APPENDIX G

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – PRIVATE SECTOR HOUSING

Private Sector Housing Approach

The Private Sector Housing team is responsible for ensuring that privately owned and rented properties are maintained in a safe condition and have a range of legislative tools available to achieve this. They are also responsible for bringing empty homes back into use.

More information can be found at:
https://www.middevon.gov.uk/residents/housing/private-sector-housing/

The Private Sector Housing team will follow this enforcement policy with the following variations:

Private rented homes

- On receipt of an enquiry from a tenant a 'tenant referral form' will be sent out.
- When the form has been returned to the Private Sector Housing team the tenant, the landlord and any other relevant person will be notified of a formal inspection date.
- Following the formal inspection an assessment of the condition of the property will be undertaken and appropriate enforcement action taken if necessary.

Owner Occupied homes

- On receipt of an enquiry the owner will be contacted to provide advice.
- A formal inspection may be arranged depending on the circumstances of the owner.
- Following the formal inspection an assessment of the condition of the property will be undertaken and appropriate enforcement action taken if necessary.

Empty Homes

- On receipt of an enquiry the empty property will be investigated within 4 weeks.
- The person reporting the property **will not** be kept informed of progress due to the nature of such investigations and the risk of sharing personal data.
- Where intervention is required, the team will pursue the most suitable form of enforcement action to either improve the property or bring it back into use.

Houses in Multiple Occupation (HMO)

- Licensed properties will be inspected on a regular basis to check for breaches of the licence conditions.
- Other types of HMO will be visited to determine if there are breaches of the Management Regulations or whether the property should be licensed.
- Where an enquiry is made by a tenant in relation to disrepair or potential hazards, then the approach mentioned above (private rented homes) will be followed.

Anonymous Enquiries

- These enquiries will be placed on an investigation rota which will be undertaken every two months.
- Where a problem is found to exist one of the approaches above will be followed depending on the circumstances.

All tenure types will be investigated in the same way, however the most appropriate course of action to deal with the individual circumstances will be determined on a case by case basis as detailed in this policy.

Legislative Overview for Private Sector Housing

Housing Act 2004

Since April 2006, the Housing Act 2004 ("the Act") has been the primary legislative tool for dealing with private sector housing conditions. Regulations made under the Act also play a significant role. The Act is divided into a number of parts, of which the following are most relevant in this context:

Part 1: Housing conditions

This Part introduced a new methodology for the assessment of housing conditions and replaced the previous housing fitness standard. It introduced the concept of Category 1 and Category 2 hazards, and regulations made under section 2 prescribed the Housing Health and Safety Rating System ("HHSRS") as being the method for assessing the severity of hazards.

Category 1 hazards are the most serious and likely to cause harm to health and/or safety. Where the Council has identified a Category 1 hazard it is under a mandatory duty to take the appropriate enforcement action. Where it has identified a Category 2 hazard it has a discretionary power to take such action.

This Part also sets out the available enforcement options for dealing with Category 1 and 2 hazards. They include:

- The service of an Improvement Notice requiring the taking of remedial action within a specified time period. Such notices can, on service, be suspended to come into effect at a later date or at a point in time when a specified event takes place.
- The making of a Prohibition Order prohibiting or restricting some or all uses of all or part of a residential premises. Such orders may also be suspended on service.
- The service of a Hazard Awareness Notice highlighting that there are hazards existing on a residential premise which should be considered for further action. Such a notice does not place a legal obligation on the recipient to carry out works.
- The taking of Emergency Remedial Action by the Council where there is a hazard which involves an imminent risk of serious harm. This action can only be taken in respect of Category 1 hazards.
- The making of an Emergency Prohibition Order prohibiting or restricting some or all uses of all or part of a residential premises with immediate effect. Such an order can only be made in respect of Category 1 hazards involving an imminent risk of serious harm.
- The making of a Demolition Order under the Housing Act 1985 ("the 85 Act"). This option is only available for residential premises containing Category 1 hazards and is not available in respect of listed buildings.
- The declaring of a Clearance Area under the 85 Act requiring the clearing of all buildings in a specified area. This option is only available when all the residential premises in the area concerned contain Category 1 hazards.

