



# **Private Housing Standards Department - Intervention and Enforcement Policy**

**For the Regulation of Housing Standards**

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## 1. Introduction and Scope

- i. Sheffield City Council (the Council) are committed to improving standards in Sheffield's private rented stock.
- ii. This policy identifies how the Council will manage deficiencies identified in residential premises which relate to the health and safety of occupiers and members of the public, amenity standards within premises and statutory nuisances resulting from property condition; and how it will address the poor management of private rented properties.
- iii. To ensure adequate regulation of the private rented stock in Sheffield, Council officers will carry out re-active and pro-active inspections, process licence applications, request information and promote good practice by providing guidance and advice to landlords, property agents, tenants, property owners and the general public.
- iv. Allegations of possible offences relating to landlord and tenant law will be thoroughly investigated and where appropriate, cases will be prosecuted through the criminal courts system. or financial penalties will be issued.
- v. The Council will take appropriate enforcement action against all landlords and property agents who flout their legal obligations and seek to profiteer through non-compliance.
- vi. To achieve this the Council will utilise the full suite of statutory implements at their disposal and where necessary escalate cases through to the criminal courts and / Residential Property Tribunals (RPT).
- vii. When deciding what enforcement action is appropriate, the Council will have regard to all relevant codes of practice and guidance.
- viii. This policy shall be read in conjunction with the associated appendices:
  - Financial Penalties Policy;
  - Smoke and Carbon Monoxide Regulations Policy;
  - Banning Orders and Procedures;
  - Redress Scheme Policy;
  - Fees and Charging Policy for the Licensing of Houses in Multiple Occupation.

## 2. Purpose of the Policy

- I. The purpose of this policy is to provide guidance for Council officers, landlords and members of the public on the principles and processes, which will apply when enforcement action is considered or taken in cases being investigated in the private rented sector in Sheffield. It also provides a background to the legislation and guidance on which the policy is based.
- II. It is important for the Council to have an enforcement policy to ensure consistency of approach among Council officers and to assist members of the public in their expectations of the service. An enforcement policy also provides clarity if the Council takes legal proceedings or enforcement action is appealed.
- III. The Council's aim is to raise standards in the private rented sector in Sheffield. To this end we will endeavour to do this by raising awareness of the applicable legislative standards. However, we will take robust enforcement action when it is appropriate to do so.

## 3. The Council's Objectives

Council officers will undertake the necessary enforcement action to ensure that:

- I. The Council fulfils its statutory duty in respect of identified category 1 hazards under the Housing Health and Safety Rating System (HHSRS)<sup>1</sup>, using proportionate enforcement action as detailed in the Housing Act 2004
- II. All premises which are subject to Mandatory, Selective or Additional licensing schemes hold the appropriate licence and the conditions of those licenses are adhered to.
- III. All houses in multiple occupation (HMOs) are safe, well-managed and appropriate, in relation to structure, design and planning permission, to be occupied as an HMO and that they comply with all the requirements of the applicable HMO management regulations<sup>2</sup>.
- IV. Private premises, including land, is not causing a statutory nuisance<sup>3</sup> to other premises or land, by presenting an unacceptable risk to the health of members of the public.
- V. Private rented premises adhere to the legal requirements in relation to the electrical safety regulations<sup>4</sup>.
- VI. Private rented premises adhere to the legal requirements in relation to the smoke and carbon monoxide regulations<sup>5</sup>.
- VII. Property management and letting agents in Sheffield are registered with one of three approved Government Ombudsman Schemes where they are required to be<sup>6</sup>.

1. <https://www.gov.uk/government/collections/housing-health-and-safety-rating-system-hhsrs-guidance>

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

3. The Environmental Protection Act 1990

4. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

5. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (as amended)

6. The Redress Scheme for Lettings Agency Work and Property Management Work (Requirements to Belong to a Scheme etc)(England) Order 2014

- VIII. Empty properties are tackled with the aim of addressing security, visual amenity and statutory nuisance issues and also returning them back into occupation.
- IX. Landlords and agents are deterred from causing tenants and licencees from being made to leave their homes unlawfully.
- X. Private rented properties in the city are safe and well managed.

#### 4. Work with other agencies (or partners)

##### Inter-departmental Working

- I. To ensure the most appropriate action is taken, with the aim of making the best use of resources to achieve the most beneficial outcome, it may be appropriate and beneficial for the Private Housing Standards department to work together with other Council departments. This will allow where appropriate, information sharing and shared targeted enforcement. Such departments may include but not necessarily limited to:
  - Planning Enforcement
  - Building Control
  - Council Tax
  - Housing Benefits
  - Housing Solutions
  - Social Services
  - Trading Standards

##### Multi-agency Working

- II. Due to the range and scope of matters dealt with by the Council, it may on occasion be beneficial to work collaboratively with other external enforcement agencies.
  - Where formal enforcement action is required in relation to a fire safety hazard identified in an HMO and common areas of blocks of flats, it will be necessary to consult with the local fire authority (SYFS). In the case of an emergency situation, this consultation will be undertaken as far as is reasonably practicable.
  - When brought to the Council's attention that another Local Authority is investigating allegations of criminal offences, this department will, subject to any legal, financial and resource constraints, assist with the gathering / sharing of evidence and production of witness statements.
  - Where matters are identified, which fall within the remit of another partner agency, these matters will be referred to the appropriate enforcing authority.
  - To assist in the undertaking of our statutory duty, the Council may undertake joint inspections with officers from other agencies, such as South Yorkshire Fire and Rescue Service (SYFS), the police, Trading Standards, the Gangmasters and Labour Abuse Authority (GLAA) and the Health and Safety Executive (HSE).

## 5. Authorisation of Officers

- I. Only officers who are competent by training, qualification and/or experience will be authorised to undertake enforcement action. The Council's Private Housing Standards Department Scheme of Delegation sets out delegated powers given to officers and under what legislation.

