Eden
District Council

Private Sector Housing Enforcement Policy

This document sets out the Council's policy framework for dealing with the enforcement of housing legislation and should be read in conjunction with the Environmental Services Enforcement Policy 2016

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Introduction

A key factor which has enabled the Council to achieve its aim of addressing current and future housing needs, is having the ability to protect and improve resident's quality of life, through the regulation of Housing conditions in Eden District Council.

The Private Sector Housing function is to improve the standard of private sector properties through, education, advice and enforcement. The Council has a statutory duty to enforce the provisions of the Housing Act (and other) Acts and this is undertaken by Officers in the Housing Team. The team deals with a wide range of housing issues, from the licensing and inspection of Houses in Multiple Occupation (HMO) to complaints from tenants regarding housing standards.

The team received over 102 service requests in the financial year 2018-2019, concerning housing conditions and empty properties in the private rented sector. The team offers advice and assistance to landlords, tenants, owner occupiers, empty property owners and stakeholders on wide range of housing issues, from overcrowding, cold in the home, damp, licensing matters and empty properties.

Scope of the Policy

The Private Sector Housing function is responsible for ensuring all statutory powers and duties specific to private sector housing are implemented. The purpose of this policy is to set out clearly, the way in which the Council intends to secure effective compliance with legislation while minimising the burden to the Council, individuals, organisations and businesses. This policy is intended to provide guidance on the principles and processes that will apply when Officers consider the options available for dealing with a case.

It sets out what owners, landlords, lettings agents and tenants of private sector properties can expect from Officers.

The Council will in all cases work jointly with other departments where necessary and we will target our resources to ensure the most serious cases are tackled as a priority. In most cases the Council will direct the tenant to liaise with the landlord regarding the Housing Standards and only in the event of inaction or unreasonable delays will the Council investigate a housing standards complaint.

Although the function is named the Private Sector Housing, the Private Sector covers a host of properties, including Registered Providers (RP) properties, owner occupied properties and the private rented sector. If enquiries are beyond the remit of the team advice and signposting will be offered.

Any areas that are not included within the policy will be determined on a case-by-case basis having regard to relevant legislation and guidance available.

Enforcement Framework

Eden District Council must have regard to the government Enforcement Concordat and the Regulators Compliance Code, these documents set out what business and others being regulated can expect from enforcement Officers. This Policy compliments the principles laid down in national policies to ensure the Officers are fair when exercising their enforcement duties.

Openness

We will provide information in plain English and publicise the availability of our services. We will be open about our priorities, policies and procedures. We will ensure that Officers explain the options available to stakeholders, and their reasoning for pursuing any given course of action. Officers will clearly distinguish between legal requirements and good practice, both in terms of their own work, and what is expected of stakeholders.

Proportionality

Enforcement Action will be proportionate to the seriousness of the offence. Where we have discretion, we will consider whether other measures will lead to effective resolution of the matter. We will apply the enforcement policy in each and every case and make a decision about whether to proceed to formal enforcement having consideration of individual circumstances of the case and any other relevant factors, such as harm caused or potential for harm to be caused to individuals the public and the environment as appropriate.

Consistency

We will have clear procedures in place to ensure consistency throughout the team with the approach to enforcement, to ensure similar matters are dealt with in the same way, whilst taking into account individual circumstances.

Co-ordinated Working

More often than not a single housing matter can trigger enforcement responsibility for several departments, both inside and outside the Council. We will therefore take a comprehensive approach to enforcement wherever possible by;

- Co-ordinating action between Council departments and with other agencies.
- Ensuring that the Council takes the most effective action by deciding which department should lead enforcement action, depending upon the offence committed and the powers available.
- Sharing information.
- Working together on joint prevention strategies.
- Aiming to speak with a single voice.

Part 1: General Enforcement

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

- No Action
- Informal Action
- Statutory Notices
- Simple Caution
- Prosecution
- Civil Penalties
- Banning Orders
- Rent Repayment Orders
- Works in Default
- Emergency Measures

No Action

Before considering taking any action in respect of a tenanted property, the tenants will normally be required to contact their landlord about the issues they are experiencing first. This applies to all tenants. Legislation covering landlord and tenant relationships requires that tenants notify their landlord of any problems in the property, this is because the landlord can only undertake their obligations when notified of a problem.

In certain situations tenants will not be required to write to the landlord;

- If the issues represent an imminent risk to the health or safety of the occupier.
- If there is a history of harassment or bad management practice.
- If the tenants are defined as vulnerable and a referral is being made by a third party.
- If the tenants' written English is poor and they require assistance to communicate.

Informal Action

Authorised Officers may use informal procedures when they believe that such an approach will secure compliance with the requirements of the appropriate legislation within a reasonable timescale. Informal action will usually involve discussion with the stakeholders. Written details will be sent by the authorised Officer to the stakeholders confirming what has been agreed and any informal action will usually precede any formal or statutory action and 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.

All informal action will be based on the principles described in the Enforcement Framework.

The service standards for the Council's response to Housing Complaints is contained within **Appendix 1.**

Statutory Action

The Council will consider serving a statutory notice in any of the following circumstances;

- Attempts to resolve the situation informally have failed.
- There are serious contraventions of legislation which pose significant risk to public health.
- 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.
- Officers have been unable to contact the owner.
- Where the legislation requires service of a notice to take further statutory action.
- A situation exists which places a mandatory duty on the Council to serve a statutory notice.
- Although it is intended to prosecute, effective action needs to be taken as quickly as possible to remedy the conditions, which pose an imminent risk to public health/safety or the environment.
- A notice is required to formalise an agreed course of action.

Statutory notices will specify:

- The reasons for the enforcement action being taken including an explanation of what the defects are in the property or the specific area of legislative noncompliance, 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.
- Information regarding the right of appeal where necessary.

