

# SEFTON COUNCIL HOUSING ENFORCEMENT POLICY

## 1. PRIVATE SECTOR HOUSING TEAM

- 1.1 The Private Sector Housing Team aims to protect and promote the health of the people of Sefton by improving private sector rented housing, public health, safety and the environment through the provision of advice, support and formal action where necessary.
- 1.2 The purpose of this enforcement policy is to ensure that a consistent approach is adopted by Enforcement Officers throughout the Borough.
- 1.3 This department has adopted the Enforcement concordat principals of good enforcement. Included in the term “enforcement” are advisory visits and assisting with compliance as well as formal action. By adopting the concordat, we commit ourselves to the following policies and procedures, which contribute to Best Value, and will provide information to show that we are observing them.
- 1.4 The policy sets out what businesses and other regulated parties and individuals can expect from enforcement officers. It commits us to good enforcement policies and procedures. Additional statements of enforcement policy may supplement it.
- 1.5 The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner, which helps to promote a thriving national and local economy. We are committed to these aims and to maintaining a fair and safe trading environment.
- 1.6 The effectiveness of legislation in protecting individuals and communities depends crucially on the compliance of those regulated. We recognise that most landlords, managing agents and individuals want to comply with the law. We will, therefore take care to help those who are regulated to meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens will reap the benefits of this policy through better information, choice and safety.
- 1.7 The purpose of this policy is to outline the Council’s approach to securing compliance with the law in relation to private sector housing while minimising the burden on private sector landlords. In particular, the policy outlines the extent to which the Council will intervene to make use of the powers in Part 1 of the Housing Act 2004 as a result of the introduction of the Housing Health and Safety Rating System (HHSRS), and its approach to the licensing of Houses in Multiple Occupation and to empty homes. It sets out what owners, landlords, their agents and tenants of private sector properties can expect from officers.

## 2.0 PRINCIPALS OF GOOD ENFORCEMENT POLICY

### 2.1 Standards

In consultation with service users and other relevant interested parties, including technical experts, where appropriate, we will draw up clear standards setting out the level of service and performance that users of the service and those regulated can expect to receive. We will publish these standards and our annual performance against them. The standards will be made publicly available.

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### 2.2 Openness

We will provide information and advice in plain language on the legislation that we enforce and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set with organisations and individuals potentially affected by our work where appropriate. We will also discuss general issues, specific compliance failures or problems with those organisations and individuals affected or potentially affected by our work.

### 2.3 Helpfulness

We believe that prevention is better than cure and that our role therefore involves actively working with all affected parties to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage those affected by our work to seek advice/information from us. Applications for information and services etc. will be dealt with efficiently and promptly. We will ensure that wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

### 2.4 Complaints about the Service

We will provide well - publicised, effective and timely complaints procedures easily accessible to business, the public, and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely timescales involved.

### 2.5 Proportionality

We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. We will take account of the circumstances of the case and the attitude of the trader or person when considering action, taking into account our prosecution criteria included in this document.

### 2.6 Consistency

We will carry out our duties in a fair, equitable and consistent manner. While officers are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies. Digital images may be taken as part of any investigation and any images taken will only be used for enforcement action if such action is required. Due regard will also be given to any guidance issued in statutory Codes of Practice, Home Office Circulars and the Human Rights Act 1998.

## 3.0 PRINCIPLES OF GOOD ENFORCEMENT: PROCEDURES

3.1 Advice from an officer will be put clearly and simply and will if necessary be confirmed in writing, explaining why any remedial work is necessary and over what timescale, and making sure that legal requirements are clearly distinguished from best practice advice.

3.2 Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, where there is an imminent risk to public health or safety).

3.3 Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within five working days and, in all cases, within ten working days.

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3.4 Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (where ever possible this advice will be issued with the statutory notice).

3.5 The decision as to whether or not to prosecute an individual or company lies initially with the individual officer as he or she confronts a particular situation. However, the officer must discuss their decision with their Team Leader prior to any action being initiated. Prosecution is only one of a number of enforcement options available to the officer and each option should be considered to determine whether other courses of action are more appropriate or effective.

