

Report to Community Overview and Scrutiny Panel

Agenda
Item:
A.4

Meeting Date: 9th January 2014
Portfolio: Communities and Housing
Key Decision: YES
Within Policy and Budget Framework: YES
Public / Private: PUBLIC

Title: **Private Sector Housing Enforcement**
Report of: **The Director of Economic Development**
Report Number: ED.03/14

Purpose / Summary:

The attached report contains an enforcement policy that reflects what the Council does to achieve improvements to housing, health and the environment in the private rented sector within the district.

Questions for / input required from scrutiny

Input from this committee regarding the enforcement policy.

Recommendations:

That the attached report that went to the Executive on 16 December 2013 be considered and comments forwarded to the Executive

Tracking

Executive:	16 December
Overview and Scrutiny:	9 January
Council:	

Report to Executive

Agenda
Item:

Meeting Date: 16 December 2013
Portfolio: Communities and Housing
Key Decision: No
Within Policy and
Budget Framework YES
Public / Private Public

Title: PRIVATE SECTOR HOUSING ENFORCEMENT
Report of: DIRECTOR OF ECONOMIC DEVELOPMENT
Report Number: ED 42/13

Recommendations:

That Members of the Executive:

1. Approve the draft Enforcement Policy for Private Sector Housing comprising appendix one of this report.

Tracking

Executive:	16 December 2013
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1. BACKGROUND

- 1.1 In 2011 Carlisle City Council commissioned a Private Sector Housing Stock Condition survey. The results of that survey in 2012 revealed that 86% of the districts housing stock was in the private sector, with 14.5% of the total stock owned and managed by private sector landlords. This was up from 9.7% in the 2001 census.
- 1.2 In the district there is estimated to be a total of 7160 private rented dwellings, with around 21% of these properties containing a Category 1 hazard under the Housing Health and Safety Rating System and 34.3% classed as non Decent under the Decent Homes Standard revised 2006
- 1.3 The Housing Act 2004 introduced the Housing Health and Safety Rating System (HHSRS) as a statutory system for assessing housing conditions in England and Wales. The system places a duty on the Council to take statutory action where any Category 1 hazard is identified in a property.
- 1.4 The Government is actively encouraging Local Authorities to look more to the private rented sector to fulfil their housing obligations, and meeting Carlisle's housing needs is a key priority within the Carlisle Plan. The 2011 Housing Need and Demand Survey noted that part of the gap between the likely future need for affordable housing and future supply is likely to be met by the Private Rented Sector. The study also noted that in 2009 and 2010, the Private Rented Sector housed 463 households in housing need per annum, supported by Local Housing Allowance (LHA). As this pattern looks set to continue, there is a clear role for the Council to engage private sector landlords and institutions to ensure that the standard of housing meets legal obligations and the supply continues to be available to meet housing need.
- 1.5 Against the backdrop of the growth in the private rented sector and the private sector house condition survey a significant change of programme is underway in Economic Development. The key elements of the change in programme comprise:
 - The development of a private sector enforcement policy and related amenity standards for Houses in Multiple Occupation (appendix one).
 - A comprehensive staff training programme within the Private Sector Housing team.
 - The development of a targeted proactive engagement and inspection programme of private sector landlords.

- The installation of a database to support a proactive engagement and inspection regime.
- Fit for purpose procedures and policies.
- A review of the existing landlord accreditation scheme.

2. THE PRIVATE SECTOR HOUSING ENFORCEMENT TEAM

- 1.1 The Private Sector Housing Team delivers a range of statutory and non-statutory services in a range of property types and tenures across Carlisle.
- 1.2 Mandatory licensing applies to HMOs of three or more storeys, with five or more occupiers forming two or more households. Social housing and HMO's owned by the Police, Health Service, Universities and some other listed Health organisations are exempt, as are buildings converted into self-contained flats. There are around 100 HMOs which are currently licensed with the authority.
- 2.3 Approximately 500 known HMOs fall outside the Mandatory Licensing Scheme. These are often two storey properties or self contained flats converted before 1991; many of these properties are occupied by single person households such as students, professionals and overseas residents.
- 2.4 Since 2009 the Council has operated a Landlord Accreditation Scheme, with the Council working in close partnership with landlords, local landlord associations and private rented sector stakeholders. The aim of the Scheme is to promote good standards and management practice by landlords and to assist both landlords and tenants to undertake their respective responsibilities. There are currently 132 landlords participating in the Accreditation Scheme, covering just over 500 properties. Landlords of both licensed and unlicensed HMOs participate in the Accreditation Scheme as do landlords of single privately rented properties.
- 2.5 The experience gained in operating a Landlord Accreditation Scheme since 2009 has shown that its administration is resource intensive and the scheme is only fit for purpose if the information it contains is up to date and the scheme code of standards is being correctly policed by the authority. As it is the landlord that is accredited and not the property, changes of ownership can go unreported and there are no guarantees that the accredited landlord is notifying the authority when they have purchased new properties. The Authority can not therefore confirm property standards within the code of practice are being met.