Simple Caution

A Simple Caution will be considered when the circumstances of the offence satisfy the following criteria:

- The offence is serious to warrant prosecution and it is a first offence.
- The Officer believes that a caution will prevent further offences.
- To divert less serious offences away from the Courts, and

A Simple Caution will only be offered where:

- There is evidence of the offender's guilt sufficient to give a realistic prospect of conviction.
- The offender admits the offence.
- The offender will accept the formal caution and understands its significance.
- Clearly understands the significance of the Caution and gives informed consent to being cautioned, and
- It is considered to be in the public interest.

Prosecution

Legal proceedings maybe instigated in the following circumstances;

- Where the offence involves a flagrant breach of the law such that health, safety or the environment has been placed at serious risk.
- Where the offence involves a failure to comply with a statutory notice.
- Where there is a history of similar offences involving serious risk to the public.
- Where an individual is unwilling to prevent a reoccurrence or resolve the matter.
- Where an Officer has been obstructed in the course of their duties.

Civil Penalties

The Housing and Planning Act, s126 amends the Housing Act 2004 to allow civil penalties to be imposed as an alternative to prosecution for certain offences. The Council can impose a penalty of up to £30,000 per offence. The level of the financial penalty will be calculated with reference to the guidelines set out in **Appendix 3.**

These offences include;

Section 30 (failure to comply with Improvement Notice)

Section 72 (licensing of HMOs)

Section 95 (licensing of houses under Part 3)

Section 139(7) (failure to comply with Overcrowding Notice)

Section 234 (management regulations in respect of HMOs)

If the Council wishes to impose a civil penalty as an alternative to prosecution, it must first issue a notice of intent. This must set out the reasons for the proposed penalty and the amount of the proposed penalty. The person who has been given the notice then has 28 days to make representations. At the end of this 28 day period, the Council must decide if it wishes to impose a penalty, and if it does, it must issue a final notice. Any penalty must be paid within 28 days. The final notice must set out the amount of the penalty, the reasons for imposing the penalty, the period for paying the penalty,

information on how to pay, information on rights of appeal, and the consequences of failure to comply. A person on whom a final notice is served has a right of appeal to the First Tier Tribunal. If an appeal is made, the notice is suspended until the outcome of the appeal is determined. The penalty may be recovered through the county court as if it were payable under an order of that court. The financial penalties may be retained by the local authority and may be used to meet the costs of enforcement action associated with the private rented sector.

Banning Orders

Part 2 of the Housing and Planning Act provides for the establishment of a database of rogue landlords and property agents. The Secretary of State must establish such a database and introduce banning order offences. If a landlord is convicted of a banning order offence, then the local authority may apply to the First Tier Tribunal for a banning order to be granted. If a banning order is granted, the person against whom the order is granted is prohibited from letting property or engaging in letting agency or property management work. The order must last for at least 12 months. Breach of a banning order is an imprisonable offence.

If the local authority pursue a banning order then they must make an entry on the database of rogue landlords when a person is subject to a banning order.

Database of Rogue Landlords

The Rogue Landlord Database is a new tool for local authorities in England to keep track of rogue landlords and property agents and came into force on 6 April 2018. A local housing authority must make an entry on the database where a landlord or property agent has received a banning order. They have the discretion to make entries where a landlord or property agent has been convicted of a banning order offence or has received 2 or more civil penalties within a 12 month period.

Local authority officers will be able to view all entries on the database, including those made by other local housing authorities. The database can be searched to help keep track of known rogues, especially those operating across council boundaries and will help authorities target their enforcement activities.

Details held on the database will not be available to members of the public. Planning and Regulatory Services will have regard to the guidance provided by Government when deciding whether or not to include a person on the Rogue Landlord Database.

Part 2: Enforcement of Private Sector Housing Standards

Housing Act 2004: Part 1, Housing Standards

Part 1 of 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 29 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 Council 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 Council'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.
- Serve and suspend the Improvement Notice or Prohibition Order for a maximum period of 12 months.
- Serve a Hazard Awareness Notice.
- Take Emergency Remedial Action (Category 1 hazards only).
- Serve an Emergency Prohibition Order (Category 1 hazards only).
- Make a Demolition Order (Category 1 hazards only).
- Declare a Clearance Area (Category 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 a Council takes action and the property owner does not comply, the Council has the powers available to Councils to act in default. Default action will only be undertaken where an imminent risk to the individual's health is and the consequences of not taking any action would be unacceptable.

The Council can reclaim the cost of the works in default including administration costs. In most cases costs can be registered as a charge on the property and can be recovered through the Courts.

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 has a duty to take the most appropriate course of action. This will be determined by the authorised Officer following the inspection, taking into account all the available information, the landlord and the tenant's views.

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 and E Hazards

There will be a general presumption that where a Band D and E hazard exist, 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.

Reducing Hazards to an Acceptable Level

The Housing Act 2004 requires only that the Council takes the most appropriate course of action to 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 12 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 Providers

Registered Providers (RPs) (Housing Associations) are also subject to enforcement, however 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 RP 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 RP 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.

Owner Occupiers

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.

Additional Powers within the Housing Act

Action by 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. Interest will be charged on the monies owed and the arrangement will be reviewed annually. Action by agreement will normally be considered and will require to be authorised by the Director of Economic Development.

Powers of Entry

Most of the legislation enforced by the Housing Team includes the power for authorised officers of the Council to gain entry into a property for the purpose of carrying out the authorities duties under that legislation.

If an Officer is unsuccessful in gaining entry to a property by informal means, the Council will consider obtaining a warrant from the 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 entry, then a warrant can be obtained.

The Council also has the power to require documents to be produced in connection with its enforcement by a notice. The notice will specify the consequences of not complying.

Power to Charge for Enforcement Action

In line 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 individual tasks. The hourly rate will be reviewed and be incorporated in the charges report.

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 21 days beginning with the date of service of the demand. A charge will be placed on the property until the sum is paid in full.

Costs incurred in carrying out emergency remedial action may be recovered separately in line with guidance prescribed by the Secretary of State.