Part 2: Licensing of houses in multiple occupation

This Part required the Council to introduce a mandatory licensing regime for certain types of HMOs. The mandatory scheme, which came into force in April 2006, requires HMOs which are comprised of three or more storeys and occupied by five or more persons to be licensed. HMOs defined by section 257 of the Act, namely buildings converted entirely into self-contained flats which fulfil certain criteria relating to tenure and conversion standards, are excluded from the mandatory licensing regime. Mandatory licensing of HMOs was introduced to improve physical conditions and management standards in higher risk HMOs.

This Part also empowers local housing authorities ("LHAs") to introduce "additional HMO licensing" schemes to extend the scope of mandatory licensing. This allows LHAs to introduce the requirement to licence other types of HMOs in all or part of their area.

Part 3: Selective licensing of other residential accommodation

This Part empowers local housing authorities to introduce "selective licensing" schemes in all or part of their area requiring all private rented accommodation to be licensed, unless it is subject to exemption. An area may be designated if it is, or may become, an area of low housing demand and/or it has a significant and persistent problem with anti-social behaviour where the inaction of private landlords is a contributory factor.

Part 4: Additional control provisions in relation to residential accommodation

This Part empowers the Council to make Interim and Final Management Orders and take over the management of privately-rented residential premises. Such orders can be made when a residential premises is not licensed and there is no prospect of it being licensed, or when there is some other management problem requiring Council intervention. Interim Management Orders can be in force for up to a year, whereas Final Management Orders can last up to five years.

This Part also provides for Interim and Final Empty Dwelling Management Orders ("EDMOs"). EDMOs are similar to Interim and Final Management Orders, but relate to empty properties and are designed to ensure that dwellings become and stay occupied.

This Part also provides for the service of overcrowding notices in respect of HMOs that are not required to be licensed.

Part 7: Supplementary and final provisions

This Part includes a number of provisions, such as the definition of an HMO. It also empowers the Council to enforce the HMO management regulations, to authorise officers to enter premises, and to require documents to be produced.

Housing Act 1985

While many of the provisions in the 1985 Act relating to private sector housing have been repealed, some still remain. As mentioned above, the 85 Act empowers the making of Demolition Orders and the declaring of Clearance Areas. The provisions of Part X concerning statutory overcrowding remain in force. A dwelling is statutorily overcrowded when the number of persons sleeping in it is such as to contravene the room or space standard. These standards are described in Part X of the 85 Act.

Section 17 of the 85 Act concerns the compulsory acquisition of land or property for housing purposes. This power may be used to acquire under-used or ineffectively used land or property by means of a compulsory purchase order ("CPO"). Before taking such action, the Council must show that there is a general housing need in the area and that a quantitative or qualitative housing gain will be made by making the order. CPOs must be approved by the Secretary of State.

Environmental Protection Act 1990

Matters which may amount to a statutory nuisance are set out in section 79(1) of the Environmental Protection Act 1990. Statutory nuisances must be either “prejudicial to health or a nuisance”. Prejudicial to health is defined as meaning “injurious, or likely to cause injury, to health”. Nuisance is not defined by statute. If the Council is satisfied that a statutory nuisance exists or is likely to occur or recur, it must serve an Abatement Notice.

Building Act 1984

Section 59 relates to the drainage of buildings. Where drainage serving any building is defective, insufficient, or prejudicial to health or a nuisance, the Council may, by notice, require the owner of the building to remedy the situation.

If a water closet in a residential building is in such a state as to be prejudicial to health or a nuisance and cannot be adequately repaired, the Council may, by notice under section 64, require the owner of the building to reconstruct the water closet.

Section 76 makes provision for defective premises which are in such a state as to be prejudicial to health or a nuisance. If, by following the procedures set out in section 80 of the Environmental Protection Act 1990, there would be an unreasonable delay in remedying the defective state, the Council may, after having given nine days’ warning to the relevant person, enter the premises to carry out the works required to remedy the defective condition.