- 2.6 The complexities of administering the scheme are not unique to Carlisle, and a Cumbrian wide approach to accreditation, involving a third party in the accreditation process is currently being developed.
- 2.7 There are an undetermined number of single household privately rented properties in Carlisle. Some of these will be known to the Private Sector Housing Team where they are included in the Accreditation Scheme but other properties are only identified when they are the subject of a housing complaint.

2. THE DRAFT ENFORCEMENT POLICY

- 2.1 The draft policy at appendix 1 and appendix 1a outlines how the Council proposes to utilise fairly and consistently all the powers contained within the Housing Act 2004 to achieve improvements to housing, health and the environment in the City. The policy ensures that we protect vulnerable occupants and provides the foundation for strategic targeted enforcement.

3. CONSULTATION

- 4.1 It is suggested that the Enforcement Policy attached at appendix one is placed on the Council's website.

4. CONCLUSION AND REASONS FOR RECOMMENDATIONS

- 5.1 That Members of the Executive:

1. Approve the draft Enforcement Policy for Private Sector Housing comprising appendix one of this report.

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- 5.2 The recommendation above will ensure a consistent, proportionate and transparent approach to private sector housing enforcement.

6. CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES

- 6.1 It is considered the proposals will support the following priorities:-
- Addressing the current and future housing needs of the City by ensuring that housing is safe and meets minimum standards.

- Promoting partnership working with the private sector.

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**Appendices
attached to report:**

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:

- None

CORPORATE IMPLICATIONS/RISKS:

Chief Executive's - No Implications.

Economic Development – No implications.

Governance – The Housing Act 2004 specifies the Council's enforcement powers in relation to private sector properties. An enforcement policy of the type proposed ensures that the officers know the framework in which they are working and within which they must base their decisions. It is an important guide in the exercise of their delegated powers. Similarly, those on the receiving end of enforcement action will have appropriate knowledge of how their cases should be dealt with. There are provisions for charges to be levied by the Council (s49) and these have been separately approved by the Council.

Local Environment – No implications.

Resources – This policy will be enforced by the Private Sector Housing Team funded from existing base budgets.

Carlisle City Council

Amenity Standards in Licensable Houses in Multiple Occupation (HMO) **(Draft Standard 2013)**

These standards apply the National Minimum Standards contained in the Licensing of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 as amended.

The document only covers those HMOs that require to be licensed, but is offered to managers and owners of non-licensed HMOs as good practice.

Council officers would be able to advise about standards which may be appropriate where a particular HMO has a layout or amenity provision which varies from the specified standard but where the facilities provided have an equivalent benefit.

Advice and information on HMOs can be obtained by contacting the Private Sector Housing Team, Civic Centre, Carlisle, by e-mail housing@carlisle.gov.uk , by telephone Tel 01228 817320 or by visiting www.carlisle.gov.uk

Housing Health and Safety Rating System (HHSRS)

The amenity standards for HMOs will be considered along with the requirements of the Housing Health and Safety Rating System which apply to all accommodation types, including HMOs. All HMOs have to be assessed to ensure there are no category 1 hazards within 5 years from an HMO licensing application.

A short guide to the 29 hazards and the background of HHSRS is available on Carlisle City Councils website. Where there are specific references in HHSRS guidance to matters included in the amenity standards, these are referenced below.

Applicable HMO Amenity Standards

1. Space Heating

Each unit of living accommodation must be equipped with an adequate means of space heating. In accordance with HHSRS guidance the Council encourages landlords to provide energy efficient means of space heating and insulation where possible. Such heating provision must be capable of being operated at any time and tenants should be in control of heating to their rooms.

Supplemental heaters such as portable paraffin or oil heaters and liquefied petroleum gas heaters (LPG) (Bottled Gas Heaters) shall not be acceptable under any circumstances, whether provided by the landlord or the tenant as they are likely to present a hazard under HHSRS.

2. Washing Facilities

Where all or some of the units of living accommodation in an HMO do not contain bathing and toilet facilities for the exclusive use of each individual household, there must be an adequate

number of bathrooms, toilets and wash hand basins for the number of persons sharing the facilities. The following guidelines will apply:

5 Persons	1 bathroom/shower room and 1 separate WC with WHB, The WC and WHB can be contained within a second bathroom
6 - 8 Persons	2 Bathrooms/shower rooms each with a WC and WHB
9- 11 Persons	2 Bathrooms/shower rooms each to include a WC with WHB and a separate WC with WHB or a third bathroom.
12 - 15 Persons	3 Bathrooms/shower rooms each to include a WC and WHB.

