

Birmingham City Council  
Place Directorate  
Private Sector Housing

Enforcement Policy for the Regulation of  
Housing Standards in the Private Rented  
Sector and for the Licensing of Houses in  
Multiple Occupation.

***2019 revision***

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# PART A

## GENERAL ENFORCEMENT POLICIES AND PRINCIPLES

### A1.1 POLICY STATEMENT

The Council will endeavour to make effective arrangements to enforce the legislation under its jurisdiction with the aim of protecting the health, safety, welfare and rights of tenants in the private rented sector.

Enforcement action with respect to other forms of tenure may also be taken where appropriate.

The Council is not able to take enforcement action with respect to its' own housing stock.

### A1.2 EQUALITIES STATEMENT

Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.

### A1.3 ENFORCEMENT CONCORDAT AND THE REGULATORS' COMPLIANCE CODE

#### (i) The Enforcement Concordat

Enforcement policy has, until recently, been guided by the following six principles of 'good enforcement' as set out in the 1998 Enforcement Concordat:

- performance will be measured against published standards;
- there will be openness in dealing with businesses and others;
- enforcement officers will be helpful, courteous and efficient;
- complaint procedures will be published;
- enforcement decisions will be proportionate to the circumstances; and
- Enforcement officers will strive for high standards of consistency.

Although the Enforcement Concordat is a voluntary code, it has been adopted by Birmingham City Council and it will continue to have a bearing on the underlying principles of its' enforcement policy.

From 6<sup>th</sup> April 2008 most enforcing authorities have been legally required to adopt an enforcement policy which complies with the requirements of The Regulators' Compliance Code (the Code) as set out below. The Code is in effect a development and refinement of the Enforcement Concordat but does not replace the Concordat.

#### (ii) The Regulators' Compliance Code

From 6<sup>th</sup> April 2008 the City Council has been required, by section 22 of the Legislative and Regulatory Reform Act 2006, to have regard to The Regulators' Compliance Code, issued on 17 December 2007 by The Minister of State for the Department for Business, Enterprise and Regulatory Reform (BERR).

In so far as it relates to the enforcement sanctions under the remit of the Place Directorate, this Enforcement Policy is compliant with the Code in that it aims to promote efficient and effective approaches to regulatory inspection and enforcement, thereby improving regulatory outcomes, without imposing unnecessary burdens upon property owners and occupiers. Any departures from the Code will be properly reasoned, documented and based upon material evidence.

The Code does not apply to actions under Part 1 of the Housing Act 2004 relating to the Housing Health and Safety Rating System (HHSRS), by reason that the HHSRS is a risk-based approach to assessing property condition.

Further details about the HHSRS are contained in the attached Appendix 2.

Actions under Part 1 will continue to be subject to the principles of the Enforcement Concordat.

The seven specific aspects of the Code that the City Council has had regard to in the development of this Enforcement Policy and in the actions taken under the Policy are as follows:

### **1. Economic progress**

The City Council recognises the need to allow and encourage economic progress. Any enforcement action taken by the Private Rented Services (PRS) Team will take into account the cost of compliance in relation to the benefits achieved. Particular regard will be given to the burden any intervention may place upon small businesses. Most private landlords would be regarded as a small business in this context.

This Enforcement Policy and actions will be kept under review in order to minimise any regulatory burdens.

### **2. Risk assessment**

The PRS Team will ensure that risk assessment precedes and informs all aspects of its' approach to regulatory activity. Consideration will be given to the combined effect of the potential impact of non-compliance on regulatory outcomes, and the likelihood of non-compliance. In evaluating the likelihood of non-compliance, consideration will be given to, amongst other things, the past history of the business, the competence of the management and its' willingness to comply. It is intended that the PRS Team will consult with businesses and interested parties when designing their risk methodologies and will keep these risk methodologies under review.

### **3. Advice and guidance**

The PRS Team will provide general information, advice and guidance to make it easier for businesses to understand and meet their responsibilities.

Any advice will distinguish between what is a statutory requirement and what is advice aimed at improving minimum standards in the private rented sector.

### **4. Inspections and other visits**

Wherever possible, inspections will only take place in accordance with a risk assessment, except where the business has requested a visit or where the PRS Team is acting upon relevant intelligence, such as a request for assistance from a tenant, or a referral from West Midlands Fire Service. Positive feedback will be given to businesses to encourage good practice. Examples of good practice may be shared with other Local Authorities and enforcement agencies that have an interest in private sector housing issues.

In order to minimise the burden on businesses, duplication of visits by the PRS Team, and other agencies with enforcement responsibilities in relation to private sector housing, will, where possible, be kept to a minimum through joint or co-ordinated inspections and data sharing arrangements.

## **5. Information Requirements**

The PRS Team will endeavour to minimise the amount of data that they require businesses to produce. Where possible, data will be shared amongst other departments of the City Council and other enforcement agencies to avoid different regulators seeking the same information from the same businesses, subject to the requirements of The Data Protection Act.

## **6. Compliance and Enforcement Actions**

It is recognised that landlords who are members of the Midland Landlord Accreditation Scheme are responsible landlords who comply with their legal obligations and, in return, their properties will be subject to less frequent inspections.

Any enforcement action taken by the PRS Team will aim to achieve the following outcomes (as identified in the Macrory Review):

- change the behaviour of the offender;
- eliminate any financial gain or benefit from non-compliance; and
- restore the harm caused by regulatory non-compliance deter future non-compliance.

Where enforcement action is taken, it will:

- be responsive, and consider what is appropriate for the particular offence and regulatory issue, which may include a criminal conviction;
- be proportionate to the nature of the offence and the harm caused;
- be enforced in a transparent manner; and
- avoid perverse incentives that might influence the choice of a sanctioning response.

Clear reasons will be given to a person against whom enforcement action is being taken, at the time the action is taken. These reasons will be confirmed in writing at the earliest opportunity and will include information about any relevant complaint or appeals procedures. Officers of the PRS Team will apply these enforcement principles consistently and fairly in accordance with the appropriate legal requirements.

## **7. Accountability**

The PRS Team will engage in effective consultation with landlords, tenants and others who have an interest in private sector housing issues, and provide effective feedback. This will be achieved principally through the holding of regular landlord forums and a landlord steering group.

Suggestions and comments may also be made through the Departmental website.

Officers of the PRS Team will provide an effective and courteous service to landlords and others against whom enforcement action may be taken. Any complaints regarding the behaviour of staff will be taken account, and, when requested, advice will be given on how to make a complaint.

Comments, complaints and compliments about the service may be made through the City Council website.

### **A1.4 THE HUMAN RIGHTS ACT**

Birmingham City Council is a public authority for the purposes of the Human Rights Act 1998. The principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms will therefore be applied.

In particular, the following are applicable:

- Article 6 - the right to a fair trial;
- Article 8 - the right to respect for private and family life, home and Correspondence; and
- Article 1 of the First Protocol, which relates to the protection of property.

### **A1.5 DATA PROTECTION**

Personal data will be collected, used, processed, stored, handled and retained in accordance with your legal rights, the provisions of the General Data Protection Regulation and the Data Protection Act 2018.

You may view the Council's privacy notice at [www.birmingham.gov.uk/privacy](http://www.birmingham.gov.uk/privacy)

The Council is under a duty to protect the public funds it administers, and may use any information provided for the prevention and detection of fraud; in order to check its' accuracy; prevent or detect crime; protect public funds; or where otherwise required or permitted by law.

Your information may also be shared with third parties and other Local Authorities, for audit funding requirements, or where there is a legal requirement to do so.

In accordance with the Housing Act 2004, the House in Multiple Occupation (HMO) Licence Holder's personal details will be included on a public register, available for the general public to view online or to request a hard copy.

### **A1.6 DELEGATED AUTHORITY AND COMPETENCY OF OFFICERS**

All officers involved with the enforcement of legislation must have been assessed as being competent to perform the duty in accordance with the legislation and agreed internal procedures. Officers will be expected to be familiar with any appropriate official government guidance, codes of practice, and British and/or European Union standards.

All officers who are required to carry out inspections or visits to any premises will carry with them at all times a means of identification, plus a written form of authority which specifies their powers of entry.

### **A1.7 PROVISION OF ADVICE FOR LANDLORDS, TENANTS AND OTHERS.**

The PRS Team will provide advice on the appropriate housing standards, good practice, legislation and legal procedures to the best of its' ability and knowledge to landlords, tenants, contractors, and others who have an interest in private sector housing issues. The PRS Team is unable to give any legal advice on any particular matter.

The provision of advice is regarded as an essential element in the Department's overall objective of raising standards and promoting confidence in the Private Rented sector.

The use of enforcement powers is generally regarded as a last resort, where the provision of advice has failed.

Advice given will be as up-to-date and relevant as possible, having regard to Government guidance, legislation, officially recognised technical guidance and standards, plus reports and findings of other professional organisations.



The PRS Team will work with other Local Authorities, partner organisations (such as HomeStamp, West Midlands Fire Service, West Midlands Police) and as part of the City Housing Partnership to ensure that advice is disseminated as widely as possible.

We will provide advice through any of the following methods:

- telephone or face-to-face, which may be followed in writing as appropriate;
- the production and/or dissemination of good quality printed material (booklets, leaflets etc.);
- the provision of training for landlords, letting agents and managing agents, which may be in support of the Midland Landlord Accreditation Scheme;
- the posting of information on the Department's website;
- holding regular landlord forums and supporting other landlord events;
- attending meetings of professional organisations representing landlords, letting agents, tenants, etc.;
- attending meetings of residents' groups and Ward Committee meetings;
- attending housing fairs and open days for students at any of the city's universities or colleges who are planning to live in privately-rented accommodation.

We will advise landlords and tenants on the availability of any financial assistance, for example Energy Efficiency Grants through the Warm Front programme. All statutory notices and informal letters requiring the installation of improved heating and/or insulation will include such advice.

## **A2.0 RANGE OF OPTIONS TO ENSURE COMPLIANCE WITH HOUSING LEGISLATION**

Where the law has been contravened, there are a range of enforcement options available to ensure compliance. These range from taking no action, through to prosecution. The range of enforcement options are explained in further detail below:

### **A2.1 NO ACTION**

Circumstances will arise from time-to-time whereby a matter brought to the attention of the PRS Team will be assessed, either at the point of referral or following a visit to the property in question, as being one which cannot be resolved by the range of powers available to the PRS Team. In such cases the person raising the matter will be advised, and the decision to take no action will be confirmed in writing.

If appropriate the person will be directed to another Department of the Council or agency, such as a solicitor or law centre, who may be able to assist further.

Where contraventions of the law are identified which can be enforced by the PRS Team, it may be considered that it is not in the public interest to enforce, and that it does not warrant any action. Examples would include:

- the cost of compliance to the offender outweighs the detrimental impact of the contravention;
- the cost of enforcement action to the Council outweighs the detrimental impact of the contravention;
- the offender is elderly and/or frail, and formal action would seriously damage their wellbeing.

In all such cases the parties will be advised, subject to The Data Protection Act, of the reasons for taking no action.

## **A2.2 INFORMAL ACTION AND ADVICE**

Informal action can include verbal advice and advisory letters, and will be considered appropriate in circumstances such as:

- where the deficiency or omission is not serious enough to warrant formal action;
- from the individual and/or company's past history or from assurances given, that it can be reasonably expected that informal action will achieve compliance;
- the consequences of non-compliance will not pose a significant risk to health and safety of the tenants or others.

Any letters or informal notices sent to individuals/companies will:

- indicate the legislation contravened and the measures to be taken to ensure compliance with any legal requirements;
- contain all the information necessary to understand what work is required and why it is necessary;
- give individuals and/or companies the opportunity to contact the appropriate officer to discuss the matter further.

Officers giving verbal or written advice will ensure that they clearly differentiate between those items which are legal requirements and those which are recommended as good practice. Verbal advice will generally also be confirmed in writing.

## **A2.3 FORMAL NOTICES AND ORDERS**

The principles of the housing legislation enforced by the PRS Team are based upon protecting the health, safety and well-being of individuals and the public. A decision regarding when to serve statutory notices or orders depends on whether there is a power or duty to serve such a notice or order, and will take into account the following criteria where:

- informal action has not achieved the desired effect;
- there is a lack of confidence that the individual and/or company will respond to an informal approach;
- there is a history of non-compliance with informal action;
- standards are generally poor with little management awareness of their statutory requirements; and
- the consequences of non-compliance could potentially have a serious effect on the health and safety of individuals or the public.
- where the breach of legislation is so serious, deterrence and punishment may be required to prevent future occurrences.

Officers serving statutory notices or orders will be prepared to discuss any works specified with the individuals and /or company representatives, and will fully consider the availability and suitability of alternative solutions. The notice or order will explain what is wrong, what is required to put things right, and what will happen if the notice or order is not complied with.

Statutory notices and orders are important legal documents. Once served, failure to take follow-up enforcement action has serious implications having regard to the contents of this Policy. Failure to comply with a statutory notice or order will normally result in seeking authority to either issue a civil penalty or to prosecute, and/or the carrying out of works in default.