Under section 77, the Council can apply to the Magistrates’ Court for an order requiring the owner of a dangerous building to either make the building safe or (if the owner chooses) demolish it. If the owner fails to comply with the order, the Council can carry out the works-in-default and recover the reasonable expenses incurred in doing so from the owner. In emergency situations, the Council can (without obtaining a court order) take immediate steps to make safe a dangerous building under section 78. In such circumstances, the Council must, if possible, attempt to give prior notice to the owner and occupier. Again, reasonable expenses can be recovered from the owner. Although such intervention may concern private sector housing, the Council’s Building Control section is responsible for action under sections 77 and 78.

Section 79 concerns ruinous and dilapidated buildings and neglected sites. If a building is, by reason of its ruinous or dilapidated condition, seriously detrimental to the amenities of the neighbourhood, the Council may serve a notice requiring the owner to carry out remedial works or (if the owner chooses) demolish the building. If the owner fails to comply with the notice, the Council can carry out the works-in-default and recover the reasonable expenses incurred in doing so from the owner. This section also makes provision for dealing with any debris resulting from the collapse or demolition of a building, which by its nature is seriously detrimental to the amenities of the neighbourhood. If this condition is met, the Council may serve a notice on the owner requiring the clearance of the site. As above, if the owner fails to comply with the notice, the Council can carry out the works-in-default and recover the reasonable expenses incurred in doing so from the owner.

Town and Country Planning Act 1990

Section 215 of the Town and Country Planning Act 1990 provides the Council with the power to deal with land which adversely affects the amenity of an area. “Land” includes buildings. A notice may be served under this section requiring the owner or occupier of the land to take steps as is necessary to remedy the condition of the land. Such notices set out the steps that need to be taken, and the time within which they must be carried out. The Council also has the power to undertake the works themselves and to recover the costs from the landowner.

Section 226 concerns the compulsory acquisition of land or property to allow development, redevelopment or improvement to take place. If compulsory acquisition will contribute to the

promotion or improvement of economic and/or social and/or environmental wellbeing, the Council may, in the public interest, make a CPO. CPOs must be approved by the Secretary of State.

Planning (Listed Buildings and Conservation Areas) Act 1990

Section 47 provides for the compulsory purchase of listed buildings in disrepair. CPOs under this section are made to ensure that listed buildings (buildings deemed to be of special architectural and historical interest) are properly preserved. CPOs must be approved by the Secretary of State. However, before the Council can compulsorily purchase a listed building in disrepair it must first give the owner an opportunity to carry out the required works by serving a repairs notice. If an owner demolishes a listed building following receipt of a repairs notice, the site may still be compulsorily purchased by the Council. Although such action may be relevant to the safety of residents in private sector housing, the Council's Planning Department is responsible for intervention under this legislative provision.

Public Health Act 1936

If a water closet provided in residential premises is in such a state as to be prejudicial to health or a nuisance, and it can, without reconstruction, be put into a satisfactory condition, the Council may serve notice under section 45 requiring the owner or occupier to repair or cleanse the water closet as necessary.

Public Health Act 1961

Section 17 concerns defective and blocked drainage. If it appears to the Council that a drain, private sewer, water-closet, waste pipe or soil pipe is not sufficiently maintained and kept in good repair, and can be sufficiently repaired at a cost not exceeding £250, it may, after giving seven days' notice, carry out the necessary repairs and recover the expenses incurred from the person(s) concerned, namely the owner(s) or occupier.

In cases where the drain, private sewer, water-closet, waste pipe or soil pipe is stopped up, the Council may, by notice, require the owner or occupier to remedy the problem within 48 hours. If such a notice is not complied with, the Council may undertake the works-in-default and recover the costs incurred in doing so.

Law of Property Act 1925

In cases where the Council is owed monies, as a result of the Council undertaking works-in-default under relevant legislation, section 103 of the Law of Property Act 1925 may be used as a means by which to recover the debt. Under this legislation, the debt may, under certain circumstances, be registered as a first charge with HM Land Registry. Such a charge would take precedence over any mortgage. The Council may then, should the owner fail to pay the debt within a specified timescale, enforce the sale of the property to recover the monies owed.

Local Government (Miscellaneous Provisions) Act 1976

When the Council requires information relating to the ownership of land in connection with the discharge of its statutory duties, it may, by notice under section 16, require certain persons to provide information within a specified timescale. In connection with the land concerned, such information can be demanded from any one or more of the following: the occupier, freeholder, mortgagee, lessee, any person receiving the rent (either directly or indirectly), and any managing or letting agent.

