



Committee and Date

Cabinet

16<sup>th</sup> January 2019

**DRAFT PRIVATE RENTED SECTOR HOUSING ENFORCEMENT POLICY  
INTRODUCING CIVIL PENALTIES AND RENT REPAYMENT ORDERS FOR  
CONSULTATION**

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**1. Summary**

- 1.1 Regulatory Services regulate private rented accommodation to ensure it is safe to live in and free from health and safety hazards. Houses in multiple occupation (HMO) must be licensed and follow extra rules around health and safety.
- 1.2 A Private Sector Housing Enforcement Policy is required to reflect the new powers that have been given to local authorities under the Housing and Planning Act 2016 to impose civil penalties of up to £30,000 as an alternative to prosecution and the extension of rent repayment orders.
- 1.3 The introduction of civil penalties, together with the extension of rent repayment orders to include a wider range of offences, will help the Council to tackle criminal, rogue and irresponsible landlords, improve standards in the private rented sector and ensure that the private rented housing is safe, well managed and properly maintained.
- 1.4 A Draft Policy has been produced for consultation.

**2. Recommendations**

- 2.1 Members are requested to approve, with any necessary amendments, the draft "Private Sector Housing Enforcement Policy" as set out in Appendix 1 for consultation.
- 2.2 The Regulatory Services Operations Manager undertake an eight week period of consultation, the feedback from which and the proposed policy be brought back before Cabinet for further consideration prior to presentation to Council for adoption.

## REPORT

### 3. Risk Assessment and Opportunities Appraisal

(NB This will include the following: Impact on Children and Vulnerable Adults, Risk Management, Human Rights, Equalities, Community and other Consultation)

- 3.1 Section 126 of The Housing and Planning Act 2016 allows financial penalties to be imposed as an alternative to prosecution for certain offences as set out in Schedule 9 of the Act. Schedule 9 in turn amends the Housing Act 2004 including providing a new Section 249A which has the financial penalties as an alternative to prosecution. The details of the offences to which a civil penalty may be imposed are as set out in section 5.2 of the draft policy.
- 3.2 The Private Rented Sector Housing Enforcement Policy (together with the Council's Better Regulation & Enforcement Policy which is already in place) will help improve housing conditions and the life chances of people, including those with protected characteristics such as people with disabilities and families with children. They will therefore have a positive impact on Equality and Diversity.
- 3.3 The Council cannot issue civil penalties or rent repayment orders without a Private Rented Sector Housing Enforcement Policy in place which will limit the Council's powers to improve housing conditions.
- 3.4 A First-Tier Tribunal has the power to quash, confirm, increase or reduce the civil penalty and the civil penalties regime is currently untried and untested. However, the Government has made it clear that offenders must not derive any financial benefit from their offences and it has briefed the Tribunals on what is expected of them.
- 3.5 Another key risk is that, if there is a substantial increase in the number of investigations, this is likely to result in a corresponding pressure on the existing staffing resources.
- 3.6 An Equality and Social Inclusion Impact Assessment (ESIIA) has been undertaken and will be reviewed following the consultation.

### 4. Financial Implications

- 4.1 The Housing and Planning Act 2016 specifies that all of the income that a local authority receives from the imposition of Civil Penalties and the recovery of Housing Benefit through Rent Repayment Orders can be retained by the local authority to further its statutory enforcement functions in relation to the private rented sector.
- 4.2 However, any income that a local authority receives from Civil Penalties and Rent Repayment Orders but fails to spend in support of one of the activities listed above must be paid into a Central Government Consolidated Fund.
- 4.3 A First-Tier Tribunal would consider any appeal against the imposition of a civil penalty or a request (from tenants or the local authority) for a rent repayment order. In both situations, an unfavourable outcome may affect the Council's income.