### 4.0 SHARED ENFORCEMENT

4.1 The range of enforcement matters dealt with by the Council in this policy area is such that there may well be occasions when there is a need to work with other agencies, for example the Fire Authority or the Health and Safety Executive, by carrying out joint inspections. Where a fire hazard is identified, the Council will consult the Fire Authority on works required before taking enforcement action, although in the case of proposed emergency measures, that consultation will be so far as it is practicable to do so.

4.2 In determining the most appropriate form of investigation and enforcement action, officers will have regard, so far as they are aware, to any potential or existing action of other council services or outside agencies.

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

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

### 5.0 ENFORCEMENT STANDARDS

5.1 All investigations into alleged breaches of legislation will follow best professional practice and the requirements of:

The Human Rights Act 1998

The Regulation of Investigatory Powers Act 2000

The Police and Criminal Evidence Act 1984 – Codes of Practice

The Criminal Procedures and Investigations Act 1996

The Code for Crown Prosecution

Enforcement Guidance issued under section 9 of the Housing Act 2004

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### 6.0 IDENTIFYING THE NEED FOR ACTION

- 6.1 The council may identify the need to act to deal with hazards in a number of ways, including following a complaint or request for enforcement action, or following a request for financial assistance to improve the property. For example where a landlord refuses a warm front or other grant for insulation or heating, an inspection may be necessary to determine whether anything needs to be done to protect the occupant from excess cold or damp and mould affecting the property. Where the council considers it appropriate to inspect premises to determine whether a hazard exists, it must do so.
- 6.2 As full an inspection as is reasonably possible will be carried out to establish the nature and extent of hazards in the dwelling, and an accurate record will be kept of the inspection.

### 7.0 HOUSING HEALTH AND SAFETY RATING SYSTEM (HHSRS)

- 7.1 The Housing Act 2004, ("the Act"), together with Regulations made under it, prescribes the Housing Health and Safety Rating System as the means by which Local Authorities assess housing conditions and decide on action to deal with poor housing. It is a risk assessment system of the effect of housing conditions on the health of occupiers. 29 potential hazards are assessed and scored for their severity. The scores for each hazard are ranked in Bands. Hazards falling into Bands A to C are more serious, and are classed as Category 1. Less serious hazards fall into Bands D to J, and are classed a Category 2. The Council must take appropriate action in respect of a Category 1 hazard, and may do so in relation to Category 2 hazards.
- 7.2 A 'Category 1 hazard' arises when a hazard reaches a score of 1000 or more under the Housing Health and Safety Rating System. A 'Category 2 hazard' arises when a hazard reaches a "significant" score of up to 999 under the Housing Health and Safety Rating System.
- 7.3 The score is based on the risk to the potential occupant who is most vulnerable to that hazard. However, in determining what action to take, the Council will not only take account of the score, but also whether the Council has a duty or discretion to act, the views of occupiers, the risk to the current and likely future occupiers and regular visitors, the presence of other significant hazards in the property and the risk of social exclusion of vulnerable groups of people from the private rented sector.

### 8.0 STAGED APPROACH TO ENFORCEMENT

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

**Stage 1:** Decisions to take these actions rest with the investigating officer.

- **Advice and guidance:** to assist individuals, existing and prospective businesses and other organisations to comply with their legal obligations. This will be achieved by providing both information leaflets and the opportunity for face-to-face contact to discuss and help resolve potential problems.
- **Informal letters:** these will be used to reinforce advice and guidance where minor breaches of the law may have been discovered but it was not thought appropriate to take formal action.

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This may be where the consequences of non-compliance will not impose a significant risk to health and safety, or where there is confidence that informal action will achieve compliance.

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

**Stage 2:** Where practicable, decisions to serve notice will be taken in consultation with the Environmental Health Officer/Senior Housing Practitioner, and actions following failure to comply with statutory notices will be taken in consultation with the Environmental Health Officer/Senior Housing Practitioner and the Principal Environmental Health Officer. The decision to prosecute lies with the Environmental Protection Director.