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.

Housing Act 2004 Part 2: Licensing of Houses in Multiple Occupation

Part 2 of the Housing Act 2004 (as amended with effect from October 2018) introduces mandatory licensing of certain types of HMO. Mandatory licensing applies to houses occupied by 5 or more persons, compromising of 2 or more households.

Duty to Licence Houses in Multiple Occupation (HMO)

The Council must take all reasonable steps to ensure property owners make licence applications. A charge will be made for HMO licence applications, this charge will be published and reviewed annually.

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

Amenity Standards within HMOs

The Council will require the provision of amenities in all HMOs to be in accordance with House in Multiple Occupation Management Regulations and for licenced HMO properties, the Licensing and Management of Houses in Multiple Occupation and other houses (Miscellaneous Provisions) (England) Regulations 2006 as amended.

In order to provide some basic guidance to landlords for amenities in relation to the legislation, the Council has adopted an amenity standards document which is referenced in **Appendix 1**. This document sets out the expected standards in licensed HMOs and should also be used as a reference for compliance for non-licensed HMOs where there are a higher number of letting units. If a landlord is not able to comply with the requirements and the property does not lend itself to adaptation or there is no evidence of the tenants being inconvenienced then a lesser standard maybe accepted, but this will be reviewed at each inspection.

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 may elect to carry out an inspection before the licence is issued.

The assessment of hazards in HMOs is made for each unit of accommodation, but will take into account 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 is now relevant to the change of use. For example, the hazard of Fire in an HMO property.

Fit and Proper Person and Management

The purpose of HMO licensing is to ensure that the most high risk and poorly managed properties are appropriately managed. Part 2 of the Housing Act 2004, requires licence holders to be a fit and proper person. 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 will be given the opportunity to develop proposals to meet the fit and proper person test. 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 £5,000 can in 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 5 years. In some cases in may be necessary to grant the licence for less than 5 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 will be the last resort and other avenues will be considered before instigating this action, including a Temporary Exemption Notice.

The Council will take all reasonable steps to assist the proposed licence holder or owner of the property to take action to enable the property to become licensed or to take the property out of use as an HMO.

Revoking a Licence

The Council may revoke a licence in line with circumstances stipulated under Part 2 of the Housing Act 2004. If the property is to remain a licensable HMO 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:

(a) Managing or having control of an unlicensed HMO that should have a licence. Prosecution can result in fines of up to £20,000.

(b) 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.

(c) 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 does not have a licence for an HMO that requires a licence, then the Council or tenants can apply for a Rent Repayment Order to the First Tier Tribunal (Property Chamber).

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 short hold tenancy), whilst the HMO is unlicensed.

Changes to HMO Licensing under the Planning and Housing Act

The Housing and Planning Act introduced changes to the definition of a House in Multiple Occupation from October 2017, existing procedures were adopted, including applications process, procedures and setting of licence fees annually for licensable activity under the Act or subsequent legislation, taking into account good practice.

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.

If a licence has been revoked for any reason and there is no reasonable prospect of the property regaining its licence, the Council must make an Interim Management Order. The order requires the Council has to take over the management of the property for up to 12 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 12 months then a final Management Order must be made which may be in force for up to 5 years. If after 5 years there is no prospect of the property being licensed a further

Management Order must be made. Management Order can be varied or revoked at any time as a result of a request from the owner or by the Council.

The Council will instigate this action as a last resort, where necessary.

The Council will take all practical steps to assist the owner of the property to satisfy the licensing requirements.

Temporary Exemption Notices

The Council will consider issuing Temporary Exemption Notice (TEN) in response to a request from the owner or managing agent to exempt the property from licensing on the grounds that it is no longer going to be used as an HMO. A TEN remains in force for a period of 3 months, after which the property must have a licence 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 3 months.

Additional and Selective Licensing

Local Authorities may also introduce Additional and Selective licensing schemes within their area. These schemes are not currently operated in Eden and are discretionary. In 2015 amendments were made to the legislation which widens the criteria for licensing, to include areas with a high proportion of private rented properties with poor housing conditions.

The Council's adoption of any selective licensing scheme, would involve a lengthy period of consultation with local stakeholders, to inform decision making and implementation.

Part 3: Other Areas of Legislation

A. Disrepair at a Property

The table below outlines a number of issues and the relevant legislation that can be used by an officer to bring about corrective action on the property. Works are required by legal notices signed by an authorised officer, in the case of non-compliance with the notice the Council can carry out works in default and/or prosecute for failure to comply. In the case of works in default a land charge can be placed against the property.

Issues	**Legislation**	**Action Required**
Dangerous or dilapidated buildings	Building Act 1984, Section 77 and 78 (Building Control)	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 (eg causing dampness in adjoining property) or prejudicial to health	Environmental Protection Act 1990, Section 79 and 80	Requires the owner to take steps to abate the nuisance and/or prevent/reduce the likelihood of reoccurrence.
	Building Act 1984, Section 76	Enables the local authority to take 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	Allows the local authority to secure a property after 48 hours.
	Building Act 1984, Section 78 (Building Control)	Allows the local authority to fence off the property.

Issues	Legislation	Action Required
Blocked or defective drains or private sewers	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, gutters, etc.
	Public Health Act 1961, Section 17	Requires the owner to address defective drains or private sewers.
Vermin either present or risk of attracting vermin that may detrimentally affect people's 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	

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

The Houses in Multiple Occupation (HMO) management regs imposes the duties of managers of HMOs and the corresponding duties of occupants. The manager's duties include the duty to take safety measures, the duty to maintain the water supply and drainage, to supply and maintain gas and electricity and have tested regularly gas and electricity installations, the duty to maintain common parts, fixtures and fittings and living accommodation. The Regulations set out what occupiers must do with a view to assisting managers to undertake their duties.

Failure to comply with these regulations can be a straight prosecution.

