have been wholly unoccupied for at least two years and there is no reasonable prospect that the dwelling will become occupied in the near future. An interim EDMO enables the Council to take steps to ensure, with the

consent of the proprietor, an empty dwelling becomes occupied. An interim EDMO lasts no longer than 12 months.

Final Empty Dwelling Management Order

A Final Empty Dwelling Management Order (Final EDMO) may replace an Interim EDMO if the Council feels that unless a Final EDMO is in place the dwelling will become or remain empty. Where the dwelling is already unoccupied the Council must have taken all appropriate steps under the interim EDMO with a view to ensuring the dwelling becomes occupied. A final EDMO lasts for 7 years; once a Final EDMO expires a new one may be made if necessary. Orders can be varied or revoked in accordance with the provisions of Part 4 of the Act.

The Council is under a duty to issue Interim and Final Management Orders where necessary. Officers will instigate this action where necessary but as a last resort.

Additional Enforcement Powers

The following tools are also available where the Housing Act 2004 measures are not appropriate, or do not sufficiently deal with the problem.

Environmental Protection Act 1990, Section 80

Notices can be served if the officer is of the opinion that there is a statutory nuisance at the premises. The premises must be deemed prejudicial to health or a nuisance.

Building Act 1984, Section 59/60

Used to deal with defective drainage issues in existing buildings.

Building Act 1984, Section 64/65

Used where sanitary conveniences are insufficient or in need of replacement and are considered prejudicial to health or a nuisance.

Building Act 1984, Section 76

Used where the property is so defective so as to be prejudicial to health. This notice notifies the person responsible of the local authority's intention to remedy the problem (similar to work in default).

Public Health Act 1936, Section 45

Used where there are defective sanitary conveniences due to their repair and/or cleansing ability. They must be in such a state as to be prejudicial to health or a nuisance.

Public Health Act 1936, Section 83

Used where a property is in such a state as to be in a filthy or unwholesome condition or verminous.

Local Government (Miscellaneous Provisions) Act 1976, Section 33

Used where services such as the water supply are due to be, or have been, cut off to a domestic property.

Local Government (Miscellaneous Provisions) Act 1982, Section 29 (Notice of Intended Entry)

Used to prevent unauthorised access (for example broken windows, doors etc.) to get the owner to secure the premises.

Prevention of Damage by Pests Act 1949, Section 4

Used where there is evidence of or harbourage of rats or mice at a property.

Housing Act 1985 (as Amended)

Some provisions within the 1985 Act have not been revoked and may be appropriate to use in some circumstances. In particular the overcrowding provisions are still available and can be used where the 2004 Act is not sufficient. The other provisions relate to houses in multiple occupation (HMO) and the Housing (Management of Houses in Multiple Occupation) Regulations 1990. These have been revoked with regards to all types of HMO, except certain converted blocks of flats. These regulations can be used to deal with disrepair and management issues of this type of HMO only.

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

These regulations have been introduced to deal with all other types of HMO other than those mentioned above. Therefore, all licensable HMOs, smaller HMOs and flats in multiple occupation are covered by these regulations. Only self-contained flats are exempt as they

fall under the regulations mentioned above. The regulations cover the management and repair of the HMO. There are no notice provisions with these regulations therefore if a decision is made to take action under these regulations, the Officer must go straight to prosecution or impose a civil penalty.

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014

This order requires a person who engages in property management work to be a member of a redress scheme for dealing with complaints in connection with that work.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

These regulations were introduced to ensure that private sector landlords install and maintain at least one smoke alarm on every story of their rented properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire or wood burning stove). It also makes it the landlords' responsibility to ensure that the alarms are in working order at the start of each new tenancy. In addition, the regulations amend the conditions which must be included in a licence under Part 2 or 3 of the Housing Act 2004 ("the 2004 Act") in respect of smoke and carbon monoxide alarms.

Local Government (Miscellaneous Provisions) Act 1976, Section 16

Used to formally request information about a premises or a person.

Police and Criminal Evidence Act 1984, Criminal Procedures and Investigation Act 1996, Regulation of Investigatory Powers Act 2000, Investigatory Powers Act 2016

Used in relation to interviews under caution, prosecution and gathering evidence.