- **Formal enforcement:** this includes the use of statutory (legal) notices, formal cautions, and prosecution. Notices will generally be served where there are significant failures of statutory requirements, there is a lack of confidence that the recipient will respond to an informal approach, and will normally be served when informal action has failed to achieve a satisfactory resolution. Formal cautions or prosecution are likely where there is a failure to comply with a notice within the specified time period or a subsequent breach of the regulations, or where health, safety or well being is put at risk such that prosecution is the most reasonable response in all respects.
- **Works in default or Immediate action:** this includes the power to take emergency action by entry to premises if necessary, and make safe areas or articles which are a cause of imminent danger of serious harm.

8.2 Enforcement will normally progress from advice to formal enforcement.

8.3 Where an owner or landlord agrees to take the required action, it may be appropriate to wait before serving a notice unless the owner fails to start the work within a reasonable time.

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

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

8.6 The Council has a duty to consider the most appropriate course of action to deal with Category 1 hazards. Therefore, where it becomes clear that an informal approach is not proving effective for these more serious hazards, it is likely that formal action will quickly follow.

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

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### 9.0 HOUSING ACT 2004: MOST APPROPRIATE COURSE OF ACTION

9.1 The Housing Act 2004 provides a range of enforcement options to address hazards. The action the Council takes will be what it considers to be the most appropriate course of action in relation to the hazard in all the circumstances.

### 10.0 ACTIONS UNDER THE HOUSING ACT 2004

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

- Hazard Awareness Notice relating to Category 1 Hazards; section 28
- Hazard Awareness Notice relating to Category 2 Hazards; section 29
  
- Improvement Notices relating to Category 1 Hazards; section 11
- Improvement Notices relating to Category 2 Hazards; section 12
  
- Prohibition Orders relating to Category 1 Hazards; section 20
- Prohibition Orders relating to Category 2 hazards; section 21
  
- Suspension of Improvement Notice; section 14
- Suspension of Prohibition Order; section 23
- Hazard Awareness Notices give formal notification that the hazard exists.
  
- Improvement Notices require remedial works.
- Prohibition Orders may prohibit use of all or part of a dwelling, or use by a description of persons, e.g., those under age 5 or over 60.
- Improvement Notices and Prohibition Orders may be suspended until a specified time or event.

10.2 an improvement notice will provide the most appropriate action for most category 1 hazards; where repair or renewal is generally cost effective. However, prohibition orders may be required on part or all of a dwelling, where there is a significant risk of harm e.g., where there is inadequate natural lighting or there is no protected means of escape in case of fire from the top floor.

### 11.0 EMERGENCY MEASURES, DEMOLITION AND CLEARANCE

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

#### **Emergency Measures – When this action may be taken**

##### **11.1.1 Emergency Remedial Action, Section 40**

When the Council is satisfied that a Category 1 hazard exists on any residential premises **and** is further satisfied that the hazard involves an imminent risk of serious harm to the health and

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safety of any occupiers of those or any other residential premises **and** no management order is in force under Chapter 1 or 2 of Part 4 of the Act.

Emergency Remedial Action may be taken by the authority in respect of one or more category 1 hazards on the same premises or in the same building containing one or more flats.

The action will be whatever remedial action the Council considers necessary to remove an imminent risk of serious harm.

This is likely where the Council considers it is immediately necessary to remove the imminent risk of serious harm, there is no confidence in the integrity of any offer made by the owner to immediately address the hazard, and the imminent risk of serious harm can be adequately addressed through remedial action to negate the need to use an emergency prohibition order.

If this action is taken a notice will be served within 7 days of taking the emergency remedial action, detailing the premises, the hazard, the deficiency, the nature of the remedial action, the date action taken, and rights of appeal.

### 11.1.2 **Emergency Prohibition Orders, Section 43**

When the Council is satisfied that a Category 1 hazard exists on any residential premises **and** is further satisfied that the hazard involves an imminent risk of serious harm to the health and safety of any occupiers of those or any other residential premises **and** no management order is in force under Chapter 1 or 2 of Part 4 of the Act.