C. Local Government (Miscellaneous Provisions) Acts 1976, 1982

Section 16 Local Government (Miscellaneous Provisions) Act 1976 gives the Council the power to issue 'Requisition for Information Notices'. When the Council need to obtain information about a property in respect of which we are proposing to take enforcement action, we will serve a Requisition for Information Notice on the occupier and/or any person who has a legal interest in it, or who directly or indirectly receives rent, or is authorised to manage or to arrange for its letting.

D. Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

The above regulations were introduced in 2015 to tackle the least energy-efficient properties in England and Wales – those rated F or G on their Energy Performance

Certificate (EPC). The Regulations establish a minimum standard for privately rented property, affecting new tenancies from 1 April 2018 and all tenancies from April 2020.

EPC F and G rated properties waste energy. They impose unnecessary cost on tenants and the wider economy, and they contribute to avoidable greenhouse gas emissions. Increasing the energy efficiency of our domestic rental stock can help:

- manage the energy costs of tenants, including some of the most vulnerable;
- improve the condition of properties and help reduce maintenance costs;
- smooth seasonal peaks in energy demand, and thereby increase our energy security;
- reduce greenhouse gas emissions at relatively low cost.

Prohibition on letting sub-standard property.

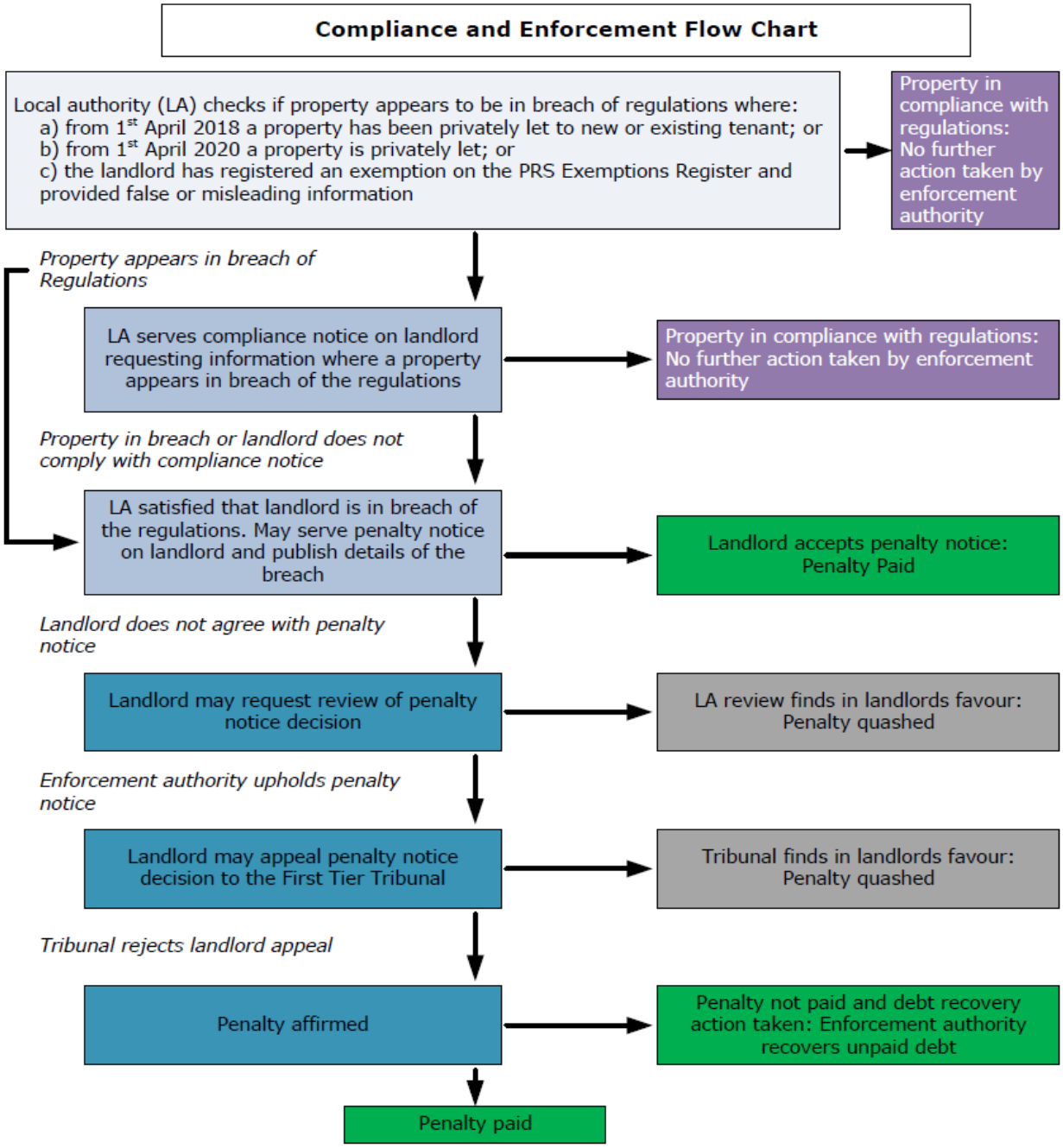
a) from the 1st April 2018, landlords of relevant domestic private rented properties may not grant a tenancy to new or existing tenants if their property has an EPC rating of band F or G (as shown on a valid Energy Performance Certificate for the property);
b) from the 1st April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating of band F or G (as shown on a valid Energy Performance Certificate for the property).

In certain circumstances landlords *may* be able to claim an exemption from this prohibition on letting sub-standard property; this includes situations where the landlord is unable to obtain funding to cover the cost of making improvements, or where all improvements which can be made have been made, and the property remains below an EPC rating of Band E.

Where a valid exemption applies, landlords must register the exemption on the national PRS Exemptions Register.