Energy Efficiency (Private Rented Property) Regulations 2015 (Energy Act 2011)

These regulations make it unlawful for landlords to: grant a new tenancy or renew an existing tenancy of a private rented property with an energy performance certificate (EPC) rating of F or G from 1 April 2018; continue to let a domestic private rented property with

EPC ratings of F or G from 1 April 2020. Landlords who do not comply with the regulations face a fine of up to £5000.

Powers of Entry and Power to Require Information

Councils have the power of entry to properties at any reasonable time to carry out its duties under **Section 239 of the Housing Act 2004** provided that the officer has:

- Written authority from an appropriate officer stating the particular purpose for which entry is authorised.
- Given 24 hours' notice to the owner (if known) and the occupier (if any) of the premises they intend to enter.

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

Councils also have powers under **Section 235 of the Housing Act 2004** to require documentation to be produced in connection with:

- Any purpose connected with the exercise of its functions under Parts 1-4 of the Housing Act 2004.
- Investigating whether any offence has been committed under Parts 1-4 of the Housing Act 2004.

Councils also have powers under **Section 237 of the Housing Act 2004** to use the information obtained above and Housing Benefit and Council Tax information obtained by the Council to carry out its functions in relation to these parts of the Act.

Informal Action

While formal enforcement action is a necessary and important part of the enforcement process, it should generally be viewed as a last resort. In going about their private sector housing activities where the Council identifies premises that contain a minor hazard or hazards, the Council will normally consider the case for drawing this informally to the attention of the owner or landlord as the case may be.

Where the Council has expressed an informal opinion it will provide a written explanation to the owner or landlord. Such written explanation will include an explanation of:

- the remedial action which in the Council's opinion is needed and the timescale in which the Council considers such action needs to be taken;
- why the Council considers remedial action needs to be taken and the nature of any enforcement action which may be taken by the Council in the future if the owner or landlord does not undertake the works, including explanations of the right to make representations before, and the right of appeal against such action.

The tenant will be given advice and a one-off letter will be sent to the landlord and if the works are of a minor nature, the case will then be closed.

What is Expected of Tenants

Before considering taking any action in respect of a tenanted property the tenant(s) will normally be required to contact their landlord about the problems first. This applies to all tenants. Legislation covering landlord and tenant issues require that tenants notify their landlords of any problems with the property. This is because landlords can only carry out their obligations under the legislation once they have been made aware of the problem. Copies of correspondence between the landlord and tenant should be provided for officers.

In certain situations tenants will not be required to write to their landlord first, e.g.:

- where the matter appears to present an imminent risk to the health and safety of the occupants;
- where there is a history of harassment/threatened eviction/poor management practice;
- where the tenant is old and frail or otherwise vulnerable, e.g. where there are pre-school children in the household;
- where the tenant's first language is not English and this is likely to cause them difficulty;
- where the tenant could not for some other reason be expected to contact their landlord/managing agent;

Tenants are responsible for keeping Officers informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.) which may affect the action the Council is taking or considering taking.

Situations where a service to tenants is not provided

Where any of the following situations arise consideration will be given to either not providing a service or ceasing to provide a service:

- Where the tenant(s) are, of their own free will, shortly to move out of the property;

- Where the tenant(s) unreasonably refuse access to the landlord, managing agent or landlord's builder, to arrange or carry out works;
- Where the tenant(s) have, in the opinion of the Council, clearly caused the damage to the property they are complaining about, and there are no other items of disrepair, etc;
- Where the tenant(s) only reason for contacting the Council is in order to get re-housed; if a tenant is not interested in their present accommodation being brought up to standard that service will not be provided;
- Where the tenant(s) have requested a service and then failed to keep an appointment and not responded to a follow up letter or appointment card. However account will be taken of the access/disability problems faced by some households.
- Where the tenant(s) have been aggressive, threatening, verbally or physically abusive towards Officers;
- Where there is found to be no justification for the complaint, on visiting the property;
- Where the service has determined, through Council procedures, that the complainant is 'vexatious';
- Where the tenant unreasonably refuses to provide the Council with relevant documentation.

Licensing of Houses in Multiple Occupation

Under the Housing Act 2004 certain types of House in Multiple Occupation (HMO) will require a license to operate. An HMO is a building occupied by more than two households as defined in Part 2 of the Housing Act 2004.

Certain HMO's , as determined by legislation, must be licensed. Regulations and guidance published by the Department of Communities and Local Government will be followed in the administration of the Council's HMO Licensing duties and enforcement of satisfactory conditions and standards.