Action may be taken by the authority in respect of one or more category 1 hazards on the same premises or in the same building containing one or more flats.

The order specifies prohibitions(s) on the use of part or all of the premises with immediate effect.

This is likely where the imminent risk of serious harm cannot be adequately addressed through the use of emergency remedial action for whatever reason.

Where this action is taken the Council will, if necessary, take all reasonable steps to help the occupants find other accommodation when the tenants are not able to make their own arrangements.

### **Other Measures – When this action may be taken**

#### 11.1.3 **Demolition Orders, Section 46 of the Housing Act 2004, and Part 9 of the Housing Act 1985**

When the Council is satisfied that a category 1 hazard exists in a dwelling or HMO which is not a flat, and a management order is not in force, or in the case of a building containing one or more flats where the Council is satisfied that a category 1 hazard exists in one or more of the flats contained in the building or in any common parts of the building.

When the Council is satisfied that a category 2 hazard exists in a dwelling or HMO which is not a flat and a management order is not in force. In the case of a building containing one or more flats the Council is satisfied that a category 2 hazard exists in one or more of the flats

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contained in the building or in any common parts of the building, and the circumstances of the case are circumstances specified or described in an order made by the Secretary of State. At the time of writing this policy, no such order has been made.

This course of action will only be taken where a Neighbourhood Renewal Assessment has been carried out and this determines that this is the most appropriate action. They are not appropriate for listed buildings, and the Council would take into account the availability of suitable accommodation for re housing the occupants, the demand for and sustainability of the accommodation if the hazard was remedied, prospective use of the cleared site, and the impact on the neighbourhood.

### 11.1.4 **Clearance Areas, Section 47 of the Housing Act 2004, and Part 9 of the Housing Act 1985**

May be declared when the Council is satisfied that each of the residential buildings in the area contains a category 1 hazard and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area.

May be declared when the Council is satisfied that the residential buildings in an area are dangerous or harmful to the health or safety of the inhabitants of the area as a result of their bad arrangement or the narrowness or bad arrangement of the street and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area.

May be declared when the Council is satisfied that each of the residential buildings in the area contains a category 2 hazard and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area and the circumstances of the case are circumstances specified or described in an order made by the Secretary of State. At the time of writing this policy, no such order has been made.

This course of action will only be taken where a Neighbourhood Renewal Assessment has been carried out and this determines that this is the most appropriate action, having regard to a range of considerations including the degree of concentration of dwellings containing serious and intractable hazards in the area, the proportion of sound premises which will also need to be cleared, and the presence of listed buildings.

## 12.0 **TENURE**

- 12.1 In considering the most appropriate course of action, the Council will have regard to the extent of control that an occupier has over works required to the dwelling. It is usually the owner's responsibility to carry out works. Most enforcement action will involve requiring a private landlord or Registered Social Landlord (Housing Association) to carry out works.
- 12.2 Where we have identified hazards and the registered social landlords have a programme of works to make their stock decent, the officer will liaise with the landlord over any works necessary to deal with category 1 and 2 hazards in advance of the planned improvements.
- 12.3 With owner – occupiers, in most cases they will not be required to carry out works to their own home, and a hazard awareness notice is likely to be the most appropriate action, unless of course there is an imminent risk of serious harm to the owner/occupier or other members of the public (i.e. dangerous gas appliance, structural collapse or falling elements)

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12.4 An improvement notice or prohibition order may be suspended until a time or event specified, and in some cases, may be more appropriate than a hazard awareness notice. Typically the event will be a change of occupancy. For example, an improvement notice may be suspended at the wishes of an elderly occupier who does not want the disturbance of extensive works, or where the vulnerable age group is not present. The notice might require an owner to notify the council of a change of occupancy to ensure that the notice can be reviewed.

