



# Draft Private Sector Housing Enforcement Policy

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[www.eastherts.gov.uk](http://www.eastherts.gov.uk)

## Foreword

The Council's Housing Strategy sets out the Council's strategy for tackling housing priorities within the district of East Herts. It refers also to public health priorities for reducing inequalities in health and wellbeing, and aims to achieve some of these through targeted housing interventions.

The Environmental Health Service's functions to maintain and improve the housing conditions in privately owned property in East Herts include: assessing properties and enforcement under the Housing Health and Safety Rating System; improving the management of and licensing Houses in Multiple Occupation; empty homes; overcrowding; public health matters; and provision of grants.

The Service's approach is to give informal advice, information and assistance when possible. Where this approach fails, or it is necessary to protect the health, safety or welfare of persons or the environment, the service will take necessary enforcement action.

This policy sets out the Council's transparent approach to enforcement so that people understand how matters will be dealt with in these circumstances by the Council.

The end of the document shows how you can contact the Environmental Health Service if you require any further explanation or have any concerns or comments about the policy.

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## 1. Introduction and Scope

- 1.1 The purpose of this policy is to outline the Council's approach to securing compliance with the law in relation to private sector housing while minimising the burden on private sector landlords. In particular, the policy outlines the extent to which the Council will intervene to make use of the powers in Part 1 of the Housing Act 2004 as a result of the introduction of the Housing Health and Safety Rating System (HHSRS), and its approach to empty homes and to the licensing of Houses in Multiple Occupation. It sets out what owners, landlords, their agents and tenants of private sector properties can expect from officers.
- 1.2 The policy follows the principles of the Council's overarching Neighbourhood Services and Environmental Health Service Enforcement Policies, which in turn are in accordance with the principles of the Regulators Code.

All enforcement action will be carried out having regard to the seven 'Hampton' principles specified in the Statutory Code of Practice for Regulators (also known as the Regulators Compliance Code) made under section 23 of the Legislative and Regulatory Reform Act 2006.

These are:

**Economic Progress.** Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

**Risk Assessment.** Regulators, and the Regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most.

**Advice and Guidance.** Regulators should provide authoritative, accessible advice easily and cheaply.

**Inspections and other visits.** No inspection should take place without a reason.

**Information Requirements.** Businesses should not have to give unnecessary information or give the same piece of information twice.

**Compliance and Enforcement Actions.** The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.

**Accountability.** Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

- 1.3 The Council's Enforcement policies were based on the 5 guiding principles of the Concordat on Good Enforcement Practice, of transparency, fairness, proportionality, consistency and objectivity. The Concordat was previously adopted by the Council, and later supplemented by the Regulators Compliance Code. Development of this policy was guided by the Compliance Code principles of good regulation also contained in section 21 of the 2006 Act: these are transparency, accountability, proportionality, consistency and targeted only at cases for which action is needed. Further explanation can be found on our website [www.eastherts.gov.uk](http://www.eastherts.gov.uk), and in our overarching enforcement policies.

- 1.4 The Regulators' Compliance Code and the voluntary Enforcement Concordat will be replaced with a new statutory Regulators' Code. Following a period of consultation, the new draft Code was published on 25<sup>th</sup> July 2013, and it is expected to be brought into statutory force in Spring 2014.<sup>1</sup> The new Code will promote a consistent, targeted and risk based approach to enforcement that minimises the burdens on compliant, well run businesses.

The new Code principles are:

1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.
3. Regulatory activities should be based on risk.
4. Regulators should share information about compliance and risk.
5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
6. Regulators' approach to regulatory activities should be transparent.

The review of this Council's housing enforcement policy has had regard to the Government's draft Code,<sup>2</sup> and therefore it should not be necessary to further review this policy upon the introduction of the Code.

- 1.5 Enforcement in the context of this policy is not limited to formal enforcement action such as serving notices or prosecution, but includes for example, the inspection of premises to check for compliance with legislation and the provision of advice.
- 1.6 This policy seeks to support the Council's corporate aims, objectives and strategies with respect to private sector housing.

## **2. Shared Enforcement**

- 2.1 The range of enforcement matters dealt with by the Council in this policy area is such that there may well be occasions when there is a need to work with other agencies, for example the Fire Authority or the Health and Safety Executive, by carrying out joint inspections. Where a fire hazard is identified, the Council will consult the Hertfordshire Fire and Rescue Service on works required before taking enforcement action, although in the case of proposed emergency measures, that consultation will be so far as it is practicable to do so. The Council and the Fire and Rescue Service follow a jointly agreed consultation policy.
- 2.2 In determining the most appropriate form of investigation and enforcement action, officers will have regard, so far as they are aware, to any potential or existing action of other Council services or outside agencies. This will be

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<sup>1</sup> Department for Business Innovation & Skills, BRDO. Regulators' Code. July 2013: available at: <http://www.bis.gov.uk/brdo/publications>

<sup>2</sup> Better Regulation Delivery Office. Amending the regulators' compliance code. March 2013: available at: <http://www.bis.gov.uk/assets/brdo/docs/publications-2013/13-685-rcc-consultation.pdf>

particularly important in the case of listed buildings and conservation areas which may restrict the use of the premises or the nature of works.

2.3 Where matters are identified by, or reported to our officers that are the enforcement responsibility of another Council service or outside agency, persons involved will, so far as is reasonably practicable, be informed that the matter will be referred to the appropriate service or agency.

2.4 Where enforcement action is being taken by another Council service or outside agency, we will provide all reasonable assistance including the production of witness statements and collection and sharing of evidence etc. subject to any legal constraints and the meeting of any reasonable expenses.

### **3. Enforcement Standards**

3.1 All investigations into alleged breaches of legislation will follow best professional practice and the requirements of:  
The Human Rights Act 1998  
The Regulation of Investigatory Powers Act 2000  
The Police and Criminal Evidence Act 1984 – Codes of Practice  
The Criminal Procedures and Investigations Act 1996  
The Legislative and Regulatory Reform Act 2006  
The Code for Crown Prosecutors  
Enforcement Guidance issued under section 9 of the Housing Act 2004

### **4. Identifying the Need for Action**

4.1 The Council may identify the need to act to deal with hazards in a number of ways, including proactive inspections of, for example, houses in multiple occupation, or in response to a complaint or request from a tenant for enforcement action, or following a request for financial assistance to improve or adapt the property. For example where a landlord refuses an Energy Company Obligation (ECO) or other grant for insulation or heating, an inspection may be necessary to determine whether anything needs to be done to protect the occupant from excess cold or damp and mould affecting the property. Where the Council considers it appropriate to inspect premises to determine whether a hazard exists, it must do so.

4.2 In accordance with section 239 of the Housing Act 2004 at least 24 hours notice will normally be given to owners (if known) and occupiers (if any). As full an inspection as is reasonably possible will be carried out to establish the nature and extent of hazards in the dwelling, and an accurate record will be kept of the inspection.

