

## **Appendix D**

# **Supplementary Environmental Health Housing Enforcement Policy**

**December 2017**

## Table of Contents

1.1	Introduction .....	4
1.2	The enforcement concordat .....	4
1.2.1	Principles of Good Enforcement Policy .....	4
1.2.2	Openness .....	4
1.2.3	Helpfulness .....	5
1.2.4	Complaints about the Service .....	5
1.2.5	Proportionality .....	5
1.2.6	Consistency .....	5
1.2.7	Procedures .....	5
2.1	Policy Intention, Purpose and Scope.....	6
2.1.1	Policy Intention and Purpose.....	6
2.1.2	Scope of Enforcement Policy in Relation to Tenure.....	6
3.0	Enquiries and Inspections .....	7
3.1	Enquiries.....	7
3.1.1	Emergency/Life and Limb requests:.....	7
3.1.2	Non-Emergency Cases .....	8
3.1.3	Cases Involving Threat of Eviction .....	8
3.2	Housing Inspections.....	8
3.2.1	General Housing Inspections .....	8
3.2.2	Overcrowding Inspections .....	9
3.3	Inspection of Houses in Multiple Occupation (HMO) .....	9
4.0	Authority to take Action and Powers of Entry.....	9
4.1	Authority to take action.....	9
4.2	Powers of entry under the Housing Act 2004 .....	10
5.0	Enforcement Options .....	10
5.1	Level of enforcement.....	11
5.2	Enforcement options .....	12
5.2.1	Hazard Awareness Notices (Sections 28 and 29) .....	12
5.2.2	Improvement Notices (Sections 11 and 12).....	13
5.2.3	Suspension of Improvement Notices (Section 14).....	14
5.2.4	Revocation or Variation of Improvement Notices (Section 16).....	14
5.2.5	Renewal of Suspended Improvement Notices (Section 17).....	15
5.2.6	Prohibition Orders (Sections 21 and 22).....	15
5.2.7	Suspension of Prohibition Orders (Section 23).....	15
5.2.8	Emergency Prohibition Orders (Section 43) .....	16
5.2.9	Revocation and Variation of Prohibition Orders (Section 25).....	16
5.2.10	Emergency Remedial Action .....	16
5.2.11	Clearance Areas .....	16
5.2.12	Prosecution.....	17
5.2.13	Simple Cautions.....	17
5.2.14	Civil Penalty Charges and Notices .....	17
5.2.15	Fines Recovery of Costs and Proceeds of Crime .....	18
5.2.16	Rent Repayment Orders .....	19
6.0	Works in default (Section 31, Schedule 3).....	19
7.0	Power to charge for enforcement action (Section 49).....	20
8.0	Power to recover certain expenses (Schedule 3) .....	20
9.1	Houses in Multiple Occupation .....	21
9.1.1	Licensing of Houses in Multiple Occupation .....	21
9.1.2	Exemptions .....	21
9.1.3	Licensing and the link with Housing Health and Safety Rating System.....	21
9.1.4	HMO Declarations.....	21
9.1.5	Mandatory Licensing of HMOs .....	21
9.1.6	Temporary Exemption from Licensing .....	22
9.1.7	Applications for Licences.....	22
9.1.8	Fit and Proper Person.....	22

9.1.9	Additional Licensing .....	23
9.1.10	Refusal of Licence.....	23
9.1.11	Appeals.....	23
9.1.12	Contents of Licence .....	23
9.1.13	Breaches of Licence Conditions .....	24
9.1.14	Duration of Licence .....	24
9.1.15	Variation/Revocation/Cessation of Licence .....	24
9.1.16	Charges for advice .....	25
10.1	Interim or final empty dwelling management orders and compulsory purchase .....	25
11.1	Environmental Protection Act 1990 .....	26
12.1	The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 .....	26
12.1.1	Introduction .....	26
12.1.2	Enforcement.....	26
12.1.3	Principles to be followed in determining the amount of a Penalty Charge.....	26
12.1.4	Level of Penalty Charge .....	27
12.1.5	Recovery of Penalty Charge .....	27
12.1.6	Appeals in relation to a penalty charge notice .....	27
13.1	Protection from Eviction Act 1977 .....	27
13.1.1	Operational .....	27
13.2.1	Scope of the policy.....	28
13.1.3	Legislative framework .....	28
13.1.4	Referrals to Herefordshire Council .....	28
13.1.5	Prevention and advice.....	28
13.1.6	Intervention .....	29
13.1.7	Legal proceedings.....	29
14.0	Other Legislation .....	30
15.0	Diversity .....	30
16.0	Provision for Particular Interests.....	30
17.0	Review .....	30
18.0	Contact .....	30

## **1.1 Introduction**

Herefordshire Council carry out a wide range of legal duties under housing related legislation. These duties are applied by carrying out programmed inspections of premises, responding to complaints and offering advice.

This policy outlines the approach we take when considering enforcement action. It is intended to ensure that we deal with everyone in a consistent way. It applies to all private rented properties including Houses in Multiple Occupation (HMOs). It also applies to privately owned and occupied dwellings.

This policy complies with the Enforcement Concordat to which Herefordshire Council is a signatory and should be read in conjunction with the Councils' overarching enforcement and prosecution policy.

## **1.2 The enforcement concordat**

The Enforcement Concordat outlines the principles of good enforcement and sets out what can be expected from local authority enforcement officers. It commits the council to adhere to good practice when enforcing policies and procedures. The policy can also be supplemented by additional statements of "enforcement policy" where relevant to the local priorities.

The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers, workers and tenants. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. Herefordshire Council is committed to these aims.

The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those regulated. Herefordshire Council recognises that most landlords wish to comply with the law. To this end therefore, we will take care to help landlords and others, meet their legal obligations without incurring unnecessary expense, whilst taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens reap the benefits of this policy through better information, choice and safety.

Bearing in mind the above, Herefordshire Council, has therefore adopted the Central and Local Government Concordat on Good Enforcement. Included in the term "enforcement" are advisory visits and assistance with compliance as well as Licensing and formal enforcement action. By adopting the concordat the council commits itself to the following policies and procedures:

### **1.2.1 Principles of Good Enforcement Policy**

In consultation with landlords and other relevant interested parties, including technical experts where appropriate, Herefordshire Council will draw up clear standards setting out the level of service and performance tenants and landlords can expect to receive.

### **1.2.2 Openness**

The council will provide information and advice in plain language on the rules that we will apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting

landlords, voluntary organisations etc. The council will discuss general issues at landlord forums and landlord fairs, specific compliance failures or problems with anyone experiencing difficulties.

### **1.2.3 Helpfulness**

The council believe that prevention is better than cure and that our role therefore involves actively working with landlords to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. The council will provide a contact point and telephone number for further dealings with the Environmental Health Housing team and we will encourage landlords to seek advice/information from us. Applications for approval of works relating to private rented properties, including houses in multiple occupation (HMOs), will be dealt with efficiently and promptly. The council will ensure that, wherever practicable our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

### **1.2.4 Complaints about the Service**

The council has a well-publicised, effective and timely complaints procedure easily accessible to landlords and the public. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained with details of the process and the likely time-scales involved.