## 5. Background

- 5.1 In Shropshire, the private rented sector represents 16% of the housing market (approximately 22,000 properties).
- 5.2 Although Shropshire has some excellent landlords and letting agents, there are criminal, rogue and irresponsible landlords who knowingly rent out accommodation that is unlicensed, substandard and or unsafe.
- 5.3 The consultation will be made available on the Shropshire Council Website and will be open to the public and stakeholders to put forward their comments. An offer will also be made to the National Landlords Association Branch meeting for a presentation and discussion on the proposed policy.
- 5.4 The draft policy sets out enforcement criteria regarding private rented sector housing which supplements the generic approach to enforcement described in the Council's existing Better Regulation and Enforcement Policy.
- 5.5 The Government has pledged to crack down on rogue landlords and has introduced a number of measures, under the Housing and Planning Act 2016, to help local authorities deal more robustly with criminal, rogue and irresponsible landlords:
- **Civil penalties of up to £30,000** as an alternative to prosecution for certain specified offences;
  - **Extension of rent repayment orders** to cover illegal eviction, breach of a banning order, failure to comply with an improvement notice and certain other specified offences;
  - **Database of rogue landlords and property agents** who have been convicted of certain offences or received multiple civil penalties; and
  - **Banning orders** for the most serious and prolific offenders.
- 5.6 The maximum civil penalty that can be imposed for an offence is £30,000, but it is for the Council to determine the level of civil penalty. A method for determining the civil penalty amount is proposed in the draft policy.

## 6. Additional Information

- 6.1 The draft policy also sets out supplementary private rented sector housing enforcement activities including the licensing of houses in multiple occupation (HMO).
- 6.2 The Housing and Planning Act 2016 extended mandatory HMO licensing, so HMOs occupied by five or more people, in two or more households, must obtain a licence, irrespective of the number of storeys of the property. This is a mandatory legal requirement.

**List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)**

None

**Cabinet Member (Portfolio Holder)**

Councillor Lee Chapman

**Local Member**

N/A – countywide.

**Appendices**

1. Draft Private Rented Sector Housing Enforcement Policy

## **APPENDIX 1: Draft Private Rented Sector Housing Enforcement Policy**

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## 1.0 Introduction

- 1.1 Shropshire Council's Regulatory Services is committed to improving standards in private rented sector housing, bringing empty homes back into use and ensuring private rented accommodation is well managed, properly maintained and safe and habitable.
- 1.2 The private rented sector plays an important role in the County's housing market. Shropshire Council shares the Government's desire to support good landlords and agents who provide decent well-maintained homes and to crack down on unscrupulous landlords who are flouting the law and seeking profit from their non-compliance.
- 1.3 Shropshire Council is keen to strike the right balance on regulation in order to avoid stifling investment in this sector. A small number of rogue or criminal landlords knowingly rent out unsafe and substandard accommodation. The Council is determined to create a level playing field for all landlords by dealing robustly with criminal, rogue and irresponsible landlords.
- 1.4 We provide advice and guidance to assist landlords and property agents in complying with their legal requirements.
- 1.5 We advise tenants of their rights and obligations and how they can try and resolve a situation prior to any involvement being required by the Council. We expect private tenants to contact their landlord to report any issues before contacting us. This ensures that landlords are aware of issues and gives them an opportunity to resolve them. We have more information on how to report issues on [our website](#). Where works are needed we would expect tenants to co-operate with the landlord to facilitate the repair. Social tenants are expected to go through the complaints procedure of the relevant Housing Association prior to any involvement being required by the Council.
- 1.6 The Housing and Planning Act 2016 introduced the following measures to crack down on criminal, rogue and irresponsible landlords:
  - Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences;
  - Extension of rent repayment orders to cover illegal eviction, breach of a banning order, failure to comply with an improvement notice and certain other specified offences;
  - Database of rogue landlords and property agents who have been convicted of certain offences or received multiple civil penalties;
  - Banning orders for the most serious and prolific offenders.

## **2.0 Purpose and Scope of this Policy**

- 2.1 This policy sets out enforcement criteria regarding private rented sector housing which supplements the generic approach to enforcement described in the Council's Better Regulation and Enforcement Policy.
- 2.2 This policy is aimed at the regulation of the private rented sector which will include housing association properties except those owned by Shropshire Council.
- 2.3 The supplementary private rented sector housing enforcement activities set out in this policy include the licensing of houses in multiple occupation (HMO), the service of statutory notices as well as the following measures introduced by the Housing and Planning Act 2016 which aim to tackle rogue landlords and improve the private rental sector:
- Civil penalties which can be used as an alternative to prosecution,
  - Banning Orders for the most prolific offenders
  - Database of rogue landlords/property agents.
  - Rent Repayment Orders (RROs).
- 2.3 This policy takes into account the statutory guidance that has been issued by the Government under Schedule 9 and Section 41 of the Housing and Planning Act 2016.