Notes;

- Having regard to the age and character of HMOs in Carlisle and the size and layout of the accommodation provided, it will not normally be reasonably practicable or desirable to require the provision of wash hand basins within individual units of accommodation.
- All baths, showers and wash hand basins in an HMO must be capable of providing an adequate supply of cold and constant hot water.
- All bathrooms/ shower rooms must be suitably and adequately heated and ventilated. Energy efficient means of heating and hot water is encouraged.
- All bathrooms/shower rooms and toilets in an HMO must be of adequate size and layout and fit for purpose.
- All bathrooms and toilets in an HMO must be suitably located in relation to the living accommodation within the HMO. Where practicable, the facility should not be more than one floor distant from any user.

In accordance with HHSRS guidance, wall and floor surfaces in bathrooms and WC compartments should be designed, constructed and maintained so they are capable of being kept clean and hygienic.

3. Kitchen Facilities

Where the individual units of accommodation do not contain any facilities for the cooking of food there must be a kitchen, suitably located in relation to the living accommodation and of such layout and size and equipped with such facilities so as to adequately enable those sharing the facilities to store, prepare and cook food. The following guidelines will apply:

Shared Kitchens Standards

5 persons	1 kitchen with <ul style="list-style-type: none"> • 1 sink and draining board with an adequate supply of cold and constant hot water • One cooker with 4 ring hob and oven
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	<ul style="list-style-type: none"> • 3 double sockets • 0.5m of worktop per person • 0.4m³ of combination of dry, refrigerated & frozen food storage per person • Appropriate refuse disposal facilities should be provided. • Appropriate extractor fans, fire blankets and fire doors, should be provided
6 - 8 persons	<p>1 Kitchen with dining area/livingroom attached, adjacent or on the same floor.</p> <ul style="list-style-type: none"> • 2 sinks and draining boards with an adequate supply of cold and constant hot water. A double drainer may be acceptable or the provision of a dishwasher in place of the second sink • 1 large oven & 6 ring hob or 2 x 4 ring hobs with ovens • 4 double sockets • 0.5m of worktop per person • 0.4m³ of combination of dry, refrigerated & frozen food storage per person • Appropriate refuse disposal facilities should be provided. • Appropriate extractor fans, fire blankets and fire doors should be provided
9 - 11 Persons	<p>1 Kitchen with large dining area/livingroom attached, adjacent or on the same floor.</p> <ul style="list-style-type: none"> • 2 sinks and draining boards with an adequate supply of cold and constant hot water. The provision of a dishwasher in place of the second sink may be acceptable • 2 x 4 ring hob and ovens • 4 double sockets • 0.5m of worktop per person • 0.4m³ of combination of dry, refrigerated & frozen food storage per person • Appropriate refuse disposal facilities should be provided. • Appropriate extractor fans, fire blankets and fire doors, should be provided
12 - 15 Persons	<p>2 kitchens and 1 living/dining area. Each kitchen to be equipped with:</p> <ul style="list-style-type: none"> • 1 sink and draining board with an adequate supply of cold and constant hot water • One cooker with 4 ring hob and oven • 3 double sockets • 0.5m of worktop per person • 0.4m³ of combination of dry, refrigerated & frozen food storage per person

	<ul style="list-style-type: none"> • Appropriate refuse disposal facilities should be provided. • Appropriate extractor fans, fire blankets and fire doors, should be provided
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If catering services are provided, then the Council will consider such circumstances and negotiate with the individual landlord to determine the standards to suit the occupiers' needs.

Units of living accommodation, without shared basic amenities. (e.g bedsits)

The minimum requirements are:

- Two rings or hotplates together with an oven or grill.
- Sink with draining board and an adequate supply of cold and constant hot water
- At least 1 double electrical socket for kitchen appliances only.
- At least 1m of worktop per person.
- At least 0.4m³ of combination of dry, refrigerated & frozen food storage space per person.
- Appropriate refuse disposal facilities should be provided.
- Appropriate extractor fans, fire blankets and fire doors, should be provided

Notes:

- In accordance with HHSRS guidance, impervious finishes should be provided adjacent to cookers, sinks, drainers and worktops. All joints between a sink, a drainer or a worktop and the adjacent wall surface should be adequately sealed.
- In accordance with HHSRS guidance, dry goods storage facilities must be free from disrepair or dampness and the storage unit must have smooth, easily cleaned surfaces. This makes the space in a sink unit below the sink unsuitable.
- In accordance with HHSRS guidance, cookers and worktops should be sited away from doors or thoroughfares and other potentially hazardous areas.