Subject to the introduction of secondary legislation the following will be applied:

Extension of the scope of mandatory HMO licensing:

- It will apply where certain HMOs are occupied by five persons or more in two or more households, regardless of the number of storeys.
- This includes any HMO which is a building or a converted flat where such householders lack or share basic amenities such as a toilet, personal washing facilities or cooking facilities.
- It also applies to purpose built flats where there are up to two flats in the block and one or both are occupied as an HMO.

Minimum room sizes for sleeping accommodation:

- The absolute minimum sizes of rooms that may be used for sleeping (as defined in the Regulations). The Council will, as part of its statutory duties, specify which rooms in an HMO are suitable for sleeping accommodation, and by how many adults and children.
- Where a room does not meet these conditions, the Council will give the landlord a reasonable period of time to remedy the failure and during this period they will not face any sanctions for a breach of the condition (unless the breach was deliberate, in which case sanctions apply).

Refuse disposal and storage facilities in licensed HMOs:

- The licence holder will be required to comply with the Council's scheme for the provision of facilities for the proper disposal and storage of domestic refuse.

Local Authorities have discretionary powers to licence other HMO's which fall outside the mandatory requirement and other types of residential properties in certain circumstances. However, problems in the Housing Stock in South Lakeland are not such as to require the use of these discretionary powers.

Local Authorities are able to make a charge for the cost of providing an HMO licence. The minimum charge for a licence is £368; each additional letting room above five rooms would cost an additional £25, up to a maximum charge of £600. *2018/19 charges to be inserted once approved by Council (annual budget meeting).*

Following licensing, HMOs will be prioritised for assessment under the HHSRS. The owner must deal with all Category 1 hazards within a suitable timescale. If they do not, then the Council is expected to use their enforcement powers to improve the property. Applicants will be informed of this requirement when the licence is issued and information made available to help them identify and deal with Category One Hazards.

The Council will consider service of a Temporary Exemption Notice (TEN) where a landlord is, or shortly will be, taking steps to make an HMO non-licensable. A TEN can only be granted for a maximum period of three months. A second three-month TEN can be served in exceptional circumstances. Where a licensable HMO is not licensed, the landlord cannot serve notice to quit until the HMO is licensed.

Where a landlord fails to licence an HMO, the Council can consider taking a prosecution case to the Magistrates' Court. On conviction for failure to licence, the RPT has the power to make a Rent Repayment Order requiring that up to 12 months' rent is repaid to the tenant or to the Council where a tenant is on housing benefits. The licensee has a right of

appeal to the RPT against refusal to licence, licensing conditions and the maximum number of occupiers or households specified on the licence.

Where there is no prospect of an HMO being licensed, the act requires that the Council use its interim management powers. This enables the Council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. In extreme cases this can be extended to five years, with the Council also having the power to grant tenancies.

If the Council finds that there has been a change of circumstances in an HMO since it was licensed, it has the power to vary the licence. If there is a serious breach or there are repeated breaches of the license conditions or the licensee or manager are no longer fit and proper persons, the licence can be revoked. The licence can also be revoked if the property is no longer a licensable HMO or if the condition of the property means it would not be licensable were an application to be made at the later time.

General

This policy will form part of the Council's Housing Strategy.

For the purpose of enforcement, the Principal Housing Standards Officer is authorised for the purposes of exercising any and all of the statutory powers and duties contained in the Housing Act 2004 and any Regulations, Orders, Byelaws and statutory instruments from time to time made thereunder, including the entry of premises, service of Notices and Orders and the granting or refusal of licences in Section 64 of the above Act.

This authorisation does not extend to the provisions in the Housing Act 1985 related to Demolition Orders and Clearance Areas.

Situations may arise where there is another authority or body with enforcement powers under other legislation regarding the unsatisfactory matter which may be dealt with by housing legislation. In this case full consultation will be made with that authority or body before housing enforcement action is taken.

Monitoring and Review

In accordance with the Regulators' Compliance Code, the Council will keep its regulatory activities and interventions under review, with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose.

This document will be subject to regular review. Changes will be introduced to accommodate new legislation, guidance and local needs.

The Council's service standards in respect of its housing enforcement role is shown at Appendix 2.