### 13.0 CATEGORY 2 HAZARDS

13.1 There are discretionary powers to deal with Category 2 hazards, but resources will not allow all to be dealt with. Generally, these hazards will only be dealt with

- Where the hazard score exceeds the national average by more than 2 bands, or
- Where the hazard band is D or E (i.e. the higher Category 2 bands), or
- Where a number of hazards at Band D or below appear, when looked at together, to create a more serious situation, and
- With regard to the Council's priorities to protect health and well being, particularly of the vulnerable. In particular, hazards relating to physiological requirements and protection against infection are more likely to be dealt with in this way.

13.2 Each case will be considered on its merits. Where appropriate, action outside these guidelines may be authorised by the Principal Environmental Health Officer.

### 14.0 LEVEL TO WHICH HAZARDS ARE TO BE IMPROVED

14.1 Where an Improvement Notice is served, the council will generally require works to prevent a recurrence within five years.

14.2 Section 11 of the Housing Act 2004 requires only that where there is a Category 1 hazard, the works specified must reduce the hazard to a Category 2. However, the Council will generally seek to specify works that, whilst not necessarily achieving the ideal, will achieve a significant reduction in the hazard level. The Council will try to ensure that any works required to mitigate a hazard are carried out to a standard that prevents building elements deteriorating.

### 15.0 CONTENTS OF NOTICES

15.1 Generally, the notice will explain:-

- what is wrong
- what is required to put things right
- the timescale in which to put things right
- what will happen if the notice is not complied with

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

### 16.0 HOUSE IN MULTIPLE OCCUPATION (HMO) LICENSING

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- 16.1 The Council will seek to ensure that all HMO premises that are required to be licensed under the provisions of the Housing Act 2004 are properly licensed and that they comply with their licence conditions.
- 16.2 Having regard to Statutory Instrument 2006 No 371 (Prescribed Descriptions Order), HMOs of three or more storeys, with five or more occupants and where there is some form of sharing of amenities such as bathroom, kitchen or wc, will require a licence. HMOs owned by RSLs, the Police, Health Authorities and certain other organisations are exempt as are certain buildings properly converted into flats.
- 16.3 The Council will require the licence application to be accompanied by a fee fixed by the Council. The fee takes into account all costs incurred by the Council in carrying out their HMO licensing functions, and the Act permits certain costs incurred in carrying out functions in relation to Interim and Final Management Orders to also be taken into account.
- 16.4 Licences will be granted where the house is reasonably suitable for occupation as an HMO, or it can be made so suitable by the imposition of conditions, the management arrangements are satisfactory, and the licensee and manager are fit and proper persons. The applicant must be the most appropriate person to hold the licence.
- 16.5 The Council is required to assess whether the applicant and any manager and any person associated with them or formerly associated with them\* are fit and proper people to own or manage an HMO.
- 16.6 A person will generally be considered fit and proper if the Council is satisfied that:
- they have no unspent convictions\*\* relating to offences involving fraud, dishonesty, violence or drugs, or sexual offences
  - they have no unspent convictions relating to unlawful discrimination on grounds of sex, race, or disability
  - they have no unspent convictions relating to housing or landlord and tenant law
  - they have no unspent convictions for breaches of planning, compulsory purchase, environmental protection or other legislation enforced by local authorities
  - they have not been refused an HMO licence, been convicted of breaching the conditions of a licence, or have acted otherwise than in accordance with the approved code of practice under section 233 of the Act within the last five years
  - they have not been in control of a property subject to an HMO Control Order, an Interim Management Order (IMO) or Final Management Order (FMO) or had work in default carried out by a local authority.

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

\*\*A conviction where the penalty is a fine is spent after five years.

- 16.7 Licences will be valid for one year and will specify the maximum number of occupiers. The occupancy number will depend on the number and size of rooms and the kitchen and bathroom facilities.