### **1.2.5 Proportionality**

The council will minimise the costs of compliance for Landlords by ensuring that any action we require is proportionate to the risks. As far as the law allows, the council will take account of the circumstances of the case and the attitude of the landlord when considering action.

### **1.2.6 Consistency**

The council will carry out its duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Homestamp Consortium, the HMO Network and the Chartered Institute of Environmental Health (CIEH).

### **1.2.7 Procedures**

Advice from an officer will be set out clearly and simply and will be confirmed in writing, on request, to any interested party, explaining why any remedial work is necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).

Where immediate action is considered necessary, an explanation of why such action is required will be given at the time and confirmed in writing, in most cases within 5 working days and in all cases within 10 working days.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the appropriate enforcement notice).

## **2.1 Policy Intention, Purpose and Scope**

### **2.1.1 Policy Intention and Purpose**

The aim of the Environmental Health Housing (EHH) Enforcement Service is to ensure good quality, healthy housing for all residents of Herefordshire. We will do this by:-

- having a staged proportionate response to complaints and enquiries ranging from information and advice to full inspection and enforcement,
- taking action in respect of those properties which present the greatest risk to the health and safety of vulnerable occupants,
- ensuring that we enforce the law in a fair, equitable and consistent manner,
- working with landlords and other to improve housing conditions and improve the quality of housing management in Herefordshire,
- assisting landlords and others in meeting their legal obligations,
- taking firm action against those who flout the law or act irresponsibly, and
- reviewing housing conditions in the county in order to come to well informed judgements.

### **2.1.2 Scope of Enforcement Policy in Relation to Tenure**

In considering the most appropriate course of action, the council will have regard to the extent of control that an occupier has over works required to the dwelling. The HHSRS provisions of the Housing Act 2004 apply to all housing whether in owner-occupation, privately rented or social housing and it is usually the owner's responsibility to carry out works to reduce or eliminate hazards. Action can be taken against an owner-occupier but as owner-occupiers have control over any hazards in the home and tenants in the main do not, most enforcement action will involve requiring a private landlord or more rarely a Registered Social Landlord (Housing Association) to carry out works.

Where EHH have identified hazards and a Registered Social Landlord (RSL) has a programme of works to make their stock decent, and has signed up to the 'Herefordshire Council's Protocol for Dealing with RSL Complaints', the officer will take into account the programme when determining the most appropriate course of action; this will include liaising with the RSL 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 (see paragraph 3.2.2).

With owner-occupiers, in most cases they will not be required to carry out works to their own home, and informal action or a Hazard Awareness Notice is likely to be the most appropriate action. However, the council may in certain circumstances require works to be carried out, or to use Emergency Remedial Action, or serve an Emergency Prohibition Order, in respect of an owner-occupied dwelling. This is likely to be where there is an imminent risk of serious harm to the occupiers themselves or to others, or where the condition of the dwelling is such that it may adversely affect the health and safety of others outside the household. This may be because of a serious, dangerous deficiency at the property, or for example to carry out fire precaution works to a flat on a long leasehold in a block in multiple occupation.

An Improvement Notice or Prohibition Order may be suspended until a time or event specified, and in some cases may be more appropriate than a Hazard Awareness Notice. Typically the event will be a change of occupancy. For example, an Improvement Notice may be suspended at the wishes of an elderly occupier who does not want the disturbance of extensive works, or where the vulnerable age group is not present. The notice might require an owner to notify the Council of a change of occupancy to ensure that the notice can be reviewed.

### **3.0 Enquiries and Inspections**

#### **3.1 Enquiries**

The council will not normally investigate anonymous requests for service unless there are other sources of information to indicate the likelihood of a Category 1 hazard within the dwelling or serious breaches of housing law. Enquiries will be passed through a triage system to ensure urgent action is directed to the highest risk cases.

##### **3.1.1 Emergency/Life and Limb requests:**

Emergency/Life and Limb requests are usually generated where premises are rented from a private landlord\*. Environmental Health Housing will endeavour to contact the complainant or person requesting assistance within 24 hours during the normal working week. Issues to be treated as an emergency include:

- Collapsed ceilings
- Gas, water or electricity disconnections where the owner or agent has failed to pay the bill.
- Defective gas electrical installations
- Lack of suitable fire precautions

For the above reasons, where there is a danger to life or limb, we aim to respond by inspecting the premises or contacting the complainant as soon as possible. The response will generate the appropriate course of action for the circumstances, be it informal advice, intervention or the service of a notice. Environmental Health Housing aim to respond to the request for assistance, including the service of any Notices requiring urgent works within **7 working days** of site inspection.

---

\* a private landlord includes Registered Social Landlords (usually Housing Associations)



### 3.1.2 Non-Emergency Cases

Other requests for service emanating from premises which are rented from a private landlord will be responded to within triage arrangements. Less urgent enquires that require an inspection will be carried out within **20 working days**. In order to empower tenants, most non urgent cases will be sent a tenant self help pack within **5 working days**. This triage response will initially involve advice to the tenant and landlord in writing but will ultimately lead to inspection if an informal resolution is not achieved or there is a threat of eviction by the landlord (see 3.1.3 below). Requests for advice will be addressed within **28 working days**.

Longer-term improvements to a property may include repairs, works for means of escape in case of fire and other fire precautions works and significant defects caused by poor management.

### 3.1.3 Cases Involving Threat of Eviction

Tenants should always report any disrepair or poor conditions that may arise to the landlord as soon as possible and should put their complaint in writing. In order to rely on the protection against retaliatory eviction that the Deregulation Act 2015 provides, a tenant must in the first instance approach the landlord in writing with details of the disrepair or poor conditions; non-emergency cases reported to EH Housing will normally be handled through the Triage system that encourages tenants to contact their landlord in writing in the first instance.

If, the landlord responds by issuing a section 21 eviction notice, the tenant should approach EH Housing to carry out an inspection to verify the need for a repair.

Tenants will need to supply the local authority with evidence that they have put their complaint in writing to the landlord before the issuing of a section 21 eviction notice. In such cases EH Housing will arrange to inspect the property **within 20 working days**. If the inspection verifies the tenant's complaint, the officer will take the most appropriate course of action as detailed in paragraph 5.2 of this policy. Officers will need to be mindful of the need to serve a relevant notice if appropriate to invoke protection from eviction, even if the first course of action would normally be to engage informally with the landlord to try and resolve the problem(s). Where the Local Authority serves an Improvement Notice or Notice of Emergency Remedial Action, the landlord cannot evict the tenant for 6 months using the no-fault eviction procedure.

## 3.2 Housing Inspections

### 3.2.1 General Housing Inspections

The Housing Act 2004 introduced a system for assessing housing conditions, known as the Housing, Health and Safety Rating System (HHSRS), which is to be used in the enforcement of housing standards in all types of residential accommodation.

The system is structured around an evidence based risk assessment procedure, which considers those hazards that may be present in a dwelling from a list of 29 hazards. The risk that any such hazards may present to the most vulnerable potential occupant of that dwelling are then used to generate a hazard score. That score is, on the basis of a numerical value, then classified as a Category 1 hazard or a Category 2 hazard. Category 1 hazards can further be sub-divided



into those banded A - C. Category 2 hazards can be sub-divided into those falling within bands D – J and which reflect a lower risk.