### **5. Part 1 Housing Act 2004**

Housing Health and Safety Rating System (HHSRS)

- 5.1 The Housing Act 2004, (“the Act”), together with Regulations made under it, prescribes the Housing Health and Safety Rating System as the means by which Local Authorities assess housing conditions and decide on action to deal with poor housing. It is a risk assessment system of the effect of housing conditions on the health of occupiers. 29 potential hazards are assessed and scored for their severity. These are described at Appendix 1. The scores for each hazard are ranked in Bands. Hazards falling into Bands A to C are more serious, and are classed as Category 1. Less serious hazards fall into Bands D to J, and are classed as Category 2. The Council must take appropriate action in respect of a Category 1 hazard, and may do so in relation to Category 2 hazards.
- 5.2 A ‘Category 1 hazard’ arises when a hazard reaches a score of 1000 or more under the Housing Health and Safety Rating System. A ‘Category 2 hazard’ arises when a hazard reaches a “significant” score of up to 999 under the Housing Health and Safety Rating System.
- 5.3 The score is based on the risk to the potential occupant who is in the age group most vulnerable to that hazard. However, in determining what action to take, the Council will not only take account of the score, but also whether the Council has a duty or discretion to act, the views of occupiers, track record of the owner, the risk to the current and likely future occupiers and regular visitors, the presence of other significant hazards in the property, and the risk of social exclusion of vulnerable groups of people from the private rented sector.
- 5.4 A formal notice may be served on the landlord requiring works to be carried out to reduce or eliminate hazards. Once the notice becomes operative failure to comply with the notice without reasonable excuse is an offence and the Authority can carry out works in default and/or prosecute.

## 6. Staged Approach to Enforcement

- 6.1 Council officers will seek compliance with legislation by one or more of the following:-

### **Stage 1: Informal Action.**

Generally taken instead of or prior to formal action.

Decisions to take these actions rest with the investigating officer.

- **Advice and guidance:** to assist individuals, existing and prospective businesses and other organisations to comply with their legal obligations. This will be achieved by providing both information, through leaflets and pointing individuals towards website information and links, and the opportunity for face-to-face contact to discuss and help resolve potential problems.
- **Informal letters:** these will be used to reinforce advice and guidance where minor breaches of the law may have been discovered but it was not thought appropriate to take formal action. This may be where the consequences of non-compliance will not impose a significant risk to health and safety, or where there is confidence that informal action will

achieve compliance.

- **Formal letters and warnings:** These warnings will be written. Where warnings are issued, follow-up visits will normally be made to ensure the problem is being rectified. Warnings issued in respect of significant breaches of the law will include timescales within which the breaches should be remedied and will always result in follow-up visits to ensure compliance. This may follow an informal letter where there remains some confidence that compliance may be achieved before resorting to formal enforcement if necessary, without undue delay.

### **Stage 2: Formal Enforcement.**

Where practicable, decisions to serve notice will be taken by the authorised officer under delegated powers in consultation with the Environmental Health Manager, and actions following failure to comply with statutory notices will be taken in consultation with the Environmental Health Manager and Head of Community Safety and Health Services. The decision to prosecute will be taken by the Director of Neighbourhood Services, in consultation with the Head of Community Safety and Health Services, the Environmental Health Manager, investigating officer and the Head of Legal or their nominated representative as appropriate.

- **Formal Notices:** Statutory (legal) notices will generally be served where there are
  - serious threats to the health and safety of occupants, or
  - there is a significant failure or a record of persistent breaches of statutory requirements, or
  - a lack of confidence that the recipient will respond to an informal approach, or
  - when informal action has failed to achieve a satisfactory resolution.

Examples of 'serious threats to the health and safety of occupants' include: no heating in cold weather, no hot water, exposure to damaged asbestos insulation board such that occupiers are likely to inhale fibres, or exposed live electrical wiring which people are likely to come into contact with.

- **Immediate action:** this includes the power to take emergency remedial action by forced entry to premises if necessary, and make safe areas or articles which are a cause of imminent danger of serious harm. This will be considered where there is a Category 1 hazard under the Housing Act 2004 and there is imminent risk of serious harm. The reasonable costs incurred including an administrative charge to cover officer time and council costs are recoverable from the recipient of the notice.
- **Emergency Prohibition:** This includes the power to immediately prohibit by notice all or part of premises where there is imminent risk of serious harm.

### **Stage 3: Formal action following non compliance:**

Where there is a failure to comply with a formal notice without reasonable excuse or reasonable progress is not being made within the specified timescale



or there is a significant breach of statutory requirements the following formal actions will be considered:

- **Formal Warnings:** are generally given with a timescale for compliance prior to prosecution or carrying out works in default.
- **Works in Default:** where specified work has not been carried out in compliance with an enforcement notice, works in default will be considered. The reasonable costs incurred including an administrative charge are recoverable from the recipient of the notice.
- **Simple Cautions:** may be considered for less serious breaches of formal notices and statutory requirements.
- **Prosecution:** may be considered where there is a failure to comply with a notice within the specified time period or where there is a subsequent or significant breach of statutory requirements, or where health, safety or wellbeing is put at risk such that prosecution is the most reasonable response in all respects.

6.2 Enforcement will normally progress from advice to formal enforcement/ action except where immediate formal action is justified as in 6.4 below.

6.3 Where an owner or landlord agrees to take the required action, and there is some confidence that the work will be undertaken, it may be appropriate to wait before serving a notice unless the owner fails to start the work within a reasonable time.

6.4 In serious cases, for example where the offence involves a significant breach of the law such that the residents health, safety, environment or well being is or has been put at risk, and there are concerns that the owner or landlord will not co-operate, it may be appropriate to commence formal enforcement immediately.

6.5 This may include cases where the HHSRS assessment reveals Category 2 hazards and where the current occupants are vulnerable.

6.6 The Council has a duty to consider the most appropriate course of action to deal with Category 1 hazards.

As these generally involve a serious risk to health and safety it is more likely that formal action will be appropriate. However, each case will be considered on its merits and there may be occasions, for example when dealing with a reputable landlord or agent, when it is considered that an informal approach will achieve the desired result without recourse to formal action.

However, formal action can be initiated at any point if reasonable progress is not being made. Therefore, where it becomes clear that an informal approach is not proving effective for these more serious hazards, it is likely that formal action will quickly follow.

6.7 Where reasonably practicable, the Council will ensure that the landlord and tenant(s) have the opportunity to discuss the Council's proposed action before a

Notice is served.

## 7. **Housing Act 2004: Most Appropriate Course of Action**

7.1 The Housing Act 2004 provides a range of enforcement options to address hazards. The action the Council takes will be what it considers to be the most appropriate course of action in relation to the hazard in all the circumstances. When considering the most appropriate course of action in relation to the hazard the Council will have regard to the Enforcement Guidance issued by the Secretary of State under section 9 of the Housing Act 2004. This may initially involve informal action in cases that warrant this approach. Where there is a **Category 1** hazard the Council is under a statutory duty to take appropriate action but for a **Category 2** hazard the Council has discretion whether to exercise this power.