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- 16.8 We will aim to issue draft licences within twelve weeks of a full application. (i.e. all information and documentation necessary to process the application). However, at peak times delays are likely.
- 16.9 A draft licence must be served on all interested parties, allowing at least fourteen days for representations before granting the actual licence.
- 16.10 HMOs will be prioritised for assessment under the Housing Health and Safety Rating System within five years of the licence being granted.
- 16.11 The Council may serve a Temporary Exemption Notice (TEN) where a landlord is, or shortly will be, taking steps to make an HMO non-licensable. A TEN can only be granted for a maximum period of three months. A second three-month TEN can be served in exceptional circumstances. Where a licensable HMO is not licensed, and no application for a licence has been made, the landlord cannot serve notice to quit until the HMO is licensed.
- 16.12 Where the person having control of or managing a licensable HMO, fails to licence it or knowingly permits another person to occupy a licensed HMO and this results in the house being occupied by more households or persons than is authorised by the licence, or fails to comply with a licence condition, the Council can take prosecution proceedings. On conviction for failure to licence, the Residential Property Tribunal (RPT) has the power to fine the person committing the offence and/or to make a Rent Repayment Order requiring that up to twelve months' rent be repaid to the tenant, or to the Council where a tenant is on housing benefit. The licensee has a right of appeal to the RPT against refusal to license, licensing conditions and the maximum number of occupiers or households specified on the licence.
- 16.13 Where a landlord is convicted for failure to license and the rent is paid as Housing Benefit, the Council can apply to the RPT for a Rent Repayment Order (RRO) for twelve months' Housing Benefit or for the period since the landlord was required to license the HMO. We will provide tenants not on housing benefits with information on how to apply. The Public Health & Housing Manager will consider any exceptional circumstances where the Council should not seek an RRO.
- 16.14 Where there is no prospect of an HMO being licensed, the Act requires that the Council use its Interim Management powers. This enables the Council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. This may be followed by a Final Management Order for a further five years. The Council intends to appoint a preferred partner to manage HMOs subject to management orders.
- 16.15 If the Council finds that there has been a change of circumstances in an HMO since it was licensed, it has the power to vary the licence. If there is a serious breach or there are repeated breaches of the licence conditions, or the licensee or manager is no longer fit and proper persons, the licence can be revoked. The licence can also be revoked if the property is no longer a licensable HMO or if the condition of the property means it would not be licensable were an application made at the later time.
- 16.16 The Council will not accept the 'decommissioning' of existing accommodation, as a means to avoid Mandatory HMO Licensing. This said, we may however consider the decommissioning of certain unused and unoccupied or unsuitable basement or attic accommodation, if the remainder of the premises would then fall outside the remit for licensing. Acceptance of decommissioning will however be at the discretion of the Environmental Protection Dept and

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will be dependant upon the particular circumstances in each individual case. The decision will only be made following an inspection and appraisal of the area/s concerned and will have regard to:

- The size, arrangement and nature of the area concerned
- The number of units to be decommissioned
- The impact on existing residents and/or neighbouring property.

*Please note: This guidance is provisional and may be superseded by anticipated guidance from CLG and LACORS*

### 17.0 TESTS AS TO SUITABILITY FOR MULTIPLE OCCUPATION

- 17.1 The HMO Management Regulations will apply to all HMOs, whether or not they require a licence. These require HMOs to be kept in a reasonable state of repair, all installations and appliances (including those for fire safety) to be in good working order and the common parts to be kept clean and in a reasonable state of decoration. The Housing Health and Safety Rating System applies to all dwellings.
- 17.2 There are nationally prescribed standards (relating to facilities such as bathrooms, cooking facilities etc) by which the Council will judge whether an HMO requiring a licence is reasonably suitable for occupation by a particular maximum number of households or persons. Section 65 of the Act allows authorities to decide that an HMO is not reasonably suitable even if it does meet those minimum standards. Councils can adopt their own standards in addition to the nationally prescribed standards.
- 17.3 A standard for licensable HMOs has been drawn up in conjunction with other authorities in Merseyside. This is attached at Appendix 1. This may be subject to slight change from time to time in order to achieve consistency with neighbouring authorities or to reflect the housing stock in this locality, but it is proposed that the Council will have regard to this standard when determining the suitability of an HMO for licensing. We are currently working on standards for non-licensable HMOs in conjunction with the other 5 Merseyside authorities.
- 17.4 Whilst local authorities are responsible for implementing mandatory licensing of HMOs and assessing the fire safety risks in all dwellings under the Housing Health and Safety Rating System, the Merseyside Fire Authority also have responsibilities under the Fire Safety Order 2005 for fire safety in common (shared) parts of HMOs. An agreement is currently being worked upon between the Merseyside Fire Authority and the Merseyside local authorities for joint working to secure fire safety in HMOs. The local agreement will have regard to the National Fire Safety Protocol and the Draft National Guidance on Fire Precautions from LACORS.