## **3.0 Regulation of Private Rented Sector Housing**

- 3.1 Regulatory Services respond to complaints from tenants and other residents about private rented sector housing, prioritising the complaints on the basis of an assessment of the risk and seriousness. If enforcement action is necessary, a variety of regulatory powers may be used to address and resolve the problem.
- 3.2 Housing issues will primarily be dealt with under the Housing Act 2004 but this is not exclusive and where circumstances are appropriate, other legislation will be used such as:
- Environmental Protection Act 1990: we will use this where a property defect is considered prejudicial to health or causing a nuisance
  - Building Act 1984: we will use this to tackle drainage issues and dangerous buildings or building elements (in collaboration with the Building Control Team)
  - Smoke and Carbon Monoxide Alarm (England) Regulations 2015: we will use this where there is a lack of smoke alarm or where there is no carbon monoxide detector in a room with a solid fuel burning appliance.
- 3.3 The Housing, Health and Safety Rating System (HHSRS) is set out in Part 1 of the Housing Act 2004. It is a method of assessing how likely it is that the condition of a property will cause an unacceptable hazard to the health of the occupant(s). There are two categories of possible hazards:

- Category 1 hazards represent a serious danger to health and the Council has a duty to take appropriate action to deal with these.
  - Category 2 hazards represent a lesser danger and, although it has no duty to take action, the Council will exercise its power to reduce category 2 hazards through appropriate action.
- 3.4 The HHSRS is an evidence based risk assessment procedure which considers any one of 29 hazards that may be present in a dwelling. The risk that any such hazard may impact on the most vulnerable, potential occupant of that dwelling is then used to generate a score. These scores are categorised to determine the consistent level of duty the Council has with regards to the seriousness of hazards that can cause harm in dwellings and then what enforcement action is the most proportionate and suitable in each case.
- 3.5 The approach followed by Regulatory Services when making decisions in respect of enforcement decisions is set out in the Council's Better Regulation and Enforcement Policy. We aim to achieve compliance through advice, This policy provides supplementary enforcement information in relation to private rented sector housing provisions.
- 3.6 Charges will be made for any formal enforcement action that the Council takes (see Council's fees and charges for further information).

### **Statutory Notices**

- 4.1 Following an inspection and subsequent assessment, where the rating shows that there are hazards which are classed as Category 1, the Council is under a duty to take appropriate enforcement action. Where the rating shows the hazard is classed as Category 2, the Council is not under a duty to take action but it may still do so where it is deemed necessary and proportionate to the hazard.
- 4.2 The forms of appropriate enforcement action that can be taken are as follows:
- For Category 1 Hazards:**
- Emergency remedial action under (Housing Act 2004, Section 40)
  - Emergency prohibition order (Housing Act 2004, Section 43)
- For Category 1 or Category 2 Hazards:**
- Improvement notice (Housing Act 2004, Section 11 & Section 12)
  - Prohibition order (Housing Act 2004, Section 20 & Section 21)
  - Hazard awareness notice (Housing Act 2004, Section 28 & Section 29)
  - Demolition order (Housing Act 1985, Section 265(1) & Section 265(2))
  - Declaring the area in which the premises concerned are situated to be a clearance area (Housing Act 1985, Section 289(2))
- 4.3 Where the issuing of a Notice is considered necessary, Section 49 of the Housing Act 2004 permits Local Authorities to make a reasonable charge for such Notices as a means of recovering certain administrative and other expenses incurred. The decision to impose this charge and the amount will be dependent on how much time the Officer has spent in resolving the issue with the landlord. We always want to resolve issues as quickly as we can and the co-operation of the landlord is very



much a factor on amount of administration expense incurred. Section 50 of the Housing Act 2004 gives us the powers to recover this expense. A charge can be placed as a Local Land Charge on the premises to which it relates. This is recorded in the register of local land charges kept by the Council. This register is normally searched during a property sale by purchasers.