The Council may check whether a property meets the minimum level of energy efficiency, and may issue a compliance notice requesting information where it appears to them that a property has been let in breach of the Regulations (or an invalid exemption has been registered in respect of it). Where a property has been let in breach of the Regulations or false information lodged on the Exemption Register the Council may serve a notice on the landlord imposing financial penalties and may also publish details of the breach on the national PRS Exemptions Register. The landlord may ask the Council to review the penalty notice and, if the penalty is upheld on review, the landlord may then appeal the penalty notice to the First-tier Tribunal.

The table below describes the process of compliance and enforcement of these regulations.



The penalties for non-compliance are shown in Appendix 3.

E. Smoke Detection and CO Regulations

On 1 October 2015 the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force which requires both smoke alarms and carbon monoxide alarms to be installed in rented residential accommodation. The Regulations apply both to houses and flats. Failure to comply can lead to a civil penalty being imposed of up to £5,000.

Requirement for Smoke Alarms

During any period beginning on or after 1 October 2015 while the premises are occupied under a tenancy (or licence) the landlord must ensure that a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation.

The Regulations do not stipulate what kind of smoke alarm is required, both mains wired and battery detection is acceptable.

Requirement for Carbon Monoxide Alarms

During any period beginning on or after 1 October 2015 when the premises are occupied under a tenancy or a licence a carbon monoxide alarm must be provided by the landlord in any room in premises which is used wholly or partly as living accommodation which contains a solid fuel burning combustion appliance. This applies to any kind of wood burning stove or an open coal fire.

Mains wired and battery detection will be acceptable.

Checks

The landlord is specifically required to carry out checks to ensure that smoke alarms or carbon monoxide alarms installed to comply with the Regulations are in proper working order on the day a tenancy begins with effect from 1 October 2015.

Although the need to undertake checks on detection only applies to new tenancies after 1 October 2015, all landlords are required to install detectors and alarms in their tenanted properties.

Enforcement

The Council will serve a Remedial Notice within 21 days when they have reason to believe that the landlord is in breach of any of these duties relating to smoke alarms or carbon monoxide alarms. The Remedial Notice must specify the action to be taken within 28 days of the date of the service of the notice and it allows the landlord 28 days to make representations against the notice.

If the landlord fails to take action then the Council can fit the smoke alarms and CO detectors as works in default. This does however require the consent of the occupiers as there is no right of entry for compliance.

Penalties

If a landlord breaches the notice, the Council will serve a Penalty Charge Notice in line with its current charging policy for civil penalties. This has been set at £1,000 and has been adopted by all the Cumbrian District Councils.

In line with other areas of penalty and fee charging within housing, Eden and the other 5 Cumbrian districts Councils have collectively opted to introduce a proposed minimum fee for fines at £1,000 per offence. The level of fine is calculated on Officer time and a reflection of other fines issued for housing offences in the courts. **Appendix 3** details the fine structure which must be adopted by the authority under the regulations.

If the Council are satisfied a breach exists then a Penalty Charge Notice will be served within 6 weeks from when it was made aware the breach had occurred. A right to make representations against the Penalty Notice is given and any representations for a reduction in fine levied, taking into account any extenuating circumstances are made to the Assistant Director Community Services and Portfolio Holder. The penalty fines received by the authority may be used by the authority for any of its functions.

Appeals

If the local authority upholds a Penalty Charge Notice there is a right to appeal for the landlord to the First Tier Tribunal. The Grounds of Appeal are:

- Local authority has made an error of fact or law.
- The amount of penalty charge is unreasonable.
- The decision to impose a penalty is unreasonable for any other reason.

Payment of the penalty is suspended pending any appeal.

Part 4: Enforcement of Tenancy Rights

Tenancy Redress Scheme

People involved in letting agency work or/and property management work in the private rented sector, are required to be registered with an approved redress scheme under **The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014**

The Council is the enforcing authority for this statutory requirement and we are required to take enforcement action where we are made aware a person is engaged in letting agency or property management work and they are not registered with an approved redress scheme.

Currently there are 3 schemes approved by the National Trading Standards (Estate Agency Team):

A financial penalty of up to £5,000 can be levied by the Council for non-compliance. The guidance on fines under the regulations stipulates that the fine level should be set at £5,000 automatically and then the individual organisations will have 28 days in which to make representations to the Council. Factors that may have an impact on the decision will include; lack of awareness, if a £5,000 fine is disproportionate to the turnover/scale of the business or would lead to an organisation going out of business.

It is proposed that any representations for a reduction in fine, taking into account any extenuating circumstances, are made to the Director and Portfolio Holder, who will have the final say on any fine levied. The penalty fines received by the enforcement authority may be used by the authority for any of its functions.

The enforcement authority can impose further penalties if a lettings agent or property manager continues to fail to join a redress scheme despite having previously had a penalty imposed. There is no limit to the number of penalties that may be imposed on an individual lettings agent or property manager, so further penalties can be applied if they continue to be in breach of the legislation.

Guidance on the enforcement route that must be followed is referenced in **Appendix 2** of this document.

Changes to Tenancies under the Deregulation Act 2015

The Deregulation Act 2015 was passed on 26 March 2015 and covers various points of law, which have an impact on the Private Sector Housing and Homeless Service, the regulations will affect how the teams deal with private sector complaints, advice offered to landlords and how the Council deals with evictions from the private sector.

Tenancy Deposit Protection Schemes

The Deregulation Act 2015, which received Royal Assent on 26 March 2015, contains important changes to Tenancy Deposit Protection Scheme legislation that attempts to clarify the issues created by the court cases of Superstrike vs Rodrigues and Charalambous vs Ng.

The main changes, relate to deposits taken under any assured short hold tenancy. There is now a requirement for all deposits to be protected even applying to those tenancies previous to April 2007.

Landlords who have not complied will not be able to serve a Section 21 Notice and **will** be liable for penalties for non-compliance in the Civil Courts if deposits are not protected.

Retaliatory Evictions

The Deregulation Act introduces new provisions which came into force on 1 October 2015, to protect tenants from eviction in England only.