If water, gas or electricity supply to a dwelling has been cut off, or is likely to be cut off, owing to the non-payment of a bill by the owner, the Council may, under section 33, step in and make arrangements with the supplier to ensure that the supply is reconnected and/or maintained.

Local Government (Miscellaneous Provisions) Act 1982

Sections 29 to 32 relate to the protection of buildings. If a building is unoccupied, or the occupier is temporarily absent, and it is insecure or likely to become a danger to public health, the Council

may take action to ensure that it is adequately secured to prevent unauthorised entry and made safe. The Council can recover the costs from taking such action from the owner of the building.

Prevention of Damage by Pests Act 1949

The Council is under a duty to ensure, as far as is practicable, that its district is kept free from rats and mice. If residential premises are in such a condition as to attract rats or mice, the Council may, by notice, require appropriate treatment to be undertaken and/or require remedial works to ensure that harbourage is no longer provided. For example, such a notice may require the removal of rubbish and furniture that has been discarded in the external grounds of a privately-owned property which has or is likely to attract rats and mice.

Health Act 2006

On 01 July 2007, England became smoke-free. Under the Health Act 2006, it became an offence to smoke in public places or places of work which are enclosed or substantially enclosed. Furthermore it is an offence not to display no-smoking signs in smoke-free premises. It is also an offence to be a manager of smoke-free premises and allow persons to smoke in them.

For the purposes of private sector housing, the common parts of HMOs and the common parts of buildings containing flats are deemed to be smoke-free premises.

Note: A number of these provisions are enforced by different departments/services within the Council and therefore the private sector housing team will work collaboratively with the different departments to ensure the most appropriate action is taken for the circumstances

Community Protection Notice

Refer to appendix two of this policy.

Houses in Multiple Occupation

The term HMO often means different things to different people. Indeed, the definition used by housing practitioners changed substantially in April 2006 owing to the implementation of the 2004 Act. Fundamentally, the term “HMO” when used in this document, refers to the legal definition prescribed by section 254 of the Act. Professionals in other fields, in consideration of alternative legislation, may view the term differently.

A building, or a part of a building, is an HMO if:

- It meets “the standard test”; or
- It meets “the self-contained flat test”; or
- It meets “the converted building test”; or
- It is a “converted block of flats” to which section 257 of the Act applies.

The standard test

There are six parts to the standard test. A building (or any part of a building) will meet the test if:

a) It consists of one or more units of accommodation that are not self-contained; and

b) It is occupied by more than one household; and

c) It is occupied by persons who use the accommodation as their only or main residence; and

d) The accommodation is not used for purposes other than living accommodation; and

e) At least one person is paying rent (or providing other consideration) for their use of the accommodation; and

f) Two or more households share one or more basic amenity, or the accommodation is lacking in one or more basic amenity.

A household is generally considered to be a single family unit, comprised of members of the same family. Couples whether married or not are deemed to be of the same family. Relatives that may form part of a single household include: parents, grandparents, children, grandchildren, brothers, sisters, uncles, aunts, nephews, nieces, and cousins.

Toilets, personal washing facilities (e.g. showers, baths and washbasins) and cooking facilities (e.g. kitchens) are considered to be basic facilities.

The self-contained flat test

A self-contained flat will be an HMO if it meets tests b) to f) of "the standard test" above.

The converted building test

There are six parts to the converted building test. A building (or any part of a building) will meet the test if:

a) It is a converted building; and

b) It consists of one or more units of accommodation that are not self-contained (whether or not there are self-contained flats in the building); and

c) It is occupied by more than one household; and

d) It is occupied by persons who use the accommodation as their only or main residence; and

e) The accommodation is not used for purposes other than living accommodation; and

f) At least one person is paying rent (or providing other consideration) for their use of the accommodation.

Certain converted blocks of flats

This HMO definition applies to certain buildings (or parts thereof) that have been converted entirely into self-contained flats. As such, there is no sharing of basic facilities in this type of HMO. However, not all buildings converted into self-contained flats are HMOs. For a building of this type to be an HMO, it must meet both of the following tests:

a) The building was not converted in accordance with the "appropriate building standards" (they being the Building Regulations 1991 or later versions of these Regulations); and

b) Less than two-thirds of the self-contained flats are owner-occupied.