## **5.0 CIVIL PENALTIES**

5.1.0 Section 126 and Schedule 9 of the Housing and Planning Act 2016 gives Local Authorities the power to impose civil penalties (financial penalties) of up to £30,000 on individuals and organisations, as an alternative to prosecution, for certain Housing Act 2004 offences.

5.1.1 If the Council believes that it has a reasonable prospect of a conviction in a particular case, it will always consider a civil penalty in the first instance and only by exception will it seek alternative measures such as prosecution or formal cautions.

5.1.2 Cases put forward for Civil Penalties, in preference to prosecution, will still have to satisfy the Council that there is a realistic prospect of conviction should the decision have been to take a prosecution for the case. The case would still be required to meet the evidential and public interest elements required.

5.1.3 Any money received from Civil Penalties is retained by the Council and then must be specifically utilised to support the work of the team in enforcing standards in the Private Rented Sector.

## **5.2 Housing offences covered by civil penalties**

5.2.1 The power given to local authorities to impose a civil penalty, as an alternative to prosecution for certain specified housing offences, was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

5.2.2 Civil penalties are intended to be used against landlords who are in breach of one or more of the sections of the Housing Act 2004 listed below:

- Section 30 - Failure to comply with an Improvement Notice
- Section 72 - Offences in relation to licensing of Houses in Multiple Occupation
- Section 95 - Offences in relation to licensing of houses under Part 3 of the Act
- Section 139 - Offences of contravention of an overcrowding notice
- Section 234 - Failure to comply with management regulations in respect of Houses in Multiple Occupation

5.2.3 Although only one civil penalty can be issued (as an alternative to prosecution) for each of the first 4 offences listed in paragraph 4.2.2 above, a civil penalty can be issued for each separate breach of the HMO Management Regulations.

## **5.3 Factors to be considered to determine the level of civil penalty**

5.3.1 In order to ensure that the civil penalty is set at an appropriate level, local housing authorities should consider the following factors set out in the Statutory Guidance issued by the Department for Communities and Local Government in April 2017:

a) **The severity of the offence**

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

b) **The culpability and track record of the offender**

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

c) **The harm caused to the tenant**

The greater the harm or the potential for harm, the higher the civil penalty will be.

d) **The punishment of the offender**

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

e) **Whether it will deter the offender from repeating the offence**

The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future.

f) **Whether it will deter others from committing the offence**

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

g) **Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence**

The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

## 5.4 Determining the Civil Penalty Amount

5.4.1 The table below provides an indication of the level of fine that is likely to be appropriate taking into account both culpability and harm.

<b>H A</b>	<b>HIGH</b>	£15,000 - £19,999	£20,000 - £24,999	£25,000 - £30,000
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R M	MEDIUM	£10,000 - £14,999	£15,000 - £19,999	£20,000 - £24,999
	LOW	£0 - £4,999	£5,000 - £9,999	£10,000 - £14,999
		LOW	MEDIUM	HIGH
<b>CULPABILITY</b>				

5.4.2 £30,000 is the maximum level of fine permitted under the legislation.

5.4.3 The starting point in each band will be the mid-point i.e. for Band 1 the mid-point will be £2,500.

5.4.4 The penalty may be increased by £1,000 for each aggravating factor up to a maximum of the top of the band level determined above.

5.4.5 The penalty may be decreased by £1,000 for each mitigating factor up to a maximum of the bottom of the band level determined above.

5.4.6 When considering aggravating and mitigating factors the civil penalty imposed must remain proportionate to the offence.

5.4.7 An offender will be assumed to be able to pay a penalty up to the maximum amount unless they can demonstrate otherwise.

5.4.8 In determining the level of harm the Council will have regard to:

- The person i.e. physical injury, damage to health, psychological distress
- To the community i.e. economic loss, harm to public health
- Other types of harm i.e. public concern/feeling over the impact of poor housing conditions on the local neighbourhood

The nature of harm will depend on the personal characteristics and circumstances of the victim e.g. tenant.

5.4.9 Where no actual harm has resulted from the offence the Council will consider the relative danger that persons have been exposed to as a result of the offender's conduct, the likelihood of harm occurring and the gravity of harm that could have resulted.