The Council's Principal Housing Standards Officer is responsible for ensuring that officers implement the service in accordance with the Policy. Procedures are in place which include details of how checks are made to ensure compliance with the Policy. Any evidence of non-compliance, both internally and externally, will be reported to the Housing Strategy and Delivery Manager to take appropriate action

Contacts

If you have any comments or queries on this policy, please contact:

Principal Housing Standards Officer

South Lakeland District Council

South Lakeland House

Kendal

Cumbria

LA9 4DQ

Telephone 01539 733 333

Email: housingstandards@southlakeland.gov.uk

Sources of Information

The Regulators' Compliance Code (Statutory Code of Practice for Regulators)

available at: <http://www.berr.gov.uk/files/file45019.pdf>

or phone the Department for Business, Enterprise & Regulatory Reform on 020 7215 5000

The Housing Health and Safety Rating System – Enforcement Guidance

available at: <http://www.communities.gov.uk/documents/housing/pdf/safetyratingsystem.pdf>

or by phoning Communities and Local Government on 020 7944 4400

Appendix 1

Calculating Fixed Penalty Charges: The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

The Regulations require a statement of principles to be followed in order to determine the amount of a penalty charge.

The following principles were considered:

1. That the Regulations would not have allowed a maximum fine of £5000 had it not been envisaged that this is the amount considered fair for Councils to levy.
2. That the cost of the remedy will be relatively low in most cases and that the amount of the penalty charge should reflect a disregard of the duty to remove the risk to life arising from a domestic fire.
3. In calculating the amount of the penalty charge it would be fair to work on the perceived average costs involved within the District.
4. It is necessary to fix and publish the charge that could be expected to be paid so that there is forewarning of the consequences of committing an offence.
5. A reduction to the amount of the penalty charge will be made where the amount is paid before remedial works have to be undertaken and/or where a Court Order does not have to be applied for to recover payment.

The amount of a penalty charge will comprise the following elements:

1. An amount for the average length of time it will take officers of the Council to:-
 - Determine that the standard of the Regulations have been contravened
 - Prepare and send a remedial notice to the landlord
 - Arrange for remedial action if the landlord has not complied with the remedial notice.
 - Serve a penalty charge notice if the landlord has not complied with the remedial notice.
 - Facilitate an appeal against the penalty charge notice
 - Process the payment of the penalty charge amount
 - Recover the penalty charge via a Court Order if the landlord does not pay voluntarily.
2. A level of fine that the offence might attract as though the case had gone before the Magistrates.

The costs have been determined as follows:

Determine that the standard of the Regulations have been contravened:

Activity	Officer	Rate per Hour	Time	Cost
Average travel time to visit house	PHSO	£22.00	60 minutes	£22.00
Average time to verify breach of Regulations	PHSO	£22.00	15 minutes	£5.50
Average time to record notes to computer system	PHSO	£22.00	30 minutes	£11.00

The total cost of determining that the standard of the Regulations have been contravened is £38.50

Prepare and send a remedial notice to the landlord:

Activity	Officer	Rate per hour	Time
Verify landlord's details	PHSO	£22.00	30 mins
Administer Notice	PHSO	£22.00	1 hour

The total cost of preparing and sending a remedial notice to the landlord is £33.00

Arrange for remedial action if the landlord has not complied with the remedial notice:

Activity	Officer	Rate per hour	Time	Cost
Confirm tenant wishes remediation	PHSO	£22.00	15 mins	£5.50
Instruct authorised person remediate	PHSO	£22.00	15 mins	£5.50
Verify work has been done	PHSO	£22.00	60 mins	£22.00
Process payment to Finance	Admin	£11.00	30 mins	£5.50
Administration by Finance Department		£11.00	30 mins	£5.50

The total cost to arrange for remedial action if a landlord does not comply with the remedial notice is £44.00

Serve a penalty charge notice if the landlord has not complied with the remedial notice:

Activity	Officer	Rate per hour	Time	Cost
Confirm notice's non-compliance	PHSO	£22.00	60 mins	£22.00
Issue Notice and cover letter	PHSO	£22.00	2 hours	£44.00

Total cost to serve a penalty notice if the landlord has not complied with the remedial notice is £66.00

Facilitate an appeal against the penalty charge notice:

Activity	Officer	Rate per hour	Time	Cost
Correspond with appellant	PHSO	£22.00	1hr	£22.00
Prepare papers	PHSO	£22.00	3hrs	£66.00
Hear the appeal	Cllr (s)	£22.00	1hr	£22.00