Any extension of time for compliance with a statutory notice or order, once served, must be justified and recorded. The recipient of any such notice or order, plus any other relevant persons in receipt of copies, will be informed in writing of the extension of time.

## **A2.4 DEFAULT**

Several statutory notices contain provisions for the Council to carry out works in default, where the person responsible has failed to comply with the notice. The undertaking of works in default is a discretionary power and can be carried out either instead of issuing a civil penalty or a prosecution, or in addition to these courses of action.

It should be noted that, in the case of action under section 76 of the Building Act 1984, and emergency remedial action under Section 40 of the Housing Act 2004, there is no power of prosecution, and the Council is only able to arrange for the required works to be carried out.

In all cases the legislation contains procedures for the recovery of expenses incurred by a Local Authority in the arranging and the carrying out of works in default (see Charging Policy for Works in Default below).

Despite the ability to recover costs, experience has shown that the default procedure is often lengthy and entails significant staff resources. In view of this, works in default will be limited to those situations where there is an imminent risk to the health and safety of the occupiers, visitors or the public, and where the remedy is relatively straightforward to achieve.

Those responsible for the works should note that the Council has duties to ensure that the works are carried out at a fair price and to an adequate standard. In addition, the Council has to carry out works to short timescales, and this can be expensive as contractors carrying out emergency works often do so at a premium rate. It will usually be cheaper for those responsible to arrange to undertake the work themselves.

In cases where default action is found to be necessary, consideration will also be given, where the legislation permits, to taking other enforcement action as detailed below.

It is also recognised that the undertaking of work by default, where there is no imminent risk, must remain an option, otherwise occupiers may be left for long periods in unacceptable living conditions.

Each case will be assessed on its' own merits and a decision whether or not to proceed with default work will be subject to the agreement of a senior Officer, in accordance with Birmingham City Council's delegated powers.

## **A2.5 INJUNCTIVE ACTIONS**

In certain circumstances, for example where offenders are repeatedly found guilty of similar offences, then injunctive actions may be used to deal with repeat offenders, dangerous circumstances, or significant public detriment.

Where the matter of non-compliance under investigation amounts to anti-social behaviour, such as the persistent targeting of an individual or a group of individuals in a particular area, then, following liaison with the Council's Anti-Social Behaviour Unit, an ASBO (Anti - Social Behaviour Order) or CRASBO (Criminal Anti-Social Behaviour Order) may be sought to stop the activity.

## **A2.6 SIMPLE CAUTIONS**

A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

For a Simple Caution to be issued a number of criteria must be satisfied:

- sufficient evidence must be available to prove the case;
- the offender must admit the offence;
- it must be in the public interest to use a Simple Caution;
- the offender must be 18 years or over; and
- the offender should not have received a Simple Caution for a similar offence within the last two years.

A record of the Caution will be held by the Council's PRS Team, and will be kept on file for two years. If the offender commits a further offence, the Caution may influence the Council's decision whether to commence prosecution proceedings as an alternative to issuing a civil penalty. If, during the time the Caution is in force, the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

Simple Cautions will not be used as a substitute for prosecutions which would otherwise be defective.

Simple Cautions may not be appropriate where it would prevent a Compensation Order from being made through the Courts.

Where an individual or company declines a Simple Caution, the PRS Team must initiate legal proceedings. Simple Cautions will only be administered in the Council's offices, except where the offender is elderly, infirm or otherwise vulnerable. Simple Cautions will be issued by a senior Officer, in accordance with Birmingham City Council's delegated powers.

## **A2.7 CIVIL PENALTY**

A civil penalty is a financial penalty that may be imposed by the Council as an alternative to prosecution.

A civil penalty can be imposed where the Council is satisfied, beyond reasonable doubt, that the person's conduct amounts to a breach of one or more of the following offences in the Housing Act 2004:

- section 30 (failure to comply with an improvement notice);
- section 72 (offences in relation to licensing of Houses in Multiple Occupation);
- section 95 (offences in relation to licensing of houses under Part 3 of the Act);
- section 139 (failure to comply with an overcrowding notice); or
- section 234 (failure to comply with management regulations in respect of a House in Multiple Occupation)

Only one financial penalty may be imposed on a person in respect of the same offence, however, a civil penalty can be issued for each separate breach of the HMO Management Regulations.

In deciding to issue a civil penalty, the Council must satisfy itself that there would be a realistic prospect of a conviction, and that an offence has been committed beyond reasonable doubt. The Council will consult the evidential and public interest tests in the Crown Prosecution Service Code for Crown Prosecutors in making this decision:

[https://www.cps.gov.uk/sites/default/files/documents/publications/code\\_2013\\_accessible\\_english.pdf](https://www.cps.gov.uk/sites/default/files/documents/publications/code_2013_accessible_english.pdf)

The amount of the civil penalty will be determined according to the Council's Civil Penalty Charging Policy (see below). The Council will take into account the following factors:

- the severity of the offence;
- the culpability and track record of the offender;
- the harm caused to the tenant;
- the punishment of the offender, in that, the penalty should be proportionate to reflect both the severity of the offence and to ensure that it has a real economic impact on the offender to demonstrate the consequences of not complying with their responsibilities;
- the deterrence to the offender from repeating the offence;
- the deterrence to others from committing similar offences; and
- the removal of any financial benefit the offender may have obtained as a result of committing the offence

The level of the financial penalty will be authorised in accordance with the Birmingham City Council's scheme of delegations.

Within six months of the Council obtaining sufficient evidence, the Council will give the person a "Notice of Intent to Impose a Financial Penalty" setting out;

- the amount of the proposed financial penalty;
- the reasons for proposing to impose the penalty; and
- information about the right of the person to make representations

The person to whom the notice relates will be given 28 days to make written representation to the Council about the proposal to impose a financial penalty. Representations can be made against any element of the proposed action.

If the landlord challenges the level of the civil penalty, it will be for them to provide appropriate and satisfactory documentary evidence to support their submission. Failure to provide such evidence will mean that the Council will not be able to consider any representation against the level of penalty imposed. The representations will be considered by a person who is a Team Leader and independent from the original investigation.

At the end of the 28 days, the Council will decide whether to impose a penalty. If the Council decides to impose a penalty a "Final Notice of a Civil Penalty" will be given setting out;

- the amount of the financial penalty;
- the reasons for imposing the penalty;
- information about how to pay the penalty;
- the period for payment of the penalty (28 days);
- information about rights of appeal; and
- the consequences of failure to comply with the notice.

The Final Notice will be authorised in accordance with the Birmingham City Council's scheme of delegations.

The person who receives the final notice can appeal to the First Tier Tribunal.

The Council can withdraw either the Notice of Intent to Impose a Financial Penalty or the Final Notice of a Civil Penalty at any time, or reduce the amount specified in a notice of intent or final notice.

Where a person fails to pay a civil penalty, the Council may refer the case to the county court for an Order of the Court, and may use the county court bailiffs to enforce the order and recover the debt. In addition the Council may pursue their powers to carry out works to the property in default.

Where a person receives two or more civil penalties over a 12 month period, the Council may include that person's details in the database of rogue landlords and property agents.

## **A2.8 PROSECUTION**

Prosecution will be considered as the most appropriate course of action in the most severe cases. The following factors will be considered in determining whether a prosecution is the most appropriate course of action:

- the seriousness of any threat or actual harm to the safety of the occupants or members of the public;
- the level of culpability of the suspect, including the level of their involvement, the extent to which the offending was premeditated and/or planned, whether they have previous criminal convictions and/or out-of-court disposals, and whether the offending was, or is likely to be, continued, repeated or escalated. Consideration will also be given as to whether the suspect is, or was at the time of the offence, suffering from any significant mental or physical ill health, as in some circumstances this may mean that it is less likely that a prosecution is required. When having regard to the offender's health, the Council will also consider how serious the offence was, whether it is likely to be repeated, and the need to safeguard the public or those providing care to such persons;
- the harm caused to the occupants. The greater the vulnerability of the occupants the more likely a prosecution is to be required;
- the degree of co-operation with the Council in improving the physical conditions in the property, in particular consideration will be given to whether the individual(s) or company have deliberately, negligently or persistently ignored written warnings, formal notices and/or orders;
- if an Officer has been threatened, assaulted or obstructed in the course of their duties;
- the views expressed by the occupants about the impact that the offence has had on them; and
- that the prosecution is a proportionate response to the likely outcome

The Council will consult the evidential and public interest tests in the Crown Prosecution Service Code for Crown Prosecutors in making this decision:

[https://www.cps.gov.uk/sites/default/files/documents/publications/code\\_2013\\_accessible\\_english.pdf](https://www.cps.gov.uk/sites/default/files/documents/publications/code_2013_accessible_english.pdf)

Any decision to authorise a prosecution will be made in accordance with the Birmingham City Council's scheme of delegations. All prosecutions will be taken by the Council's Legal Services' Department and must be brought without unavoidable delay. Verdicts and sentences in criminal cases are given in open court and are a matter of public record. The Council will publicise sentences following prosecution on a case by case basis

## **A2.9 Proceeds of Crime Applications**

Private Rented Services, either through its own Officers, or in co-operation with the Police, may make application(s) under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender. The purpose of any such proceedings is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof.

### **A3.0 INTERVENTION POLICY**

The PRS Team will intervene in housing issues on both a reactive and pro-active basis.

#### **A3.1 Reactive**

We will respond to requests for assistance concerning unsatisfactory housing conditions and private tenancy issues. Referrals may be made either directly by a tenant or through another Department or agency.

In cases where the tenant has been unable to resolve the matter themselves, we will liaise directly with the landlord or agent in an attempt to get the remedial work completed before undertaking formal action.

Upon receipt of an enquiry or referral, the level of intervention by Council Officers will be decided having regard to:

- the vulnerability of any occupant;
- the effect that the problem has on the occupants, neighbourhoods or the surrounding area;
- the relevant legislation, particularly whether there is a duty to investigate certain matters; and
- any relevant history of the owners, neighbours, tenancy or landlord, particularly the owners' and/or landlords' history of carrying out repairs either informally or following the service of a notice.

A Duty Officer system is operated whereby requests for assistance are prioritised according to these criteria.

#### **A3.2 Proactive**

The PRS Team will carry out pro-active inspections of HMOs, and take appropriate action to ensure compliance with the relevant legislation and the Council's standards.

Inspection programmes will be subject to available resources based upon the following criteria:

- an assessment of the risk to the occupants
- inspection of licensed HMOs to assess for hazards under the HHSRS;
- inspection of licensed HMOs to assess for compliance with licence conditions;
- inspection of licensed HMOs for compliance with the HMO Management Regulations;
- area surveys to identify licensable HMOs;
- inspection of all private sector homes and hostels that are funded, supported or procured for use by the City Council ( whether licensable or not) to ensure compliance with relevant standards;
- inspection of property portfolios in the ownership or management of any landlord where serious concerns over management standards have been identified in any one of the properties in the portfolio;
- inspection of multi-occupied properties owned or managed by Registered Providers or public sector organisations such as the NHS, Police, Probation Service, etc. Although such properties are exempt from the definition of an HMO, action may still be taken with respect to hazards identified under the HHSRS. It is appropriate that such properties should meet equivalent standards to those in the private sector; and
- proactive inspections will also be carried out in priority areas of the City as identified in the Private Sector Housing Strategy, and any subsequent area-based action to support the regeneration of key areas.

## **A4.0 CHARGING POLICY AND DEBT RECOVERY**

### **A4.1 Charges for the Service of Statutory Notices and Orders Private Rented Sector, Registered Providers and other Public Sector Landlords (excluding the Local Authority).**

Local Authorities are able to recover the costs incurred in serving certain notices and orders under Part 1 of the Housing Act 2004 with respect to housing related hazards under the HHSRS. There is provision in the Act for secondary legislation to be brought in to impose a maximum charge that can be levied for such action, but to date, no such regulations have been made by the Government.

Such costs can include the time spent on inspecting the property, scoring the hazards, paying for any specialist reports (such as electrical and gas safety reports), preparing the notice or order and schedule of works, plus the typing of the notice and/or order, the associated administrative tasks, and postal charges.

The charges to be made will be based upon the hourly pay rate of the officers involved with any particular case inclusive of all associated overheads (such as office accommodation, power, transport, stationery, Information Technology, etc.). The hourly rate will be rounded to the nearest fifteen minutes.

Where the property in question is large or complex, or where there are numerous hazards requiring greater officer resources to assess, the Council will seek to recover its' full expenses.

These revised charges came in to effect on 6<sup>th</sup> March 2018 and will be further reviewed from time to time in accordance with any changes to financial circumstances.

#### **Owner Occupiers**

In the case of notices or orders served upon owner occupiers, there will be no charge made unless the deficiency is affecting an adjoining property or endangering public safety, and the person concerned has failed to take appropriate action.

Where a charge is being considered for action against an owner occupier, hardship factors will be taken in to consideration and the fee may be waived at the discretion of a Senior Manager.