## 6. Equality statement

- I. The council is committed to treating all customers fairly and all enforcement decisions will be fair, independent and objective. A priority for the private housing standards department is to improve standards in private rented accommodation that is occupied by the most disadvantaged persons living in this sector.

## 7. Property Inspections

- I. The Council has a general duty to keep housing conditions under review in Sheffield in order to identify any action that may need to be taken under the Housing Act 2004<sup>7</sup>. Resources will generally be concentrated in the areas that need them the most and on the properties in the worst condition.

### Re-active Inspections

- II. Where The Council considers that enforcement action may be appropriate as a result of a complaint in relation to unsafe or substandard conditions in their privately rented accommodation, we will respond by undertaking a formal inspection<sup>8</sup>. Inspections will be prioritised based on seriousness and risk of harm to the public. Following on from this inspection one of the enforcement actions detailed below in [Section 12 – Enforcement Options](#), of this policy will be carried out.

### Licensing Compliance Inspections

- III. The Council will undertake at least 1 compliance inspection per licensing period, for every property subject to Mandatory and Additional licensing, to ensure that these properties comply with any associated licensing conditions, any applicable HMO management regulations and Part 1 of the Housing Act 2004.

### Pro-active Inspections

- IV. The Council will, where appropriate, carry out targeted pro-active formal inspections<sup>8</sup>, following an intelligence led and risk-based approach to ensure that properties identified as posing the most significant risk to the health and safety of the community are tackled. This may involve:
  - Properties that are owned or managed by landlords / agents with a known record of poor compliance;
  - Properties which are required to be licensed, but are not so licensed;
  - Area based surveys to actively seek out compliance with licensing;

7. Housing Act 2004, Section 3

8. Housing Act 2004, Section 239

- Surveys of areas of the city identified as priority areas to support strategic goals of the city.

## 8. Different Tenures

- I. The investigative and enforcement powers which relate to private housing are applicable to all private residential premises, regardless of tenure. However, the Council approach to enforcement may vary depending on tenure for the reasons set out below:

### Owner Occupied Properties

- II. As owners of their property this group of tenure are in greater control over their property and usually have access to greater financial support, as such they are usually in a position to make informed decisions about maintenance or safety issues in their own homes.
- III. For this reason, authorised officers will usually limit our involvement to the provision of appropriate advice / recommendations, or the service of a Hazard Awareness Notice<sup>9</sup>.
- IV. Formal enforcement action against this type of tenure will likely be limited to exceptional circumstances which may include the following:
  - where the issue is adversely affecting neighbouring properties, land or other members of the public, such as drainage issues or leaks;
  - where there is a severe risk to the health and safety of the occupiers or other members of the public;
  - where there are other occupiers of the subject property who are not the owners, such as lodgers;
  - where the occupiers are particularly vulnerable, such as in cases of extreme hoarding. However, in such a situation all other possible avenues of remediation would have been thoroughly explored.

### Private Tenants and Landlords

- V. Tenants in private rented accommodation are not afforded the level of control over the properties they live in as individuals who own the properties they occupy. As a result, they are totally reliant on their landlords / agent to undertake the necessary repairs / maintenance / improvements to comply with legislative requirements.
- VI. As a result, the Council will take the necessary formal enforcement action, as specified in [Section 12 – Enforcement Options](#), against landlords / agents, who flout their legal obligations by subjecting their tenants to conditions which pose a significant risk to their health and safety or allow their properties to adversely affect adjacent premises.
- VII. Prior to taking any action the Council would normally expect a tenant of a private rented property to have informed their landlord / agent of the issue to afford them a reasonable time to remedy the problem, where it is reasonable for the tenant to do so.

9. Housing Act 2004, Section 28 & 29



- VIII. Tenants should also consider seeking independent legal advice about their own individual powers to resolve any dispute with the landlord, as a tenant may want to take their own civil legal action against the landlord.

#### Registered Social Landlords (RSLs)

- IX. RSLs are usually non-profit making organisations that aim to provide low-cost social housing, which is suitable and properly maintained for people in need. Their performance is scrutinised by the Regulator of Social Housing and the Housing Ombudsman. RSL's have written arrangements for reporting problems and clear response times for addressing these issues, in addition to having systems for registering any complaints about service failure.
- X. On that basis, following receipt of a complaint from a tenant of a RSL property, the Council will contact the RSL to arrange a joint inspection of the property and will seek in the first instance to proceed enforcement action on an informal basis.
- XI. Should this approach not resolve the matters within reasonable timeframes then the Council will resort to the undertaking of formal enforcement.

### 9. Powers of Entry

- I. In most circumstances where officers are undertaking duties under Part 1 of the Housing Act 2004, either pro-actively or re-actively, inspections will be carried out on a formal basis utilising the powers of entry in accordance with the relevant legislation.<sup>10</sup>
- II. Prior to undertaking a formal inspection both owners and occupiers of a premises will be provided at least 24 hours notice of an officer's intention to carry out a formal inspection. Notice will usually be given in writing or by email, but can in some circumstances be given verbally, depending on the relevant statutory provision.
- III. In certain circumstances pro-active or re-active inspections will be undertaken without providing any notice to owners or occupiers, such situations include:
- where investigations are being undertaken in respect of HMO licencing offences<sup>11</sup>;
  - where investigations are being undertaken in relation to licensing offences relating to Selective licencing schemes<sup>12</sup>;
  - where investigations are being undertaken in respect of breaches of the HMO management regulations<sup>13</sup>;
  - Where complaints have been raised which pose an imminent risk of serious harm to the occupiers or the general public;
  - where investigations are being undertaken in respect of duties under, other delegated enforcement legislation.

10. Housing Act 2004, Section 239

11. Housing Act 2004, Section 72

12. Housing Act 2004, Section 95

13. Housing Act 2004, Section 234

- IV. The powers of entry referred to above, can be enacted through a warrant of entry<sup>14</sup>, issued through the courts. When executing a warrant of entry, it is likely that members South Yorkshire Police will accompany authorised officers.
- V. When undertaking powers of entry authorised officers will carry with them, identification, warrant cards (detailing their powers of entry) and a copy of a warrant if applicable.
- VI. It is an offence to obstruct an authorised officer from undertaking their powers of entry.