Under the Housing Act 2004, Herefordshire Council has a duty to take appropriate enforcement action where there is a Category 1 hazard, and has the discretionary power to take appropriate enforcement action where there is a Category 2 hazard. Therefore, to ensure a consistent approach to housing enforcement by Officers, the council has adopted a formal policy for enforcement under the Act.

### **3.2.2 Overcrowding Inspections**

HHSRS provisions of the Housing Act 2004 includes 'crowding and space' and these will be used to determine overcrowding in preference to the statutory overcrowding standard in Part 10 of the Housing Act 1985

The HHSRS operating guide outlines the ideal conditions for space depending on age and gender mix, and the size and number of the rooms available for sleeping; these generally mirrors the bedroom standard. Unlike all other housing risks, crowding and space hazard is assessed in two stages by considering the property with and without the current occupants.

An Order prohibiting use of the property should only to be served in the event of a Category 1 hazard where there is "severe overcrowding" (the property lacks 2 or more bedrooms based on the bedroom standard) and there is a strong threat to health or safety. In these cases, action should be co-ordinated between all parties including the landlord, Homeless Prevention Team, Homepoint and Environmental Health Housing to re-house affected individuals as soon as possible.

### **3.3 Inspection of Houses in Multiple Occupation (HMO)**

All Houses in Multiple Occupation (HMOs) and Flats in Multiple Occupation (FMOs) will be inspected pro-actively on the basis of risk to the occupier(s) using the Environmental Health Housing's hazard ranking system.

Proactive inspections will also be a function of the HMO Licensing scheme so that these properties comply with the Council's standards and are appropriately managed by a fit and proper person. The Council is required to inspect and address housing hazards within 5 years of issuing a HMO licence for a property.

In addition to the HHSRS, Herefordshire Council will use Management Regulations under Section 234 of the Housing Act 2004 to impose duties on landlords and managers in Houses in Multiple Occupation, whether or not it is subject to licensing. Decisions as to whether it is appropriate to prosecute landlords for breach of the regulations will be considered in accordance with the enforcement policy.

## **4.0 Authority to take Action and Powers of Entry**

### **4.1 Authority to take action**

Herefordshire Council has authorised officers to carry out inspections of dwellings and HMOs using the Housing, Health and Safety Rating System and relevant housing Regulations. All officers may act on behalf of the Council where they consider housing conditions and their associated hazards impact the health and safety of occupants and visitors or that there have been breaches of relevant housing legislation.

Those officers who have successfully completed training courses accredited by the Communities and Local Government (CLG) are authorised to sign and serve notices as detailed in the Environmental Health Housing authorisation document in appendix A. Where mention is made in this policy to action by the council, the council will act through its officers in accordance to the level of authorisation given.

#### **4.2 Powers of entry under the Housing Act 2004**

Section 239 and Part 1 of the Housing Act 2004 enable the Council to carry out inspections to see if Category 1 or 2 hazards exist.

Before entering the property, 24 hours' notice must be given to the owner/landlord and occupier(s). However, where the Council consider that any premises need to be entered for the purpose of ascertaining whether an offence has been committed under section 72 (HMO licensing), 95 (selective HMO licensing) or 234(3) (HMO management Regulations) no prior notice need be given.

Section 240 allows the council to apply to a justice of the peace for a warrant which can include forced entry.

A person exercising power of entry under the Housing Act 2004 may:

- (a) take other persons with them;
- (b) take equipment or materials with them;
- (c) take measurements or photographs or make recordings;
- (d) leave recording equipment on the premises for later collection;
- (e) take samples of any articles or substances found on the premises.

Section 235 gives the council power to require production of documents to enable them to carry out enforcement functions.

#### **5.0 Enforcement Options**

Prior to any formal enforcement action, it will be necessary for Environmental Health Housing to undertake a full investigation into the condition, occupation and ownership of a property in order to determine on whom a Notice should be served and copies made available. Where the council intends to serve a Works Notice in respect of long-term improvements of a property, we shall aim to serve this within **one month** of the inspection of the property.

Enforcement action will be:

- i) Proportionate to the risk to health and safety;
- ii) Applied consistently by all officers;
- iii) Targeted;
- iv) In accordance with any guidance issued by Communities and Local Government.
- v) To consult Hereford and Worcester Fire and Rescue Service as appropriate before taking enforcement action in respect of prescribed fire hazards in a House in

Multiple Occupation (HMO) and in the common parts of a building containing flats. The procedure will extend to premises covered by the Regulatory Reform (Fire Safety) Order 2005 relating to fire authorities and any agreed protocol between the two authorities;

- vi) To consult the council's Built & Natural Environment (Listed Buildings) Team as appropriate,
- vii) To ensure that inspectors follow the enforcement policy when making enforcement decisions, that variations from the policy are justifiable in terms of the risk to health and safety and are taken after full consultation with the appropriate senior officer. Ensure that all officers are kept up to date with the requirements of the policy;
- viii) To maintain documented policy on enforcements. The policy will be reviewed at regular intervals and when there are relevant changes to the legislation or guidance. Any review will be considered in accordance with the council's procedure for reviewing these Policies and will include consultation with relevant stakeholders;
- ix) To ensure that all officers have received suitable training and are confident in carrying out their duties;
- x) To make the Housing Enforcement Policy or a summary of the policy available to any interested parties. (i.e. web site);
- xi) To produce any further procedures that promote consistency of enforcement amongst its officers;
- xii) To produce procedures to enable persons aggrieved by officers actions to make representations to the council;
- xiii) To consult with the owner and occupier, and any other relevant person prior to pursuing enforcement action.

It is the policy of Herefordshire Council to ensure that enforcement action is always taken in a fair and consistent manner and in proportion to the risk to health and safety. To help achieve this, the council will make reference to guidance from Communities and Local Government.

## **5.1 Level of enforcement**

When deciding which level of enforcement to take, the Council will consider the following criteria:

- i) The risk to health and safety
- ii) The current occupants and their views
- iii) The turnover rate of tenancies
- iv) The likelihood that the property will become occupied by a member of a group who could be at particular risk.
- v) The relevant person's attitude towards the hazards identified
- vi) The consequences of non-compliance.
- vii) The cost of compliance
- viii) The likely effectiveness of enforcement options under consideration.
- ix) The history of past compliance

For the purposes of this policy the “relevant” person can be taken to refer to the individual or company who could be the subject of enforcement action.

## **5.2 Enforcement options**

Enforcement options available to The Herefordshire Council under part 1 of the Housing Act 2004 are:

- i) To issue Hazard Awareness notices
- ii) To serve Improvement Notices
- iii) To serve Prohibition Orders
- iv) To take Emergency Remedial Action (not available for Category 2 hazards)
- v) To serve Emergency Prohibition Orders (not available for Category 2 hazards)
- vi) To make a Demolition Order (not available for Category 2 hazards)
- vii) To declare a Clearance Area (not available for Category 2 hazards)
- viii) To issue a fixed penalty notice.