#### **A4.2 CHARGES FOR CARRYING OUT WORK BY DEFAULT**

As well as recovering the actual capital cost of carrying out work by default where a statutory notice has not been complied with, the Council will make a charge to cover the costs incurred in arranging a contractor, supervising the work, and all associated administrative procedures. The charge will be based upon the same officer hourly rates as those for the service of statutory notices above.

#### **A4.3 DEBT RECOVERY**

The Council will actively pursue such debts incurred in all cases, including the use of enforced sale procedures under the Law of Property Act 1925 as a last resort where other methods of recovery have not been successful.

Where the debt incurred is small or where there are exceptional circumstances, the advice of the Council's Legal Services Department will be sought as to whether it is financially worthwhile or in the public interest to pursue the debt.



Until cleared, all outstanding debts will be registered with the Local Land Charges Registry as a financial charge. Once registered, the charge will accrue compound interest.

## **A5.0 APPEALS AND CONSULTATION**

### **A5.1 Formal appeals**

Where a statutory notice is served or an order or licensing decision is made, the method of appealing against the notice, order or decision will be included within the documentation provided. Appeals are made either to the County Court, Magistrates Court or to the First Tier Tribunal, depending upon the legislation employed.

All formal appeals will receive a response in accordance with the statutory time limits, and acting in accordance with the advice of the Legal Services Department.

### **A5.2 Consultation**

Prior to the service of any statutory notice or order, the person responsible will, wherever possible, be given the opportunity to put forward their views to the Officer concerned (either in writing or verbally). The Officer will fully consider the availability and suitability of alternative solutions.

Where agreement cannot be reached with the case Officer, the matter may be referred to the Officer's line manager for further consultation.

Informal consultation will not be available where the matter is such that the health and safety of occupiers is at serious and imminent risk and where urgent statutory action is required.

In the case of licensing decisions made under Parts 2 or 3 of the Housing Act 2004, there is a formal consultation stage built into the licensing process which must be followed prior to the service of the final licence documentation.

## **PART B**

# **IMPLEMENTATION POLICIES WITH RESPECT TO THE HOUSING ACT 2004**

### **B1.0 The Housing Health and Safety Rating System (HHSRS) and associated Enforcement Powers under Part 1 of the Housing Act 2004.**

#### **B1.1 Introduction**

The Housing Act 2004 introduced the HHSRS as a replacement for the housing fitness standard (formerly Section 604(1) of the Housing Act 1985). HHSRS is a method of identifying hazards in any dwelling and assessing the risk that such hazards pose to the health and safety of any occupiers.

A range of enforcement powers is available to remove or reduce any hazards identified to an acceptable level. A more detailed explanation of the HHSRS is provided together with a summary of the powers available in Appendix 2.

The HHSRS applies to all dwellings and all tenures, although the Council is unable to enforce its provisions with respect to its own housing stock.

When taking action to remedy or reduce hazards identified following a property inspection, there should be regard to the Enforcement Guidance issued by the Government (the Ministry of Housing, Communities and Local Government) under Section 9 of the Housing Act 2004, in addition to the policy decisions described in Part A above relating to the service of statutory notices and orders.

The circumstances under which the various enforcement options will be used are a matter for individual assessment.

#### **B1.2 Property Inspection and Keeping of Records**

Where there is reason to enter a property, either on a reactive or pro-active basis, the Council Officer will, as far as possible, inspect the whole property, both internally and externally, in accordance with the HHSRS Operating Guidance.

Where there is a particular problem requiring urgent action, a partial inspection may initially be undertaken. Once action to deal with the urgent problem is in hand, a follow-up inspection of the whole property will be undertaken to assess for other hazards, unless the case officer is satisfied that the property is free from significant hazards, as assessed during the initial partial inspection.

Local Authorities are required by the HHSRS Regulations to keep an accurate record of all inspections undertaken, either in paper or electronic form. The PRS Team will undertake inspections using a Inspection Report form.

#### **B1.3 Duty to take action with respect to Category 1 Hazards**

Under Section 5 of the Housing Act 2004, Local Authorities are under a duty to take appropriate enforcement action with respect to Category 1 Hazards (see Appendix 2 for the types of enforcement action that can be taken).

It is still acceptable for the Council to take an informal approach following the inspection of a property. No time limit is specified in the Housing Act 2004 within which formal action

must be taken following identification of the hazard(s). The National Enforcement Guidance also supports this approach. Clearly the Council is under an obligation to take action within a reasonable period; however this will vary depending upon individual circumstances.

Unless there are indicators to the contrary, such as a previous poor record of compliance with either statutory or informal action, or where it is known that the person responsible for the premises in question has been aware of the hazard for an appropriate period and taken no action, then officers of the PRS Team will confirm in writing the action that is needed to remedy the hazard(s), which will specify a time period for compliance. Consultation may also have taken place verbally, but this will always be confirmed in writing.

Informal action may be replaced by a statutory notice or order at any time, if it appears that satisfactory progress in remedying the hazard(s) is not being made.

In the case of Category 1 hazards which pose a serious and imminent risk of harm to the occupier(s) or members of the public, then the informal approach is not appropriate. However, if contact can be made with the person responsible, and a written assurance is given that remedial action will be taken within a period equivalent to the period within which the Council could take action, then, subject to the agreement of a senior Officer, it may be acceptable to withhold action for that period.

### **Owner Occupiers**

Occasions will arise whereby Category 1 Hazards are identified in owner-occupied properties. The duty to take one of the forms of action described in Appendix 2, as required under Section 5 of the Housing Act 2004, still applies. However, it would not generally be in the public interest to enforce compliance, unless the hazard in question is adversely affecting an adjoining property, or is endangering the health and safety of the public or visitors to the property.

Where it appears that there would otherwise be little prospect of such a hazard(s) being remedied within the forthcoming twelve months, then the hazard(s) will be brought to the attention of the owner by the service of a Hazard Awareness Notice. No charge would generally be made for the service of such a notice. This fulfils the Council's duty under section 5 of the Housing Act 2004 but has no subsequent enforcement consequences.

### **B1.4 Discretionary Power to deal with Category 2 Hazards**

Under Section 7 of the Housing Act 2004, Local Authorities have a power, as opposed to a duty, to take enforcement action with respect to Category 2 hazards (see Appendix 2 for the types of enforcement action that can be taken).

As with category 1 hazards, the Council has the power to require that category 2 hazards are removed or reduced to an acceptable level. The same types of notice and order are available, except for emergency remedial action and emergency prohibition orders. The power to make a demolition order or to declare a slum clearance are included in section 7 of the Housing Act 2004 as options to deal with category 2 hazards, but only in circumstances prescribed by Order of the Secretary of State. To date the Government has not made such an Order.

Whilst there is no obligation for the Council to take action with respect to category 2 hazards, it cannot fetter its' discretion, and, as such, it is considered appropriate for enforcement action to remain available in the following circumstances:

- any Category 2 hazard assessed as falling within Band D;
- any Category 2 assessed as falling within Bands E, F or G within a designated area for the purpose of achieving a strategic objective such as a Burglary Reduction Initiative.

Cases falling outside the policy may arise from time-to-time, where the Officer considers that there are justifiable reasons for taking action. The decision to proceed in these cases must be agreed by a Senior Manager.

The enforcement of Band D Category 2 hazard will be subject to consideration of the following factors:

- the nature of the complaint and the extent of the deficiencies;
- the multiplicity of hazards present in the dwelling;
- the vulnerability of the occupants;
- the health of the occupants  
and
- a hazard in an HMO which affects the means of escape from fire, or the kitchen and bathroom facilities.

Where it is identified that action could be taken to remedy category 2 hazards in line with this policy, then the initial informal approach and any subsequent formal action will be as for described for Category 1 hazards above.

### **B1.5 Standard of Remedial Work Required**

As a minimum, Category 1 hazards must be reduced to a Category 2 to the average, or below average, condition for the particular age and type of property in question.

Regard will be given to the extent of work that is reasonable in order to reduce the hazard(s) significantly, without incurring excessive costs.

The work must be substantial, and a 'patch and mend' approach should be avoided.

Generally the work specified will be effective for a minimum of five years before further work to remedy the same deficiency is required.

Works will not be specified which, in remedying one hazard, will create another hazard, unless the resulting hazard can also be addressed at the same time.

### **B1.6 Cost of Remedial Work**

The cost of compliance will be minimised, although there will be cases which will require substantial works and associated high cost.

In all cases, before taking any of the available courses of action, an assessment of the likely cost of compliance will be undertaken using the current Departmental unit rates.

Regard will also be had to the Neighbourhood Renewal Assessment Guidance (NRA) issued by the Government in 2004, as well as the HHSRS Enforcement Guidance.

### **B1.7 Powers of Entry**

Authorised Officers have powers of entry to carry out a survey or examination of any residential premises to determine whether any action under Part 1 of the Housing Act 2004 should be exercised, or whether any offence has been committed with respect to an Improvement Notice or Prohibition Order.

This power will be used with appropriate discretion, and occupiers and owners will be given at least 24 hours' notice, usually in writing, of any intended inspection.

### **B1.8 Vacation of a Property following Statutory Action**

In general, the following action will be taken, according to the circumstances:

- When a property becomes vacant following the service of an improvement notice relating to Category 1 hazards and the Notice has not been complied with;
  1. If the landlord confirms in writing that s/he intends to use the house for their own or their own family's use, then the Improvement Notice will be revoked and replaced by a Hazard Awareness Notice.
  2. If the landlord fails to give any indication regarding his/her future proposals for the property, or if it appears that the property is likely to remain vacant, then the Improvement Notice will continue to be enforced, since the operation of an Improvement Notice is not dependent upon tenure.
  3. Where a landlord gives an undertaking, in writing, that the required remedial work will be completed prior to any new tenant moving in, then the Improvement Notice may be suspended until the house is reoccupied, or some other stated date. The situation will be reviewed every six months.
- Where the property becomes vacant following the service of an Improvement Notice relating to Category 2 hazards, the notice will be revoked and replaced by a Hazard Awareness Notice. Suspension of the Notice, as in the case for Category 1 hazards, may be appropriate where it appears that there is a likelihood that the property will be re-let.

## **B2.0 HOUSES IN MULTIPLE OCCUPATION (HMOs) AND MANDATORY HMO LICENSING UNDER PART 2 OF THE HOUSING ACT 2004**

### **B2.1 Introduction**

Privately-rented accommodation in HMOs is recognised as an essential source of housing for persons who may be unable to purchase their own home, or who prefer to rent accommodation as a short-term solution to their housing needs.

In many cases, HMOs are the only viable source of housing for vulnerable persons in terms of their ability to adequately control their own safety and well-being.

The Council recognises the important role that HMOs play within the overall housing market, and wishes to ensure that this role is maximised.

### **B2.2 The Mandatory Licensing of HMOs**

The Government and Council's aim in the mandatory licensing of HMOs is to ensure that the highest-risk properties in the private sector are identified, that they meet the minimum standard, and are properly managed.

The Housing Act 2004 places the following duties on all local housing authorities with respect to HMOs that fall within the mandatory licensable regime:

#### **SECTION 55(5)(a): To effectively implement a licensing regime.**

The Council will introduce a fully electronic application process to ensure the speedy and effective issuing of HMO licences

**SECTION 55(5)(b): To determine licence applications within a reasonable time.**

The Council aims to determine all HMO licence applications within 56 days of an effective licence application being received.

To be regarded as effective application an application must comprise the following minimum elements:

- a fully completed application form;
- a reasonably accurate plan of the property indicating room dimensions, the position of the standard amenities, the location of any smoke detectors, and the location of any fire doors;
- a copy of the current gas safety record, if the property has a gas supply; and
- payment of the correct licence fee

The Council also wishes to receive copies of the following certificates where appropriate:

- the current electrical installation condition report;
- the current Fire Alarm test certificate;
- the current Emergency Lighting test certificate; and
- the current Portable Appliance test certificate, if portable electrical appliances are provided
- a Disclosure and Barring Service record.

**SECTION 61 (4) : To take all reasonable steps to ensure that applications for licences are made in respect of HMOs which are required to be licensed but are not currently licensed.**

The Council will continue to actively seek compliance with the mandatory licensing regime through a range of activities including:

- direct mailings to known landlords;
- area-based surveys;
- advertising and publicity aimed at both landlords and tenants;
- liaison with professional organisations representing landlords, managing agents, and letting agents, as well as large-scale accommodation providers such as Universities and NASS procured landlords;
- landlord forums;
- a website with extensive information about licensing standards, and an application form that can be completed electronically;
- working in partnership with other Council departments and external agencies to identify potentially licensable properties.

### **B2.3 Licence Fees**

Section 63 (3) of the Housing Act 2004 enables local authorities to charge a fee to cover the costs incurred in undertaking all duties involved in the administration of the licensing process.

In setting a reasonable fee, regard is taken to the method recommended in a licence fee toolkit developed by the Local Government Association in consultation with the Chartered Institute of Public Finance Accountants (CIPFA).