## 10. Licensing of Private Rented Sector Properties

### Mandatory HMO Licensing

- I. A mandatory HMO licence is required for properties which are occupied by five or more persons living in two or more households sharing some facilities, such as a kitchen or bathroom.

### Discretionary licensing

- II. Under parts 2 and 3 of the Housing Act 2004, the Council has the discretion to bring into force licensing of other residential accommodation and require landlords of some privately rented properties to apply for a licence. There are two types of discretionary licensing:
  - **Additional licensing** may be appropriate where a large number of HMOs in an area are not being managed effectively and causing particular problems for the people who live in these HMOs or members of the public.
  - **Selective licensing** may be appropriate where that the area contains a high proportion of properties in the private rented sector and there are issues in relation to; housing condition, migration, deprivation, or crime.

### Operating an Unlicensed Property

- III. It is an offence to be in control of or managing a property, that should be licensed but is not licenced and no valid licence application has been submitted.
- IV. The Council will use all available means at its disposal to identify unlicensed properties and then take the most appropriate enforcement action in respect of that offence. Unless there are exceptional circumstances, this action will likely be:
  - Prosecution action through the Magistrates Court, where unlimited fines may be levied against an offender, if found to be guilty of the offence.
  - The service of a financial penalty of up to a maximum of £30,000, per offence, in accordance with the Council's [Financial Penalty Policy](#).
- V. The Council also has the power to apply to the First Tier Residential Property Tribunal Service for a [Rent Repayment Order](#). This enables the Council to claim back up to a maximum of 12 months' of Housing Benefit or equivalent paid in the form of rent, whilst the property was unlicensed.
- VI. The Council may also provide information, advice and assistance to tenants on how and when they can apply to The First Tier Tribunal Service, for a Rent Repayment Order, to claim back the rent they paid whilst the property was unlicensed.

### Duration of Licences

- VII. The Housing Act 2004<sup>15</sup> provides that a licence may be granted for a maximum 5-year period. Most licence applications will be granted for a 5-year term. However, the Council reserves the right to issue licences for a shorter period, appropriate and proportionate to the individual circumstances of the case. Certain factors which may be taken into account:
- where the Planning status for use of the property as an HMO is unconfirmed;
  - where the Council has reasonable grounds to believe that the property has already been operating without a licence;
  - where notwithstanding that an individual has been found to be a fit and proper person, concerns exist regarding past compliance with the relevant HMO property standards, or the tenancy management practices of the licence holder or manager;
  - where the Council is not satisfied with the current management practices;
  - where the Council is not satisfied that the proposed management practices will be satisfactory;
  - where there has been a history of compliance issues with previous licences;
  - any other factor which the Council deems appropriate to have regard to.

### Breach of licence requirements

- VIII. Licences may include limitations on the number of persons or households that are permitted to occupy a property as well as licence conditions, which may require works with regard to the physical condition of the property or in relation to the management of the property.
- IX. Failing to meet the requirements of the licence conditions and / or knowingly permitting the property to be occupied by numbers exceeding those specified in the licence is a criminal offence.
- X. Where the Council deems there is sufficient evidence to prove such an offence it will likely take one of the following actions:
- Prosecution action through the Magistrates Court, where unlimited fines may be levied against an offender, if found to be guilty of the offence.
  - The service of a financial penalty of up to a maximum of £30,000, per offence, in accordance with the Council [Financial Penalty Policy](#).

### Fit and Proper Person and Satisfactory Management Arrangements

- XI. The Council takes a rigorous approach to assessing whether landlords and agents named on a licence are Fit and Proper, and whether their management arrangements are satisfactory.
- XII. Under the Housing Act 2004<sup>16</sup>, where a property is required to be licensed under either the mandatory HMO licensing scheme, an additional licensing scheme or a selective licensing scheme, the Council must be satisfied that the Licence Holder and any other person involved in the management of the property, are a

15. Housing Act 2004, Section 68

16. Housing Act 2004, Section 66

fit and proper person to be the licence holder or to be the manager of the property.

- XIII. In addition, the Council must be satisfied that the management arrangements are satisfactory, including that persons involved in the management of the property are fit and proper persons to be so involved, and have a sufficient level of competence, and that the management structure and funding arrangements are suitable.
- XIV. This includes considering factors such as whether managers or Licence Holders have a criminal record or have contravened landlord and tenant law. Other factors would include having been declared bankrupt, and also, any evidence we have about the competence of the individual or company in relation to the role it is proposed they have in managing the property.
- XV. We will also consider these factors in relation to landlords and managers for other schemes where we are approving the use of a private rented property; for example, when discharging the Council's homelessness duty into the private rented sector, or considering whether to accept a membership application for the student housing scheme, Snug.
- XVI. Where we are assessing management arrangements in relation to Snug, we expect a particularly high standard of management and competence to be met.
- XVII. Where we are concerned that the management arrangements proposed for a property are not satisfactory, we may make further enquiries including, for example, asking a manager to attend an interview to discuss their role in managing the property to help us decide whether they have the competence to perform that role.
- XVIII. All standards and criteria relating to our different schemes can be found on our web pages at [www.sheffield.gov.uk/phs](http://www.sheffield.gov.uk/phs)

#### Granting, Refusing, Revoking and Varying of a Licence

- XIX. Decisions in relation to licensing applications will be based on the following:
- The information declared on the application;
  - The previous record of the proposed or current licence holder and/or manager;
  - Any further information gathered from enquiries made to check the validity of the information submitted with the application.