5.4.10 Factors that indicate a higher degree of harm include:

- Multiple victims
- Serious or psychological effect on the victim
- Victim is particularly vulnerable

5.4.11 Examples of Harm Categories

High	Housing defect giving rise to the offence poses a serious and substantial risk of harm to the occupants and/or visitors; e.g. danger of electrocution, carbon monoxide poisoning or serious fire safety risk
Medium	Housing defect giving rise to the offence poses a serious risk of harm to the occupants and/or visitors; e.g. falls between levels, excess cold, asbestos exposure

Low	Housing defect giving rise to the offence poses a risk of harm to the occupants and/or visitors; e.g. localised damp and mould, entry by intruders
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5.4.12 In determining culpability the Council will have regard to 4 levels of culpability. Where the offender:

- Has the **intention** to cause harm, the highest culpability where an offence is planned
- Is **reckless** as to whether harm is caused i.e. the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences, even though the extent of the risk would be obvious to most people.
- Has **knowledge** of the specific risks entailed by their actions even though they do not intend to cause the harm that results.
- Is **negligent** in their actions.

5.4.13 Examples of culpability

High (Deliberate Act)	An intentional breach by a landlord or property agent or flagrant disregard for the law. For example, by failing to comply with a notice or regulations.
High (Reckless Act)	An actual foresight of, or wilful blindness to the risk of offending, but decides to takes the risk nevertheless. For example, failing to comply with a strict liability in the HMO regulations.
Medium (Negligent Act)	The failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding the offence. For example, partial compliance with a schedule of work to an enforcement notice but failure to fully comply with all schedule items.
Low (Low or no culpability)	The offence committed has some fault on the part of the landlord or property agent but there are other circumstances for example obstruction by the tenant to allow a contractor access for repairs, or damage caused by tenant negligence.

## 6.0 RENT REPAYMENT ORDERS

6.1 Rent Repayment Orders were introduced by the Housing Act 2004 to cover situations where a landlord had failed to obtain a licence for a property where one is required.

6.2 The use of these Orders has now been extended by the Housing and Planning Act 2016 to cover a wider range of offences. These are outlined below:

- Failure to comply with an Improvement Notice served under the Housing Act 2004
- Failure to comply with a Prohibition Order served under the Housing Act 2004
- Breach of a Banning Order made under the Housing and Planning Act 2016

- Illegal eviction or harassment of the occupiers of a property under the Protection of Eviction Act 1977
- Using violence to secure entry to a property under the Criminal Law Act 1977

- 6.3 Rent repayment orders can be granted to either the tenant or the local authority. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent basis
- 6.4 A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty.
- 6.5 The Council must consider a rent repayment order after a person is the subject of a successful civil penalty and in most cases the Council will subsequently make an application for a rent repayment order to recover monies paid through Housing Benefit or through the housing element of Universal Credit.
- 6.6 The Council will also offer advice, guidance and support to assist tenants to apply for a rent repayment order if the tenant has paid the rent themselves.
- 6.7 Where a landlord has been convicted of the offence to which the rent repayment order relates the First-tier Tribunal must order that the maximum amount of rent is repaid, capped at a maximum of 12 months.
- 6.8 An Order can also be applied for where an offence has been committed but a landlord has not been convicted of one of the above offences. In this instance the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence. In this instance when considering how much rent should be recovered the following factors should be taken into consideration:
- The Rent Repayment Order should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities
  - The level of the penalty should be such that it is likely to deter the offender from repeating the offence
  - The imposition of the Order will be in the public domain so robust and proportionate use of them will dissuade others from committing similar offences
  - Removal of any financial benefit the offender may have obtained as a result of committing the offence

## **7.0 BANNING ORDERS**

- 7.1 The Housing and Planning Act 2016 gives Councils the option of applying for a Banning Order to prevent a person from managing rented property, where they have been prosecuted for a relevant offence.
- 7.2 In deciding whether to apply for an Order the following will be considered:

- The seriousness of the offence to which the person has been convicted
- Any previous convictions the person has for a banning order offence
- Whether the person has at any time been included in the database of rogue landlords and property agents
- The likely effect of the banning order on the person and anyone else who may be affected by the order

7.3 Banning Orders must be for a minimum of 12 months except for certain exemptions.

7.4 Any person who is subject to a Banning Order may not hold a HMO licence.

## **8.0 DATABASE OF ROGUE LANDLORDS AND LETTING AGENTS**

8.1 The database will contain details of landlords and property agents who have been convicted of a Banning Order offence or have received two or more civil penalties by any Local Authority, in any 12 month period.