7.2 When a formal enforcement option is taken the Act requires a formal statement of reasons to be given saying why that particular option was chosen. Where possible the Council will seek the views of the landlord or owner and current occupier before deciding on which enforcement option to take.

## 8. **Actions under the Housing Act 2004**

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

- Hazard Awareness Notice relating to Category 1 Hazards; section 28
- Hazard Awareness Notice relating to Category 2 Hazards; section 29
  
- Improvement Notices relating to Category 1 Hazards; section 11
- Improvement Notices relating to Category 2 Hazards; section 12
  
- Prohibition Orders relating to Category 1 Hazards; section 20
- Prohibition Orders relating to Category 2 hazards; section 21
  
- Suspension of Improvement Notice; section 14
- Suspension of Prohibition Order; section 23

**Hazard Awareness Notices** give formal notification that a hazard exists and draws attention to the desirability of remedial action. It is normally used for less serious Category 2 hazards or in the case of owner-occupied property but may also be used for more serious Category 1 hazards where remedial action is not practicable or where informal advice is being acted upon. The notice does not have to be acted upon and consequently there is no provision for appeal. However, service of the notice does not prevent further formal action should an unacceptable hazard remain.

**Improvement Notices** require remedial works within a specified time and must as a minimum remove the Category 1 hazard but may extend beyond this. An appeal can be made to a residential property tribunal within 21 days from service of the notice.

**Prohibition Orders** may prohibit use of all or part of a dwelling, or use by a description of persons, e.g., those aged under 5 or over 60. An appeal against a prohibition order can be made to a residential property tribunal within 28 days from service of the order.

- Improvement Notices and Prohibition Orders may be suspended until a specified time or event.

Failure to comply with the requirements of an Improvement Notice or Prohibition Order is an offence for which the recipient of the notice can be prosecuted. The Council can also carry out the works themselves if reasonable progress is not made and recover their reasonable costs.

8.2 An Improvement Notice will provide the most appropriate action for most Category 1 hazards; repair or renewal is generally cost effective because of the high value of property in East Herts. However, Prohibition Orders may be required on part or all of a dwelling, e.g., to reduce overcrowding, or where there is inadequate natural lighting or there is no protected means of escape in case of fire from the top floor.

## 9. Emergency Measures, Demolition and Clearance

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

<b>Emergency Measures</b>	<b>When this action may be taken</b>
Emergency Remedial Action Section 40	<p>When the Council is satisfied that a Category 1 hazard exists on any residential premises <b>and</b> is further satisfied that the hazard involves an imminent risk of serious harm to the health and safety of any occupiers of those or any other residential premises <b>and</b> no management order is in force under Chapter 1 or 2 of Part 4 of the Act.</p> <p>May be taken by the authority in respect of one or more Category 1 hazards on the same premises or in the same building containing one or more flats.</p> <p>The action will be whatever remedial action the Council considers necessary to remove an imminent risk of serious harm.</p> <p>This is likely where the Council considers it is immediately necessary to remove the imminent risk of serious harm, there is no confidence in the integrity of any offer made by the owner to immediately address the hazard, and the imminent risk of serious harm can be adequately addressed through remedial action to negate the need to use an</p>

	<p>emergency prohibition order.</p> <p>If this action is taken a notice will be served within 7 days of taking the emergency remedial action, detailing the premises, the hazard, the deficiency, the nature of the remedial action, the date action taken, and rights of appeal.</p>
<p>Emergency Prohibition Orders Section 43</p>	<p>When the Council is satisfied that a Category 1 hazard exists on any residential premises <b>and</b> is further satisfied that the hazard involves an imminent risk of serious harm to the health and safety of any occupiers of those or any other residential premises <b>and</b> no management order is in force under Chapter 1 or 2 of Part 4 of the Act.</p> <p>May be taken by the authority in respect of one or more Category 1 hazards on the same premises or in the same building containing one or more flats.</p> <p>The order specifies prohibitions(s) on the use of part or all of the premises with immediate effect.</p> <p>This is likely where the imminent risk of serious harm cannot be adequately addressed through the use of emergency remedial action for whatever reason.</p> <p>Where this action is taken the Council will, if necessary, take all reasonable steps to help the occupants find other accommodation when the tenants are not able to make their own arrangements.</p>
<p><b>Other Measures</b></p>	<p><b>When this action may be taken</b></p>
<p>Demolition Orders Section 46 of the Housing Act 2004, and Part 9 of the Housing Act 1985</p>	<p>When the Council is satisfied that a Category 1 hazard exists in a dwelling or HMO which is not a flat, and a management order is not in force, or in the case of a building containing one or more flats where the Council is satisfied that a Category 1 hazard exists in one or more of the flats contained in the building or in any common parts of the building.</p> <p>When the Council is satisfied that a Category 2 hazard exists in a dwelling or HMO which is not a flat and a management order is not in force. In the case of a building containing one or more flats the Council is satisfied that a category 2 hazard exists in one or more of the flats contained in the building or in any common parts of the building, and the circumstances of the case are circumstances specified or described in an order made by the Secretary of State. At the time of writing this policy, no such order has been made.</p>

	<p>This course of action will only be taken where a Neighbourhood Renewal Assessment has been carried out and this determines that this is the most appropriate action. They are not appropriate for listed buildings, and the Council would take into account the availability of suitable accommodation for rehousing the occupants, the demand for and sustainability of the accommodation if the hazard was remedied, prospective use of the cleared site, and the impact on the neighbourhood.</p>
<p>Clearance Areas Section 47 of the Housing Act 2004, and Part 9 of the Housing Act 1985</p>	<p>May be declared when the Council is satisfied that each of the residential buildings in the area contains a Category 1 hazard and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area.</p> <p>May be declared when the Council is satisfied that the residential buildings in an area are dangerous or harmful to the health or safety of the inhabitants of the area as a result of their bad arrangement or the narrowness or bad arrangement of the street and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area.</p> <p>May be declared when the Council is satisfied that each of the residential buildings in the area contains a Category 2 hazard and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area and the circumstances of the case are circumstances specified or described in an order made by the Secretary of State. At the time of writing this policy, no such order has been made.</p> <p>This course of action will only be taken where a Neighbourhood Renewal Assessment has been carried out and this determines that this is the most appropriate action, having regard to a range of considerations including the degree of concentration of dwellings containing serious and intractable hazards in the area, the proportion of sound premises which will also need to be cleared, and the presence of listed buildings.</p>

## 10. Tenure

- 10.1 In considering the most appropriate course of action, the Council will have regard to the extent of control that an occupier has over works required to the dwelling. It is usually the owner's responsibility to carry out works to reduce or eliminate hazards. Action can be taken against an owner-occupier but as owner-occupiers have control over any hazards in the home and tenants in the main do not, most enforcement action will involve requiring a private landlord or

Registered Social Landlord (Housing Association) to carry out works.