Where an incomplete application is received, the Council will charge an additional fee of £100 for checking the application, advising the applicant of the missing information, and for the additional administration involved in processing that application. The licence period will be reduced accordingly to reflect the delay, the licence being granted from the date that the property first became licensable.

The current licence fee structure is:

- A first application for a licence for a property - £1150
- For the renewal of an existing licence made before the current licence expires - £ 850
- An application for the renewal of an existing licence made after the expiry of the current licence - £1150
- An additional charge for an incomplete application - £ 100

The proposed licence holder was also entitled to claim any of the following discounts:

- Midland Landlord Accreditation Scheme - £ 300
- National Landlord's Association or the Residential Landlord's Association - £ 150

The cases, R (Gaskin) v Richmond-upon-Thames LBC and R (Hemming t/a Simply Pleasure) v Westminster CC, mean that the fees local authorities can charge for the licensing of houses in multiple occupation (HMO) must be proportionate for the area to which they apply, and must be applied in two parts; part one to cover the costs of administering the application process and part two, only on award of a licence, to cover the costs of running the scheme itself.

With the introduction of a fully electronic application process during 2019, the licence fee will be amended to:

- A fee to make an application for a HMO licence either as a first application, or to renew an existing licence - £ 200  
This fee will be non-refundable
- An additional charge for an incomplete application - £ 100

A further fee, once an application has been accepted, to process the application to the granting of a licence:

- A first application for a licence - £ 750
- For the renewal of an existing licence:
  - before the current licence expires - £ 450
  - where the application is made after the existing licence has expired - £ 750

The proposed licence holder will be entitled to claim the following discount:

- Midland Landlord Accreditation Scheme - £ 250  
This discount will be available for a period of up to two weeks after the current licence has expired.

Where an Additional Licensing scheme or Selective Licensing scheme is introduced, for a period of six months from the introduction of the scheme, the total licence fee will be set at £500, with a discount of £250 for landlords who are a member of the Midland Landlord Accreditation Scheme, Thereafter the total fee will be set at £950, with a discount of £250 for landlords who are a member of the Midland Landlord Accreditation Scheme.

As above, the fee will be collected in two stages:

- A fee to make an application for a HMO licence - £ 200  
This fee will be non-refundable
- An additional charge for an incomplete application - £ 100

A further fee, once an application has been accepted, to process the application to the

granting of a licence:

- A first application for a licence within six months from the introduction of the scheme - £ 300
- A first application for a licence later than six months from the Introduction of the scheme - £ 750

The proposed licence holder will also be entitled to claim the following discount:

- Midland Landlord Accreditation Scheme - £ 250

See section B2.5 below for the duration period for a licence.

The current licence fee can be found in our document “HMO Licensing – how much do I pay?” at [www.birmingham.gov.uk/hmo](http://www.birmingham.gov.uk/hmo) .

The Licence fee will be reviewed regularly.

### **Variation of Licences**

A licence may be varied, either by agreement with the licence holder, or by the Local Authority if there has been a material change in circumstances since the licence was granted (Section 69 of the Housing Act 2004).

A variation to an existing licence includes changes to the manager of the property, a change to the permitted number of persons or households, or an alteration to the layout of, or provision of, amenities in the property.

The cost of any variation that is requested by the existing licence holder is included within the cost of the licence fee.

A property that is not being occupied in accordance with the permitted number of persons or households for the licence is a breach of the licence, which is a criminal offence.

The failure of the Licence Holder to comply with any licence conditions imposed when the licence was granted is a criminal offence.

In these cases, the Council will undertake an investigation, the result of which may be to take No Action, offer a Simple Caution, impose a Civil Penalty, or to seek Prosecution.

### **B2.4 Refund of Licence Fees**

Where it is found that a property was not licensable at the date of application, and where the licence fee was fully paid, then the Council is obliged to refund the fee in full, whether or not the licence was subsequently granted.

In certain cases, a property will have been licensable at the date of application but circumstances may have changed before the licence has been granted, for example, the occupation may have been reduced to less than five persons and the landlord has no intention of re-letting the property to five or more persons.

In other cases, the property may be sold prior to the licence being granted, or the name of the proposed Licence Holder may change.

In such cases, a partial refund of the licence fee will be made to the applicant, apportioned to reflect the work undertaken in the processing the application. The amount of refund will be as follows:



Application received and acknowledged but not yet allocated to a Licensing Officer for processing	<b>90% refund</b>
Application allocated to a Licensing Officer, but prior to the service of the Notice of Intention to Grant a Licence under Schedule 5 (1)	<b>75% refund</b>
Notice of Intention under Schedule 5(1) served but the final licence and Notice of Decision to Grant a Licence under Schedule 5 (7) not yet served	<b>50% refund</b>

There will be no entitlement to a refund after the licence has been granted and all associated documentation has been appropriately served.

### **B2.5 Duration of Licences**

Section 68 (4) of the Act provides that a licence may be granted for a maximum of five years. The majority of applications will be granted for this period.

Properties held by an applicant under a lease with an unexpired term of less than five years will be granted a licence for no more than the remaining unexpired term.

A one-year licence will be granted where:

- an application is made following an investigation made by the Council;
- the application follows a request made by the Council;
- the property should have been licensed previously;
- there is evidence of previous poor management of an HMO  
or
- the planning status for use of the property as an HMO is unconfirmed.

This will ensure equity for those landlords who have complied with the requirements of the legislation.

### **B2.6 The Licensing Process**

The licensing process is lengthy and complex, the legal procedures and requirements being set out in Part 2 and Schedule 5 of the Housing Act 2004, along with any the associated regulations and amendments. Written procedures have been developed to ensure compliance and consistency for all licence applications.

Licensing decisions will, wherever possible, be based upon an assessment of the licence application form, the accompanying property plan, and any other documents provided by the applicant.

Guidance issued by the former Office of the Deputy Prime Minister in the period leading up to the introduction of licensing in 2006 means that it is not considered necessary to undertake a physical inspection of the property prior to the granting of a licence.

An application for an HMO Licence is now a fully-electronic application process, containing all the information legally required, plus sufficient additional information in order to assess whether the required standard in terms of property condition and management practice are being met, and for the form to generate a worksheet within the Council's Licensing system.

Having considered the information provided, the Council must grant a licence if it is satisfied that:

- the HMO is reasonably suitable for occupation by the number of persons requested in the application, having regard to the number and suitability of facilities available, or that it can be made suitable for occupation subject to the imposition of licence conditions;
- the proposed licence holder is the most appropriate person to hold the licence;
- the proposed licence holder is a fit and proper person;
- the proposed manager, if applicable, is a fit and proper person;
- the proposed management arrangements are satisfactory;
- that any person involved in the management of the house is competent, including confirmation by provision of a Disclosure and Barring Service certificate or Disclosure Scotland declaration where the property will house vulnerable persons; and
- that the financial structures are in place for the proper management of the property.

### **Assessing Suitability for Occupation**

Under section 65 of the Housing Act 2004, the Council must be satisfied that licensable premises are reasonably suitable for occupation by the specified maximum number of persons or households.

In making this assessment, the Council must consider The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 and 2007 (as amended). These regulations require that the following matters must be taken in to account when assessing suitability for occupation:

- the provision of an adequate means of space heating in each unit of living accommodation;
- the provision of adequate and sufficient toilet facilities, plus facilities for personal washing and bathing;
- the provision of adequate and sufficient kitchen facilities; and
- the provision of appropriate fire precaution facilities and equipment.

It is generally for the Council to set their own standards, based upon these general headings.

From 1 October 2018 the Government have introduced minimum bedroom sizes as follows:

- no room may be occupied as sleeping accommodation if the floor area of the room is less than 4.63m<sup>2</sup>;
- a room with a usable floor area between 4.64m<sup>2</sup> and 6.5m<sup>2</sup> may be occupied by a child under the age of ten, provided the room is let or occupied in connection with the letting or occupation of a room with a usable floor area of or in excess of 6.51m<sup>2</sup> to a parent or guardian of the child
- a room with a usable floor area between 6.51m<sup>2</sup> and 10.21m<sup>2</sup> may only be occupied as sleeping accommodation by one person;
- a room with a usable floor area of 10.22m<sup>2</sup> or more may be occupied as sleeping accommodation by two persons;
- For the purpose of calculating the usable floor area of a room, any area of the room in which the distance between the lowest part of the floor and the ceiling measuring less than 1.5m is to be disregarded.

However, Birmingham City Council has adopted its' own standards document, entitled "Property and Management Standards Applicable to Houses in Multiple Occupation – a Guide for Property Owners, Landlords, Managing Agents, Tenants and Other Stakeholders with Interests in the Private Rented Housing Sector", which is attached as

Appendix 3. The Council will therefore continue to enforce its' own higher requirements for minimum room sizes.

The standards in this document are derived from the licensing regulations, the Chartered Institute of Environmental Health Code of Practice "Amenity Standards for Houses in Multiple Occupation" and the experience of Officers. It is reviewed in line with changes in legislation, and in consultation with landlords and other organisations that have an interest in the private rented sector.

Where a property does not comply with the prescribed standard, then compliance will be achieved either through the setting of licence conditions (where the property is licensable), which will require work to be undertaken within a specified period of time, or through the Housing Health and Safety Rating System.

The fire precaution standards are in accordance with the guidance given by the Local Authority Coordinators of Regulatory Services (LACoRS), developed in association with the Chief Fire Officers Association and the Chartered Institute of Environmental Health "Housing – Fire Safety" and in liaison with the HomeStamp consortium. This sets out the recommended fire precaution schemes according to the type, size, height and layout of the premises.

HomeStamp is a consortium of Midlands Local Authorities, West Midlands Fire Service, West Midlands Police, the National Landlords Association (Midlands), the Residential Landlords Association, and local Universities, who work together to improve standards in the private rented sector. Birmingham City Council is a member of the consortium. The revised HomeStamp guidance is available on the website at [www.homestamp.com](http://www.homestamp.com).

When a licence is agreed, a letter is sent to the licence holder and any other relevant person, which draws their attention to the required standards.

### **Fit and Proper Person Assessment**

The City Council must undertake checks to ensure that the proposed licence holder (and the manager, if different) is a fit and proper person. In deciding whether a person is fit and proper they must take into account:

- any previous convictions involving fraud or other dishonesty, violence, drugs or specified sexual offences;
- contraventions of housing or landlord and tenant law;
- whether the person has practised unlawful discrimination; and
- whether the person has acted otherwise than in accordance with any applicable code of practice approved under section 233.

The licensing regulations specify the information that the licence applicant and manager must declare on the licence application form with respect to their personal circumstances in relation to the matters listed above. The application form requests this information in the form of questions which the applicant must complete, and declare that it is correct to the best of their knowledge. To provide false or misleading information is an offence under section 238 of the Housing Act 2004. The licence applicant will also sign the form on behalf of all joint licence holders and the manager, and must ensure that those persons do not have any offences that must be declared. Where no issues are identified, a self-

declaration will be accepted as sufficient evidence of all relevant persons' fit and proper status.

Where an applicant indicates that one or more issues applies to them, or where other information comes to light, then further information must be disclosed in order for the Council to assess whether this is of relevance to that person's ability to be regarded as being fit and proper. Applicants may be contacted by the Licensing Team by telephone, in writing, or by invitation to attend the office with a view to establishing the exact circumstances of the matter.

If it appears that the matter is not of relevance to their status as a fit and proper person, then the application may proceed for approval.

If it is established that the matter is of relevance to their status as a fit and proper person, then the licence may be refused or the licence applicant may nominate another, more suitable, person. Wherever possible, applicants who are assessed as not being fit and proper will be encouraged to propose an alternative person or company, who has no personal connection with the refused person, to act as the licence holder on their behalf. The Licensing Team will actively work with the initial proposed licence holder to assist in this process wherever possible. The final decision as to whether a person is to be regarded as not being fit and proper will be made by the Place Directorate Management Group. Applicants will be invited to attend the Management Group meeting to state their case as appropriate.

If a licence is refused, then the Council must make an Interim Management Order.

Where accommodation is to be occupied by vulnerable persons, the applicant will be required to support their declaration by obtaining a basic disclosure certificate from the Disclosure and Barring Service (DBS) or Disclosure Scotland. Existing certificates to this or a higher level will be acceptable, provided they are no more than twelve months' old. This applies to supported accommodation housing persons with a background of dependency issues, mental illness, on probation, those under the age of 18, and any other persons considered to be vulnerable.

The proprietors of Supporting People schemes which fall within the mandatory licensing requirements will need to produce a disclosure certificate in connection with their Supporting People contract.

Disclosure certificates are obtainable through the Disclosure and Barring Service or Disclosure Scotland.

In certain cases, particularly larger hostel-type premises accommodating persons with drug/alcohol dependency, or persons who are still under supervision by the Probation Service, there may be other agencies who would wish to have their views or concerns taken in to account as part of the licensing process, such as the Police, WMFS, Probation Service, Community Safety Team, or the Drug Intervention Team. Such concerns may indicate that the proposed licence holder is failing to take reasonable steps to control the behaviour and activities of the occupiers, and this may have an impact upon the local community. As such, the competency of the proposed licence holder or manager may be questioned, even though they may not have declared any outstanding issues and may have a clear DBS Disclosure. The Licensing Team will actively work with all such agencies, and will consider their views as part of the decision-making process in considering the licence application, and whether any specific licence conditions should be identified.