Banning order offences are specified in legislation and can be for landlords or property agents who have been convicted of particular serious offences and/or are repeat offenders.

A number of offences set out in the regulations are not directly related to housing, such as fraud, sexual assault, misuse of drugs, theft and stalking. To result in a banning order such an offence must be committed:

- against or in collusion with her/his tenant or licensee (or member of her/his household) or at (or in relation to) the property let out, and
- at a time when the offender was a landlord or property agent of that property, and
- by an offender who was sentenced in the Crown Court.

The offence can also be for relevant housing offences including any offence under the Housing Act 2004, committing or causing overcrowding, providing a local authority with false or misleading information, continuing to let to illegal immigrants, or illegally evicting or harassing as residential occupier.

8.2 Their details can be entered on the National Database of Rogue Landlords and Property Agents. This national database is an important tool to assist local authorities and prospective tenants identify landlords who have failed to maintain their properties to the required standard.

## **9.0 Powers of Entry**

9.1 Authorised officers have a power of entry to properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004 provided that they have given 24 hours' notice to the owner (if known) and the occupier (if any) of the premises they intend to enter. These duties are:

- Enter a property to carry out an inspection
- Take any appropriate persons with them
- Take equipment or materials with them
- Take measurements, photographs or make recordings

- Take samples of articles or substances

9.2 If admission is refused, then a warrant may be granted by a Justice of the Peace on written application. A warrant under this section includes power to enter by force, if necessary.

9.3 No notice is required where entry is to ascertain whether an offence has been committed under certain sections of the Act relating to HMO's.

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

10.1 The Housing Act 2004 introduced a mandatory licensing system for certain types of Houses in Multiple Occupation (HMO). The aim of licensing is to ensure that every licensable HMO is safe for the occupants and visitors and is properly managed.

10.2 An HMO is a house or flat that is occupied as a main residence, by more than one household, where occupiers share facilities such as kitchens, bathrooms and WCs. This would include, for example, houses containing bedsits, a combination of bedsits and self-contained flats where the bedsits share facilities, and also shared houses and hostels. In addition, houses entirely converted into self-contained flats not in strict compliance with the Building Regulations 1991, with at least one third occupied as flats on short tenancies are classed as HMOs.

10.3 Since 1<sup>st</sup> October 2018, the Housing and Planning Act 2016 extends mandatory HMO licensing, so HMOs occupied by five or more people, in two or more households, must obtain a licence, irrespective of the number of storeys of the property. This is a mandatory legal requirement.

10.4 The responsibility for applying for a licence rests with the person having control of or the person managing the property.

10.5 The Housing Act 2004 sets out a number of HMO licensing related offences all of which carry an unlimited fine, including:

- Operating an unlicensed HMO or allowing an HMO to be occupied by more persons than a licence allows
- Breach of licence condition
- Supplying incorrect information in a licence application

10.6 A civil penalty can be issued as an alternative to prosecution for each separate breach of the HMO management regulations.

10.7 In addition to the above, a landlord who operates an unlicensed HMO can be subject to a Rent Repayment Order (RRO). The Council may also decide to apply a Civil Penalty for certain offences using the Housing and Planning Act 2016.

10.8 Generally, any breach of licence condition will be dealt with informally initially. However, if the breach is serious and affects the safety of the occupants or the responsible person does not carry out necessary works within an agreed timescale, the Council will pursue enforcement action in line with the Council's Better Regulation and Enforcement Policy.

- 10.9 In serious cases An Interim Management Order (IMO) transfers the management of a residential property to the Council for a period of up to twelve months. In exceptional circumstances the Council can also apply for a Final Management Order (FMO) which can last for up to five years.
- 10.10 Licence Holders and HMO Managers will be assessed in order to determine whether they are a fit and proper person having regard to:
- any previous convictions relating to violence, sexual offences, drugs and fraud;
  - contraventions of any laws relating to housing, public health or landlord and tenant issues;
  - any convictions for unlawful discrimination;
  - previous HMO licence refusals;
  - training and qualifications through professional bodies and/or landlord accreditation schemes.
  - Basic Disclosure result. The Council requires that a Basic Disclosure is undertaken for the proposed licence holder and manager of the HMO. Where a company is either the licence holder and/or the manager, each Company Director/Partner will be required to undertake a Basic Disclosure.