4. Refuse, Storage and Disposal

Refuse and recycling bins and containers shall be provided in sufficient numbers for the needs of the household, and acceptable means of disposal provided.

All refuse containers should be located on hard standings with suitable access for cleansing of the area and removal of containers. Such hard standing should be located in an area away from habitable rooms and wherever practical, at the rear of a property.

5. Electricity Supply

Electricity socket outlets shall be provided to individual rooms or lettings to a minimum standard as follows:

Living Rooms	2 double sockets
Bedrooms	2 double sockets
Bedrooms, containing cooking facilities	2 double sockets and 1 additional double socket above the work surface for the use of portable kitchen appliances.

All socket outlets shall be located in positions which permit their safe, convenient and proper use at all times, having regard to likely room layouts. They should not be positioned where vulnerable to damage, likely to be obstructed or where the resulting appliance cables are likely to pose a health and safety hazard.

Electric cookers shall be provided with a dedicated cooker point outlet suitable for the rating of the cooker and fixed electric space or water-heating appliances shall be provided with a separate dedicated electric point.

All landlords must also provide an up to date electrical safety report from an NICEIC registered electrician or other suitably qualified electrician on the condition of the whole existing electrical system. This should be undertaken every 5 years.

6. Space Standards for Rooms

Room sizes must comply with the following standards set for each individual type of let.

No. of people	Shared lounge	Shared kitchen	Room size (m ²)
One	Yes	Yes	6.5
One	No	Yes	10
One	No	No	13
Two	Yes	Yes	10
Two	No	Yes	14
Two	No	No	20.5

Shared lounges

Shared lounges must be of sufficient size and have sufficient soft furnishings, to allow at least two thirds of the occupiers to sit together and socialise.

Measurement of rooms

Room sizes are calculated by taking wall to wall measurements directly above the height of the skirting board. In general, where the layout of the room prevents some parts of it being properly used these areas will be excluded from the assessment of size. This includes areas which can only be used for access (e.g. some “L” shaped rooms with a narrow area in front of a doorway) are excluded.

Also excluded are all parts of rooms located below sloping ceilings etc where the maximum ceiling height is less than 1.5m. The minimum standards apply to each room and the equivalent amount of space cannot be made up by using two smaller rooms.

Management of HMOs

The Management Regulations impose duties on both the managers and the tenants of an HMO. The duties imposed are to ensure the good order, repair and, as appropriate, cleanliness of the following:

- (a) Means of water supply and drainage.
- (b) Parts of the house in common use.
- (c) Installations in common use.
- (c) Living accommodation.
- (d) Windows and ventilation.
- (e) Means of escape from fire, including any fire apparatus.

The Manager is also given certain responsibilities in respect of the disposal of refuse and litter, and the taking of reasonable precautions to protect tenants and lodgers from dangers resulting from structural conditions in the premises.

Regulatory Reform (Fire Safety) Order 2005

Landlords of HMOs that require to be licensed will need to comply with the Regulatory Reform (Fire Safety) Order 2005, (often referred to as the RRO or just Fire Safety Order). For further information please visit the Communities & Local Government website for the sleeping guide which relates to HMOs. You can also obtain further information from Cumbria Fire and Rescue Services.

Further information on Fire safety measures applicable to HMO's can also be accessed in the Fire Safety measures guidance produced by LACORS adopted by the City Council in the Summer of 2008.

Building and Planning Regulation Approval

Some of the works to HMOs will require Building Regulation or Planning approval including change of use for houses occupied by more than 6 people; installation of plumbing and electrical works; thermal insulation or for structural alterations. Meeting Building Regulation and Planning regulation standards does not imply that the house meets HMO standards and will be free from HHSRS hazards. Landlords submitting an application for Building Regulations or Planning regulations should include HMO in the title of the application to enable the development to be identified so that we may advise you as to any requirements we might have. For further information on any Planning or Building regulations please contact Planning or Building control directly.

DRAFT

Private Sector Housing Enforcement Policy

2013

Enforcement Framework

This Policy is based on the principles of openness, clear standards, proportionality, consistency of approach, targeting to areas of greatest need, and transparency as contained in the Enforcement Concordat issued by the Cabinet Office.

The Policy recognises the Human Rights Act 1998 and the Code of Practice for Crown Prosecutors and complies with the Police and Criminal Evidence Act 1984, the Regulation of Investigatory Powers Act 2000 and the Criminal Procedures and Investigations Act 1996.

This policy explains how the enforcement tools, provided by the Housing Act 2004 and other legislation will be used fairly and consistently to improve regulatory outcomes without imposing unnecessary burdens, in recognition of the Regulators Compliance Code where this applies to the legislation enforced by the Private Sector Housing Team. In some instances the Council may decide that a provision of the Code is either not relevant or outweighed by another provision. Any decision to depart from the Code will be properly reasoned and documented.