In all cases, the proposed licence holder must have a permanent address within the United Kingdom before they can be regarded as being suitable to hold a licence.

### **Assessment of Management Arrangements**

Licence applicants are required to complete a detailed questionnaire as part of the application form, giving details of how they propose to manage the property, and how essential repair work and routine maintenance is undertaken and funded.

In the majority of cases, from this information, it will be possible to make an informed decision as to whether or not satisfactory management arrangements are in place.

### **B2.7 Licence Conditions**

All the licences that are granted are subject to conditions, and the licence holder must either comply with those conditions either immediately or within a specified period of time. Breach of any licence condition is an offence, for which the offender could be prosecuted or a civil penalty could be imposed. A significant or persistent breach of a licence condition may be grounds for the licence to be revoked.

Certain conditions, as detailed in Schedule 4 of the Act, are mandatory and must be included in every licence granted. These mandatory conditions require the licence holder to:

- produce an annual gas safety certificate (if gas is supplied to the property);
- keep electrical appliances and furniture in a safe condition and to supply, on demand, a declaration as to their safety;
- ensure that smoke and heat alarms are installed and maintained in proper working order, and to supply, on demand, a declaration as to their condition and location; and
- supply to the occupiers of the house a written statement of the terms on which they occupy it.

The Council can also impose discretionary conditions that are considered to be necessary for regulating the management, use and occupation of the premises concerned, plus its' condition and contents. In particular such conditions include:

- imposing restrictions or prohibitions on the use or occupation of particular parts of the house by persons occupying it;
- requiring the licence holder to take reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house;
- requiring facilities and equipment to be made available in the house for the purpose of meeting standards prescribed under section 65;
- requiring such facilities and equipment to be kept in good repair and proper working order;
- requiring that any work that is needed in order for any such facilities or equipment to be made available or to meet any such standards are completed within a period specified in, or determined under, the licence;
- requiring the licence holder or the manager of the house to attend training courses in relation to any applicable code of practice approved under section 233.

Further licence conditions have been introduced which are attached to every licence as Schedule 1. These standard conditions may be subject to variation where the premises requires particular management control and where increased security is necessary in order to control access to the building by unauthorised persons.

Where specific works or actions are required, these are detailed in a Schedule 2, with a timescale for compliance, which varies according to the type, and size of the premises.

### **B2.8 Temporary Exemption from Licensing**

If a landlord or a person in control of a property that is currently licensable intends to cease operating as an HMO, or to reduce the number of occupants below five persons, and can give clear evidence of this, then they may apply for a Temporary Exemption Notice (TEN).

Where occupation levels are to be reduced, the tenants being displaced must confirm (in writing if possible) that they intend to vacate the property of their own free will, and not as a result of being issued with a notice to quit under section 21 of the Housing Act 1988.

Where a property ceases to be let in multiple occupation, the landlord must be able to provide evidence that any existing tenants have made suitable alternative housing arrangements and that they will have vacated the premises within three months from the date of application for the TEN.

In some cases, landlords will wish to apply for a TEN where they are proposing to convert a licensable HMO into self-contained flats, thereby excluding the premises from any licensing requirements under the mandatory scheme. In such cases, evidence that the proposed conversion has Planning Consent and Building Regulation approval must be produced before consideration will be given to granting a TEN.

If necessary, consideration can be given to issuing a further TEN for a further three months. No more than two consecutive TENs may be granted under any circumstances.

A person who applies for a TEN but is refused may appeal to HM Courts and Tribunals Service, Property Chamber, Midland Residential property, First-tier Tribunal (FTT) within 28 days of the TEN being served.

Upon expiry of a TEN, the property must either be licensed, cease to be an HMO, be no longer licensable, or become subject to an Interim Management Order.

### **B2.9 HMO Declarations**

The Council may declare a building, or part of a building, to be an HMO if it is used for some other purpose, but the living accommodation is also occupied by persons as their main residence, who do not form a single household, and this constitutes a significant use of that accommodation. This includes premises operating as hotels or bed-and-breakfast establishments, where a number of rooms are used to house people who would otherwise be homeless.

Such use will be deemed as significant if 25% or more of the total number of sleeping rooms are regularly occupied by persons who have no other permanent place of residence, are in receipt of housing benefit, or are paying a weekly or monthly rent, as opposed to an overnight charge. Such use will also be deemed as significant where a hotel or bed-and-breakfast establishment is occupied by more than two households for a continuous period of 30 days or more as their only or main residence.

### **B2.10 Rent Repayment Orders**

Local Authorities can apply to the FTT to reclaim any housing benefit (up to a maximum of 12 months) that has been paid during the time that a licensable property was operating without a licence, and where a landlord has been found guilty of the offence of failing to

obtain a licence, or if the Local Authority has sufficient evidence that an offence has been committed. This is known as a Rent Repayment Order (RRO).

An application to the FTT will be made by the Council for a RRO, following a successful prosecution, where housing benefit has been paid during the period that the property was not licensed. Any applications for a RRO will be at the discretion of a senior Manager, because it may not be cost-effective to reclaim housing benefit amounts below £500.

Any tenant living in an HMO that should have been licensed, but was not licensed, can also apply to the FTT for an RRO to reclaim any rent that they paid during the unlicensed period (up to a limit of 12 months). The FTT can, however, only agree to such an order if the landlord has been found guilty of the offence of failing to obtain a licence, or where an order has already been made in favour of a Local Authority to reclaim housing benefit payments.

Tenants of any HMO where the landlord has been prosecuted for failing to obtain a licence, or where a RRO has already been made enabling the Council to reclaim housing benefit, will be advised of this to ensure that they may pursue a RRO themselves.

### **B2.11 Refusal to Grant a Licence**

The refusal to grant a licence is serious for both the landlord and the Council, because the Council has a duty to take on the management of the property by making an Interim Management Order.

A full option appraisal must be undertaken before any decision to refuse to grant a licence is made, and the making of a Management Order should be regarded as a last resort.

Where a proposed licence holder or manager is assessed as not being a fit and proper person, the Licensing Team will work with that person to agree an alternative person who is considered to be a fit and proper person.

### **B2.12 Enforcement of Licensing Failure to Apply for a Licence**

Under section 72 (1) of the Housing Act 2004, it is an offence, punishable by prosecution or a civil penalty, for a person having control or managing a licensable HMO to do so without a licence and without reasonable excuse.

Where a potentially licensable HMO has been identified and one or more of the following circumstances apply:

- there are concerns about the condition of the property;
- there are concerns about the number of occupiers in the property;
- there are believed to be vulnerable persons in occupation;
- a complaint has been received from an occupier or former occupier;
- a complaint has been received from a Councillor or Member of Parliament;
- there has been a fire in the property.

an inspection of the property may be undertaken, without prior warning, to gather evidence about the condition of the property, and to obtain witness statements from the occupiers, in order to determine whether an offence has been committed, and whether legal action should be considered.

Any person involved in the business of renting-out a multi-occupied property is expected to ensure that the property meets all the appropriate standards and associated legislation.

The receipt of an effective or complete application once an investigation has commenced, will not be regarded as a reason to cease the investigation or to withdraw proceedings, although it may be regarded as a mitigating factor.

### **Permitting Excess Occupation**

Under section 72 ( 2) of the Housing Act 2004, it is an offence, punishable by prosecution or civil penalty, for a person having control of, or managing, a licensed HMO to knowingly permit it to be occupied by any additional person or persons so as to exceed the maximum number of persons or households authorised by the licence.

Cases may arise where other persons move into a licensed HMO at the invitation of existing occupiers (usually as friends or relatives), and the licence holder or manager may have no knowledge that this has taken place. In such cases, the situation will be brought to the attention of the licence holder or manager, and a period of 28 days will be permitted to allow the licence holder or manager adequate time to take appropriate action to require the additional person or persons to vacate the premises. The PRS Team will provide assistance and advice on alternative housing options to those persons affected.

A person who has no tenancy or licence agreement will be regarded as an occupier for these purposes once they have remained in continuous occupation for a period of 28 days or more.

If work is undertaken to extend the property, or to increase the number of occupiers, then a variation of the licence will be required to increase the permitted numbers. The responsible person will normally be given adequate opportunity to apply for a variation to the HMO licence before an investigation is commenced. This will typically take the form of at least two written invitations to apply for a variation to the HMO licence.

Failure to respond to the letters will result in a visit being made to the property, in order to verify the number of occupants, and to ensure compliance with the conditions of the licence. Continued failure to apply for a variation will result in the commencement of an investigation, which may lead to legal proceedings being pursued.

### **Breach of Licence Conditions**

Under section 72 (3) of the Housing Act 2004, it is an offence punishable by an unlimited fine or civil penalty if the licence holder, or a person on whom restrictions or obligations are imposed under the terms of a licence, fails, without reasonable excuse, to comply with any condition of the licence.

Failure to comply with the licence conditions will result in a letter being sent to the Licence Holder requesting immediate compliance. Any continued failure to comply will result in legal proceedings being pursued.

A serious breach, or repeated breaches of licence conditions, may also be grounds to revoke the licence. Legal proceedings will be considered in all cases where a licence is revoked on these grounds.

### **Incomplete Applications**

Applicants who have failed to provide the full details required to make their application an effective, or complete, application will be given adequate opportunity to provide the missing information or documentation. This will be in writing, requesting the missing information or documentation. A reminder letter will allow a further period where there has been no, or an inadequate, response to the first letter.



Continued failure will be regarded as a failure to apply for a licence, and legal proceedings may be commenced in line with the prosecution policy.

Failure to pay the licence fee in full will mean that the licence application is not considered to be an effective, or complete, application.

Where an incomplete application is received, the Council will charge a fee of £100 for checking the application, advising the applicant of the missing information, and for the additional administration involved in processing that application. The licence period will be reduced accordingly to reflect the delay, and in accordance with B2.5 above.

### **B2.13 Management Orders**

Management Orders under Part 4 of the Act enable the Council to take over the control of a privately rented property where there are serious concerns over management standards, such that the health, safety and welfare of the occupiers or other residents in the vicinity may be at risk. These concerns may relate to the physical condition of the property or to the behaviour of the landlord or the occupiers.

Once such an order is made, the Council must take all necessary action to remove the immediate risks to health and safety, and to make arrangements for the proper management of the property. The Council would take on the role and responsibilities of the landlord, but it will not have any rights of ownership.

The initial action, known as an Interim Management Order (IMO), lasts for a maximum of twelve months. It can be replaced by a Final Management Order (FMO), which can last for a maximum of five years, where long-term management is required.

There is a duty to make an IMO where there is no reasonable prospect of a licensable property becoming licensed, where an existing licence is revoked and no alternative licence holder can be identified, or where the health, safety and welfare of occupiers is placed at serious and imminent risk (known as the 'health and safety condition').

There is a discretionary power to apply to the First Tier Tribunal for an IMO to be made in the case of non-licensable properties, where the health and safety condition applies, or where there are significant and persistent problems of anti-social behaviour with respect to a particular property.

The Council will make full use of the range of Management Order powers in appropriate cases, but this will always be regarded a last resort, when all other methods of achieving compliance with the legislation have failed. The PRS Team will work in partnership with other Council departments, as well as other statutory enforcement agencies and voluntary organisations as necessary, in order to secure improvements to property management standards, with the aim of protecting the health, safety and well-being of residents.

Upon the making of a Management Order, the Council may call upon its' own Housing Management resources to implement its' duties under the Order or may enter into a contract with a partner housing organisation or company to take on this role on its behalf.

### **B2.14 Discretionary Licensing under Parts 2 and 3 of the Housing Act 2004**

Discretionary powers are available to extend the scope of licensing within the private rented housing sector beyond the mandatory scheme for HMOs.

Under the heading of discretionary licensing, there are two distinct types:

### **Additional HMO Licensing (Part 2 of the Housing Act 2004)**

Section 56 of the Act gives powers to Local Housing Authorities (LHAs) to designate areas, or the whole of the area within their district, as being subject to additional licensing in respect of some, or all, of the HMOs in its' area that are not already subject to mandatory licensing. An additional licensing area can only be made where widespread and significant problems of ineffective management can be identified.

### **Selective Licensing (Part 3 of the Housing Act 2004)**

Section 80 of the Act a Local Housing Authority can designate the whole or any part or parts of its' area as subject to selective licensing. Where a selective licensing designation is made, it applies to all privately rented property in the area. Subject to certain exemptions specified in the Selective Licensing of Houses (Specified Exemptions)(England) Order 2006, all properties in the private rented sector which are let, or occupied under a licence, are required to be licensed by the Local Housing Authority, unless the property is a House in Multiple Occupation and is required to be licensed under Part 2 of the Act. A Local Housing Authority will need to apply to the Minister for Housing, Communities and Local Government for confirmation of any scheme which would cover more than 20% of their geographical area or that would affect more than 20% of privately rented homes in the Local Authority area.