## **11.0 Works in Default**

- 11.1 In certain circumstances the Council may decide to carry out works detailed in any enforcement Notice or Order. Such action can be taken with or without the agreement of the responsible person. If works in default are undertaken a Civil Penalty can still be imposed or a prosecution considered.
- 11.2 The Council is not obliged to carry out the works in default and reserves the right not to do so. We will avoid actions that may encourage owners, landlords and agents to be non-compliant, such as carrying out costly works in default where it may be difficult for the Council to recover its costs.
- 11.3 When taking action with the agreement of the person concerned, the Council may take any action which that person is required to take in relation to the Notice/Order. However taking action by agreement will only generally be considered where it is felt that the relevant person is for whatever reason incapable of organising, executing and overseeing the necessary works. Any such work undertaken will be at the expense of the person concerned.
- 11.4 Taking action without the agreement of the person concerned, will be considered as a course of action in the following circumstances:
- Where there is a significant risk to health and safety
  - Where a person has failed without “reasonable excuse” to comply with the requirements of an Improvement Notice
  - Where reasonable progress, in relation to the requirements of the Notice/Order, is not being made
  - Where it is likely that the Council will be able to recover its costs.
- 11.5 Where the Council has undertaken works in default, or exercises its power to take Emergency Remedial Action, it will seek to recover the cost of the work carried out and our reasonably incurred expenses for organising the work. The expenses will



carry interest from the date of service until payment of all sums due under the demand at a rate of 2%. A charge will also be placed as a Local Land Charge on the premises to which it relates.

## **APPEALS**

- 12.1 There is a right of appeal against any formal notice, order or decision made by the council. All appeals should be made to a First-tier Tribunal and must be made within a specified time from the date the notice was served. Tribunals are informal bodies and do not operate like courts. They will hear cases presented by each side. The Tribunal may confirm, cancel or change the notice, order or decision.
- 12.2 In the case of imposing a civil penalty, a local housing authority is required to issue a 'notice of intent' to issue a financial penalty. Under this notice a landlord has 28 days with which to make representations to the local housing authority. At the end of this period, should the local housing authority still propose to issue the financial penalty, they must serve a 'final notice' imposing the penalty.
- 12.3 On receipt of a final notice imposing a financial penalty a landlord can appeal to the First-tier Tribunal against the decision to impose a penalty and/or the amount of the penalty. The appeal must be made within 28 days of the date the final notice was issued. The final notice is suspended until the appeal is determined or withdrawn.
- 12.4 The appeal will involve a re-hearing of the Council's decision to impose the civil penalty. The Tribunal has the power to confirm, vary (increase or decrease) or cancel the civil penalty that the Council has issued.
- 12.5 The First-tier Tribunal can dismiss an appeal if it is satisfied the appeal is frivolous, vexatious or an abuse of process, or it has no reasonable prospect of success.
- 12.6 The Council intends to defend its decision to issue civil penalties rigorously and this will involve not only Officer time and resources but also specialist legal support.

### **13.0 Housing Association / Registered Social Landlords**

Housing Association / Registered Social Landlords have published arrangements for reporting problems and clear response times for tenants addressing these issues. If tenants feel that repairs have not been carried out to their satisfaction, each Housing Association / Registered Social Landlords has a complaints procedure that the tenant should follow. Because of this we will not normally investigate issues from Housing Association / Registered Social Landlords tenants, unless the reporting and complaints procedure has been followed and the landlord has then failed to take appropriate action.

### **14.0 Guidance**

- 14.1 This Policy has been developed with regard to the following:
  - Shropshire Council's Better Regulation and Enforcement Policy
  - The Housing and Planning Act 2016

- Civil Penalties under the Housing and Planning Act 2016 Guidance for Local Housing Authorities – Department for Communities and Local Government (published April 2017)