- 10.2 Where we have identified hazards and the Registered Social Landlords have a programme of works to make their stock decent, the officer will liaise with the landlord over any works necessary to deal with Category 1 and 2 hazards in advance of the planned improvements.  
In particular, with the Space and Crowding hazard, account will be taken of the availability of suitable alternative accommodation and the priority given for alternative accommodation for tenants living in overcrowded conditions which are the subject of a Category 1 or high Category 2 hazard.
- 10.3 With owner – occupiers, in most cases they will not be required to carry out works to their own home, and a Hazard Awareness Notice is likely to be the most appropriate action.
- 10.4 However, the Council may in certain circumstances require works to be carried out, or to use Emergency Remedial Action, or serve an Emergency Prohibition Order, in respect of an owner – occupied dwelling. This is likely to be where there is an imminent risk of serious harm to the occupiers themselves or to others, or where the condition of the dwelling is such that it may adversely affect the health and safety of others outside the household. This may be because of a serious, dangerous deficiency at the property, or for example to carry out fire precaution works to a flat on a long leasehold in a block in multiple occupation.
- 10.5 An Improvement Notice or Prohibition Order may be suspended until a time or event specified, and in some cases, of any tenure, may be more appropriate than a Hazard Awareness Notice. Typically the event will be a change of occupancy. For example, an Improvement Notice may be suspended at the wishes of an elderly occupier who does not want the disturbance of extensive works, or where a member of the vulnerable age group is not present. The notice might require an owner to notify the Council of a change of occupancy to ensure that the notice can be reviewed.

## **11. Category 2 hazards**

- 11.1 There are discretionary powers to deal with Category 2 hazards, but resources will not allow all to be dealt with. Generally, these hazards will only be dealt with
- where the hazard score exceeds the national average by more than 2 bands, or
  - where the hazard band is D or E (i.e. the higher Category 2 bands), or
  - where a number of hazards at Band D or below appear, when looked at together, to create a more serious situation, and
  - with regard to the Council's priorities to protect health and well being, particularly of the vulnerable. In particular, hazards relating to physiological requirements and protection against infection are more likely to be dealt with in this way.
- 11.2 Each case will be considered on its merits. Where appropriate, action outside these guidelines may be authorised by the Environmental Health Manager.

## **12. Level to which Hazards are to be Improved**

- 12.1 Where an improvement notice is served, the Council will generally require works to prevent a recurrence of the hazard within five years.
- 12.2 Section 11 of the Housing Act 2004 requires only that where there is a Category 1 hazard, the works specified must reduce the hazard to a Category 2. However, the Council will generally seek to specify works which, whilst not necessarily achieving the ideal, will achieve a significant reduction in the hazard level, if possible to the national average or below if the national average is D or above. The Council will try to ensure that any works required to mitigate a hazard are carried out to a standard that prevents building elements deteriorating.

### **13. Content of Notices**

13.1 Generally, the notice will explain:-

- what is wrong (the deficiencies)
- what is required to put things right
- the timescale in which to put things right
- what will happen if the notice is not complied with
- the appeal period and the address of the relevant Residential Property Tribunal that would hear the appeal.

All notices and orders will be accompanied by a statement of the reasons for choosing that course of action.

### **14. House in Multiple Occupation (HMO) Licensing**

- 14.1 An HMO is a building or part of a building occupied by more than one household as their only or main residence, and there is some sharing or lack of basic amenities, and includes houses containing bedsits, hostels, and shared houses. A full definition is given under section 254 and Schedule 14 Housing Act 2004.
- 14.2 HMOs of three or more storeys, with five or more occupiers require a licence. HMOs owned by RSLs, the Police, Health Authorities and certain other organisations are exempt, as are certain buildings properly converted into flats.
- 14.3 The Council will require the licence application to be accompanied by a fee fixed by the Council. The fee takes into account all costs incurred by the Council in carrying out their HMO licensing functions, and the Act permits certain costs incurred in carrying out functions in relation to Interim and Final Management Orders to also be taken into account. The fee structure is attached at Appendix 2.
- 14.4 The Council will publish its scale of charges for HMO licensing each year. These recognise the increased cost to the Council where intervention is required to initiate and progress the application, and so offers a reduced fee where the application is made pro-actively.
- 14.5 Licences will be granted where the house is reasonably suitable for occupation

as an HMO, or it can be made so suitable by the imposition of conditions, the management arrangements are satisfactory, and the licensee and manager are fit and proper persons. The applicant must be the most appropriate person to hold the licence. A member of the Environmental Health service will normally visit before licensing an HMO, to assess compliance with the licensing requirements and the number of people the HMO should be licensed for.

- 14.6 The Council is required to assess whether the applicant and any manager and any person associated with them or formerly associated with them<sup>3</sup> are fit and proper people to own or manage an HMO.
- 14.7 A person will generally be considered fit and proper if the Council is satisfied that:
- they have no unspent convictions<sup>4</sup> relating to offences involving fraud, dishonesty, violence or drugs, or sexual offences
  - they have no unspent convictions relating to unlawful discrimination on grounds of sex, race, or disability
  - they have no unspent convictions relating to housing or landlord and tenant law
  - they have no unspent convictions for breaches of planning, compulsory purchase, environmental protection or other legislation enforced by local authorities
  - they have not been refused an HMO licence, been convicted of breaching the conditions of a licence, or have acted otherwise than in accordance with the approved code of practice under section 233 of the Act within the last five years
  - they have not been in control of a property subject to an HMO Control Order, an Interim Management Order (IMO) or Final Management Order (FMO) or had work in default carried out by a local authority.
- 14.8 Licences will normally be valid for five years from the date the licence was required i.e., from when it first became a licensable HMO with the current owner. Where an HMO has been operating without a licence we will, depending on the circumstances, normally give the opportunity to apply for a licence before considering formal action in the form of a Simple Caution or prosecution. The minimum period of such a licence will normally be two years. If the landlord has pro-actively approached the Council for a licence an informal approach will be adopted so long as the application is subsequently duly made within 21 days. Exceptional circumstances that have resulted in an application not being made will be considered by the Environmental Health Manager.
- 14.9 Licences will specify the maximum number of occupiers or households. The occupancy number will depend on the number and size of rooms and the kitchen and bathroom facilities.  
When assessing the number of households and occupiers regard will be had to the prescribed standards and the good practice guide developed by East Herts

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<sup>3</sup>If a person associated or formerly associated with the applicant or any manager, has done any of the things stated above, the Council will only take these issues into account if they are relevant to the applicant or manager being a fit and proper person to manage the house.

<sup>4</sup> A conviction where the penalty is a fine is spent after five years.



Council in partnership with other Herts and Beds authorities.