#### Granting of a Licence

- XX. In most cases licences will be granted with standard conditions together with a schedule of any works required to ensure the property meets the minimum standards adopted by the Council. Where the Council has concerns about the ability of a licence holder or manager to discharge their duties under licensing further enquiries may be made. The Council's minimum standards for licensable HMOs can be found on the Council website: [Apply for a Houses in Multiple Occupation \(HMO\) licence | Sheffield City Council](#)

### Refusing to Grant a Licence

XXI. Under the Housing Act 2004<sup>17</sup> the council may refuse to issue a licence to the applicant or proposed manager of a residential premises if:

- the proposed licence holder or manager is not a fit and proper person;
- the proposed licence holder is not the most appropriate person to be the licence holder;
- the proposed management arrangements for the house are not satisfactory; the property is not capable of being operated as a licensable HMO or other licensable property.

### Revoking a Licence

XXII. Under the Housing Act 2004<sup>18</sup> the Council may revoke a licence for a number of reasons relating to either the licence holder or manager or the property.

In relation to the licence holder or manager, this may be because:

- the licence holder agrees for the licence to be revoked.
- the licence holder or manager are no longer considered to be fit and proper persons.
- the licence holder or manager has committed serious or repeated breaches of the licence conditions in respect of the licence.
- the licence holder is subject to a Banning Order<sup>19</sup>.

In relation to the property, this may be because:

- the property ceases to be an HMO;
- the structure of the HMO has substantially changed since the granting of the licence, that were an application for a licence to be submitted now, the Council would not grant a licence.

### Varying a Licence

XXIII. Under the Housing Act 2004<sup>20</sup> the Council may vary a licence for a number of reasons:

- the licence holder agrees for the licence to be varied;
- the Council consider that there has been a change of circumstances since the time when the licence was granted.

### Interim Management Orders

XXIV. Under the Housing Act 2004<sup>21</sup>, the Council has the power to make an interim management order, in relation to, a property, which requires a licence but is not so licensed. These powers will be used as a last resort where other attempts to ensure that the property is licensed have failed and where the following criteria are met:

- the Council is satisfied that there is no reasonable prospect of a licence being granted (with appropriate conditions) in the near future;
- it is necessary to protect the health, safety or welfare of the occupiers of the property or properties in the vicinity.

17. Housing Act 2004, Section 64

18. Housing Act 2004, Section 70

19. Housing and Planning Act 2016, Section 16

20. Housing Act 2004, Section 92

21. Housing Act 2004, Section 102

- XXV. Following the making of such an order, the Council may take on the management of the property or may delegate the management to another agent or partner agency.
- XXVI. An Interim Management Order allows the Council to manage the property with many of the rights of a landlord, including the right to collect the rent and to use that rent to pay for work to the property.
- XXVII. An Interim Management Order will be in force for 12 months or until an HMO / Selective licence is granted if this happens within the 12 months.
- XXVIII. There are provisions within the Housing Act 2004<sup>22</sup> to vary, revoke and appeal against an Interim Management Order.

#### Final Management Order

- XXIX. Under the Housing Act 2004<sup>23</sup>, if the Council is satisfied (upon the expiry of an Interim Management Order) that the property still requires a licence, but it is still not able to grant an HMO / Selective licence, it must make a Final Management Order.
- XXX. A Final Management Order will be in force for 5 years.
- XXXI. A Final Management Order is similar to an Interim Management Order in that:
- the Council may delegate the management of the property to another agency or partner agency;
  - there are provisions to vary, revoke and appeal against the Final Management Order.

## 11. Rent Repayment Orders

- I. A rent repayment order<sup>24</sup> is an order made by the First Tier Tribunal (Property Division) requiring a landlord to repay a specified amount of rent either to the tenant or the Council. An application for a rent repayment order can be made by the Council or the tenant, depending on how the rent was paid. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be paid to the Council.
- II. Rent repayment orders can be applied for when a range of various offences have been committed relating to the management of properties, whether or not there has been a conviction.
- III. Where the Council is aware that a landlord has been convicted of any of the offences for which a Rent Repayment order can be made, and the breach was committed in Sheffield, we will always consider applying for a Rent Repayment Order.
- IV. The Council may apply for a Rent Repayment Order following conviction for an offence where we consider that there is sufficient merit with regard to factors including but not limited to:
  - whether the offender could reasonably have been expected to know that they were in breach of their legal responsibilities;
  - the likelihood of further offending by the offender;

22. Housing Act 2004, Schedule 6

23. Housing Act 2004, Section 113

24. Housing Act 2004, Section 73

- the deterrent to others who may commit similar offences;
  - the financial circumstances of the offender;
  - the removal of any financial benefit the offender may have obtained as a result of committing the offence.
- V. The Council may also decide to apply for a Rent Repayment Order where there has not been a conviction, but we are satisfied that an offence, for which a Rent Repayment Order can be made, has taken place and there is a reasonable prospect of the Council satisfying the tribunal beyond reasonable doubt that the offence was committed.
- VI. In these cases, when deciding whether to apply for a Rent Repayment Order where there has not been a conviction, and when deciding how much rent we should seek to recover, our considerations will include, but not be limited to, factors such as:
- the financial circumstances of the offender;
  - any previous action taken against the offender;
  - whether the offender could reasonably have been expected to know that they were in breach of their legal responsibilities;
  - the likelihood of further offending by the offender;
  - the deterrent of the order to others who may commit similar offences;
  - the removal of any financial benefit the offender may have obtained as a result of committing the offence;
  - any other aggravating factors;
  - the conduct of the offender and the occupier.
- VII. Where there has been a conviction and the tenants have the right to pursue a rent repayment order, the Council will consider offering them support in any application made to the Tribunal service where we consider that an application has merit, having regard to such factors as: the harm caused to the tenant, the deterrent value to the offender, and removing any financial value the offender may have obtained in committing the offence.
- VIII. We will have regard to the statutory guidance issued to local authorities on applying for rent repayment orders<sup>25</sup> and any other relevant Council policy when deciding whether to apply for a Rent Repayment Order.
- IX. Income received from a rent repayment order can be retained by the Council to further the Council's statutory functions in relation to our enforcement functions covering the private rented sector<sup>26</sup>.