These provisions restrict a landlord's ability to serve a Section 21 Notice in circumstances where the tenant has complained about the condition of the premises or the common parts of a building of which the premises form part, and the landlord either did not respond within 14 days or they have not provided an inadequate response.

The tenant can complain to the Council if they are not satisfied and the Council may investigate the matter for breaches of legislation under the Housing Act. In the event that the Council serves an Enforcement Notice on the landlord, the landlord will not be able to serve a Section 21 Notice within 6 months of the date of the notice.

Although the legislation infers that tenants should contact the Council to make complaints regarding housing standards and that this action will result in immediate enforcement action, this is not in the spirit of the Council's approach in dealing with complaints under the Housing Act 2004 and each case will be dealt with on an individual basis. The overall aim is to ensure a satisfactory outcome for all parties and secure the accommodation through a preventative approach, rather than enforcement.

The provisions will apply to all Assured Shorthold Tenancies (AST) granted on or after 1 October 2015. They will not apply to a fixed term AST granted prior to that date even if, after 1 October 2015, the fixed term AST becomes a statutory periodic tenancy. The position changes, however, after the end of the period of 3 years, at which point the provisions will apply to any AST in existence.

Section 21 Notices

On 1 July 2015 the Secretary of State introduced regulations prescribing the form on which a Section 21 Notice must be served, this makes the procedure for serving a Section 21 Notice much simpler and clearer and landlords will be required to comply with these requirement before serving a notice.

From 1 October 2015 in England, there will be no requirement for the date specified in the Section 21 Notice to be the last day of a period of the tenancy and a landlord will not be able to serve a Section 21 Notice within the first 4 months of the tenancy. In addition there is now a statutory right for the tenant to claim back rent paid in advance (calculated on a daily basis) where a Section 21 Notice brings the tenancy to an end before the end of a payment period.

The new rules will apply to ASTs granted on or after 1 October 2015, they will not apply to all fixed term AST granted prior to this date even if, after the relevant date, the fixed term AST becomes a statutory periodic tenancy.

The position changes, however in respect of these provisions after a period of 3 years, at which point it will apply to all tenancies. In respect of the prescribed information about the rights and responsibilities of the landlord and tenant under the AST, this will apply from 1 October 2015.

The prescribed requirements are set out in the regulations and relate to the condition of dwelling houses and their common parts, the health and safety of occupiers of dwelling houses, and the energy performance of dwelling houses.

Protection from Eviction

The Environmental Health Officer (Housing) takes the lead responsibility for enforcing various offences to do with the behaviour of landlords towards tenants and the requirement for landlords to provide information to tenants relating to their tenancy. In the event that Eden Housing are presented with evidence of illegal eviction and/or harassment they will forward the case to the Environmental Health Officer (Housing).

The most serious of such offences dealt with by the Council are to do with the harassment and illegal eviction of tenants (Protection from Eviction Act 1977). The Council generally regards these offences as very serious because of its commitment to:

a. Protecting the interests of vulnerable people.

b. Promoting respect for the individual's home.

c. Preventing homelessness.

The law provides grounds for landlords to lawfully regain possession of their premises and these procedures must be followed when a landlord wants a tenant (or licensee) to leave. Where an allegation is made that an offence has been committed under the Protection from Eviction Act 1977, the Council will investigate with a view to:

- Informing the landlord and occupier of their rights and responsibilities where appropriate.
- Prosecuting offences where there is sufficient evidence and where it is in the public interest to do so.

Prosecution of offences dealt with by the Housing Team and the issue of Simple Cautions will be dealt with in accordance with this policy.

Right to Rent Legislation

On 1 February 2016, legislation will be rolled out across England, requiring landlords and letting agents to conduct checks on prospective tenants to ensure they only let property to those with a right to rent in the UK. If they do not conduct checks and are found to be renting out to someone without that right, then they may face a civil penalty.

The Council will have a role to play in raising awareness of the scheme among landlord, letting agents and tenants.

Section 29 of the Local Government (Miscellaneous Provisions) Act 1982 gives the Council power to require the owner to board up a property to prevent unauthorised access, and to carry out the work in default of the owner if they fail to comply or cannot be found.

Part 5: Empty Properties

In conjunction with the Empty Property grants and Loans procedures the following options will be available for consideration when dealing with long term empty properties;

Dealing with Dangerous Buildings

The Building Act 1984 allows Local Authorities to deal with buildings that it considers being dangerous. The Council can apply to a Magistrates' Court for an order requiring the owner to make the building safe or demolish it. If the owner fails to comply, the Council can carry out the works in default.

Derelict and Ruinous Buildings and Structures

Provisions contained in Section 79 of the Building Act 1984 enable the council to take action against building owners who neglect their buildings allowing them to become ruinous and dilapidated. It empowers a local authority to serve notice requiring the building owner to either execute works of repair and restoration or if the owner chooses to, demolish it.

The qualifying criteria for action to be taken on derelict buildings are that in the opinion of the local authority they are ruinous and dilapidated and detrimental to the amenities of the neighbourhood. Evidence of 'ruin and dilapidation' relates to the building's condition whilst 'detriment to amenity of the neighbourhood' is a subjective judgment relative to the detrimental impact it has on the neighbourhood usually underpinned by the number of complaints it generates.

The owner can appeal against the notice within 21 days but only on specified grounds. If works in default are undertaken a local land charge is put on the property against all titles and could lead to enforced sale in extreme circumstances.

Section 215 of the Town and Country Planning Act 1990

This legislation gives the Council a power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the city. Action can be taken against land and buildings including empty homes.

Amenity is a broad concept and there must be sufficient evidence that the amenity of that part of the area is being suitably affected by the condition of neighbouring land and buildings to justify service of a notice. A notice must be clear, concise and unambiguous.

In the event that a notice is successfully appealed at the Magistrates' Court reasonable costs can be awarded against the council. Failure to comply with an enforcement notice may result in enforced sales procedure being undertaken.