- 14.10 We will aim to issue draft licences within seven months of a full application. During this time we will carry out checks that the applicant and any manager are fit and proper persons, and will normally inspect the property, consult with the Fire Service if fire safety improvements are necessary, produce draft licence, conditions and any other schedules of work, and liaise as appropriate. Applicants should include all required documentation to support their application. A full licence application must include:
- the completed application form
  - the appropriate fee
  - two passport type photographs, and
  - a copy of the tenancy agreement.

Where plans are not provided, the council will normally produce and charge for these. Where the other required documentation, such as gas or electrical safety inspection certification, or automatic fire detection or emergency lighting commissioning certification are not provided, these will generally be required through a condition on the licence.

- 14.11 A draft licence must be served on all interested parties, allowing at least fourteen days for representations before granting the actual licence.
- 14.12 HMOs will be prioritised for assessment under the Housing Health and Safety Rating System within five years of the licence being granted. However, subject to available resources, we aim to carry out all such assessments within two years of the licence being granted, and in many cases will do so before granting the licence. When the licence is issued information will be made available to applicants to help them identify and deal with Category 1 hazards.
- 14.13 The Council may serve a Temporary Exemption Notice (TEN) where a landlord is, or shortly will be, taking steps to make an HMO non-licensable. A TEN can only be granted for a maximum period of three months. A second three-month TEN can be served in exceptional circumstances. Where a licensable HMO is not licensed, and no application for a licence has been made, the landlord cannot serve notice to quit until the HMO is licensed.
- 14.14 Where a landlord fails to license a licensable HMO, or knowingly permits another person to occupy a licensed HMO and this results in the house being occupied by more households or persons than is authorised by the licence, or fails to comply with a licence condition, the Council can take a prosecution case to the Magistrates Court. On conviction for failure to license, the appropriate Tribunal, currently the Residential Property Tribunal (RPT), has the power to make a Rent Repayment Order requiring that up to twelve months' rent is repaid to the tenant, or to the Council where a tenant is on housing benefit. The licensee has a right of appeal to the RPT against refusal to license, licensing conditions and the maximum number of occupiers or households specified on the licence.
- 14.15 Where a landlord is convicted for failure to license and the rent is paid as Housing Benefit, the Council will apply to the RPT for a Rent Repayment Order (RRO) for twelve months' Housing Benefit or for the period since the landlord

was required to license the HMO. We will provide tenants not on housing benefits with information on how to apply. The Environmental Health Manager will consider any exceptional circumstances where the Council should not seek an RRO.

- 14.16 Where there is no prospect of an HMO being licensed, the Act requires that the Council use its Interim Management powers. This enables the Council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. This may be followed by a Final Management Order for a further five years. The Council intends to appoint a preferred partner to manage HMOs subject to management orders.
- 14.17 If the Council finds that there has been a change of circumstances in an HMO since it was licensed, it has the power to vary the licence. Rather than risk prosecution for breach of licence conditions, the licence holder should apply for a variation should circumstances change that may affect the licence conditions. If there is a serious breach or there are repeated breaches of the licence conditions, or the licensee or manager are no longer fit and proper persons, the licence can be revoked. The licence can also be revoked if the property is no longer a licensable HMO or if the condition of the property means it would not be licensable were an application made at the later time.
- 14.18 Breaches of licence conditions will be investigated in line with current enforcement objectives and priorities, and each case will be judged on its own merits. Informal action will normally be taken in relation to minor breaches of licence conditions, for example not producing certificates on time, as long as the breaches have not significantly affected a person's health, safety or welfare. Formal action will be considered where there have been serious and/or persistent breaches of licence conditions.

## **15 Discretionary Licensing**

### **15.1 Selective Licensing of Privately Rented Housing**

Sections 79-81 of the Housing Act provide for the introduction of a scheme of selective licensing of private landlords in a local authority area for a period of up to five years. It is intended to address significant impact of poor quality private landlords and anti-social tenants.

In an area subject to selective licensing, all private landlords must obtain a licence and achieve acceptable management standards, or risk enforcement action.

Many of the provisions are similar to those for mandatory and discretionary licensing of HMOs.

### **15.2 Additional HMO Licensing**

Councils also have discretion to introduce additional licensing of types of HMOs which are not subject to mandatory licensing, including poorly converted self-contained flats (also known as section 257 HMOs after the section in the Act which defines them).

Selective licensing of privately rented housing, and additional HMO licensing schemes are aimed at dealing with situations that cannot be improved by any other means.

Councils have to consult with landlords before introducing additional HMO or selective licensing, and to publicise the scheme.

No areas in East Herts have been identified as so problematic as to warrant the introduction of these additional tools, and therefore the Council has no current plans to consult on the introduction of selective or additional licensing schemes.

## **16 Management of HMOs**

16.1 HMO Management Regulations place duties upon the manager of an HMO. These require HMOs to be kept in a reasonable state of repair, all installations and appliances (including those for fire safety) to be in good working order and the common parts to be kept clean and in a reasonable state of decoration. Landlords and managing agents should comply with these regulations at all times. Failure to do so may result in prosecution and a fine of up to £5000 for each offence.

16.2 There is no provision under the Regulations for the service of a notice prior to prosecution. Therefore whilst the Council will generally inform the landlord and manager of breaches it becomes aware of, in accordance with the general principles of this enforcement policy, it may, depending on the severity and circumstances, directly institute legal proceedings.

## **17. Tests as to suitability for multiple occupation**

17.1 The HMO Management Regulations will apply to all HMOs, whether or not they require a licence. The Housing Health and Safety Rating System (HHSRS) applies to all dwellings.

17.2 There are nationally prescribed standards (relating to facilities such as bathrooms, cooking facilities etc) by which the Council will judge whether an HMO requiring a licence is reasonably suitable for occupation by a particular maximum number of households or persons. Section 65 of the Act allows authorities to decide that an HMO is not reasonably suitable even if it does meet those minimum standards. Councils can adopt their own standards in addition to the nationally prescribed standards.

17.3 East Herts Council became concerned that the standard it adopted under the 1985 Housing Act may have prevented certain otherwise acceptable HMOs from becoming licensed as a result of the space it required in bedrooms. As the Council recognises the importance of this type of affordable accommodation in the area, and the prospective tenant is able to make a judgement about the adequacy of room sizes when deciding to take up the tenancy, the Council reviewed its amenity standards for all HMOs in January 2007.

17.4 A standard has been drawn up in conjunction with other authorities in Hertfordshire and Bedfordshire. This is attached at Appendix 3. This may be

subject to slight change from time to time in order to achieve consistency with neighbouring authorities, but it is proposed that the Council will have regard to this standard when determining the suitability of an HMO for licensing. It will also apply to HMOs not subject to licensing in conjunction with an HHSRS assessment, in particular, but not exclusively, when considering overcrowding.