Total cost to facilitate an appeal against the penalty charge notice is £110.00

The overall total cost of the fixed penalty charge is £291.50

NOTE: PHSO and Admin hourly rates (£) based on SCP39 and SCP16 plus 25% on-costs, rounded to nearest £

Private Sector Housing Research: Prosecuting Landlords for Poor Property Conditions
 Research findings on the resources and timescales for councils in prosecuting private landlords in cases of poor property conditions, and the level of fines awarded in court
 Local Government Association 2014

Type of breach	Fine	Councils stated costs	Costs Awarded	Was this amount requested?	PSH team costs	Legal team costs	Councils stated costs	Shortfalls
11 contraventions of HMO management regulations	£2,600	£6,438	£1,995	Yes	£1,995	£5,443	£1995	£5443
Failure to comply with an improvement notice regarding nine health hazards	£3,000	£2,190	£2,190	Yes	£1,765	£425	£2,190	N/A
Three breaches of HMO management regulations	£5,000	£1,363	£1,363	Yes	£1,038	£325	£1,363	N/A
5 contraventions of HMO management regulations	£1,210	£3238	£3238	Yes	£1,090	£2,148	£3,238	N/A
Failure to comply with improvement notice	£100	£787	£787	Yes	£451	£336	£787	N/A
Failure to comply with an improvement notice	£1,000	£3,000	£1,000	33%	£1,376	£1,624	£3,000	£2000
Average	£2151.25	N/A	£1 893	N/A	£1094	£1158	£2252	N/A

Outcome of Research:

Suggest first offence fine of £1,291.50 (based on costs plus £1,000 fine)

2nd offence fine of £2,291.50 (based on costs plus £2,000 fine)

Fines increasing by £1000 for each subsequent offence up to the maximum allowed of £5,000.

Appendix 2

Application of Civil Penalties under section 126 Housing and Planning Act 2016

Statement of principles

The level of civil penalty to be applied will be determined with reference to the culpability of the offender, and the harm, or potential harm, caused to occupiers as a result of the breach. The principles that the Council will take into account when applying a civil penalty are:

The more serious the offence, the higher the penalty should be.

A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

The harm caused to the tenant. This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

Punishment of the offender. A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.

The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

Deter others from committing similar offences. While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

Remove any financial benefit the offender may have obtained as a result of committing the offence. The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence; it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

These principles will be applied using the Culpability / Harm matrix set out below to arrive at an appropriate penalty.

Culpability

Very High: The offender intentionally breached or flagrantly disregarded the law. This may be evidenced by numerous previous failures to comply with enforcement action.

High: Actual foresight of, or wilful blindness to risk of offending, but risk nevertheless taken. This may be evidenced by some previous enforcement activity.

Medium: Offence committed through act or omission which a person exercising reasonable care would not commit.

Low: Little fault because, for example, efforts were made to address the risk, albeit they were inadequate on this occasion, or failings were minor and occurred as an isolated incident.

Harm:

Level 1: Multiple serious failings giving rise to a number of Category 1 Hazards that posed a substantial risk to occupiers, or very serious breach of HMO management regulations.

Level 2: Significant risk arising from, for example a single Category 1 Hazard, a number of Category 2 Hazards. Significant breach of HMO management regulations.

Level 3: Lower risk arising from one or two Category 2 Hazards only, or from a minor breach of HMO management regulations.

The level of the civil penalty will be calculated with reference to the table below. A history of previous non-compliance and/or evidence of substantial financial gain from the failure to comply will result in a higher penalty within the range being imposed. Previous good character, less financial gain and evidence of efforts to remedy the situation will result in a lower penalty within the range being imposed.

Clubability Level	Starting Point	Range
Very High Culpability Harm Level 1	£20,000	£10,000 to £30,000
Very High Culpability Harm Level 2	£10,000	£5000 to £15,000
Very High Culpability Harm Level 3	£5000	£2500 to £7500
High Culpability Harm Level 1	£10,000	£5000 to £15,000
High Culpability Harm Level 2	£7500	£3750 to £11,250
High Culpability Harm Level 3	£3000	£1500 to £4500
Medium Culpability Harm Level 1	£5000	£2500 to £7500
Medium Culpability Harm Level 2	£3500	£1750 to £5250
Medium Culpability Harm Level 3	£2000	£1000 to £3000
Low Culpability Harm Level 1	£3000	£1500 to £4500
Low Culpability Harm Level 2	£2000	£1000 to £3000
Low Culpability Harm Level 3	£1000	£500 to £1500