### 18.0 NON – COMPLAINT

- 18.1 Where notices are not complied with, the Council will normally use its powers to prosecute and/or to carry out the work in the owner's default, reclaiming the costs.
- 18.2 **Work in Default**  
Where statute allows works in default can be carried out by the Council where there has been non-compliance with a Statutory notice and the time given in the notice has expired. The Council may recover the costs of administering and supervising the works along with the costs

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of the works themselves. Unpaid accounts in respect of these works in default can be placed as a land charge against the property with interest accruing at the rate of time.

18.3 Work in default will only be carried out in strict accordance with the written Departmental procedure.

### 19.0 FORMAL CAUTIONS

19.1 Under certain circumstances, a formal caution may be used as an alternative to prosecution and will usually be considered before making a decision to prosecute.

19.2 A formal caution is a serious matter. It is recorded as a conviction on the Central Register of Convictions held by the Office of Fair Trading. It may be used to influence any decision whether or not to prosecute should the individual, organisation or business offend again and it may be referred to in any subsequent court proceedings. Formal cautions remain on record for a period of 3 years. The decision whether to offer a formal caution will be made by the Environmental Protection Director.

19.3 Formal cautions are intended to:-

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

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

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

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

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

### 20.0 PROSECUTION

20.1 The Council will use discretion in deciding whether to bring a prosecution and generally will only commence proceedings when to do so is considered to be in the public interest. The decision to pursue prosecution lies with the Environmental Protection Director.

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

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

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- 20.4 The officer will ensure that decisions to prosecute and results of any legal proceedings are notified to all known interested bodies, including tenants, managers, freeholders, leaseholders and mortgagees.
- 21.0 CHARGES FOR FORMAL ACTION**
- 21.1 A charge will normally be made where it has been necessary to take one of the enforcement actions listed from a) to i) below:
- a) serving an improvement notice under section 11 or 12
  - b) making a prohibition order under section 20 or 21
  - c) serving a hazard awareness notice under section 28 or 29
  - d) taking emergency remedial action under section 40
  - e) making an emergency prohibition order under section 43
  - f) making a demolition order under section 46
  - g) declaring a slum clearance area under section 47
  - h) reviewing a suspended improvement notice under section 17
  - i) reviewing a suspended prohibition order under section 26
- 21.2 The expenses are in connection with the inspection of the premises, the subsequent consideration of any action to be taken, and the service of notices or orders. Reasonable expenses may include specialist support, such as testing of electrical or gas installations and structural engineer's reports.
- 21.3 The Act does not make specific provision for charging for serving the following notices and orders, (although there may well be other costs to the owner associated with these actions):
- j) taking enforcement action for offences in relation to licensing of HMO's under section 72
  - k) taking enforcement action for offences in relation to the selective licensing of HMO's under section 95
  - l) applying for a rent repayment order under section 96
  - m) making an interim management order under section 102
  - n) making a special interim management order under section 103
  - o) making a final management order under section 113
  - p) making an interim empty dwelling management order under section 133
  - q) making a final empty dwelling management order under section 136 or
  - r) serving an overcrowding notice under section 139
- 22.0 DIVERSITY**
- 22.1 The Council is committed to equality of access to its services and aims to treat all people with dignity and respect. The Council's comprehensive Equality Policy is available on request and on the Council's website.
- 23.0 PROVISION FOR PARTICULAR INTERESTS**
- 23.1 Where possible, all documents will be produced in plain language and arrangements will be made on request to make them available in the relevant community languages, Braille, large type or on audiotape. Provision may also be made for the use of interpreters where appropriate.

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### 24.0 REVIEW

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