The above actions are not exclusive when dealing with the same hazard in the same premises. However, the council can take a different course of action, or the same course of action again, if the initial action has not proved satisfactory. Emergency measures are the exception to the above rule.

For example, where Emergency Remedial Action is required followed by an Improvement Notice or Prohibition Order, it is considered to be a single course of action.

When taking Enforcement Action the Council will prepare and serve with any Notice or Order under Part 1 of the Act, or any copy of a Part 1 Notice or Order, a statement of reasons for the decision to take enforcement action.

The statement will include an explanation as to why a particular course of action is taken in preference to the other forms of available action.

When enforcement action leads to the Declaration of a Clearance Area, a statement of reasons must be published after the resolution, declaring that the area will be defined as a clearance area under Section 289 of the Housing Act 1985.

A reasonably practicable, proposed enforcement action will be discussed with the relevant person prior to the service of any notice or order under Part 1 of the Act, and representations sought.

### **5.2.1 Hazard Awareness Notices (Sections 28 and 29)**

A Hazard Awareness Notice under Section 29 (notice relating to a Category 2 hazard) may be a reasonable response to a less serious hazard, where the authority wishes to draw attention to the desirability of remedial action.

A Hazard Awareness Notice under Section 28 (notice relating to Category 1 hazard, and no Management Order is in place under Part 4) may be an appropriate course of action as a means of advising the relevant person that a

Category 1 hazard exists on the residential premises. This would be appropriate in circumstances where remedial action or prohibition is unreasonable or impractical.

A Hazard Awareness Notice may be the preferred course of action, instead of an Improvement Notice, where the relevant person has agreed to take remedial action and the Council are satisfied that the work will be done within a reasonable time scale.

When taking informal action of any nature, inspectors will clearly differentiate to the alleged offender what is legally required and what is recommended as good practice.

In summary, it is The Herefordshire Council's policy that Hazard Awareness Notices will be the preferred course of action on residential premises where:

- i) the hazard(s) are all of Category 2; or
- ii) in the case of Category 1 hazards the Council is fully satisfied that the relevant person will take suitable remedial action within a suitable timescale; or
- iii) the circumstances are such that improvement or prohibition is unreasonable or impractical.

The service of a Hazard Awareness Notice does not preclude formal action, should an unacceptable hazard remain.

All notices and accompanied documents will be sent as soon as possible.

Hazard Awareness Notices will be drafted in accordance with the relevant sections of the Housing Act 2004 as determined by the category of hazards.

### **5.2.2 Improvement Notices (Sections 11 and 12)**

An Improvement Notice under Section 11 will be an appropriate course of action where a Category 1 hazard exists in a residential premises, where no management order is in place under Part 4 of the Act. An Improvement Notice served under this section must be for a Category 1 hazard.

An Improvement Notice under Section 12 may be an appropriate course of action where a Category 2 hazard exists on residential premises, where no management order is in place under Part 4 of the Act. A Notice served under Section 12 requires the relevant person to take suitable remedial action in respect of the hazard(s).

In summary, Improvement Notices will be the preferred course of action on residential premises where:

- i) There is a Category 1 hazard(s) present
- ii) There is limited confidence that the relevant person will respond to a Hazard Awareness Notice within a reasonable time; or

- iii) There is no confidence in an unprompted offer by the relevant person to undertake necessary remedial action associated with that risk (Category 2 only); or
- iv) The relevant person will not confirm in writing their unprompted offer to undertake the necessary remedial action (Category 2 only).

Improvement Notices will be drafted in accordance with Section 13 of the Housing Act 2004.

When the Notice becomes operative there will be a Local Land Charge on the premises to which it relates. This means that it will be recorded on the Register of Local Land Charges kept by the Council. This register is public and anyone can search for entries upon payment of a fee. House purchasers will normally search this register.

Inspectors will not issue Improvement Notices unless they are confident that there is sufficient evidence to defend an appeal against the Notice.

All notices will be accompanied by information on the appeal procedure and the time limits for such an appeal.

#### **5.2.3 Suspension of Improvement Notices (Section 14)**

An Improvement Notice, may, for the operation of the Notice be suspended until a time, or the occurrence of an event specified in the Notice. The purposes of suspension will normally be to allow the council to prioritise action. Suspension of an Improvement Notice may be the preferred course of action where:

- i) It is appropriate to wait until a person of a particular description begins, or cease to occupy the premises; or
- ii) In the case of an event where a person on whom the notice was served, does not comply with an undertaking given to the Council.

#### **5.2.4 Revocation or Variation of Improvement Notices (Section 16)**

Where the council are satisfied that the Improvement Notice has been complied with, any such Notice will be revoked. Herefordshire Council may also, at their discretion, revoke an Improvement Notice where it is deemed that there are special circumstances (except of a Category 1 hazard), or where (Category 2 hazard) it is considered appropriate.

In the case of a notice that applies to more than one hazard, requirement of the preceding paragraph will apply to each of the hazards individually.

The Council may also vary Improvement Notices in the following circumstances:

- i) Where parts of a notice, which relates to more than one hazard have been revoked, the remainder of the Notice may also be varied as considered appropriate; or
- ii) With the agreement of the person on whom the notice was served; or
- iii) In the case of a suspended Improvement Notice, so as to alter the time or event specified that triggers the end of suspension.

### **5.2.5 Renewal of Suspended Improvement Notices (Section 17)**

Suspended Improvement Notices will be approved in accordance with Section 17 Housing Act 2004.

### **5.2.6 Prohibition Orders (Sections 21 and 22)**

A Prohibition Order made under Section 21 may be an appropriate course of action, where a Category 1 hazard exists on residential premises, where no management order is in place under Part 4 of the Act. An order made under this section may prohibit the use of part or all of the premises for some or all purposes, or occupation by a particular number or descriptions of people.

Section 22 makes an equivalent provision for a Prohibition Order to be made where a Category 2 hazard exists on residential premises, where no Management Order is in place under Part 4 of the Act.

Prohibition Orders will be the preferred course of action relevant to the actual premises where:

- i) there may be a serious threat to health and safety and remedial action is considered unreasonable or impractical, i.e. where the work cannot be carried out with the tenant in residence; or
- ii) the dwelling is overcrowded as regard space and/or amenities numbers in occupation; or
- iii) where a dwelling presents a serious threat to the health and safety to a specific group of persons, which is relatively safe for occupation; or
- iv) the relevant person will not confirm in writing the unprompted offer of voluntary prohibition (Category 2 hazards only).

Prohibition Orders will become operative in accordance with Section 22 of the Housing Act 2004.

When the Notice becomes operative there will be a local land charge on the premises to which it relates. This means it can be recorded in the Register of Land Charges kept by the Council. This register is public and anyone may search for entries in it upon payment of a fee. House purchasers will normally search this register.

Inspectors will not issue Prohibition Orders unless they are confident that they have sufficient evidence to defend an appeal against the Order.

### **5.2.7 Suspension of Prohibition Orders (Section 23)**

A Prohibition Order may, for the operation of the order, be suspended until a time when the occurrence of events specified in the order have been dealt with. Suspension of a Prohibition Order is at the discretion of the council and it may be the preferred course of action when:

- i) it is appropriate to wait until a particular circumstance ends, or a person departs, or ceases to occupy the premises; or



- ii) in case of an event, where a prohibition notice was served, was not complied with by an undertaking being given to the council.