## 12. Enforcement Options (property condition and licencing)

- I. Based on the individual circumstances of each case, there are a number of possible action which authorised officers of the Council can take, following on from a formal inspection of a property.
- No Action
- II. Where a property is found to be safe, not causing a statutory nuisance and not contravening any applicable licensing requirements or HMO management regulations, no action will be taken.

25. Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities

26. The Rent Repayment Orders and Financial Penalties (Amounts Recovered)(England) Regulations 2017

### Informal Action

- III. Where a property is found to have only a small number of low scoring category 2 hazards.
- IV. Where, upon request, advice is provided to a landlord, who strives to go beyond his legal obligations.
- V. Where a small number of minor breaches of licensing conditions or HMO management regulations are identified and the landlord has a good history of compliance, informal action will be taken in the first instance.
- VI. Where the property is accredited under the Snug partnership scheme
- VII. Where the property is a part of the Private Rented Solutions partnership scheme
- VIII. Possible forms of informal action may include:
  - The offer of advice or the suggestion of recommendations, either verbally or in writing;
  - The provision of a written schedule of works, which must be adhered to within strict timeframes.

### Formal Enforcement Action

- IX. Where it is found that there are significant hazards, statutory nuisance, breaches of licence conditions or HMO management regulations following an inspection, then in the majority of cases, except in the few instances detailed above, formal enforcement action will be the first course of action.
- X. The Council have a statutory duty to act in the case of Category 1 hazards and a power to act in the case of Category 2 hazards.
- XI. The Council will exercise its power to deal with Category 2 hazards for those hazards that it considers to be significant. These will usually include Category 2 hazards banded D and E, as defined under the Housing Health and Safety Rating System (HHSRS). However, there may well be instances, when hazards falling outside of this scope will be addressed.
- XII. Factors which will be taken into account when determining whether formal action should be taken in relation to Category 2 hazards, which score below Band E include:
  - whether there are multiple hazards within the property;
  - whether there is a vulnerable individual or group in occupation or likely to be in occupation;
  - whether or not it is reasonable to assume the conditions are likely to deteriorate in the next 12 months.

### Different options for formal enforcement action

- XIII. Possible forms of formal enforcement action, as designated under the Housing Act 2004, are as follows.

### **Service of a Hazard Awareness Notice, under [Sections 28 & 29](#)**

- XIV. This course of action may be used when dealing with hazards scored in Bands F – J. Hazard Awareness Notices may also be served when notifying an



owner occupier of a hazard in their property, which is not causing a significant risk to members of the public, or a statutory nuisance.

**Service of an Improvement Notice, under [Sections 11 & 12](#)**

- XV. This course of action will be most likely taken in respect of private rented premises, where there are Category 1 hazards or significant hazards, as specified in paragraph 12.9 above, and where the repairs / improvements necessary can feasibly be undertaken.

**Service of a Suspended Improvement Notice, under [Section 14](#)**

- XVI. Improvement Notices may be suspended, in exceptional circumstances. The decision as to whether an Improvement Notice should be suspended, will be determined on a case-by-case basis.

**Making of a Prohibition Order, under [Sections 20 & 21](#)**

- XVII. The making of a Prohibition Order will result in restrictions or prohibitions to the use of all or part of a property. Prohibition Orders will only be made when there are significant hazards, likely to result in serious injury over the next 12 months and the remedial works required are not practical, feasible or are prohibitively expensive. Prohibition Orders may also be used to resolve issues of serious overcrowding in a property, which is resulting in a significant and detrimental impact of health and safety. The Council will actively support individuals, whose home is subject to a Prohibition Order, in their application for re-housing.

**Making of a Suspended Prohibition Order, under [Section 23](#)**

- XVIII. Prohibition Orders may be suspended if there are exceptional circumstances for doing so and this will be determined on a case-by-case basis. A Prohibition Order may be suspended, when dealing with an overcrowded property, to allow sufficient time for the proper legal process to be followed by the owner to regain possession of the property and for the occupiers to find alternative accommodation.

**Taking of Emergency Remedial Action, under [Section 40](#)**

- XIX. Emergency Remedial Action will be taken when it has been assessed that there is a hazard that poses an imminent risk of serious harm. The Council will arrange for appropriate remedial work to be undertaken which will remove the imminent risk of serious harm, and this will be carried out at the cost of the owner / landlord / agent. Where the circumstances of the case allow, prior to undertaking the Emergency Remedial Action, authorised officers will attempt to contact the owner / landlord / agent of the property to provide them with the opportunity to carry out the works promptly.

**Making of an Emergency Prohibition Order, under [Section 43](#)**

- XX. An Emergency Prohibition Order will be made, where an imminent risk of serious harm has been assessed and the remedial works required are too expensive and / or not practicable, given the circumstances of the case to undertake. This action will result in the all or part of the property being subject to restrictions / prohibition with immediate effect. The Council will actively support individuals, whose home is subject to an Emergency Prohibition Order, in their application for re-housing.

**Making a Demolition Order under section 265 ([Housing Act 1985 as amended by section 46 Housing Act 2004](#))**

XXI. The making of a Demolition Order would only be considered in the most serious of situations and only when out of all other possible enforcement options available is considered to be the most appropriate. For a Demolition Order to be appropriate most of the following factors would need to be met:

- at least 1 serious category 1 hazard;
- if the property is not a detached property and there is no building line separating it from other properties, then it must be possible to make adjacent properties stable and weather-proof;
- the property is located in a potentially unsustainable area, due to such factors as very low housing demand, high crime and anti-social behaviour;
- the costs of repairing the property far exceed the value of the property, even after the works have been undertaken;
- the property is having a significant negative impact on the amenity of the local area;
- the property is not listed or of other historical interest.

**Declaring a Clearance Area under section 289 ([Housing Act 1985 as amended by section 47 Housing Act 2004](#))**

XXII. The designation of a Clearance Area would only be considered if the area in question met similar criteria to those required for the making of a Demolition Order. The exception being that in the making of a Clearance Area, the Council would be seeking to acquire the land for the following reasons:

- re-development by the Council;
- sale of the land for re-development by a private company;
- following the making of a Clearance Area, the Council will seek a compulsory purchase order or voluntary acquisition.