PART 1: GENERAL ENFORCEMENT

The following range of enforcement options will be applied to private sector housing enforcement:

- No action
- Informal Action
- Statutory Action
- Simple Caution
- Prosecution
- Works in Default
- Emergency Measures

No action

No action can be taken where cases fall outside the team's legislative remit. In other cases, the individual circumstances of the case may lead the officer to determine that no action should be taken. Whenever possible, the customer will be given advice on ways they can deal with the matter themselves.

Informal action

Informal action includes both verbal advice and advisory letters. This stage will usually precede any formal or statutory action. Informal action will be appropriate where:

- There is no legislative requirement to serve a formal notice
- The circumstances are not serious enough to warrant formal action
- Past history suggests that informal action can reasonably be expected to achieve compliance
- There is confidence in the landlord/person responsible

- The consequences of non-compliance will not pose a significant risk to occupiers or other affected persons
- Remedial work within a suitable timescale can be agreed

Statutory action

The Council will serve a formal notice where they have a statutory duty to do so, taking account of the following matters:

- Where informal action has not achieved compliance
- There are significant contraventions of legislation but prosecution is not appropriate
- There is a lack of confidence that there will be a suitable response to an informal approach
- There is a history of non-compliance with informal action
- Standards are poor, with little awareness or regard for statutory requirements
- The consequences of non-compliance could be potentially serious for the health and safety of the occupier or public health
- Prosecution is intended, but action needs to be taken to remedy conditions which pose an immediate risk to health and safety

Only officers authorised to do so can take statutory action. Please refer to the Council's Scheme of delegation for further information.

Statutory notices will be served in accordance with the relevant legislation and will specify:

- The reasons for the enforcement action being taken including an explanation of what is wrong, what is needed to put things right and what will happen if the notice is not complied with.
- A reasonable timescale for compliance having regard to the seriousness of the defects or contraventions
- Written information explaining the right of appeal against the notice and method for doing so

Formal/Simple Caution

A Simple/Formal Caution may be offered as an alternative to prosecution in order to:

- Deal quickly and simply with less serious offences
- To divert less serious offences away from the Courts, and
- To reduce the likelihood of repeat offences

A Simple/Formal Caution will only be offered where:

- There is evidence of the offenders guilt sufficient to give a realistic prospect of conviction
- The offender admits the offence
- The offender clearly understands the significance of the Caution and gives informed consent to being cautioned, and
- The use of a Caution is considered to be in the public interest

Prosecution

The Council recognises that the decision to prosecute is significant and could have far reaching consequences upon the alleged offender. The Council will only instigate

legal proceedings where there is sufficient, admissible and reliable evidence that an offence has been committed by an identifiable individual or company, that there is a realistic prospect of conviction and that prosecution for the offence is in the public interest.

In making the decision to prosecute the case will be considered, in line with the guidance in the Code for Crown Prosecutors 2013 and Crown Prosecution Service Policies and Guidance.

Enforcement under the Housing Act 2004

The Housing Act 2004 requires local authorities to base their enforcement decisions in respect of all types of residential property on assessments under the Housing Health and Safety Rating System (HHSRS). The system is based on twenty-nine possible hazards, and is structured around an evidence based risk assessment process. Local Authorities must inspect properties to determine whether there are Category 1 or Category 2 hazards present, using the method prescribed by regulations, having regard to Operating Guidance issued by the Secretary of State.

Assessment of hazards is a two stage process, addressing first the likelihood of an occurrence and then the range of probable harm outcomes. These two factors are combined using a standard method to give a score in respect of each hazard identified. The decision to take enforcement action is based on three considerations:

- (a) the hazard rating score determined under HHSRS;
- (b) whether the local authority has a duty or power to act, determined by the presence of a hazard score above or below a threshold prescribed in the regulations, and
- (c) the authority's judgement as to 'the most appropriate course of action' to remove or reduce the hazard taking into account the most vulnerable potential occupant and the actual occupants.

Duties and Powers

The Council must take appropriate action in respect of a Category 1 hazard (bands A-C) and may do so in respect of a Category 2 hazard (bands D-J).