HMO declarations

Sometimes, a building (or part of a building) is not solely used as living accommodation. In this situation, the HMO tests set out above (concerning sole use as living accommodation) cannot be met. However, if the building concerned is primarily used as living accommodation, and meets all the other relevant HMO tests, it may be appropriate for the Council, in the public interest, to declare the building as an HMO.

HMO declarations can be made by the Council in respect of buildings that would otherwise meet the "the standard test", "the self-contained flat test", and "the converted building test". An HMO declaration cannot be made in respect of "converted block of flats".

A relevant person can appeal to the Residential Property Tribunal against any decision of the Council to declare a building as an HMO.

Exemptions

Schedule 14 of the Act specifies buildings which are not HMOs for the purposes of the Act. However, when considering action under Part 1 of the Act (HHSRS and enforcement of housing conditions), the specified exemptions do not apply. This allows for risk assessment to reflect the true nature of occupation. The exemptions are:

- Buildings managed or controlled by LHAs, registered social landlords ("RSLs") and certain other public sector bodies, such as the Police.
- Buildings that are otherwise regulated under prescribed legislation, such as care homes (see Schedule 1 of The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 (SI 2006/373) for the full list of enactments).
- Buildings that are managed and controlled by certain educational establishments and are occupied by students. As of January 2014, only those establishments specified in The Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2013 (SI 2013/1601) are exempt. These regulations are regularly updated, usually on an annual basis.
- Certain buildings occupied by religious communities.
- Any building occupied by its owner and his/her family, and in which no more than two lodgers or tenants reside. HMOs defined by section 257 of the Act are excluded from this exemption.
- Buildings occupied by only two persons forming two households.

Exempt buildings are not subject to HMO licensing under Part 2 of the Act, or either of the two sets of HMO management regulations (see below). Furthermore, the provisions of Chapter 3 of Part 4 of the Act, which relate to the service of overcrowding notices in respect of HMOs not subject to licensing, do not apply to exempt buildings.

Licensing Overview

In April 2006, the Act introduced three licensing regimes for residential accommodation in the private sector. These are:

- Mandatory HMO licensing (Part 2 of the Act);
- Additional HMO licensing (Part 2 of the Act);
- Selective licensing (Part 3 of the Act).

The mandatory HMO licensing scheme applies to all local authority areas in England. Accordingly, the Council, as the LHA, has a mandatory duty to implement, operate, and enforce the scheme. Additional HMO licensing and selective licensing schemes are discretionary, and it is for each LHA to determine, at a local level, whether there are particular problems in their area that could be tackled by the introduction of a discretionary licensing scheme. Any LHA that proposes to implement a discretionary licensing scheme must provide sufficient evidence to demonstrate why such a scheme is needed and carry out a public consultation.

Mandatory HMO licensing

Chapter 7 describes the types of premises that are deemed to be HMOs for the purposes of the Act. However, the mandatory licensing scheme only applies to certain types of HMO. The prescribed types have been set out in The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 (SI 2006/371).

In the first instance, all HMOs as defined by section 257 of the Act (certain converted blocks of flats) are excluded from the mandatory scheme. All other types of HMO are licensable if:

- The HMO, or any part of it, comprises three or more storeys; and
- It is occupied by five or more persons; and
- It is occupied by persons living in two or more single households.

Mandatory HMO licensing was introduced to improve physical conditions and management standards in higher risk HMOs.

Exemptions from mandatory HMO licensing

Certain buildings, as specified in Schedule 14 of the Act, are not deemed to be HMOs, and are therefore not licensable. The exemptions are summarised in the HMO chapter above.

Two further exemptions are specified in the Act. These are:

- HMOs subject to a temporary exemption notice; and
- HMOs subject to a management order.

Additional HMO licensing

This form of discretionary licensing empowers LHAs to introduce the requirement to license other types of HMOs in all or part of their area.

Before implementing such a scheme, the LHA must consider that a significant proportion of the HMOs (of the type it is considering to license) are being managed sufficiently ineffectively so as to cause problems for those occupying the HMOs or for members of the public.