**Other formal enforcement powers**

XXIII. There are a number of other pieces of legislation for which the Council has delegated authority to implement, to enforce necessary works to be undertaken. Whether or not the Council chooses to use these powers will be determined by assessing the individual circumstances of the case. These powers include:

- [Public Health Act 1936](#),
- [Prevention of Damage by Pests Act 1949](#)
- [Local Government \(Miscellaneous Provisions\) Act 1976](#)
- [South Yorkshire Act 1980](#)
- [Building Act 1984](#)
- [Housing Act 1985](#)
- [Environmental Protection Act 1990](#)
- [The Smoke and Carbon Monoxide Alarm \(England\) Regulations 2015](#)
- [Electrical Safety Standards in the Private Rented Sector \(England\) 2020](#)

### [The Smoke and Carbon Monoxide Alarm \(England\) Regulations 2015](#)

- XXIV. Under the above regulations the Council has the power to enforce the requirement for privately rented residential premises to have the necessary smoke alarms and carbon monoxide alarms.
- XXV. Where following a notification from the Council, a landlord fails to comply, the Council has the powers to install the necessary alarms and serve financial penalties for failing to comply with the requirements of these regulations.
- XXVI. For a more detailed explanation as to how the Council enact the powers under these regulations, then reference should be made to [Appendix 3](#) to this policy.

## 13. Power to Charge for Enforcement Notices

- I. Under the Housing Act<sup>27</sup>, the Council has the power to make a reasonable charge to recover certain administrative and other associated expenses, which have been reasonably incurred during the undertaking of certain enforcement action, such as serving an Improvement Notice, making a Prohibition Order, serving a Hazard Awareness Notice, taking emergency Remedial Action and making an Emergency Prohibition Order
- II. These costs will include:
  - the full costs of all officer's time, including overheads, time spent gaining entry to the premises, visiting and inspecting the premises to determine the appropriate course of action and the preparation and service of the notices or making of the orders;
  - the costs incurred when enlisting the services of qualified specialists, or other such contractors;
  - the costs incurred preparing any expert reports, as necessary;
  - the costs incurred applying and obtaining a warrant of entry, if applicable.
- III. When the charge demand becomes operative, the sum recoverable is, until recovered, a charge on the premises concerned. The charge takes effect at that time as a legal charge which is a Local Land Charge.
- IV. The Council will vigorously pursue all debts owed. In some cases, we may force the sale of a property to recover our costs. We will only do so if we have the power to and it is reasonable and proportionate to do so in the circumstances of that case.
- V. Should a person, upon whom a charge demand is served, undertake the necessary works required, within the timeframes specified, the Council may revoke the charge demand notice and waive the debt. This will be determined on a case-by-case basis

27. Housing Act 2004, Section 49

## 14. Undertaking Works in Default

- I. When there is a failure to fully comply with the requirements of a statutory notice that requires works to be carried out, then the Council is afforded powers under the Housing Act 2004<sup>28</sup> and other legislation to carry out works in the owner's default.
- II. If a Notice has not been complied with the Council will consider whether works in default are appropriate. The Council is not obliged to carry out works and reserves the right not to do so where:
  - the cost of the works is likely to be very high;
  - where it would be very difficult or impractical to carry out works in default;
  - there are likely to be difficulties in recovering the costs;
  - Any other circumstances where the Council deems that it would not be appropriate to undertake the works in default.
- III. In most circumstances, where the Council has decided that carrying out works in default is appropriate, a notice of the Council's intention to carry out works in default, will be given to the relevant parties.
- IV. Once the work has started it is an offence to obstruct the Council or any of its contractors that have been employed to carry out the works<sup>29</sup>.
- V. The cost incurred by the Council in carrying out the works will be recovered in accordance with the relevant statutory provisions.
- VI. It should be noted that carrying out works in default does not prevent the Council from undertaking further enforcement activities such as undertaking [prosecution](#) proceedings or the service of [financial penalties](#), which may also be appropriate.

## 15. Powers to Require Documents or Information to be Provided

- I. The Council has powers to require certain information and documentation to be provided, under section 235 of the Housing Act 2004 and section 16 of the Local Government (Miscellaneous Provisions) Act 1976.
- II. Failure to comply with formal requests for information under the specified legislation above is a criminal offence and enforcement action can be taken, such as a [prosecution](#).
- III. The Council also has powers under section 237 of the Housing Act 2004 to use information obtained by the Council from Housing Benefit and Council Tax information to carry out its functions or investigate the commission of an offence in relation to Parts 1-4 of the same Act.

## 16. Empty Properties

- I. The Council systematically identifies long term empty properties and will work with the owner to them bring back into use.
- II. This action will be tailored to match housing need, nuisance issues and length of time the property has been empty.
- III. Where necessary, we will take appropriate enforcement action to deal with the symptoms that arise when a property is left empty.

28. Housing Act 2004, Section 31 & Schedule 3

29. Housing Act 2004, Section 241

- IV. The overall aim is to provide more accommodation of the type required in Sheffield. Therefore, we will take action on empty properties within a procedure that could ultimately lead to the use of Compulsory Purchase Orders<sup>30</sup> to bring a property into use.

## 17. Intervention where there is Harassment, Illegal Eviction and Poor Tenancy Management

- I. In Sheffield we have high expectations about the management of tenants and tenancies. We expect landlords and agents to behave in a professional and respectful way towards their tenants.
- II. If a resident claims that they have been made to leave without the proper legal procedures being followed, so as to give reason to suspect that an offence may have been committed under the Protection from Eviction Act 1977 we will investigate with a view to:
- informing the resident of their rights and where appropriate
  - [prosecuting](#) offences where there is enough evidence for there to be a reasonable prospect of conviction and where it is in the [public interest](#) to do so.
- III. We take offences under the protection from Eviction Act very seriously as we have a strong commitment to:
- protecting the interests of vulnerable people
  - promoting respect for the individual's home
  - preventing homelessness
  - promoting the health and well-being of people living in private rented accommodation.