The courses of action available to the Council where it has either a duty or a power to act are to:

- Serve an Improvement Notice requiring remedial works
- Make a Prohibition Order, which closes the whole or part of a dwelling or restricts the number or class of permitted occupants
- Suspend the Improvement Notice or Prohibition Order
- Serve a Hazard Awareness Notice
- Take Emergency Remedial Action (Cat 1 hazards only)
- Serve an Emergency Prohibition Order (Cat 1 hazards only)

- Make a Demolition Order (Cat 1 hazards only)
- Declare a Clearance Area (Cat 1 hazards only)

For the purposes of assessing the hazard, it is assumed that the dwelling is occupied by the most vulnerable household (irrespective of what household is actually in occupation or indeed if it is empty). However, for the purposes of deciding the most appropriate course of action, regard is had to the actual household in occupation. Where an authority takes action and the property owner does not comply, the Act retains the powers available to authorities to act in default. It also enables them to charge and recover charges for enforcement action.

Decision Rules

The Council will have regard to the statutory guidance document 'The Housing Health and Safety Rating System: Enforcement Guidance' when deciding the most appropriate course of action.

Whether the Council has a duty to act in respect of a Category 1 hazard, or the power to act in respect of a Category 2 hazard, in either case the Council is obliged to give a formal statement of reasons for the action it intends to take.

The Council will take account of factors such as:

- Extent, severity and location of hazard
- Proportionality - cost and practicability of remedial works
- Multiple hazards
- The extent of control an occupier has over works to the dwelling
- Vulnerability of current occupiers
- Likelihood of occupancy changing
- The views of the current occupiers

Consideration must also be given to whether consultation is required with other enforcing bodies. In particular where the hazard of fire is identified there is a duty to consult with the fire authority as prescribed under section 10 of the 2004 Act.

Category 1 Hazards

Where an assessment and rating of a property has resulted in a Category 1 hazard, the council will serve Statutory Notice. Where this formal action is being considered and the person responsible agrees to take action to resolve the matter, the Council may agree to defer formal action for a reasonable time. Deferred action will not be considered where there is an imminent risk to public health or safety.

Category 2 Hazards

In addition to the Council's duty to take action where a Category 1 hazard exists, the Council will generally exercise its discretion to take the most appropriate course of action where a Category 2 hazard exists in the following situations:

(a) Band D Hazards

There will be a general presumption that where a Band D hazard exists, Officers will consider action under the Housing Act 2004 unless that would not be the most appropriate course of action.

(b) Multiple Hazards Where a number of hazards at Band D or below create a more serious situation, where a property appears to be in a dilapidated condition, or where the conditions are such as to be affecting the material comfort of an occupying tenant.

(c) Exceptional Circumstances

In exceptional circumstances where (a) and (b) above are not applicable, the Director of Community Engagement may authorise the most appropriate course of action to be taken.

Level to Which Hazards are to be Improved

The Housing Act 2004 requires only that the works specified when taking the most appropriate course reduce a Category 1 hazard to Category 2 hazard. For example Band C and Band A hazards need only be reduced to Band D. The Council will generally seek to specify works which achieve a significant reduction in the hazard level and in particular will be to a standard that should ensure that no further intervention should be required for a minimum period of twelve months.

Tenure

In considering the most appropriate course of action, the Council will have regard to the extent of control that an occupier has over works required to the dwelling. In normal circumstances, this will mean taking the most appropriate course of action against a private landlord and in most cases this will involve requiring works to be carried out.

Registered Social Landlords (Housing Associations) are also subject to enforcement, however where RSLs have a programme of works to make their stock decent, the Council will liaise as appropriate with the landlord over any works necessary to deal with Category 1 and 2 hazards in advance of any planned improvements.

If an RSL is planning works which would deal with the hazard, depending on the risk to the tenants, it may be appropriate to issue a Suspended Improvement Notice rather than an Improvement Notice, or to allow extra time on an Improvement Notice.

However, if the RSL fails to respond to any such request for information, or if the proposed timescale is not considered acceptable based on the severity of the hazard, the Council will consider the need to pursue more urgent action.

With owner occupiers, in most cases they will not be required to carry out works to their own home and the requirement to take the most appropriate course of action will be satisfied by the service of a Hazard Awareness Notice.

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 outside the household, or where the condition of the dwelling is such that it may adversely affect the health and safety of others outside the property. This may be because of a serious, dangerous deficiency at the property. Another example is a requirement to

carry out fire precaution works to a flat on long leasehold in a block in multiple occupation.

Vacated Properties with Statutory Notice

In cases where properties are subject to a statutory notice and the property is subsequently vacated, all notices or orders will be reviewed to consider whether the notices or orders may be varied, suspended or revoked. The Council will seek to deter landlords from undertaking retaliatory eviction and will not consider that removal of a tenant achieves compliance with any Notice served, except in overcrowding situations where it was a specific requirement of the notice.

Action with Agreement

The Act also makes provision for remedial works to be carried out by agreement. This is where the local authority arranges for the works to be carried out at the request of the person responsible and they are then charged for the full cost. If the costs incurred cannot be paid they must be placed as a charge against the property.