- 17.5 Whilst local authorities are responsible for implementing mandatory licensing of HMOs and assessing the fire safety risks in all dwellings under the Housing Health and Safety Rating System, the Hertfordshire Fire and Rescue Service also have responsibilities under the Fire Safety Order 2005 for fire safety in common (shared) parts of HMOs. An agreement has therefore been drawn up between the Hertfordshire Fire and Rescue Service and the Hertfordshire local authorities for joint working to secure fire safety in HMOs. A guide has also been produced, attached at Appendix 4, to help landlords meet the standards of fire precautions normally required in various types of HMO, without the need for intervention by the local authority. The Council will however carry out an HHSRS assessment when determining actual legal requirements for each specific dwelling, and the requirements may therefore vary from the guide depending on the circumstances. The guides may be downloaded from the Council's website or obtained from our Environmental Health Service.

## **18 Planning and HMOs**

### **18.1 Definition of HMO under Planning Laws**

For Development Control purposes, the Town and Country Planning (Use Classes) Order 1987 (as amended) defines different use classes. Planning permission is normally required to change to an HMO with more than six occupants.

- 18.2 Generally, the change of use between family dwellings (Use Class C3) and small houses in multiple occupation of between three to six persons (Use Class C4) does not need planning permission unless the area is covered by an 'Article 4 Direction'. However, there are occasional circumstances (where we have withdrawn 'permitted development' rights for example) when permission will be required, and therefore you are advised to contact the Council's Development Management Team for confirmation in this respect prior to effecting any change.

### **18.3 Article 4 Directions**

Article 4 Directions require landlords to gain planning permission before converting a house into a Class 4 HMO. Some Local Authorities have introduced Article 4 Directions as a means of restricting the proportion of HMOs in an area, where the area would benefit from tighter controls, such as in conservation areas, or areas experiencing problems such as anti-social behaviour, noise nuisance, untidy neighbourhoods and rogue landlords.

- 18.4 This tool is not currently thought necessary in East Herts, so the Council has no plan to consult on and implement an Article 4 Direction. This recognises the increasing need for affordable shared housing.

## **19. Summary of Actions in relation to HMOs and Empty Homes**

Offences in relation to the Licensing of HMO's Section 72	Action may be taken for the offence of operating an HMO without a licence or for failing to satisfy the conditions of the licence without reasonable excuse. This may take the form of revocation of a licence and/or prosecution.
Offences in relation to the Selective Licensing of HMO's Section 95	Action may be taken for the offence of operating an HMO without a selective licence where required or for failing to satisfy the conditions of the licence without reasonable excuse. This may take the form of revocation of a licence and/or prosecution. However, the Council has not currently identified a need for the introduction of Selective Licensing.
Rent Repayment Order Sections 73 & 96	Where an HMO is operating without a licence or a selective licence where one is required, and notice has not been received to notify the local authority that particular steps are being taken to no longer require the house to be licensed, the Council may make an application to the Residential Property Tribunal for a rent repayment order with respect to the repayment of housing benefit.
Interim Management Order Section 102	<p>Where an HMO requiring a licence is operating without a licence, or the licence has been revoked but the revocation is not yet in force or, on coming into force the revocation will mean that the health and safety condition will be satisfied, the local authority has a duty to make an Interim Management Order.</p> <p>Where the health and safety condition is satisfied within a property that is not required to be licensed, on application to the Residential Property Tribunal, the Council may make an Interim Management Order (IMO). The health and safety condition is met where it is necessary to make an IMO to protect the health, safety or welfare of residents or others.</p>
Special Interim Management Order Section 103	Where a house, occupied under a single tenancy or licence, is in an area experiencing a significant and persistent problem of anti-social behaviour and the landlords, who have let the premises, are failing to take action to combat the problem <i>and</i> the health, safety and welfare of the occupiers or visitors is at risk, the local authority may apply to the Residential Property Tribunal for a special interim management order.
Final Management Order (FMO) Section 113	<p>Must be made to replace an interim management order on the date the house would be required to be licensed but the Council consider they are unable to license it.</p> <p>If not required to be licensed, the FMO may be made on the date the interim management order expired, for the purpose of protecting the health, safety and welfare of the</p>

	occupying persons or others affected.
Interim Empty Dwelling Management Order (EDMO) Section 133	Where a dwelling has been wholly unoccupied for a period of at least 2 years and is causing a nuisance, there is no reasonable prospect that the dwelling will become occupied unless an interim EDMO is made, the Council has made reasonable efforts to notify the proprietor of the dwelling and to ascertain what steps are being taken to occupy that dwelling, the Council may apply to the Residential Property Tribunal for an interim EDMO. Complaints about the dwelling may indicate necessary community support for the proposal.
Final Empty Dwelling Management Order (EDMO) Section 136	The local authority may make a final EDMO to replace an interim EDMO, where: <ul style="list-style-type: none"> <li>• the dwelling is likely to become or remain unoccupied; they have taken all such steps as were appropriate for securing the occupation of the dwelling; and</li> <li>• they have taken into account the interests of the community and the effect that the order will have on the rights of the relevant proprietor and the rights of third parties.</li> </ul>
Overcrowding Notice Section 139	Where no IMO or FMO is in force, and the HMO does not require a licence, the local authority may serve an overcrowding notice on one or more relevant persons if, having regard to the rooms available, it considers that an excessive number of persons is being or is likely to be, accommodated in the HMO concerned.

## 20. Other Enforcement Actions for Empty Homes

20.1 In addition to the actions under the Housing Act 2004 there are other enforcement actions the Council may choose to take to help bring empty homes back into use. There are three enforcement routes that may be used (in addition to the Empty Dwelling Management Orders listed above). These are:

- improvement works
- enforced sale, and
- compulsory purchase

Any enforcement action aimed at bringing empty property back into use will only be used when repeated attempts to encourage the owner of an empty property to bring it back into use voluntarily have failed. When considering enforcement options for empty homes, each case will be assessed on its merits and will only be recommended for enforcement action where there are clear benefits to the neighbourhood or where it could address a housing need.

## 21. Improvement Works for Empty Homes

21.1 In many cases the powers that can be used to require improvements to an empty home rest with other services within the Council and will be covered by the appropriate services enforcement policies. Any action taken under powers available to this service will be taken in accordance with the staged approach to enforcement above. The following table shows the problem identified, main

legislation that may be used to require improvements, and the action required of the owner. These powers are not restricted to empty homes, however the powers under Part 1 of the Act to remedy hazards will often not be appropriate for empty homes, unless occupation seems likely.