### **B2.15 Joint Working Protocol between the Council and West Midland's Fire Service with Respect to the Enforcement of Fire Safety Standards in HMOs**

The duties of Local Housing Authorities (LHAs) under the Housing Act 2004, and those of Fire and Rescue Authorities (FRAs) under the Regulatory Reform (Fire Safety) Order 2005, are inter-connected in relation to fire safety matters in HMOs.

LHAs have duties and powers to take action with respect to hazards identified under the HHSRS with respect to fire in any residential premises, plus the power to impose licence conditions with respect to fire precautionary facilities and equipment in any licensable HMO. There is a duty under section 10 of the Housing Act 2004 for the LHA to consult with the FRA before taking any enforcement action under Part 1 in relation to any HMO, or the common parts of a building containing flats.

FRAs have powers under the Fire Safety Order to ensure that appropriate fire safety measures are in place in the communal areas of any HMO. This includes a requirement that the proprietor of the HMO carries out a fire safety risk assessment.

The overlap of these powers has created some confusion and concern amongst the enforcing authorities and landlords. The former Department for Communities and Local Government (DCLG) commissioned a national working document entitled "Protocol between Local Housing Authorities and Fire and Rescue Authorities to Improve Fire Safety", which was published in May 2007.

The Council recognises the authority of the National Protocol and has worked in partnership with the West Midland's Fire Service to adopt the principles contained, and further adapt them to take in to account local circumstances in order to achieve the following:

- an agreement as to which enforcing authority will take the lead role in certain premises. This will ensure that duplication of enforcement action by the two respective enforcement authorities is avoided;
- agreement as to the required standards in different types of HMO;
- agreement on consultation procedures and the exchange of information; and
- the production of regular monitoring reports.

A joint working protocol between Birmingham City Council and West Midlands Fire Service was formally adopted by both Authorities in February 2009. It has since been reviewed on a regular basis by both authorities.

Following the publication of national guidance in August 2008 by the Local Authority Coordinators of Regulatory Services (LACoRS) for fire safety in housing, entitled "Housing – Fire Safety", Birmingham City Council will generally follow that guidance when considering the required fire precautions in all domestic properties, including both licensable and non-licensable Houses in Multiple Occupation, unless a Fire Safety Risk Assessment has been undertaken at the property that recommends alternative fire precaution works.

Where a property is complex, non-standard, or where the Fire Safety Risk Assessment Sleeping Accommodation guide is applicable (published by HM Government in 2006), then the Local Authority will liaise with the Fire Safety Officers from West Midlands Fire Service before determining the appropriate required fire precautions.

### **B2.16 Overcrowding in Non-Licensable HMOs**

Under Chapter 3 of Part 4 of the Housing Act 2004, an Overcrowding Notice may be served on a relevant person having control of, managing, or having an estate or interest in, an HMO, to either not permit an excessive number of persons to sleep in the house, or to not admit new residents if the number of persons is already excessive.

This power does not apply to HMOs which are required to be licensed under Part 2 of the Act, or to HMOs subject to an Interim or Final Management Order.

Contravention of an Overcrowding Notice without reasonable excuse is an offence punishable by an unlimited fine.

In deciding whether or not an HMO is overcrowded, or is likely to become overcrowded, regard will be had to the space standards specified in the standards document attached as Appendix 3.

## PART C

### Other Services and Legislation

#### C1.0 Empty Properties

Owners of privately-owned empty properties will be encouraged to bring the houses back into residential use through informal action. Where this is not successful or appropriate, then a range of enforcement measures are available to the Council to address the problems caused by problematic empty properties. These include the use of:

- Empty Dwelling Management Orders under Part 4 of the Housing Act 2004;
- Compulsory Purchase Orders under Part 2 of the Housing Act 1985;
- enforced sales under the Law of Property Act 1925;
- action under the Local Government (Miscellaneous Provisions) Act 1982 to ensure that empty dwellings are properly secured against unauthorised access; and
- action under section 215 of the Town and Country Planning Act 1990 for empty properties which are causing an eye-sore to the detriment of the amenity of the neighbourhood.

The approach that the City Council is taking to address these issues is provided in Appendix 5, Birmingham City Council's Empty Property Strategy

#### C1.1 Overcrowding

HHSRS introduced a risk-based methodology for assessing hazards, including crowding and space. The HHSRS Operating Guidance describes the relevant matters to be considered during the assessment and an 'ideal', which is the optimum to prevent a crowding and space hazard.

Councils can choose to enforce under Part 1 of the Housing Act 2004 or use alternative powers by continuing to enforce Part 10 of the Housing Act 1985. Part 10 of the Housing Act 1985 contains a prescriptive standard which includes living and dining rooms as being suitable for use as sleeping rooms.

The Government's HHSRS Enforcement Guidance states that the statutory overcrowding provisions in Part 10 of the HA1985 remain in force, and provide Local Authorities with certain powers to act, although Local Authorities are advised to use HHSRS rather than Part 10.

Local Authorities have a statutory duty to take enforcement action to tackle category 1 crowding and space hazards. However, the use of enforcement action under the HA2004 could lead to occupiers becoming displaced from their homes into temporary accommodation, if there is no settled home immediately available. Whilst most temporary accommodation is self-contained, and of a reasonable standard, temporary accommodation can mean that families find it hard to put down roots or settle children in school.

#### C1.2 Immigration Enquiries

Where an existing UK resident wishes a family member who is currently residing in a Commonwealth Country to enter and reside with them permanently in the UK, the British High Commission in that country will usually require evidence that the addition of the person or persons concerned will not create any statutory overcrowding, and that the proposed accommodation is in a reasonable condition.

The evidence required by the High Commission may be obtained either from the Local Authority or from an independent housing consultant or solicitor. This service is not a statutory duty, and the Council have withdrawn their assistance with this service.

Sponsors can seek the help of a solicitor specialising in immigration matters or contact the [Chartered Institute of Environmental Health's website](#). This contains a list of independent environmental health officers, under housing consultants, who may provide this service.

### **C1.3 Other Legislation**

The Housing Act 2004 has repealed much of the former principle housing legislation under the Housing Act 1985, and is now the predominant legislation governing housing conditions in England and Wales. Nevertheless, other legislation relating to housing matters remains in force, and is available for officers to use according to the particular circumstances and their professional judgement.

Where other legislation carries powers of prosecution and default, the general prosecution and default policy detailed in Part A of this document will be applicable.

The legislation currently still available is as follows:

- **Public Health Act 1936**  
**Section 45**

A Notice requiring the repair of closet accommodation deemed to be in such a state as to be prejudicial to health, or a nuisance. This Notice carries powers of default and prosecution for failure to comply.

- **Prevention from Damage by Pests Act 1949**  
**Section 4**

This is a Notice requiring the owner of land to take appropriate steps to rid the land of rats or mice. This can be by:

- carrying out an appropriate treatment;
- undertaking work to prevent access; or
- removing accumulations of refuse providing harbourage.

This Notice is likely to be used where there are holes or gaps in the fabric of a dwelling allowing access, or drainage defects allowing rats to escape from the drains into a dwelling.

Parallel powers under the HHSRS (Domestic Hygiene, Pests and Refuse) now exist.

- **Public Health Act 1961**  
**Section 17**

A Notice requiring work to unstop a blocked WC, drain, private sewer, or soil pipe.

A local agreement exists to the effect that the PRS Team will deal with drainage and WC obstructions above ground in privately-rented accommodation only, and that Regulatory Services will deal with below ground drainage obstructions in all tenures.

Failure to comply with the Notice can result in work being carried out in default, but there is no power to prosecute.

- **Building Act 1984**

- **Section 59**

- A Notice requiring the provision of satisfactory drainage to a building. This also applies to the cleansing or repairing of cesspools, sewers, drains, pipes, etc..

- This Notice carries powers of default and prosecution for failure to comply.

- **Section 64**

- A Notice requiring the provision of adequate closet accommodation in any dwelling, or the reconstruction of such closet accommodation where it is in such a state as to be prejudicial to health or a nuisance, where it cannot be made satisfactory without reconstruction.

- This Notice carries powers of default and prosecution for failure to comply.

- **Section 70**

- A Notice requiring the provision of suitable accommodation for the storage of food in a dwelling house.

- This Notice carries powers of default and prosecution for failure to comply.

- **Section 76**

- This type of Notice is similar to an Abatement Notice under section 80 of the Environmental Protection Act, in that it relates to any premises in such a state as to be prejudicial to health, or a nuisance.

- The Local Authority can carry out works in default, but there are no powers of prosecution for failure to comply.

- **Local Government (Miscellaneous Provisions) Act 1976**

- **Section 16**

- This is a notice requiring the production of information about the ownership of a property and details of other persons with an interest in a property.

- Failure to comply by the specified date is an offence. A similar power requiring a responsible person to provide any information or documentation to enable a Local Authority to carry out any of its duties under the Housing Act 2004 now exists under section 235, and the use of Section 16 notices to obtain information about ownership is likely to diminish.

- **Section 33**

- This is a power which enables the Local Authority to pay a statutory undertaker where the landlord has failed to pay a gas, electricity or water bill, and that failure has resulted in the service being disconnected, or there is a threat of disconnection. The costs incurred can be recovered through rental payments.

- Where such a disconnection has occurred within an HMO, and it can be proved that the landlord's failure to pay was a deliberate act, or was through gross neglect of their management responsibilities, then consideration will be given to commencing legal proceedings for a breach of the HMO Management Regulations.

- **Environmental Protection Act 1990 (EPA)**

- **Section 80 Abatement Notice**

- An Abatement Notice must be served where any premises is deemed to be prejudicial to health or a nuisance. Although this is a statutory duty, it may still be considered more appropriate to take action under Part 1 of the Housing Act 2004 where the defect also relates to a hazard under the HHSRS.

Non-compliance with an Abatement Notice is an offence, and can also result in the work being undertaken in default.

## **C1.4 Private Tenancy Unit (PTU)**

### **Introduction**

The Private Tenancy Unit delivers a service that provides accurate, appropriate and specialist advice to tenants and landlords on all aspects of renting and living in the private rented sector. The PTU protects tenants from harassment and unlawful eviction through intervention, negotiation and mediation, and prosecutes criminal landlords who break the law, for example under the Protection from Eviction Act 1977 and Landlord and Tenant Act 1985. PTU is a front line service for tenants reporting poor and unsafe housing conditions and are involved in enforcing the legislation to ensure homes are maintained in a decent and safe standard. PTU also aims to promote and improve the private rented sector as a safe and healthy place to live.

### **Legislation**

The PTU has power to investigate and take criminal prosecutions under the following legislation:

- **Protection from Eviction Act 1977**

- This Act contains measures to protect residential occupiers from illegal eviction and harassment. The Act makes it a criminal offence for a landlord to evict a residential occupier without having followed the stated legal procedure to bring the tenancy or licence to an end.

- The Act also makes it a criminal offence for a landlord or a person acting on the landlord's behalf to carry out acts of harassment to force a tenant to give up or leave their tenancy.

- Upon conviction there is a maximum penalty of two years in prison and/or an unlimited fine.

- **Landlord and Tenant Act 1985**

- This Act contains measures to assist tenants in the conduct of their tenancies.

- Landlords are required to:

- provide rent books to tenants who are charged a weekly rent;
        - provide an address at which they can be contacted; and/or
        - to inform the tenant if the property in which they live is sold.

- Where the landlord is a company, the tenant must be informed of the names of the company's directors and secretary.

- Managing Agents are required to provide annual service charge accounts to leaseholders.

Should landlords and Managing Agents not comply with requests for this information, they will be committing a criminal offence. Upon conviction, there is a maximum penalty of a fine not exceeding level 4 on the standard scale.

- **Accommodation Agencies Act 1953**

Prospective tenants searching for accommodation are entitled to view lists of available accommodation at letting agent without charge.

Letting agents must not make a charge for registering a potential tenant's personal details, and must not offer a property for letting without the owner's consent.

It is a criminal offence for a letting agent not to comply with these requirements. Upon conviction a maximum penalty of a fine not exceeding level 4 on the standard scale can be imposed.

- **Protection from Harassment Act 1997**

This Act makes it a criminal offence for a person to commit acts of harassment against another.

Whilst not specifically designed to protect private tenants it can be used as an enforcement tool for cases where the available evidence does not allow for a prosecution under the Protection from Eviction Act 1977.

Upon conviction, a maximum penalty of six months in prison and/or an unlimited fine can be imposed.

- **Housing Act 1996**

This Act contains measures to assist tenants to obtain details of their tenancy from their landlord.

Landlords who fail to provide written confirmation of the terms of the tenancy will commit a criminal offence.

Upon conviction a maximum penalty of a fine not exceeding level 4 on the standard scale can be imposed.

- **Rent Act 1977**

It is a criminal offence for a landlord to make false entries in a rent book showing a tenant to be in arrears.

A further offence is committed if the landlord fails to erase these entries when challenged.