#### **5.2.8 Emergency Prohibition Orders (Section 43)**

If the council are satisfied that a category 1 hazard exists on any residential premises, and that the hazard involves an **imminent risk of serious harm** to the health or safety of any of the occupiers of those or any other residential premises, then the making of an Emergency Prohibition Order is a course of action available.

An Emergency Prohibition Order imposes, **with immediate effect**, prohibition(s) on the use of any premises in a similar manner to a standard Prohibition Order.

#### **5.2.9 Revocation and Variation of Prohibition Orders (Section 25)**

Where the council is satisfied that a hazard, in respect of which a Prohibition or Emergency Prohibition Order was made, no longer exists, any such order will be revoked. Herefordshire Council may also, at their discretion, revoke a Prohibition Order where it is deemed special circumstances exist (in respect of Category 1 hazard), or where (in the case of a Category 2 hazard) it is considered appropriate.

#### **5.2.10 Emergency Remedial Action**

Where the council is satisfied that a Category 1 hazard exists on a residential premises and is further satisfied that the hazard presents an imminent risk of serious harm to the health and safety of any occupiers, the council will enter the premises at any time in order to take emergency remedial action.

This power will only be used where there is:

1. an imminent risk of serious harm
2. limited action that could be taken under an Improvement Notice under S.11 or an Improvement Notice that has not been complied with.

#### **5.2.11 Clearance Areas**

The council may decide to declare a clearance area where it is satisfied that:

- i) Individually, each of the residential buildings in the area contain a Category 1 hazard, and
- ii) 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
- iii) the residential buildings in the 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 streets; and
- iv) the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area.

The council may decide to declare a clearance area where it is satisfied that:

- i) each of the residential buildings in the area contains a Category 2 hazard,

- ii) that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area.

#### **5.2.12 Prosecution**

Prosecution will (only) be considered as a course of action where there has been a failure to comply, “without reasonable excuse” with requirements of an operative improvement notice or prohibition order. The decision or timescale to prosecute may be influenced by the presence of one or more of the following criteria:

- i) where there is a history of similar offences
- ii) where as a result of failure to comply there is a risk of an accident or a case of ill-health
- iii) where there appears to be a reckless disregard for the health and safety of occupants and/or others;
- iv) false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to a serious risk;
- v) inspectors have been intentionally obstructed in the lawful course of their duties.

All evidence will be gathered in accordance with the Police and Criminal Evidence Act 1984 and associated codes of practice.

Before a decision to prosecute is taken the officer, together with the Environmental Health Service Manager and the council’s solicitor, must be satisfied that both the “Evidential Tests” and the “Public Interest Tests”, as required by the council’s constitution and as contained within the code for Crown Prosecutors.

When a prosecution is proposed, the case file will be submitted to the council’s solicitor as soon as possible for consideration.

#### **5.2.13 Simple Cautions**

Simple Cautions may be appropriate where someone has admitted to an offence, or where it is their first offence of this type or they have assisted officers in remedying the situation that led to the offence. For example applying for a licence as soon as they are able or quickly complying with the requirements of a notice. Simple Cautions warn people that their behaviour has been unlawful and makes them aware of the legal consequences should they commit further offences. Where a person declines the offer of a formal caution, the appropriate officer will reconsider the case.

#### **5.2.14 Civil Penalty Charges and Notices**

Certain legislation enables the Council to serve a Penalty Charge Notice or Monetary Penalty Notice. Failure to pay a civil penalty may result in the Council bringing prosecution proceedings or in the recovery of the charge as a debt through courts action. EHH is responsible for enforcing the following requirements that can be subject to a civil penalty:

- Failure to comply with a notice requiring the provision of a smoke or carbon monoxide detector (£5000 maximum). See item 12 below.

- Failure to have a valid Energy Performance Certificate (EPC) for a rented property. (£200 maximum).
- From 1st April 2018, failure to comply with new energy efficiency requirements for rented properties. (£5000 maximum).
- Failure to display details of the Government approved redress scheme that businesses are a member of. (£5000 maximum).
- Failure to display fees that apply to landlords agents and tenants. (£5000 maximum).
- Failure to be a member of a Government approved residential lettings or management redress scheme when required to do so. Government guidance states that the expectation is that for this contravention, a £5,000 penalty should be considered the norm and that a lower penalty should only be charged if the Council is satisfied that there are extenuating circumstances. It will be up to the Council to decide what such circumstances might be, taking into account any representations the lettings agent or property manager makes during the 28 day period following the authority's notice of intention to issue a penalty.

Civil Penalty Notices in The Housing and Planning Act 2016 gives the council the power to issue Civil Penalty notices of up to £30,000 as an alternative to prosecution, where there is evidence beyond reasonable doubt of certain offences i.e. failure to:

- comply with an improvement notice,
- license a property which requires a HMO licence,
- comply with HMO licence conditions or occupancy requirement,
- comply with an overcrowding notice, or
- comply with HMO management regulations requirements.

The decision when to prosecute, agree a simple caution or when to issue a civil penalty will made on a case-by-case basis in line with this policy and relevant statutory appeal rights are provided with any notice served.

Civil Penalties can be used where a breach is serious and the council may determine that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution, is the most appropriate and effective sanction in a particular case.

The government have issued statutory guidance to councils on the use of Civil Penalty notices under the 2016 Act. The council has also published its own policy on how it will decide on the level of financial penalty that is in accordance with the government guidance.

#### **5.2.15 Fines Recovery of Costs and Proceeds of Crime**

The upper limit for fines in the Magistrates Court has been remove; this means if found guilty of an offence there is no maximum fine.

In some cases the Council can apply to court to recover rent from a landlord if a property has been let illegally. Officers will provide Legal Services with all the relevant information to enable the recovery of costs to be sought at Court. Any costs application made is likely to include the time officers have spent investigating a case and the legal costs involved.

### 5.2.16 Rent Repayment Orders

Rent Repayment Orders (RRO) can be made by a First Tier Tribunal where they are satisfied beyond reasonable doubt that a landlord has committed certain offences (whether the landlord has been convicted of that offence or not). The landlord can be required to repay up to 12 months rent, either to a tenant for rent paid or a council for housing benefit or universal credit paid in relation to the rent of a property. The relevant offences are:

- Violence for securing entry
- Illegal eviction or harassment of occupiers
- Failure to comply with an improvement notice or prohibition order
- Failure to license a property which requires a licence
- For breach of a banning order

Councils must consider applying for an RRO if they become aware of someone being convicted of one of the offences which can lead to an RRO. The council can also help tenants apply for an RRO. Applications for an RRO can be made in addition to other formal action taken in relation to the same conduct.

- When deciding whether or not to apply for an RRO the Council's policy is to:
- Treat each case on its own merits
- Ensure that applying for an RRO would meet the enforcement objectives in this policy
- Consider the impact of the breach on the occupier or others affected by the offence committed.
- Consider the likelihood of the application being successful.
- The level of resources it will take to make a successful application
- Whether it is more appropriate for the tenant to apply for the order themselves.