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Powers of Entry

Most of the legislation enforced by the Private Sector Housing Team includes the power for authorised officers of the local housing authority to gain entry onto property for the purpose of carrying out the authority's duties under that legislation.

If an officer is unsuccessful in gaining entry by informal means, the Council will consider obtaining a warrant from a Justice of the Peace to provide for the power of entry by force if necessary. If prior warning of entry is likely to defeat the purpose of the entry then a warrant can be obtained.

The Council also has the power to require documents to be produced in connection with its enforcement (Parts 1 - 4 of the Housing Act 2004) by a notice. The notice will specify the consequences of not complying.

Copies of documents can be obtained and kept by the Council.

Power to Charge for Enforcement Action

In accordance with Sections 49 and 50 of the Housing Act 2004, the Council reserves the right to charge and recover the reasonable costs incurred in taking the most appropriate course of action.

The Council will charge where a formal notice or order is required to remove hazards, or when emergency remedial action is necessary, with charges levied on the basis of actual time spent by officers on the chargeable activities and the appropriate hourly rate for those officers, as approved by Executive on 2 September 2010

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This charge may be waived if the landlord makes representations and agrees the extent of the works and timescales prior to the service of the notice. If there is an appeal against the Notice then the charge will not be applied until the appeal is resolved and if the notice is upheld.

A demand for payment of the charge must be served on the person from whom the Council seek to recover it. The demand becomes operative, if no appeal is brought

against the underlying notice or order, at the end of the period of twenty-one days beginning with the date of service of the demand. As from the time when the demand becomes operative, the sum recoverable by the authority is, until recovered, a charge on the premises concerned.

Costs spent carrying out emergency remedial action may be recovered separately. If the Secretary of State prescribes a maximum amount that may be charged to recover administration and other expenses incurred in taking enforcement action the Council will limit any charge accordingly.

Works in Default

The Council may carry out works in default of a statutory notice. The cost of the works, plus the Council's reasonable administration charges based on an officer hourly rate, will be charged to the responsible party and recovered through the civil court.

Charges may be made for abortive costs in preparing to carry out work in default where an order has been placed and the owner then carries out the work required. Where there is no prospect of the money being recovered, the debt may be placed on the property as a land charge.

Emergency Measures

The Council may use emergency enforcement powers under housing legislation where there is an imminent risk of serious harm. In such circumstances the Council will take whatever remedial action it considers necessary to remove an imminent risk of serious harm. This could include taking remedial action in respect of a hazard and the subsequent recovery of reasonable expenses or prohibiting the use of all or part of a property.

Such emergency measures will only be taken where the use of emergency powers is the most appropriate course of action. Where emergency measures are taken, the owner of the property or other relevant person will be advised of the method of appeal against the action taken.

Licensing of Houses in Multiple Occupation

Duty to Licence HMO's

Section 61 of the Housing Act 2004 places a duty on the local housing authority to licence certain types of HMO. The Council must take all reasonable steps to ensure applications are made. A charge will be made for the issue of an HMO licence. This charge will be published and reviewed annually.

Each licence application must be dealt with systematically and will require a degree of checking before a licence can be issued. Checks must be carried out within agreed timescales and a Notice either granting or refusing a licence must be issued before the licence itself is issued.

Amenity standards within licensed HMOs

The provision of amenities in Licensed HMOs will be in accordance with the Licensing and Management of Houses in Multiple Occupation and other houses (Miscellaneous Provisions) (England) Regulations 2006 as amended. A revised set of amenity standards are included in appendix one.

HHSRS and its Link to HMO Licensing

The Council does not need to consider HHSRS before an HMO licence is issued. However, if during the licensing process the Council has reason to be concerned about the likelihood of Category 1 or 2 hazards, it will take action as described in this policy.

In HMOs the assessment of hazards is made for each unit of accommodation, which will reflect the contribution of conditions in the common parts and other areas connected to the unit of accommodation. If an enforcement notice is served on an HMO and it reverts to single occupation, the Council will consider whether the impact of the hazard has diminished and take appropriate action.

Part 2 of the Housing Act 2004 introduces mandatory licensing of certain types of HMO. Mandatory licensing has been introduced to tackle the types of HMO where unsatisfactory housing conditions are most likely to be found.

Local Authorities may also introduce Additional and Selective licensing schemes within their area. These schemes are not currently operated in Carlisle and are discretionary.

Fit and Proper Person and Management

The purpose of HMO licensing is to ensure that the most high risk and poorly managed properties are targeted. The requirement that the licence holder should be a fit and proper person is to ensure that tenants are protected, and the Act stipulates criteria that the licence holder must meet to be regarded as fit and proper.