Selective licensing

LHAs are empowered to introduce selective licensing schemes in all or part of their area, which require all types of private rented accommodation to be licensed (unless subject to exemption). An area may be designated if it is, or may become, an area of low housing demand and/or it has a significant and persistent problem with anti-social behaviour where the inaction of private landlords is a contributory factor.

HMO licensing fees

Licensing schemes should be self-financing and are not intended to be a burden to the public purse. The Council therefore charges fees to cover the costs of implementation and administration.

A fee, usually revised every financial year, is payable in respect of:

- Making a new licence application;
- Making an application to renew a licence.

Public registers of licences

The Council is required to maintain a public register of all licences issued. The information required to be contained within a public register is prescribed by legislation.

The Council maintains a public register for mandatory HMO licensing. This can be viewed at the Council's main offices during working hours, by appointment. Paper copies of the registers are available; for which a small fee may be charged to cover the cost of photocopying.

The public registers include the names and addresses of all licence holders and named managers.

Property inspections

The Council will inspect all properties subject to licensing and make an assessment under the HHSRS. The inspection will be carried out before, or as soon as possible after, the granting of a licence; however, the timing will depend on the priorities of the Council's inspection programme. The inspection will always take place during the licence period.

The licence holder, manager and occupiers will be given at least 24 hours' notice of the date and time that an HHSRS inspection will be undertaken. Any hazards identified will be dealt with following the enforcement principles in this policy.

The Council will also make unannounced inspections of licensed premises to ensure compliance with licence conditions and the Management Regulations.

Penalties for non-compliance

Offences

There are two offences associated with HMO licensing.

Failing to obtain a licence for a property which is required to be licensed is an offence. The offence is committed by the person having control of and/or the person managing the premises. A person committing such an offence is liable on summary conviction to a fine.

Once a licence has been issued, the licence holder and any named manager (if applicable) must adhere to the licence conditions. The licence holder and/or the licence manager will commit an offence if they breach any of the licence conditions. A person committing such an offence is liable on summary conviction to a fine.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 introduced unlimited fines for these offences.

In respect of licensing offences there is a defence of "reasonable excuse".

Prosecution

When a person fails to licence a property, or breaches a licence condition, the Council will begin an investigation to consider whether or not an offence has been committed.

If the Council forms the opinion that an offence has been committed, it will initiate prosecution proceedings in the Magistrates' Court (unless there are good reasons not to do so).

Restriction on terminating tenancies

No section 21 notice may be given in respect of unlicensed premises.

In this context, a "section 21 notice" is a notice served under section 21(1)(b) or (4)(a) of the Housing Act 1988 in order to regain possession of a property subject to a shorthold tenancy.

The following are not "unlicensed premises":

- A property subject to a valid temporary exemption notice;
- A property subject to a valid licence application that is being determined by the Council.

Rent Repayment Orders

In certain situations, the Council or a resident may make an application to the Residential Property Tribunal for a Rent Repayment Order ("RRO").

If a property is licensable under the mandatory HMO or selective licensing regimes and the Council is of the opinion that an offence has been committed owing to the failure of the person having control of or managing the premises to make a valid licence application, the Council may make an RRO application. An application can be made irrespective of whether the Council decides to prosecute for the offence.

Council applications will concern the repayment of housing benefit monies paid in respect of an unlicensed property. Applications may only relate to periods of up to 12 months.

However, before an RRO application can be made, the Council must serve a Notice of Intended Proceedings on the appropriate person. The notice will set out the reasons why the Council intends to make an application and state the amount it wishes to recover. The notice will give the recipient 28 days in which to make representations. Any representations received by the Council must be carefully considered before any further action is taken.

A resident may make an RRO application, but only if the Council has successfully prosecuted the appropriate person for failing to licence the premises, or the Council has been successful in making its own RRO. Resident applications may only be made in respect of rents they have paid over a period of up to 12 months.

RROs made in favour of the Council are a local land charge and the Council may use the enforced sale procedure under the Law of Property Act 1925 to recover its debt.