The Council will also have regard to the statutory guidance issued on applying for an RRO.

## 6.0 Works in default (Section 31, Schedule 3)

The council may in certain circumstances carry out works detailed in an Improvement Notice. Such action may be taken with or without the agreement of the person on whom an Improvement Notice was served.

When taking action with the agreement of the person on whom an Improvement Notice has been served, the council may take any action that is required in relation to the Notice. However, taking action by agreement, will only generally be considered where it is felt that the relevant person is for whatever reason incapable of organising, executing and overseeing the necessary works. Any such work undertaken will be at the expense of the person on whom the Improvement Notice was served.

Taking action without the agreement of the person on whom an Improvement Notice has been served, will be considered as a course of action in any of the following circumstances:

- i) where a person has failed without "reasonable excuse" to comply with the requirements of an Improvement Notice,

- ii) reasonable progress, in relation to the requirements of the Notice is not being made

## **7.0 Power to charge for enforcement action (Section 49)**

The Housing Act 2004 allows councils to charge for taking enforcement action. Some other legislation also allows councils to recover costs for officer's time and expenses needed to determine what works need to be carried out in default. It will be the policy of Herefordshire Council to make a reasonable charge for taking enforcement action in the following circumstances:

- i) where the relevant person has failed to fulfil an undertaking to carry out the necessary works appertaining to hazard(s) (for example in a formal consultation letter) or to carry out a Prohibition which otherwise would have been the subject of formal enforcement,
- ii) where the relevant person has failed to comply, without reasonable excuse, with the requirements of an Improvement Notice, Prohibition Order or Demolition Order, or
- iii) in the case of emergency remedial action or an Emergency Prohibition Order, where matters giving rise to the hazard(s) were reasonably foreseeable and/or due to the failure to suitably manage the premises.

The Environmental Health Housing Service will recover costs and fees when formal action is taken where it is reasonable to expect the owner to pay for the charges in the circumstances. Costs will be regularly reviewed and published. There will be discretion to waive the charge when it is not reasonable to expect a person to pay for the enforcement action taken i.e. where the reason for the charge was outside of the control of the person charged or persons acting on their behalf. Where expenses are to be charged they will be made relating to all stages of enforcement as detailed in Section 49 in the Housing Act 2004.

Expenses will be recovered in accordance with Section 50 of the Housing Act 2004, by a demand for payment of the charge.

At the time that the demand becomes operative, the sum recoverable together with the interest accrued will, until recovered, be registered as a local land charge on the premises concerned. Interest will be added to outstanding charges at 4% above the current Bank of England base rate annually using a daily compound interval.

## **8.0 Power to recover certain expenses (Schedule 3)**

The council is given powers to carry out works in default where a person has been required to do works but has failed to do so. The work in default powers are provided in the legislation being used in relation to a case.

In most circumstances a person will be given notice of the council's intention to carry out works in their default. The cost of the works will be recovered in accordance with the relevant statutory provisions. It should be noted that such charges are an addition to the administrative and other costs to be recovered as laid out above.

Expenses will be recovered by demanding a payment of the charge. At the time that the demand becomes operative, the sum recoverable together with the interest accrued will, until recovered, be registered as a local land charge on the premises concerned. Interest

will be added to outstanding charges at 4% above the current bank rate calculated on a daily basis.

## **9.1 Houses in Multiple Occupation**

### **9.1.1 Licensing of Houses in Multiple Occupation**

Part 11 of the Housing Act 2004 covers the Mandatory and Discretionary Licensing of Houses in Multiple Occupation.

The Housing Act 2004 Section 254 provides a new definition of an HMO.

A “House in Multiple Occupation” means a dwelling, or part of a building:

- that is occupied by more than 1 household sharing an amenity such as bathroom, toilet or cooking facilities (the standard test); or
- is occupied by more than one household, which is a converted building, which does not entirely comprise self-contained flats (whether or not they are sharing amenities); (the self contained flat test) or
- comprises entirely of converted self-contained flats and the standard conversion does not meet that required by the 1991 Building Regulations and more than one third of the flats are occupied under short tenancies. (the converted building test).

### **9.1.2 Exemptions**

Certain types of buildings will not be HMOs. These include:

- i) Managed or owned by a public body (such as the NHS or Police) or a local Housing Authority or a Registered Social Landlord.
- ii) Where the residential accommodation is ancillary to the principal use of the building e.g. religious establishments, conference centres etc.
- iii) Entirely occupied by freeholders or long leaseholders and their households.
- iv) Occupied by no more than two households each of which comprise a single person (i.e. two person flats).

### **9.1.3 Licensing and the link with Housing Health and Safety Rating System**

HMO Licensing is linked to the HHSRS. Section 55 gives local authorities a duty to ensure that there are no Category 1 hazards in an HMO within 5 years of licensing.

### **9.1.4 HMO Declarations**

Under Section 255 where the council is satisfied that a building or part of a building is being occupied by persons as their only or main residence which has a mixture of uses, the council can declare the building an HMO.

### **9.1.5 Mandatory Licensing of HMOs**

Mandatory Licensing applies to three or more storey properties occupied by five or more persons comprising of two or more households.



Storeys include basements, attics, commercial units and mezzanine floors. Mixed used properties will be counted by storey e.g. shop ground floor with two storey HMO above equals a three storey HMO.

For the purpose of HMO Licensing, a person includes children from birth.

It is an offence, under section 72 to operate a HMO that should be licensed under the provisions of Part 2 without a licence.

The government intends to widen the scope of mandatory licensing in 2018 by removing the three-story requirement. Therefore, most dwellings occupied by five or more unrelated persons will require a licence after April 2018; this will include flats above shops and single story buildings.

#### **9.1.6 Temporary Exemption from Licensing**

Under Section 62 the council may grant a Temporary Exemption Notice (TEN) where it is satisfied that the owner is taking steps to stop using the property as an HMO e.g. if the owner has applied for planning permission to convert the property back into a single family dwelling.

A TEN can be granted for a maximum of 3 months but in exceptional circumstances may be granted for a further 3 months. No more than two consecutive TEN's can be granted.

#### **9.1.7 Applications for Licences**

Under Section 63, a person owning or managing an HMO which is required to be licensed must apply to The Herefordshire Council for a Licence for each property. Charges for a HMO licences or re-licence will be reviewed at least every 3 years in line with current guidance from Communities and Local Government and published on the Councils website.

Herefordshire Council must grant a licence if it is satisfied that:

- The HMO is reasonably suitable for occupation by the number of persons permitted on the Licence.
- The licence holder is a fit and proper person.
- The proposed licence holder is the most appropriate person to hold the licence.
- The proposed manager, if not the licence holder is fit and proper and the proposed management arrangements are satisfactory, including that the person involved in the management of the house is competent and the structures and funding for the management are suitable.

#### **9.1.8 Fit and Proper Person**

Under section 66, the local Authority has to decide whether a Licence Holder or Agent is fit and proper.