21.2

<b><u>Problem</u></b>	<b><u>Legislation</u></b> <i>(Service, where not Environmental Health)</i>	<b><u>Action required</u></b>
Dangerous or dilapidated buildings	Building Act 1984, section 77 and 78  <i>(Building Control)</i>	Requires the owner to make the property safe and/ or enables the Local Authority to take emergency action to make the property safe
Property in such a state as to be a nuisance (e.g. causing dampness in adjoining property) or prejudicial to health	Environmental Protection Act 1990, section 79	Requires the owner to take steps to abate the nuisance
	Building Act 1984, section 76	Enables the Local Authority to take emergency action to abate the nuisance
Unsecured property posing a risk of unauthorised entry or likely to suffer vandalism, arson or similar	Local Government (Miscellaneous Provisions) Act 1982, section 29  <i>(Building Control)</i>	Requires the owner to take steps to secure the property or allows the Local Authority to board it up in an emergency
	Building Act 1984, section 78 <i>(Building Control)</i>	Allows the Local Authority to fence off the property
Blocked or defective drains or private sewers Blocked or defective drains or private sewers (continued)	Local Government (Miscellaneous Provisions) Act 1976, section 35	Requires the owner to address obstructed private sewers
	Building Act 1984, section 59	Requires the owner to address blocked or defective drains
	Public Health Act 1961, section 17	Requires the owner to address defective drains or private sewers
Vermin either present or a risk of attracting vermin that may detrimentally affect peoples health	Prevention of Damage by Pests Act 1949, section 4	Requires the owner to take steps to clear the land of vermin and/or requires the owner to remove waste likely to attract vermin
	Environmental Protection Act 1990, section 79	
	Public Health Act	

	1936, section 83	
Unsightly land or property affecting the amenity of the area	Public Health Act 1961, section 34 <i>(Contract Services)</i>	Requires the owner to remove waste from the property
	Town and Country Planning Act 1990, section 215 <i>(Development Control)</i>	Requires the owner to address unsightly land or external appearance of the property
	Building Act 1984, section 79 <i>(Building Control)</i>	Requires the owner to address the property adversely affecting the amenity of the area through its disrepair

## 22. Enforced Sale

- 22.1 The Law of Property Act 1925 gives Local Authorities the power to sell properties in order to recover a debt secured against that property. This power can be used where a debt has been incurred for example following works undertaken to an empty home in the owners default.

## 23. Compulsory Purchase

- 23.1 The Housing Act 1985, section 17 allows the Local Authority to acquire under-used or ineffectively used property for residential purposes if there is a general housing need in the area.  
In addition section 226 of the Town and Country Planning Act 1990 (as amended by section 99 of the Planning and Compulsory Purchase Act 2004) allows Local Authorities to acquire land or buildings if acquisition will allow improvements or redevelopment to take place.
- 23.2 Compulsory purchase will be used only as the enforcement route of last resort for returning empty homes to use.

## 24 Overcrowding

- 24.1 The legislation relating to overcrowding is complex. In the Housing Act 1985, a dwelling is statutorily overcrowded if the number of persons sleeping in it exceeds a permitted number, based on the room or space standards contained within Part 10 of the Act.
- 24.2 The HHSRS Operating Guidance describes 'Crowding and Space' as a hazard associated with lack of space within a dwelling for living, sleeping and normal family/household life, and refers to the 'Bedroom Standard' as a guide.
- 24.3 Councils may choose to enforce the low, prescriptive standard in Part 10 of the Housing Act 1985, but are encouraged to follow the HHSRS Enforcement Guidance to enforce Part 1 of the Housing Act 2004.



- 24.4 When considering appropriate action, officers will refer to the Enforcement Guidance and to the LACORS guidance for local authorities on 'Regulation of Crowding and Space in Residential Premises' published June 2009. The LACORS guidance stresses the need for such action to be proportionate, having regard to the impact, such as potential displacement into temporary accommodation and lack of alternative housing supply. The hazard of 'Crowding and Space' has not been identified as a local priority for action. Action will be prioritised on those hazards with the most serious impact.
- 24.5 Where HMOs are licensed, overcrowding is controlled by specifying in the licence the maximum number of occupiers or households allowed to occupy the HMO. Powers to deal with overcrowding in HMOs which do not need to be licensed are contained in section 139 of the Housing Act 2004 (as amended). The HMO space standards used to decide whether an HMO is overcrowded are contained in the Council's Amenity Standards for HMOs.

## **25 Restoration of Supplies**

- 25.1 Section 33 of the Local Government (Miscellaneous Provisions) Act 1976, as amended by the Local Government and Housing Act 1989, gives Local Authorities the discretionary power to reconnect gas, electricity or water supplies upon the written request of a tenant, where they are satisfied that they are likely to be or have been disconnected as a result of the landlord's failure to pay his/her account.
- 25.2 The local authority may recover the cost (normally the reconnection fee and first invoice to the statutory undertaker) by collecting rent after having served Notice on the occupiers as a civil debt or as a charge against the property.
- 25.3 This is viewed as an emergency approach to deal with an immediate problem, and will only be considered where the households affected contain a person or persons deemed to be at risk, e.g., elderly, person(s) with disabilities, containing small children, or person(s) in ill health.
- 25.4 If none of the households fall within these "at risk" groups, they will normally be advised to become the registered consumer. In the case of an HMO, the Management Regulations may be used to require the provision of individual supplies

## **26 Accreditation Schemes**

- 26.1 The Council has no current plans to introduce a landlord accreditation scheme. Such schemes are most suited to areas of low demand or in University towns, and when a local scheme was proposed to East Herts landlords through our Private Rented Sector Forums some years ago, there was very little support for its introduction.
- 26.2 There are now other landlord accreditation schemes in existence to encourage and acknowledge good standards of privately rented accommodation.

26.3 The Council seeks to recover costs of licensing through its fee structure. Whilst the Council acknowledges the benefits of landlords joining a recognised accreditation scheme, there is no evidence that this would reduce the cost of the licensing process, and therefore does not currently offer a fee reduction on this basis.

## **27. Non - Compliance**

27.1 Where notices are not complied with, the Council will normally use its powers to prosecute and to carry out the work in the owner's default, reclaiming the costs. Administration costs to cover officer time and council costs will be added to the works cost. Prosecution will generally be the preferred initial option, unless the Head of Community Safety and Health Services considers that there is an urgent need for the works to be carried out to protect the health and safety of the tenant.

## **28. Simple Cautions**

28.1 Under certain circumstances, a simple caution may be used as an alternative to prosecution and will usually be considered before making a decision to prosecute. The procedure adopted and the form of content of the caution will be in accordance with current LACORS guidance and relevant Home Office Circular.

28.2 A caution is a serious matter. It may be used to influence any decision whether or not to prosecute should the individual, organisation or business offend again and it may be referred to in any subsequent court proceedings. Simple cautions remain on record for a period of 3 years. The decision whether to offer a caution will be made by the Head of Community Safety and Health Services in consultation with the Head of Legal.

28.3 Cautions are intended to:-

- deal quickly and simply with certain, less serious offences;
- avoid unnecessary appearance in criminal courts;
- reduce the chance of offenders re-offending.

28.4 Before issuing a caution the following conditions must be satisfied:-

- there must be evidence of guilt sufficient to give a realistic prospect of conviction;
- the offender must understand the significance of the formal caution and admit the offence by signing a declaration.