Upon conviction a maximum penalty of a fine not exceeding level 3 on the standard scale can be imposed.

- **Housing Act 2004**

The PTU is often the first agency to respond to complaints of disrepair, and they start the process of enforcing the Housing Health and Safety Rating System (HHSRS).



- **The Enterprise and Regulatory Reform Act 2013 - Letting Agents Redress Scheme**

Relevant persons involved in letting agency work or/and property management work in the private rented sector, are required to be registered with a Secretary of State Approved Redress Scheme.

The Local Authority, where it is satisfied, on the balance of probabilities, that a person who is required to register, has not registered with a redress scheme, may apply a monetary penalty up to a limit of £5,000.

### **Description of the PTU Service**

PTU is primarily a reactive service. Referrals are received via a Duty Desk, and an assessment is made of each referral.

If the request for assistance is outside current policy, customers are signposted to another service or agency.

If the request is within policy, a desk study is undertaken to establish previous contacts, past history and relevant details.

In cases of requests for advice, the Duty Officer will deal with the enquiry.

Other referrals will be prioritised and allocated to an Environmental Health Officer or similar. In these cases proposed actions will be agreed with the enquirer.

Cases are currently allocated to Officers under one of 12 case types:

- eviction;
- threatened eviction;
- harassment;
- Landlord and Tenant Act enquiries;
- Accommodation Act enquiries;
- Section 33 enquiries;
- possession procedure advice;
- rent enquiries;
- deposits;
- succession;
- landlord advice; and
- homeless prevention.

All referrals and requests for assistance will be handled in an impartial way, in an attempt to resolve disputes by guidance, advice and negotiation. This action will include a warning of the possibility of enforcement action should the matter not be resolved.

In each case, contact will be made with all parties by letter, telephone call, or visit. Where it is apparent that a criminal offence has been committed, the Officer will commence a formal investigation with a view to bringing legal proceedings. Potential prosecutions will be investigated and brought to prosecution in line with the overall prosecution policy detailed in Part A

On completion we will record whether the agreed action at the start of the case with the enquirer was successful or not.

We will also ask customers for feedback on the service provided. We will take account of the results and comments and use them to help improve our service.

### **Multi-agency working**

The PTU is not able to assist with some inquiries received at the Duty Desk. This may be because the needs of the enquirer can be met by another service or organisation:

- the City Council e.g. teams dealing with anti-social behaviour, homelessness and housing benefits;
- by another agency e.g. the Police;
- by a voluntary sector advice agency e.g. Shelter, Citizens Advice Bureau; or
- by a solicitor, e.g. civil law matters

Information about these services will be available on the web site, and customers will be signposted to the appropriate services. PTU will foster and maintain working relationships with these organisations, and will support actions they take on behalf of customers as appropriate.

An example would concern a tenant who has been illegally evicted. PTU would refer the tenant to a solicitor and could support the tenant's claim for compensation in the civil courts. This could be in addition to any legal proceedings being taken by the Council in relation to the matter.

### **Pro-active work**

PTU will continue to support pro-active initiatives to raise the issues of tenants' rights and good practice. This includes attendance at landlord forums, and University housing fairs, production and/or distribution of advice leaflets, training for Neighbourhood Office advisors, other relevant staff, and publicity regarding new legislation.

## Appendix 1

### Civil Penalty Charging Policy

#### **Civil Penalties under the Housing Act 2004 (as amended by the Housing and Planning Act 2016)**

The Housing and Planning Act 2016 section 126 and Schedule 9 amended the Housing Act 2004 and introduced the ability for Local Housing Authorities to allow financial penalties (civil penalties) of up to £30,000 per offence to be imposed as an alternative to prosecution for the following offences under the Housing Act 2004:

- failure to comply with an Improvement Notice (Section 30);
- offences in relation to Licensing of Houses in Multiple Occupation (Section 72);
- offences in relation to Licensing of houses under Housing Act 2004 Part 3, (Section 95);
- offences of contravention of an Overcrowding Notice, (Section 139(7));
- failure to comply with management regulations in respect of HMOs. (Section 234).

The Council will seek to impose Civil Penalties in accordance with this Enforcement Policy for the Regulation of Housing Standards and the Licensing of Houses in Multiple Occupation.

The decision to issue a civil penalty comprises two stages:

- to determine whether a civil penalty is an appropriate sanction in accordance with this Enforcement Policy, and, if appropriate
- to determine the level of the proposed civil penalty.

If the decision is to impose a civil penalty, a notice of intent must be served stating the amount of the proposed penalty, the reasons for its imposition and information about the right to make representations.

After the expiry of the period for representations the matter must be reviewed and a decision taken whether to impose a civil penalty and if so the amount of the penalty.

Statutory guidance issued by the Ministry of Housing Communities and Local Government in April 2017 sets out the following factors which must be taken into account when deciding on the appropriate level of penalty:

- a) Severity of the offence.** The more serious the offence, the higher the penalty should be.
- b) Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
- c) The harm caused to the tenant.** This is an 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.

- d) **Punishment of the offender.** A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.
- e) **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. 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.
- f) **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.
- g) **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

The Council will determine the level of civil penalty from a review of the case and having regard to the statutory guidance will apply the following five step approach:

### **Step 1 – Determining the offence category**

To determine the financial starting point, consider the culpability and harm factors in the lists below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment.

#### **Culpability**

##### **Very High**

Deliberate failure to comply with legal obligations

##### **High**

Knew or ought to have known that they were in breach of their legal responsibilities, wilful blindness to the risk of offending. Non-compliance over a long period or ignoring concerns raised by regulators, tenants or others.

##### **Medium**

Offence committed through an act or omission which a person exercising reasonable care would not commit

## Low

Offence committed with little fault, for example, because:

- Significant efforts were made to address the risk although they were inadequate on this occasion
- Failings were minor and occurred as an isolated incident.

## Harm

### High

The property conditions pose a high risk of serious adverse effects to the occupants and/or visitors.

Vulnerable individuals were put at risk.

### Medium

The property conditions pose medium risk of serious adverse effects to the occupants and/or visitors.

### Low

The property conditions pose a low risk of serious adverse effect to the occupants and/or visitors.

## Step 2 – Starting point

Having determined the culpability and harm levels, the appropriate offence matrix should be referred to in order to calculate the starting point for the civil penalty.

		HARM		
		LOW	MEDIUM	HIGH
CU LPA BILI TY	LOW	£500	£1000	£2000
	MEDIUM	£1000	£2000	£4,000
	HIGH	£2,000	£4,000	£10,000
	VERY HIGH	£4,000	£10,000	£20,000

## Step 3 – Consider factors to increase or reduce fine

The Council should then consider further adjustment from the starting point to take into account aggravating and mitigating features. Set out below is a non-exhaustive list of factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these or other relevant factors should result in an upward or downward adjustment from the starting point.

### **Factors increasing seriousness:**

Aggravating factors include:

- History of failing to comply with obligations
- Motivated by financial gain
- Deliberate concealment of illegal nature of activity
- Established evidence of wider/community impact
- Obstruction of justice
- Landlord or agent of multiple properties which may include licensed HMOs

### **Factors reducing seriousness or reflecting personal mitigation:**

- Steps taken to remedy the problem
- High level of co-operation with the investigation, beyond that which will always be expected
- A history of good communication and compliance regarding work as a landlord

- Co-operation and acceptance of responsibility
- Mental disorder or learning disability, where linked to the commission of the offence
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender

#### **Step 4 – Case and penalty review**

The level of the penalty should reflect the extent to which the offender fell below the required standard. The penalty should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; **it should not be cheaper to offend than to take the appropriate precautions.**

The Council may increase or reduce the proposed penalty reached at the end of step three

#### **Step 5 - Review offender's financial means – prior to any Final Notice**

The level of civil penalty must be proportionate to the seriousness of the offence and the financial circumstances of the offender.

The council may conclude that the offender is able to pay any penalty imposed unless the offender has supplied financial information to the contrary. It is for the offender to disclose to the council such data relevant to his/her financial position on the representations form attached to the "Notice of Intention".

#### **Banning Orders**

The Council will in all instances consider applying for a Banning Order where a landlord or property agent has been convicted of one or more Banning Order offences as defined by regulations made under the Housing and Planning Act 2016. This will exclude him/her from letting or engaging in letting agency or property management work. When considering applying for a Banning Order, the Council will have regard of Government Guidance and evidence (if any) of housing offence(s) committed by the landlord in other Local Authority areas.

#### **Rogue Landlord Database**

The Council will make an entry on the Rogue Landlord database where a landlord or property agent has received a banning order.

The Council will have discretion to make an entry on the database where a person has:

- been convicted of a banning order offence that was committed at a time when the person was a residential landlord or property agent; and/or
- received two or more financial penalties in respect of a banning order offence within a period of 12 months committed at a time when the person was a residential landlord or a property agent .

In making this decision the Council will have regard to Government Guidance.

Prior to making an entry on the database, the Council will issue the person with a decision notice, specifying the period for which the entry will be maintained.

## Appendix 2

### **Summary of the Housing Health and Safety Rating System (HHSRS) and the Enforcement Powers Available Under Part 1 of the Housing Act 2004 to deal with Category 1 and Category 2 Hazards.**

#### **1. The Housing Health and Safety Rating System**

The HHSRS lists 29 different types of hazard that may be found in residential property. It prescribes a 'risk assessment' methodology for local housing authorities to carry out in order to determine the degree of severity of the prescribed hazards.

The basic theory behind the system is that all dwellings should provide a safe and healthy environment for all occupiers, potential occupiers or their visitors. The system relies upon an assessment of the whole dwelling to identify any deficiencies which could pose a risk to health and safety (health in this context includes both physical and mental wellbeing) and then relating any identified deficiencies to a prescribed hazard.

In undertaking the assessment, the effect of certain hazards is considered against the most vulnerable age group who may occupy the property i.e. an age range of people for whom the risk arising from the hazard is greater than for any other age group. Some hazards, e.g. excess cold will affect the elderly (over 60) in particular whereas other hazards e.g. structural collapse will affect all age groups equally.

The assessment is made disregarding the current occupiers (if any) but is based upon the potential effect of any hazards on a member of any relevant vulnerable age group. The assessment will therefore not be affected by a change of occupier and a vacant property can also be assessed.

To score a hazard, the assessor must determine the likelihood of harm occurring during the forthcoming twelve months taking in to account average likelihoods for that type and age of property and then assess the range of harm outcomes taking in to account averages based upon national accident ill health and accident statistics. These average likelihoods and harm outcomes are defined in the Operating Guidance document issued by the Government (DCLG) under Section 9 of the Housing Act 2004.

By application of a prescribed formula contained in the HHSRS (England) Regulations 2005, hazards are given a numerical score. The scores have been divided in to bands ranging from A to J for ease of comparison.

Hazards which have a score in the top three bands (A, B and C) are prescribed by these regulations as Category 1 Hazards. Those which fall within the lower bands (D to J) are prescribed as Category 2 Hazards.

Under Section 5 of the Housing Act 2004, local authorities are under a duty to take appropriate enforcement action with respect to Category 1 Hazards.

Under Section 7 of the Housing Act 2004, local authorities have a power to take particular kinds of enforcement action with respect to Category 2 hazards

#### **2. Range of Enforcement Options**

##### **(i) Improvement Notices to deal with premises affected by category 1 and category 2 hazards**

An Improvement Notice under section 11 or 12 Housing Act 2004 may be served in response to a category 1 or category 2 hazard respectively. Under section 11, action must, as a minimum remove the category 1 hazard but may extend beyond this.

An improvement notice must specify the nature of the hazard, the deficiency giving rise to the hazard the nature of the remedial action, and a time in which to do the necessary work. The notice must also contain information about the right to appeal.

In certain circumstances, the Council may suspend the action specified in the notice and can specify an event or period that triggers the end of the suspension.

Failure to comply with the requirements of an improvement notice without reasonable excuse is an offence punishable by a fine up to level 5 on the standard scale (currently £5000.00).

### **(ii) Prohibition Order to deal with premises affected by category 1 and category 2 hazards.**

A prohibition order under section 20 or 21 Housing Act 2004 may be served in response to category 1 or category 2 hazards respectively. It may prohibit the use of part or all of the premises for some or all purposes, or occupation by particular numbers or descriptions of people. The housing needs of the occupier(s) will always be assessed and suitable alternative accommodation secured before they are displaced by the making of a prohibition order.

A prohibition order must specify the nature of the hazard, the deficiency giving rise to the hazard, the premises or part of the premises to which prohibitions are imposed and any remedial action that would result in the order being revoked. The order must also contain information about the right to appeal.

In certain circumstances, the Council may suspend the action specified in the order and can specify an event or situation that causes the order to be fully operative some time after it is served.

Failure to comply with the requirements of a prohibition order (including an emergency prohibition order) without reasonable excuse is an offence punishable by a fine up to level 5 on the standard scale (currently £5000.00). An additional penalty of up to £20 per day may be imposed for every day or part of a day where a premise is permitted to be occupied in contravention of a prohibition order.