The Council is of the opinion that RROs are a significant deterrent to operating unlicensed premises. As such, the Council will consider applying for an RRO at every available opportunity. If, after careful consideration, it is deemed to be in the public interest to make an application for an RRO, an application will be made.

The Council will also ensure, insofar as is reasonably practicable, that any resident who is entitled to apply for a RRO is made aware of their right to do so.

Prescribed amenity standards

The prescribed amenity standards for licensable HMOs are contained in regulations made under section 65, namely: The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 (SI 2006/373) as amended by The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 (SI 2007/1903). The prescribed amenity standards are contained in Schedule 3 of the regulations. While licensable HMOs must be able to comply with them, simply meeting these standards does not necessarily mean that the Council will be satisfied as to the suitability test set out in section 64.

The prescribed amenity standards provide for the following:

Heating - Each unit of accommodation must be equipped with adequate means of space heating.

Washing facilities - Where shared washing and toilet facilities are provided (that being bathrooms, WCs and wash-basins), there must be an adequate number of such facilities having regard to the number of persons using them. All facilities must be suitably located. Where reasonably practicable, there must be a wash-basin in each unit of accommodation.

Shared kitchens - Where private kitchen facilities are not provided, the HMO must contain at least one shared kitchen that is suitably located and adequately equipped having regard to the number of people sharing the kitchen.

Private washing and kitchen facilities - Adequate kitchen facilities must be provided within a unit of accommodation if a suitably located and equipped shared kitchen is unavailable to the occupier.

Adequate private washing and toilet facilities must be provided within a unit of accommodation (or within reasonable proximity to the accommodation) if suitably located and equipped shared facilities are unavailable to the occupier.

Fire precautions - Appropriate fire precaution facilities and equipment must be provided of such type, number and location as is considered necessary.

Non-licensable HMOs

Amenities in non-licensable HMOs are assessed under the Housing Health and Safety Rating System. While the prescribed amenity standards and local guidelines do not apply to non-licensable HMOs, they provide sound advice for what would be expected. Officers assessing such HMOs will refer to the Council's local guidelines to inform their HHSRS hazard assessments.

HMO Management Regulations

Section 234 of the Act provides for the making of HMO management regulations by the Secretary of State.

If a person managing an HMO does not comply with the HMO management regulations issued by the Secretary of State, they are guilty of an offence (unless they have a reasonable excuse).

The Secretary of State has issued two sets of regulations:

- The Management of Houses in Multiple Occupation (England) Regulations 2006 (SI 2006/372). These regulations apply to all HMOs, except those defined as converted blocks of flats under section 257 of the Act.
- The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 (SI 2007/1903). These regulations apply only to HMOs defined as converted blocks of flats under section 257 of the Act.

Both sets of regulations impose duties on the persons managing HMOs in respect of:

- Providing information to occupiers;
- Taking safety measures, including fire safety measures;
- Maintaining the water supply and drainage;
- Supplying and maintaining gas and electricity, including having it regularly inspected;
- Maintaining common parts;
- Maintaining living accommodation; and
- Providing waste disposal facilities.

The regulations also impose duties on occupiers to ensure that they do not hinder the effective management of HMOs.

HMO licensing is an entirely separate legislative regime. The regulations apply to all types of HMOs, both licensable and non-licensable.

Enforcement of the Management Regulations

In general terms, the Council will seek to ensure compliance with the regulations by means of an educative and informal approach. Initiating prosecution as a first response will not normally be

the Council's approach. Therefore, where contraventions have been identified, the Council will usually send an informal notice to the person(s) managing the HMO, setting out the nature of the failings and requiring the taking of remedial action within prescribed timescales. Further legal action would not be taken if such a notice is complied with satisfactorily. However, failing to comply with the timescales set out in an informal notice without reasonable excuse may lead to prosecution proceedings being initiated by the Council.

In some situations, the Council may decide to initiate a prosecution without recourse to informal procedures. Immediate prosecution may be considered for contraventions that:

- Are so serious that the failings have exposed occupiers to significant risk or caused actual harm;
- Are related to other forms of enforcement action being taken by the Council; or
- Have been repeated and the manager has already been subject to informal intervention under the HMO regulations.

Other Relevant Documents

HMO licensing guide

Empty Homes Plan