Enforced Sale

This is the procedure that allows Local Authorities to recover charges incurred following non-compliance with a notice after they have done works in default for example failing to comply with a S.215 Planning Notice.

The power gives local authorities the right to require a house to be sold to recover the money they are owed if the owner fails to repay the charge for works in default. If the owner does not pay for the works in default the charge is secured as a local land

charge. Once the charge is in place the local authority can pursue the enforced sale without further legal recourse.

Compulsory Purchase Orders (CPO)

Compulsory purchase of empty properties may be justified as a last resort in situations where there appears to be no other prospect of a suitable property being brought back into residential use.

The city council will first wish to encourage the owner to restore the property to full occupation. However, cases may arise where the property may be causing nuisance to the neighbours and the owner cannot be traced or will not engage with the city council, therefore use of compulsory purchase powers may be the only way forward.

When considering whether to confirm such an order the Secretary of State will normally wish to know: how long the property has been vacant, what steps the authority has taken to encourage the owner to bring it into acceptable use and the outcome; and what works have been carried out by the owner towards its reuse for housing purposes.

Empty Dwelling Management Orders (EDMOs)

EDMO's allow local authorities to take management control of an empty property for up to 7 years, carrying out any necessary repairs and arranging for the property to be rented out during this period.

The owner retains ownership and the right to sell the property and receives any surplus income made during this time once management costs and refurbishment costs have been reclaimed from the rental income.

The minimum time a property has to be empty is two years and Councils have to serve a three month notice on owners that they intend to apply for an interim EDMO in the first instance.

An EDMO is only applicable for properties attracting anti-social behaviour and/or having a significantly adverse effect on the community, with owners unwilling to take action. This will restrict its use to a small number of properties, but they are valuable tool for long-term empty properties having a significant impact on a neighbourhood.

The Council will only consider applying for an Empty Dwelling Management Order as the last resort.

Boarding up of Empty Dwellings

See Local Government (Miscellaneous Provisions) Act in referenced in part 3 A.

Other Statutory Powers.

All empty properties undergo an external assessment by the Empty Homes Officer, if an internal inspection is carried out, it will be under the Housing Act 2004 Housing Health and Safety Rating System (HHSRS).

The Housing Act 2004 places a duty on local authorities to take action when the most serious Category 1 hazards are identified.

The authority has the option to serve Improvement Notices requiring the owner to carry out the necessary works to remedy defects, which will reduce the hazards to an acceptable level.

If the owner fails to comply with a notice, the authority can arrange for the works to be carried out in default and recover the costs from the owner. Any costs are registered as a local land charge against the property and may count in any subsequent enforced sale.

Part 6: General Information

Planned Enforcement Activity

The Council's approach to the regulation of Housing Standards will be evidence based. Inspections will be undertaken to actively target those properties and areas where we believe we should be addressing priority risks. This approach will be documented annually in the directorate service plan.

Improving Standards in Property Management through Landlord Accreditation

The Council adopted the Cumbria Landlord Accreditation Scheme (CLAS), the scheme set up a joint Cumbrian approach to landlord accreditation in partnership with the National Landlord Association. The scheme's approach is to drive improvement in the sector through education of landlords, to improve property standards and management.

Media Coverage

Media coverage will normally be sought in the following cases:

- The offence is widespread in the area and coverage will assist in securing compliance by others.
- To draw attention to particular serious hazards.
- The offence is serious and/or was committed wilfully and the Council wishes to draw attention to its willingness to take a hard line in such cases.
- Coverage is otherwise in the public interest.

A press release will also be issued about convictions where it is considered that publicity will bring benefits by promoting compliance with those statutory requirements designed to protect the health, safety and welfare of customers, residents, workers and visitors as well as the environment.

Complaints

In the event that an individual or company is not satisfied with the Service or they do not agree with the action taken by the investigating officer, they should first contact the Housing 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.

Review

We will monitor and consider the effectiveness of this policy and it will be subject to reviews as and when appropriate and also to accommodate changes in legislation and as local needs dictate.

If you have any comments please contact the Housing Team on 01768 212138 or e-mail env.admin@eden.gov.uk

Appendix 1

Amenity Standards in Licensable Houses in Multiple Occupation

(HMO Standards 2014)

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 will 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 Eden District Council, Mansion House, Friargate, Penrith, Cumbria CA11 7YG by email env.admin@eden.gov.uk , by telephone Tel 01768 212138 or by visiting www.eden.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 Eden District Council's 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 Eden 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: • 1 sink and draining board with an adequate supply of cold and constant hot water. • 1 cooker with 4 ring hob and oven • 3 double sockets • 0.5m of worktop per person • 0.4m^3 of combination of dry, refrigerated and 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	1 kitchen with dining area/living room attached, adjacent or on the same floor. • 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 and 6 ring hob or 2 x 4 ring hobs with ovens. • 4 double sockets • 0.5m of worktop per person • 0.4m^3 of combination of dry, refrigerated and 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	1 kitchen with large dining area/living room attached, adjacent or on the same floor. • 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 • 0.4m^3 of combination of dry, refrigerated and 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	2 kitchens and 1 living/dining area. Each kitchen to be equipped with: • 1 sink and draining board with an adequate supply of cold and constant hot water. • 1 cooker with 4 ring hob and oven • 3 double sockets • 0.5m of worktop per person • 0.4m^3 of combination of dry, refrigerated and frozen food storage per person. • Appropriate refuse disposal facilities should be provided. • Appropriate extractor fans, fire blankets and fire doors, should be provided.

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 (eg bedsits)

The minimum requirements are:

- 2 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 0.4m^3 of combination of dry, refrigerated and frozen food storage space per person.
- Appropriate refuse disposal facilities should be provided.
- Appropriate extraction, 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 (eg 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 2 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 HMOs can also be accessed in the Fire Safety measures guidance produced by LACORS.