Other than in exceptional circumstances, there will usually therefore be a strong public interest in prosecuting these offences.

- IV. We will:
- ensure information is available to landlords to make them aware of the relevant legal provisions for getting an occupier to leave where appropriate;
  - respond promptly to complaints relating to offences under the Protection from Eviction Act or where there is particular reason to suspect that an offence may be committed in the future.
  - Where we seek to prevent an offence from taking place we may contact a landlord to make them aware of the relevant law. We will usually seek the occupier's agreement to do this, but where this cannot be obtained, it may be necessary to contact the landlord without this agreement where the commission of an offence appears imminent.
- V. We will liaise with our colleagues in the department that deals with homelessness and advising about housing options to assess all cases where private rented tenants have been asked to leave, in order to ensure that occupiers are aware of their rights and to make sure we identify any illegal or poor management practices in private rented properties.

30. Compulsory Purchase Act 1965 and Acquisition of Land Act 1981

## 18. Additional Enforcement Powers introduced by Renters Reform Act

- I. The additional enforcement powers and duties given to local authorities in the Renters Reform Act will be utilised in accordance with the principles and priorities set out elsewhere in this policy, in order to protect tenants' rights and ensure that landlords and agents are meeting their legal obligations and managing their properties lawfully.
- II. In utilising these powers, all due regard will be had to government guidance relating to the powers.

## 19. Requirement for Lettings and Property Management Agents to belong in a Redress Scheme etc.

- I. [The Redress Scheme for Lettings Agency Work and Property Management \(Requirement to Belong to a Redress Scheme etc.\) \(England\) Order 2014](#) came into force on the 1<sup>st</sup> October 2014.<sup>31</sup>
- II. Details as to how the Council enforces this order are contained within [Appendix 4](#) to this policy.

## 20. Other landlord and tenant offences

- I. The Landlord and Tenant Acts 1985 and 1987, the Rent Act 1977 and Housing Act 1988 set out other offences relating to the rights of tenants, most relating to tenants' rights to information about their tenancy or their landlord.
- II. Where complaints are made to Private Housing Standards, they will be recorded and in most circumstances, contact will be made with the landlord or agent to remind them of their responsibilities. Consideration will also be given to the prosecution of these offences but it may not be possible to prosecute every offence, due to financial constraints. Where it is considered that there is sufficient evidence to prosecute, in relation to these offences and there are sufficient resources available, consideration will be given to factors such as:
  - the suspect's response co-operation with Private Housing Standards and evidence of contrition;
  - any mitigating factors which have been raised;
  - whether previous similar complaints have been received;
  - whether previous warnings have been issued;
  - whether previous complaints have been received regarding other aspects of tenancy management;
  - any aggravating factors;
  - whether information to which a tenant is entitled has been provided, albeit outside the required timescale;

- any attempts to comply;
- whether the tenant is resident in the property about which the complaint relates?
- whether the tenant is resident in Sheffield.

This is not an exhaustive list and consideration may be given to other factors relevant to the particular case.

## 21. Simple Cautions

- I. A simple caution is a formal warning which is given to a person aged over 18 years old, who admits the commission of an offence.
- II. This type of action is usually a means to deal with less serious, mainly first-time types of offending, where we have decided not to prosecute or issue a financial penalty on the basis of factors described elsewhere in this policy.
- III. For the Council to offer a simple caution for an offence, there must first be sufficient evidence to prove the commission of the offence beyond reasonable doubt (the criminal standard of proof) if the offence were to be prosecuted through the courts. In assessing this, the Council can take account of any clear and reliable verbal or written admissions by the offender to committing the offence being considered.
- IV. A caution can only be offered in cases where the offender has made an admission of guilt in relation to an offence(s) and this has been recorded. An offender would also need to formally accept the conditions set out in the caution by signing the caution form. Those offenders who are offered a caution and do not accept this will usually be prosecuted or a financial penalty imposed.
- V. Whether an offender will be offered a simple caution is a matter for the Council to consider, on a case-by-case basis, having considered all the facts and circumstances of the offence in relation to this intervention and enforcement policy.
- VI. A simple caution may be cited in later court proceedings and the Council may use this information to influence decisions going forward in relation to enforcement action and/or licence applications.
- VII. Consideration of offering a simple caution will be initially considered by the investigating officer and a manager. Advice and guidance may be sought from the Council's Legal Services.

## 22. Prosecution Proceedings

- I. When determining whether or not to undertake prosecution proceedings, the Council must be satisfied of the following:
  - there is sufficient admissible and reliable evidence that an offence has been committed.
  - the offender is an identifiable individual(s) or company.
  - That there is a realistic prospect of conviction.
- II. In determining whether there is sufficient evidence to secure a conviction, the Council will have consideration of the 'Crown Prosecution Service Code for Crown Prosecutors'<sup>32</sup>

### Evidential Test

- III. In accordance with this Policy, the Council will carry out an objective assessment of the evidence, including the impact of any defence and any other information that the offender has put forward or on which he or she might rely.
- IV. The Council will only prosecute where it is satisfied that the required burden of proof has been met and that an objective, impartial and reasonable bench of magistrates, or a judge hearing the case alone, properly directed and acting in accordance with the law, would be sure that the individual(s) or company is guilty of the offence alleged.
- V. When determining if there is a realistic prospect of conviction, the Council will have regard to the following factors:
  - whether there is enough evidence to prove each element which makes up an offence (points to prove);
  - whether the offender can make out any statutory defence or is likely to have a reasonable excuse to put before the court;
  - whether the evidence is admissible in court and the importance of that evidence to the case as a whole, for example evidence which might be excluded because it breaches the rules of hearsay;
  - whether there is evidence to suggest a witnesses' background, credibility, age, intelligence or level of understanding is likely to weaken the Council's case in relation to the accuracy or the integrity, for example does the witness have a motive that may affect their attitude to the case, or relevant previous conviction?
- VI. Evidence will not be ignored because the Council is not sure that it can be used or that it may be unreliable; however, it should be closely considered when assessing whether there is a realistic prospect of conviction.