Where the proposed manager or licence holder is not a fit and proper person, the applicant should be given the opportunity to review the current situation and make proposals that do meet these criteria. If this is not possible, it may be necessary to refuse the licence.

Provision of False or Misleading Information

It is an offence under the Act to provide false or misleading information. On conviction a fine of up to level 5 on the standard scale can be incurred.

Where the HMO licence application form has been signed this is a declaration that information provided is correct. Should contradictory information come to light, prosecution will be considered.

Granting a Licence

Where an application for a licence has been received and the Council is satisfied that the proposed licence holder is fit and proper, that the house is suitable for multiple occupation and the application submitted is valid, the Council must grant a licence.

Each licence must only relate to one HMO and can last for up to five years. In some cases it may be necessary to grant the licence for less than five years.

Refusing a Licence

A licence can be refused if the Council is not satisfied that the criteria stipulated in the Act have been met.

If a licence is to be refused, the Council will give serious consideration to the consequences of this decision. Depending on the reasons for the refusal it may be appropriate to consider the options available for dealing with the property. Where a licence is refused the Council has a duty to take on the management of the property by serving an Interim Management Order. A management order should be the last resort and other avenues will be considered before instigating this action, including a Temporary Exemption Notice. All reasonable steps will be taken to assist the proposed licence holder or owner of the property to either take action to allow the property to become licensed or to take the property out of use as an HMO.

Revoking a Licence

A licence may be revoked under a number of circumstances, stipulated in the Act. In deciding to revoke the licence consideration must be given to the consequences of doing so. If the property is to remain a licensable HMO then the Council must make an interim management order. If it is no longer an HMO no further action is required.

Varying a Licence

A licence may be varied where either the licence holder makes a request or the Council feels it is relevant to do so. It may be varied where there has been a change in circumstances, which also includes the discovery of new information.

Penalties

There are a number of possible offences relating to HMO licensing. The Council will consider taking action where there is evidence of an offence and it is appropriate to take such action.

Offences include:

- Managing or having control of an unlicensed HMO that should have a licence. Prosecution can result in fines of up to £20,000.
- Allowing the HMO to become occupied by more than the agreed number of households or persons on the licence. Prosecution can result in fines of up to £20,000.
- Breaching licence conditions. A breach of licence conditions can lead to prosecution and can result in fines of up to £5,000 per breach.

Other penalties include:

Rent Repayment Orders - if a person has committed the offence described above, in that no licence is being held for a property that should have one, then the Council or tenants can apply for a rent repayment order. The residential property tribunal can award this order, which requires the appropriate person to repay all rents and other periodical payments, and housing benefit for the period up to a licence being issued. The Order will state the amount to be repaid.

Termination of Tenancies - Landlords will not be able to issue any section 21 notices under the Housing Act 1988 (recovery of possession on termination of a shorthold tenancy), whilst the HMO is unlicensed.

Interim Management Orders and Final Management Orders

The Council has a duty to make an Interim Management Order in respect of an HMO where there is no reasonable prospect of it being licensed in the near future or it is necessary to protect the health, safety and welfare of the occupants.

An order can also be served in circumstances that the Council thinks are appropriate with a view to ensuring the proper management of the house pending the licence being granted.

Where a licence has been revoked for any reason and the property remains a licensable HMO an interim management order must be made if there is no reasonable prospect of the property regaining its licence.

Once an interim management order has been served the Council must take over the management of the property for up to twelve months. This includes carrying out any remedial works necessary to deal with the immediate risks to health and safety. If there is still no prospect of a licence being granted after twelve months then a final management order must be made which may be in force for up to five years. If after five years there is no prospect of the property being licensed a further management order must be made.

The Council is under a duty to issue interim and final management orders where necessary. The Council will instigate this action where necessary but as a last resort. All practical steps should be taken to assist the owner of the property to satisfy the licensing requirements. Management orders can be varied or revoked at any time as a result of a request from the owner or by the Council.

Temporary Exemption Notices

A Temporary Exemption Notice (TEN) may be issued where an HMO that is due to be licensed is to be taken out of use as a licensable HMO. A person having control or managing an HMO can notify the Council of its plans and request that the property be exempt from licensing. The Council must then consider this representation and if appropriate, serve the temporary exemption notice. A TEN remains in force for a period of three months, after which the property must have a license if it is still in such a condition as to require one. If further notification is received and the authority considers that there are exceptional circumstances a second TEN may be served which will remain in force for a further three months.

Complaints

In the event that an individual or company is not satisfied with the Private Sector Housing Service or they do not agree with the action taken by the investigating officer, they should first contact the Private Sector Housing Technical Team Manager who will escalate the complaint to a Senior Manager if appropriate. If this does not resolve your complaint the Council also has a formal complaints system.