28.5 Where an individual chooses not to accept a caution the Council will normally prosecute.

28.6 In instances where a caution is accepted the risk assessment for the premises will be reviewed and the inspection frequency may be increased as a result of this.

28.7 The officer shall ensure that decisions to issue a formal caution are notified to all known interested bodies, including tenants, managers, freeholders, leaseholders and mortgagees.

## **29. Prosecution**

29.1 The Council will use discretion in deciding whether to bring a prosecution and generally will only commence proceedings when to do so is considered to be in the public interest. The decision to pursue prosecution lies with the Director of Neighbourhood Services after consultation with the Head of Community Safety and Health Services, the Environmental Health Manager, and the Head of Legal.

29.2 Before deciding to prosecute there must be sufficient evidence for a realistic prospect of conviction, taking account of any defence that may be available. In certain circumstances prosecution without prior warning may take place.

29.3 The decision to prosecute will always take into account the criteria laid down in the Code for Crown Prosecutors issued by the Crown Prosecution Service. ([www.cps.gov.uk](http://www.cps.gov.uk))

29.4 The officer will ensure that decisions to prosecute and results of any legal proceedings are notified to all known interested bodies, including tenants, managers, freeholders, leaseholders and mortgagees.

## **30. Charges for Formal Action**

30.1 Section 49 Housing Act 2004 gives local authorities the power to make a charge as a means of recovering certain reasonable expenses incurred in serving formal notices.

A charge will normally be made where it has been necessary to take one of the enforcement actions listed from a) to i) below. However, particularly for Hazard Awareness Notices, matters such as the gravity of the hazard, response to informal requests for action, and previous non compliance will be taken into account when deciding whether to charge.

- a) serving an improvement notice under section 11 or 12
- b) making a prohibition order under section 20 or 21
- c) serving a hazard awareness notice under section 28 or 29
- d) taking emergency remedial action under section 40
- e) making an emergency prohibition order under section 43
- f) making a demolition order under section 46
- g) declaring a slum clearance area under section 47
- h) reviewing a suspended improvement notice under section 17
- i) reviewing a suspended prohibition order under section 26

30.2 The expenses are in connection with the inspection of the premises, the subsequent consideration of any action to be taken, and the service of notices or orders. The Council publishes its standard charge for serving Housing Act notices in its annual fees and charges summary. In addition to the standard charge, reasonable expenses may include specialist support, such as testing

of electrical installations. The Environmental Health Manager has discretion to waive or reduce the charge if there are exceptional or extenuating circumstances.

30.3 The Act does not make specific provision for charging for serving the following notices and orders, (although there may well be other costs to the owner associated with these actions):

- j) taking enforcement action for offences in relation to licensing of HMO's under section 72
- k) taking enforcement action for offences in relation to the selective licensing of HMO's under section 95
- l) applying for a rent repayment order under section 96
- m) making an interim management order under section 102
- n) making a special interim management order under section 103
- o) making a final management order under section 113
- p) making an interim empty dwelling management order under section 133
- q) making a final empty dwelling management order under section 136 or
- r) serving an overcrowding notice under section 139

## **31. Powers to require documents**

31.1 Authorised officers have the power to require:

- documents to be provided to enable them to carry out their powers under the Housing Act 2004
- electrical and gas safety certificates to be provided for Houses in Multiple Occupation
- any person with an interest in a property to provide details about its ownership and occupation.

31.2 It is an offence not to produce the required information. Where information is not provided formal action will be considered, e.g., simple caution if appropriate or prosecution where there is sufficient evidence and it is in the public interest to do so.

## **32. Diversity**

32.1 The Council is committed to equality of access to its services and aims to treat all people with dignity and respect. The overarching Environmental Health Enforcement Policy refers in more detail to the Council's Diversity and Equality Policy. Both policies are available on request and on the Council's website.

## **33. Provision for Particular Interests**

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

## **34. Complaints**

34.1 Where informal action has been taken which a person wants reviewed,

representations should be made to the case officer as soon as possible or within the time limits stated. We will endeavour to resolve the issue informally where possible. Where this is not possible, you will be informed what will happen if the informal request is not followed, for example service of a formal legal notice.

34.2 In most cases where formal legal action is taken there will be a statutory legal framework which should be followed for appealing any decision made by an officer. Anyone considering an appeal is encouraged to immediately discuss the matter with the officer concerned to see if the points of issue can be resolved without the need for a formal appeal where possible. This must be carried out before any time limits for an appeal expire otherwise the right to appeal may be lost.

34.3 Complaints about the way a case has been handled or the way an officer has acted may be made through the Council's corporate complaints system.

## 35. **Data Protection**

35.1 Personal data collected in the course of enforcement action, licensing and complaint investigations will be stored and processed in accordance with the Data Protection Act 1998. This Act gives individuals the right to know what data we hold on them, how we use it, with whom we share it, and for it to be accurate. It will be used for administering Council functions/services and may be shared in confidence with those organisations helping East Herts Council to provide such functions/services.

## 36. **Glossary**

36.1 **HHSRS**  
Housing Health and Safety Rating System. Statutory system introduced by the Housing Act 2004, for assessing risk from 29 potential housing hazards.

*Category 1 hazard*

A significant hazard, scoring 1000 or more, and rated as Band A to C under HHSRS.

*Category 2 hazard*

A hazard scoring up to 999, rated as Bands D to J under HHSRS

*House in Multiple Occupation (HMO)*

Dwelling occupied by more than one household as their only or main residence, with some sharing or lack of amenities.

*Licensable HMO*

HMO with 3 or more storeys, and 5 or more occupiers, in 2 or more households.

**LACORS**

Formerly Local Authorities Coordinators of Regulatory Services, now Local Government Regulation – provides guidance to Local Authority regulatory

services.

*TEN*

Temporary Exemption Notice. The Council may allow a 3 month temporary exemption from HMO licensing. See Housing Act 2004 section 62.

*RPT*

Residential Property Tribunal. The current tribunal for hearing appeals against certain notices.

*Simple Caution*

Alternative to prosecution for some offences.

**37. Review**

37.1 This policy will be reviewed on a regular basis and, in any event, at least every five years. Formal enforcement actions considered under this policy will be monitored.

**38. Have your say**

38.1 Please tell us your views on the policy and include any comments or questions you have for us via email: [environmental.health@eastherts.gov.uk](mailto:environmental.health@eastherts.gov.uk) OR use the space below and return to the following address: Environmental Health Service, East Herts Council, Wallfields, Pegs Lane, Hertford. Herts. SG13 8EQ

Name: (Optional)

Address: (Optional)

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**For copies of this document in large print or another language, please call the council on 01279 655261 and ask to speak to Communications.**

Appendix 1: Description of Hazards under the Housing Health and Safety Rating System

Appendix 2: Fee Structure for HMO Licensing

Appendix 3: Amenity Standards for HMOs

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