32. <https://www.cps.gov.uk/publications/code>



### Public Interest Test

- VII. In every case where there is sufficient evidence to meet the evidential test outlined above, the Council must then go on to consider whether a prosecution is in the public interest.
- VIII. When considering the public interest factor we will have particular regard to the Council's aims and objectives, especially those to do with promoting health, safety and well-being.
- IX. The more serious the offence is, in relation to the Court's sentencing powers for the offence, then the more likely it is that a prosecution will be appropriate, but we may also choose to prosecute less serious offences where we consider that it helps achieve the strategic goals of the council or the aims and values set out elsewhere in this policy.
- X. We may also take account of the offender's culpability in terms of such factors as any vulnerabilities they may have, and evidence of previous offending or poor management.
- XI. Where a financial penalty is provided for as well as a criminal prosecution, we will have regard to the considerations in Appendix 1 in deciding whether to prosecute or issue a financial penalty.
- XII. The Council will also have regard as to whether the offender has had financial penalties imposed on them previously, which they have not paid, resulting in County Court action.
- XIII. In deciding whether it is in the public interest to prosecute a case we will also have regard to any relevant and appropriate guidance.
- XIV. The Council acknowledge that media reporting of convictions of criminal offences acts as a deterrent to others, and has the potential for reducing offending, deterring rogue landlords and improving the management and safety standards of private rented housing. To this strategic end, where we consider it appropriate, we will inform local, and where relevant national, media, of enforcement action taken within this policy.
- XV. We will encourage and assist media representation at court hearings and actively publicise convictions where we consider it may deter similar behaviour or offences from being committed.

## 23. Financial Penalties

- I. The Council has the power to impose financial penalties in respect of certain specified housing offences, for up to £30,000 per offence.<sup>33</sup> Our detailed policy in relation to financial penalties can be found as [Appendix 1](#) to this policy.
- II. The same standard of criminal proof is required for a financial penalty as for a prosecution. Therefore, the Council must be satisfied that:
  - it can be demonstrated beyond reasonable doubt that the landlord did commit the offence in question and that if the matter were to be heard at a magistrates' court, there is a realistic prospect of a conviction;
  - it is in the public interest to impose a financial penalty rather than using another form of enforcement action such as a simple caution or prosecution through the courts.
- III. The Council will consider the imposition of a financial penalty as an available enforcement option, where they can be legally imposed for an offence.
- IV. Offences will be assessed on a case-by-case basis to determine if the imposition of a financial penalty is the most appropriate course of action for the offence, as opposed to the issuing of a simple caution or the instigation of prosecution proceedings.
- V. Any decision to impose a financial penalty will be fully considered at a case conference attended by the appropriate authorised officers. In addition to this advice and guidance may be sought from the Council's Legal Services.
- VI. In deciding the level of financial penalty that will be applied in relation to each offence, the Council will have regard to [Appendix 1](#) of this Policy, using the calculation matrix to determine the financial penalty.
- VII. The Council will also have regard to the statutory guidance<sup>34</sup> and overall will ensure that the financial penalty imposed removes any financial benefit the offender may have obtained by the commission of the offence. The guiding principle will be to ensure that the offender does not benefit as a result of committing the offence, for example, it should not be cheaper to offend than ensure that a property is well maintained and properly managed.
- VIII. A financial penalty is a significant matter. The sanction, as well as imposing a financial penalty, highlights a failure to comply with the relevant legislation and is a matter the Council may have regard to when deciding whether to instigate criminal proceedings in future cases.
- IX. In addition, we may also have regard to the imposition of a financial penalty when deciding whether a person is a [fit and proper person](#), and a competent person for the purposes of awarding a licence under the Housing Act 2004 or any other scheme where the relevant person is required to be a fit and proper person and where the suitability of management arrangements must be considered.

33. Housing Act 2004, Section 249A

34. Civil Penalties under the Housing and Planning Act 2016- Guidance for Local Authorities (issued April 2017)

## 24. Banning Orders

- I. The Housing and Planning Act 2016<sup>35</sup> provides for Councils in England to apply for a Banning Order against a person who has been convicted of a Banning Order offence.
- II. The application is to the First-Tier Residential Property Tribunal, who will decide, based on the evidence of the case whether to grant a Banning Order.
- III. We will pursue a Banning Order for the most serious offenders and the decision will be made on a case-by-case basis with regard to the more detailed policy at [Appendix 2](#):

## 25. Complaints about our service

- I. We are committed to providing an excellent service. But we understand that sometimes things may not go to plan. If someone is dissatisfied by how we have dealt with their case, they should contact us straight away.
- II. Our aim is to listen to their concerns and resolve the issue, as soon as possible. We aim to put things right informally.
- III. However, if we cannot do that, a complaint may be made and considered under [Sheffield City Council's corporate complaint procedure](#).

## 26. Publicity

- I. We acknowledge that media reporting of convictions of criminal offences acts as a deterrent to others, and has the potential for reducing offending, deterring rogue landlords and improving the management and safety standards of private rented housing. To this strategic end, where we consider it appropriate, we will inform local, and where relevant national, media, of enforcement action taken within this policy.
- II. We will encourage and assist media representation at court hearings and actively publicise convictions where we consider it may deter similar behaviour or offences from being committed.

## 27. Policy Review

- I. This policy will be kept under review and may be the subject of revision. This ensures that it continues to be effective and relevant in line with changes in legislation, Government statutory guidance and Council Policy.

## 28. How to contact us

- I. We encourage people to get in touch with us. If you have any questions about our work, or about this policy, you can contact us in the following ways:
  - By post at: Private Housing Standards, Solpro Business Park, Floor 2, Windsor Street, Sheffield, S4 7WB
  - By telephone: 0114 273 4680
  - By e-mail: [phs@sheffield.gov.uk](mailto:phs@sheffield.gov.uk)