The Council must have regard amongst other matters to:

- Any previous convictions relating to violence, sexual offences, drugs or fraud.
- Whether the proposed Licence Holder has contravened any laws relating to housing or landlord and tenant issues
- Whether the person has been found guilty of unlawful discrimination practices



- Whether the person has managed HMO's otherwise in accordance with any approved Code of Practice.

Relevant convictions do not automatically mean a person cannot be deemed fit and proper. The Council must give consideration to any convictions alongside a Landlord taking training or engaging with Council initiatives.

#### **9.1.9 Additional Licensing**

Herefordshire Council's additional licensing scheme under Section 58 of the Housing Act 2004 came to an end in April 2009. There is currently no intention to reinstate an additional licensing scheme in Herefordshire.

#### **9.1.10 Refusal of Licence**

If under Section 64, the council is not satisfied that it cannot grant a licence under the above conditions then it must refuse to grant the Licence and make an Interim Management Order. The council must give the applicant reasons in writing and allow 14 days for representations.

#### **9.1.11 Appeals**

All appeals against licensing, (fit and proper person), TEN's and HMO declarations will go to the Residential Property Tribunal which is part of the Lands Tribunal.

An appeal may be made if the council:

- Refuse to grant a licence
- Grant a licence but impose conditions
- Vary a licence
- Revoke a licence,
- Refuse to vary or revoke a licence.

There is a 28 day appeal period.

#### **9.1.12 Contents of Licence**

Under Section 67 and Schedule 4 of the Housing Act 2004 an HMO Licence will specify the maximum number of occupants who may occupy the HMO.

It will always include conditions requiring the Licence Holder to:

- Produce a Gas Safety Certificate on an annual basis
- Keep electrical appliances and furniture in a safe condition and supply on demand to the council a declaration to that effect.
- Ensure smoke alarms and any other fire detection is kept in proper working order and supply on demand a declaration as to the condition and positioning of the alarms.
- The occupiers will have a written statement of terms on which they occupy the property.

Further conditions can be attached to the Licence regarding work required within specified periods to meet the Authority's adopted standards for the number of occupants.

A Licence may also include conditions relating to:

- The management of the house, including taking such steps within reason to deal with anti-social behaviour of the occupants and people visiting the property.
- The condition of the house, its contents and the amenity standards other than those under the HHSRS.
- A requirement to carry out specific works or actions within such time as is specified in the Licence.
- A requirement for landlords to attend training courses relating to the Codes of Practice.
- Management Regulations setting out general requirements as to the management of properties.

Where there are hazards in the HMO these will be dealt with by the HHSRS provisions rather than Licensing.

#### **9.1.13 Breaches of Licence Conditions**

Under Section 72 the Licence Holder or Manager of an HMO who allows it to be occupied by more persons than the Licence permits, commits an offence and is liable to an unlimited fine. Breaching Licence conditions is also an offence and fines are up to a maximum of £20,000. Prosecution of these offences is without prejudice to the Council's power to revoke the Licence. The 2016 Act introduced civil penalty notices of up to £30,000 which the Council can serve on individuals as an alternative to prosecution.

#### **9.1.14 Duration of Licence**

Under Section 68 a HMO licence will normally last for 5 years. The Council can reduce this to an appropriate lesser period (minimum of 12 months):

- to remove any advantage over those licence holders who applied at the appropriate time, or
- where the property has not been satisfactorily managed, or
- where we are concerned the proposed management arrangements may not be satisfactory and want to see evidence that they are before allowing a longer licence period to be granted.

#### **9.1.15 Variation/Revocation/Cessation of Licence**

Under Sections 69 and 70 variations may be done by agreement, but the council may not impose higher or different standards than the original Licence except if new amenity standards are prescribed by regulations. Licences may be revoked by agreement and automatically cease after 5 years or within a specific period.

A Licence ceases to be in force on the death of the Licence Holder and for the first three months following their death. The HMO is not licensable within that period, the Council can grant a TEN. After this period a new Licence application must be submitted or the council must make an Interim Management Order.

Other than in those circumstances a licence may be revoked if:

- there has been a significant breach of licence conditions,
- there is a banning order on the licence holder,
- the licence holder and others involved in the management of the house are no longer fit and proper persons,
- the property ceases to be a HMO subject to licensing, or
- the council would not have granted a new licence for the HMO at the time it terminates the licence because of reasons relating to the structure of the HMO which would render the property unsuitable for licensing on similar terms.

On revocation of a licence (unless this is because the HMO no longer requires Licensing) the council must grant another licence or make an Interim Management Order.

On receipt of an application for a licence for a House in Multiple Occupation, Herefordshire Council will carry out all necessary checks as soon as practicable.

#### **9.1.16 Charges for advice**

A charge at full cost recovery will be made for advisory inspections to managers or landlords of HMOs which are not subject to mandatory licensing. Advice and guidance to such persons by telephone, email or letter will also be chargeable at full cost recovery should this total over 1 hour in any calendar month.

Landlords of licensed / licensable HMOs will be exempt from advisory charges, as they are already incorporated in the calculation of the HMO license fee.

### **10.1 Interim or final empty dwelling management orders and compulsory purchase**

Subject to prescribed exceptions, Herefordshire Council may seek authority from a Residential Property Tribunal to make Interim or Final Empty Dwelling Management Orders (EDMO).

This course of action will only be pursued:

- if a dwelling has been wholly unoccupied for at least six months or such longer period as may be prescribed.
- if there is no reasonable prospect of it becoming occupied in the near future.
- if an Interim EDMO is made, there is a reasonable prospect that the dwelling will become occupied.
- if Herefordshire Council has made reasonable effort to notify the relevant owner that they are considering making an Order and to ascertain from him (if any) what action he is taking, or is intending to take, to ensure that the dwelling is occupied.
- if any prescribed requirements have been complied with.

The council reserves the right to consider the option of compulsory purchase where it is appropriate to do so.

## **11.1 Environmental Protection Act 1990**

The council will use relevant powers to deal with specific issues covered by the Environmental Protection Act 1990 under Section 79 dealing with statutory nuisances, where a premises is in such a state to be prejudicial to health or a nuisance.

## **12.1 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

### **12.1.1 Introduction**

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduces the following requirements for all landlords during any period beginning on or after 1<sup>st</sup> October 2015 when the premises are occupied under the tenancy:

- a) a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation;
- b) a carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
- c) checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

### **12.1.2 Enforcement**

Where the local housing authority has reasonable grounds to believe that:

- there are no or insufficient number of smoke alarms or Carbon Monoxide Detectors in the property as required by the regulations; or
- The Smoke Alarms or Carbon Monoxide Detectors were not working at the start of a tenancy or licence;

then the authority shall serve on the landlord in a method prescribed by the regulations, a Remedial Notice detailing the actions the landlord must take to comply with the Regulations.

If after 28 days the landlord has not complied with the Remedial Notice a penalty charge shall be levied through a penalty charge notice.

### **12.1.3 Principles to be followed in determining the amount of a Penalty Charge**

Where a local housing authority is satisfied, on balance of probabilities, that a landlord on whom it has served a remedial notice is in breach of the duty under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015, the authority may require the landlord to pay a penalty charge of such an amount as the authority may determine. The amount of the penalty charge must not exceed £5,000.