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 and Building Control Admin on tech.support@eden.gov.uk

Appendix 2

Enforcement process:

Step 1: Notice of Intent

The enforcement authority must give written notice of their intention to impose a penalty, setting out:

i) the reasons for the penalty;

ii) the amount of the penalty; and

iii) that there is a 28 day period to make written representations or objections, starting from the day after the date on which the notice of intent was sent.

This written notice must be served within 6 months of the date on which the enforcement authority is in the position to issue the fine (have gathered sufficient evidence and satisfied any internal requirements that a fine is appropriate). It is up to each local authority to decide who should serve the notice. The enforcement authority may withdraw the notice of intent or reduce the amount specified in the notice at any time by giving notice in writing.

Step 2: Representations and Objections

The person who the notice of intent was served on has 28 days starting from the day after the date the notice of intent was sent to make written representations and objections to the enforcement authority in relation to the proposed fine.

Step 3: Final Notice

At the end of the 28 day period the enforcement authority must decide, having taken into account any representations received, whether to impose the fine and, if so, must give at least 28 days for payment to be made. When imposing a fine, the enforcement authority must issue a final notice in writing which explains:

i) why the fine is being imposed;

ii) the amount to be paid;

iii) how payment may be made;

iv) the consequences of failing to pay;

v) that there is a right to appeal against the penalty to the First-tier Tribunal and that any appeal must be made within 28 days after the imposition of the fine.

It is up to each local authority to decide who should serve the notice. The enforcement authority may withdraw the final notice or reduce the amount specified in the notice at any time by giving notice in writing.

Step 4: Appeals

If an appeal is lodged the fine cannot be enforced until the appeal is disposed of. Appeals can be made on the grounds that:

i) the decision to impose a fine was based on a factual error or was wrong in law;

ii) the amount of the fine is unreasonable; or

iii) that the decision was unreasonable for any other reason.

The First-tier Tribunal may agree with the enforcement authority's notice to issue a penalty or may decide to quash or vary the notice and fine.

Appeals will be heard by the General Regulatory Chamber, further details on the appeals procedure can be found at the following link:

http://hmctsformfinder.justice.gov.uk/courtfinder/forms/policy-makers-guidance-eng.pdf

Step 5: Recovery of the Penalty

If the lettings agent or property manager does not pay the fine within the period specified the authority can recover the fine with the permission of the court as if payable under a court order.

Where proceedings are necessary for the recovery of the fine, a certificate signed by the enforcement authority's chief finance officer stating that the amount due has not been received by a date stated on the certificate will be taken as conclusive evidence that the fine has not been paid.

Appendix 3

Application of Civil Penalties under Section 126 Housing and Planning Act 2016

Statement of Principles

The level of civil penalty to be applied will be determined with reference to the culpability of the offender, and the harm, or potential harm, caused to occupiers as a result of the breach. The principles that the Council will take into account when applying a civil penalty are:

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

2. 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.

3. The harm caused to the tenant. This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

4. 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.

5. 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. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

6. Deter others from committing similar offences. 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.

7. 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; it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

These principles will be applied using the Culpability/Harm matrix set out below to arrive at an appropriate penalty.

Culpability

Very High: The offender intentionally breached or flagrantly disregarded the law. This may be evidenced by numerous previous failures to comply with enforcement action.

High: Actual foresight of, or wilful blindness to risk of offending, but risk nevertheless taken. This may be evidenced by some previous enforcement activity.

Medium: Offence committed through act or omission which a person exercising reasonable care would not commit.

Low: Little fault because, for example, efforts were made to address the risk, albeit they were inadequate on this occasion, or failings were minor and occurred as an isolated incident.

Harm:

Level 1: Multiple serious failings giving rise to a number of Category 1 Hazards that posed a substantial risk to occupiers, or very serious breach of HMO management regulations.

Level 2: Significant risk arising from, for example a single Category 1 Hazard, a number of Category 2 Hazards. Significant breach of HMO management regulations.

Level 3: Lower risk arising from 1 or 2 Category 2 Hazards only, or from a minor breach of HMO management regulations.

The level of the civil penalty will be calculated with reference to the table below. A history of previous non-compliance and/or evidence of substantial financial gain from the failure to comply will result in a higher penalty within the range being imposed. Previous good character, less financial gain and evidence of efforts to remedy the situation will result in a lower penalty within the range being imposed.

Previous good character, less financial gain and evidence of efforts to remedy the situation will result in a lower penalty within the range being imposed.

	Starting Point	**Range**
Very High Culpability		
Harm Level 1	£20,000	£10,000 - £30,000
Harm Level 2	£10,000	£5,000 - £15,000
Harm Level 3	£5,000	£2,500 - £7,500
High Culpability		
Harm Level 1	£10,000	£5,000 - £15,000
Harm Level 2	£7,500	£3,750 - £11,250
Harm Level 3	£3,000	£1,500 - £4,500
Medium Culpability		
Harm Level 1	£5,000	£2,500 - £7,500
Harm Level 2	£3,500	£1,750 - £5,250
Harm Level 3	£2,000	£1,000 - £3,000
Low Culpability		
Harm Level 1	£3,000	£1,500 - £4,500
Harm Level 2	£2,000	£1,000 - £3,000
Harm Level 3	£1,000	£500 - £1,500

In respect of the Minimum Energy Efficiency Standards a guideline to the penalties for breaches is set down by the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (Regulation 40).

Breach	**Penalty**
Letting a sub-standard property for less than 3 months	up to £2,000 plus a publication penalty
Letting a sub-standard property for 3 months or more,	up to £4,000 plus a publication penalty
Registering false or misleading information on the PRS Exemptions Register,	up to £1,000 plus a publication penalty
Failing to comply with compliance notice	up to £2,000 plus a publication penalty
Maximum penalty to be applied against an individual property (NB This penalty can be repeated if the property remains sub-standard and is let on a new tenancy.	up to £5,000