The amount of penalty applied shall be based upon a sum of the following elements:

- a) The costs associated with officer time to investigate and enforce the regulations for the specific case, being calculated at an hourly rate including full cost recovery;

- b) The anticipated typical administration costs of the Council associated with enforcement of the penalty, including works in default, £250;
- c) The anticipated typical costs for recover of the penalty, £250;
- d) A reduction if the penalty is paid within 14 days;
- e) A deterrent element (as set out in 12.4 below).

The recovered penalty charge elements a to d above shall be used by the council to offset the service costs. The recovered penalty charge element e above shall be used to provide appropriate financial assistance to improve private sector rented properties to the benefit of vulnerable tenants.

#### **12.1.4 Level of Penalty Charge**

The cost recovery element of the penalty shall be as follows:

- a) Officer costs calculated at an hourly full cost recovery rate;
- b) A £250 administration fee; and
- c) A £250 cost recovery fee, unless paid within 14 days.

The deterrent element of the penalty shall be as follows:

- a) A £500 base sum;
- b) For landlords who have been subject to single previous formal action under Housing Act 2004 or other housing legislation, an additional £1000;
- c) For landlords who have been subject to more than one case of formal action under the Housing Act 2004 or other housing legislation, an additional £2500.

#### **12.1.5 Recovery of Penalty Charge**

The local housing authority may recover the penalty charge as laid out in the Regulations.

#### **12.1.6 Appeals in relation to a penalty charge notice**

The landlord can request in writing, in a period that must not be less than 28 days beginning with the day on which the penalty notice was served, that the local housing authority review the penalty charge notice. The local housing authority must consider any representation and decide whether to confirm, vary or withdraw the penalty charge notice. A landlord who is served with a notice confirming or varying a penalty charge notice may appeal to the First-tier Tribunal against the local housing authority's decision.

### **13.1 Protection from Eviction Act 1977**

#### **13.1.1 Operational**

EH Housing provides advice and assistance to private sector tenants in the county who have been unlawfully evicted or are suffering from harassment, intimidation, abuse or

threats to evict from their landlord. This part of the policy sets out what Environmental Health Housing (EHH) may do to prevent unlawful evictions and to support those who are unlawfully evicted. It also in general terms refers to complementary services offered by the Housing Solutions Team (HST) to prevent homelessness.

### **13.2.1 Scope of the policy**

This part of the policy covers unlawful eviction, harassment to evict, threats and abuse to evict and intimidation to evict.

This part of the policy refers to private sector tenants within the county of Herefordshire. This means the property they rent is within the county boundaries of the Herefordshire.

### **13.1.3 Legislative framework**

This part of the policy is based on the discretionary powers available under the Protection from Eviction Act 1977. This policy covers unlawful eviction and harassment as defined in Part 1 of The Protection from Eviction Act 1977.

Part 1 of The Protection from Eviction Act states:

*“(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.*

*(3) If any person with intent to cause the residential occupier of any premises—*

*(a) to give up the occupation of the premises or any part thereof; or*

*(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof; does acts calculated to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence;*

*he shall be guilty of an offence.”*

The council has discretionary powers under the Landlord and Tenant Acts 1985 and 1987, which may be advised upon where appropriate by EHH or HST.

### **13.1.4 Referrals to Herefordshire Council**

Referrals to Herefordshire Council can be made either directly by the individual affected or by a referral from another council department. Referrals may also be accepted from the police, solicitors or an advice centre. Complaints to the council are initially actioned by either EHH or HST in line with the current joint working protocol for dealing with harassment and illegal eviction complaints under the Protection from Eviction Act 1977.

### **13.1.5 Prevention and advice**

Tenants accessing the service will be offered advice on their rights and their security of tenure and the correct procedure for eviction.

Prevention action which may be taken may include:

- Advice on harassment and illegal eviction;
- Advice on legislation cover landlord and tenant relations;
- Advice on civil damages and legal process;
- Advice on housing benefits and benefits available;
- Advice to leaseholders concerning service charge issues and rights to obtain information concerning their service charge accounts.

EHH or HST may, with the permission of the tenant, contact the landlord and make them aware of the correct procedure and their obligations under legislation. This contact could be made in person, over the telephone or in writing.

Where the tenant and landlord agree, HST may offer to be present at meetings, to encourage communication and dialogue between the tenant and the landlord, and make both parties aware of their rights and obligations.

#### **13.1.6 Intervention**

EHH or HST may refer the case to other council departments for remedy if this is suitable.

EHH or HST may issue warning for potential cases of harassment in the form of a formal letter, outlining the complaint, and reminding the landlord of their duties and the legislation.

#### **13.1.7 Legal proceedings**

Legal proceedings under the Protection from Eviction Act 1977 can be either criminal or civil proceedings. Local authority powers under the Protection from Eviction Act 1977 are discretionary. Legal proceedings, if undertaken, will be the last resort and will not be suggested unless the case passes evidential and public interest tests set out in The Code for Crown Prosecutors and Herefordshire Council's General Enforcement Policy.

The legislation allows for a complainant to take a private prosecution, although in most cases legal aid will not be available.

The council will only consider bringing a prosecution where the evidence is sufficient to indicate the likelihood of a successful prosecution and where it is in the public interest.

An investigation by EHH will take place before prosecution is considered. During the investigation, evidence will be collected about the alleged offence and a case built. All evidence must be able to be used in court and reliable. The Code for Crown Prosecutors and the Council's own overarching enforcement and prosecution policy will be used to ensure these requirements are considered.

It must be in the public interest for the case to be taken to court. The Code for Crown Prosecutors and the Council's own overarching enforcement and prosecution policy will be used to ensure these requirements are considered.

Officers from EHH with the assistance of the council's Legal Services will make an assessment if the evidential test and public interest test have been passed, as outlined in



The Code for Crown Prosecutors and the Councils own overarching enforcement and prosecution policy. The council's Legal Services will, in all cases before proceeding to court, be asked to examine the evidence and public interest tests when reviewing the decision to prosecute.

When a prosecution file has been opened, tenants will be made aware of the outcome of the investigation. This will be done formally in writing.

If a decision is made not to continue to investigate the complaint, the written response will detail why, and may include other options to remedy the situation.

#### **14.0 Other Legislation**

Other housing and tenancy related legislation will be used as appropriate in accordance with the approach outlined in this Policy.

#### **15.0 Diversity**

The council is committed to equality of access to its services and aims to treat all people with dignity and respect. The Council's Diversity and Equality Policy refers in more detail to this commitment and is available on request and on the Council's website.

#### **16.0 Provision for Particular Interests**

Where possible, all documents will be produced in plain language and are also available on request in the relevant community languages, Braille, large type or on audiotape. Provision may also be made for the use of interpreters where appropriate.

#### **17.0 Review**

This policy will be reviewed regular and at least every two years.

#### **18.0 Contact**

Environmental Health & Trading Standards  
Economy, Communities and Corporate Directorate  
Herefordshire Council  
8 St Owen's Street,  
Hereford  
HR1 2PJ  
Telephone: 01432 261761  
E-mail: [ethelpline@herefordshire.gov.uk](mailto:ethelpline@herefordshire.gov.uk)