### **(iii) Emergency Remedial Action to deal with premises affected by category 1 hazards**

The Council has the discretion to take emergency remedial action against category 1 hazards which present an imminent risk of serious harm to the occupier. The action will consist of whatever remedial action the Council considers necessary to remove an imminent risk or serious harm. Attempts will always be made to contact the responsible person prior to carrying out any such emergency works, but the risk to the health and safety of the affected person or persons will be the overriding concern of the council in such a case

The Council must serve a notice of emergency remedial action within seven days of taking action. The notice must specify the nature of the hazard, the deficiency giving rise to the hazard and the date when the action was or is to be started. The notice must also contain information about the right to appeal.



#### **(iv) Emergency Prohibition Order to deal with premises affected by category 1 hazards**

The Council has the discretion to make an emergency prohibition order in relation to category 1 hazards that present an imminent risk of serious harm to the occupiers. The order may prohibit the use of all or any part of a premise with immediate effect.

Attempts will always be made to contact the responsible person prior prohibiting the use of any dwellings in this way, but the risk to the health and safety of the affected person or persons will be the overriding concern of the Council in such a case. Occupiers of premises that become subject to an emergency prohibition order may have to vacate the premises at short notice. The housing needs of the occupier(s) will always be assessed and appropriate advice given on where to seek assistance in securing suitable alternative accommodation.

The Order must specify the nature of the hazard and any remedial action that would result in the order being revoked. The order must also contain information about the right to appeal

#### **(v) Hazard Awareness Notice to deal with premises affected by category 1 and category 2 hazards**

A hazard awareness notice must specify the nature of the hazard, the deficiency giving rise to the hazard and details of any remedial action which the Council considers would be practicable and appropriate to take.

This procedure does not require further action by the person served with the notice and therefore there is no appeal provision.

A Hazard Awareness Notice is not declared on Local Land Charges so a new purchaser may be unaware of the hazard.

Although a Hazard Awareness Notice has no provision for subsequent enforcement, it is still a formal response and can be replaced by one of the other forms of action if circumstances should change.

#### **(vi) Demolition Orders to deal with premises affected by category 1 hazards**

Demolition orders are available under part 9 of the Housing Act 1985 (as amended by the Housing Act 2004) as a possible response to a category 1 hazard. A demolition order requires the property to be vacated within a specified time and subsequently demolished. It is a criminal offence to allow a premise to be occupied after a demolition order has come into effect. Should the building not be demolished the Council may demolish it and recharge the person upon whom the notice was served. This power cannot be used for listed buildings.

#### **(vii) Clearance Areas to deal with premises affected by category 1 hazards**

A clearance area is an area to be cleared of all buildings. A clearance area under Part 9 of the Housing Act 1985(as amended by the Housing Act 2004) can be declared if the Council is satisfied that each of the residential buildings in the area contains one or more category 1 hazards (or that the buildings are dangerous or harmful to the health or safety of the occupiers as a result of their bad arrangement or the narrowness or bad arrangement of the streets) and any other buildings in the area are dangerous or harmful to the inhabitants. The Council is required to consult on the declaration of a clearance area and publish its intentions. Account must be taken of the availability of accommodation

for rehousing, the local demand for accommodation and the possible future use of the cleared site.

**BIRMINGHAM CITY COUNCIL  
PLACE DIRECTORATE**

**Housing Act 2004**

**Property and Management Standards Applicable  
To Privately Rented Properties,  
Including Houses In Multiple Occupation (HMOs)**

**A Guide for Property Owners, Landlords, Managing Agents,  
Tenants and Other Stakeholders with Interests in the Private  
Rented Housing Sector**

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This section is no longer used

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This section is no longer used

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# Section 1: Legal Definitions and Procedures

## 1.10 Introduction

The provisions of the Housing Act 2004 came into effect on 6 April 2006. This legislation has important implications for the private rented sector in particular with the introduction of mandatory licensing of certain higher risk Houses in Multiple Occupation (HMOs), discretionary licensing other privately rented housing in specific circumstances, and a new system of assessing housing conditions known as the Housing Health and Safety Rating System, which replaced the former housing fitness standard.

The standards for HMOs in Birmingham have been applied for many years in terms of fire precautions, amenities, room sizes and property management.

With the extension of Mandatory HMO Licensing, this is an opportunity for the City Council to issue revised standards for all privately rented housing in the city, and this document will act as a code of practice to which property owners, landlords and managers should be working in order to achieve compliance.

Most of the accommodation arrangements commonly encountered are described, however it is recognised that there will always be circumstances which do not match those given. If this is the case then it is always advisable to contact Private Rented Services for guidance.

This document also provides basic information about the definition of a House in Multiple Occupation, and which properties need to be licensed. Further details about licensing can be found on the City Council's website [www.birmingham.gov.uk/hmo](http://www.birmingham.gov.uk/hmo).

This standards document was formally adopted by the Cabinet of Birmingham City Council in November 2018 as part of the overall Private Sector Housing Enforcement Policy.

## 1.20 What is an HMO?

Under the Housing Act 2004, if you let a property which is one of the following types, it is a House in Multiple Occupation:

- An entire house or flat which is let to three or more tenants, who form two or more households and who share a kitchen, bathroom or toilet
- A house which has been converted entirely into bedsits or other non-self-contained accommodation, and which is let to three or more tenants who form two or more households, and who share a kitchen, bathroom or toilet facilities.
- A converted house which contains one or more flats which are not wholly self-contained (i.e. the flat does not contain within it a kitchen, bathroom and toilet) and which is occupied by three or more tenants who form two or more households.
- A building which is converted entirely into self-contained flats, if the conversion did not meet the standards of the 1991 Building Regulations, and more than one-third of the flats are let on short-term tenancies.

In order to be an HMO the property must be used as the tenant's only or main residence, and it should be used solely or mainly to house tenants.

Properties let to students and migrant workers will be treated as their only or main residence and the same will apply to properties which are used as domestic refuges.

### **1.30 What is a household?**

A household is:

- Couples married to each other, or living together as husband and wife, and couples in same sex relationships
- Relatives living together, including parents, grandparents, children and step-children, grandchildren, brothers, sisters, uncles, aunts, nephews, nieces or cousins. Half-relatives are treated as full relatives.
- A foster child living with his or her foster parent is treated as living in the same household as his/her foster parent.
- Any domestic staff are also included in the household if they are living rent-free in accommodation provided by the person who they are working for.
- A resident landlord, and any individuals who are part of the landlord's family, are classed as one household and one person.

Household examples:

- Three friends sharing together would be considered as three households
- A couple sharing with a third person would be classed as two households
- A family renting a property is a single household. If that family had an au pair to look after their children, that person would be included in their household.
- A resident landlord, with a partner and two children are one household and one person. If there are also four tenants, then this arrangement comprises five households and five persons.

### **1.40 Which HMOs need a licence?**

Under the national mandatory licensing scheme, any HMO must be licensed if it has five or more tenants, living as two or more households, and there are shared facilities such as a kitchen, bathroom and toilet.

The Government has recognised that problems of poor management and facilities in an HMO are not confined to those subject to mandatory licensing, and it also recognises that poor management and associated problems exist elsewhere in the private rented sector, and that these are not simply a phenomenon of HMOs. For this reason the Housing Act gives local authorities powers to require certain other rented accommodation to be licensed in specified circumstances.

Additional HMO licensing (Section 56 of the Act) gives powers to a local authority to designate areas, or the whole of the area within their district, for additional licensing in respect of some or all of the HMOs in its area that are not already subject to mandatory licensing.

Selective licensing (Section 80 of the Act) gives powers to local authority to designate areas, or the whole of the area within their district, for selective licensing in respect of some or all privately rented accommodation, provided certain conditions are met.

Before declaring an additional or selective licensing, the City Council would need to consult extensively with landlords and tenants organisations, local residents and advertise in the local newspapers. You should therefore become aware of any licensing scheme before it comes into operation.

## **1.50 How do I calculate how many storeys there are?**

When you count the number of storeys in a building you need to include:

- Basement and attics, if they are occupied or have been converted for occupation, or are in use by residents
- Any storeys which are occupied by you and your family, if you are a resident landlord
- All storeys in residential occupation, even if they are self-contained
- Any business premises or storage space on the ground floor or any upper floor.

You do not need to count basements used for business or storage unless the basement is the only, or principal, entrance to the HMO from the street.

## **1.60 Types of House in Multiple Occupation**

A wide variety of properties fall within the definition as being houses in multiple occupation (HMOs). It is however possible to identify characteristics common to the manner in which they are occupied.

A system of categorisation has been in operation for many years throughout the country based upon a code of practice issued by Chartered Institute of Environmental Health. Although the law applicable to HMOs has changed, the types of property remain broadly the same and it is therefore intended that same system of categorisation will be used as the basis of this standards document.

The categories of HMO can be summarised as:

- CATEGORY A - bedsit-type accommodation
- CATEGORY B - shared houses
- CATEGORY C - Halls of Residence, which is no longer in use
- CATEGORY D – supported accommodation, also known as hostels and bed and breakfast establishments
- CATEGORY E - Care Homes, which are no longer classified as HMOs as these are now fully regulated by the Care Quality Commission.
- CATEGORY F - self-contained flats

Details of the standards applicable to each Category of HMO are given in section 2

## **1.70 How will the standards be applied to licensable HMOs?**

In order to issue a licence, the City Council must be satisfied, amongst other things, that



the property is reasonably suitable for occupation by a specified maximum number of persons and/or households.

To be able to make an assessment as to what counts as reasonable for occupation a set of regulations entitled 'The Licensing and Management of Houses in Multiple occupation and other Houses (Miscellaneous provisions) (England) Regulations 2006' have been issued which prescribe the minimum standards every local authority must have regard to in terms of:

- Washing and toilet facilities
- Kitchen facilities
- Heating
- Fire precautions

Each local authority is able to set its own standards, but these must not be to a lesser standard than as specified in these regulations.

These regulations were amended in October 2007 by 'The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007' which, amongst other things, had the effect of giving local authorities more discretion over required standards with respect to the provision of bathrooms, toilets and wash hand basins.

More recently, The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 introduced the following conditions:

- to ensure that the floor area of any room in the HMO used as sleeping accommodation by one person aged over 10 years is not less than 6.51 square metres
- to ensure that the floor area of any room in the HMO used as sleeping accommodation by two persons aged over 10 years is not less than 10.22 square metres
- to ensure that the floor area of any room in the HMO used as sleeping accommodation by one person aged under 10 years is not less than 4.64 square metres
- to ensure that any room in the HMO with a floor area of less than 4.64 square metres is not used as sleeping accommodation.
- The regulations also include a condition that landlords of licensed HMOs must comply with any relevant local authority waste scheme

Whilst the Government have set minimum sizes for room for sleeping accommodation, Birmingham will maintain its' current space standards, since it is considered that this is an important factor when setting maximum occupancy levels.

A property which fails to meet the standards as specified would not normally be refused a licence, and in these cases it is intended that a licence would be issued with conditions attached requiring that the property be brought up to standard over a period of time.

Properties which are clearly well below the minimum prescribed standard, and where there appears to be little prospect of work being carried out within a reasonable period of time, or where the health, safety or welfare of the occupiers is at imminent risk, may result in the refusal to grant a licence.

Where a licence is issued with conditions, it is an offence to fail without reasonable excuse to comply with any such conditions within the specified time limit(s) and may result in a civil penalty or an unlimited fine upon conviction.

## **1.80 How will the standards be applied to Non-Licensable HMOs and other privately-rented properties?**

The Management of Houses in Multiple Occupation (England) Regulations 2006 apply to all HMOs, as well as those HMOs which fall within the mandatory licensing description or within any additional or selective licensing scheme.

Whilst there are many HMOs throughout the city which do not fall within any licensing requirement at the present time, it is important that the appropriate standards of amenity provision, fire precautions and room size are met.

Part 1 of the Housing Act 2004 introduced a new method of assessing housing conditions known as the Housing Health and Safety Rating System (HHSRS) plus associated enforcement powers to deal with any hazards identified. Part 4 of the Housing Act 2004 contains provisions for dealing with overcrowding in HMOs.

By application of these new powers, similar standards can be achieved in non-licensable HMOs and other privately-rented properties as those required for licensable HMOs.

Landlords and managers of privately-rented houses and flats will be required to comply with these standards to lessen the possibility of any enforcement action being taken under the provisions of the Housing Act 2004.

## **2.10 Single family housing (houses and flats)**

### **2.11 Definition**

A family property is one where the whole property, be it a house or a flat, has been rented out to one single family, where all the occupants are related. Family members means any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law

### **2.12 General principles of occupation**

Children below the age of 10 years count as a whole person.

It is recommended that no room be occupied by more than two persons.

Persons of the opposite sex over the age of 10 should not share the same room for sleeping purposes unless they are of marriageable age and are either married or living as partners.

Circulation spaces such as hallways, landings and other rooms such as kitchens, bathrooms or cellars, roof spaces etc. are unsuitable for use as sleeping and/or living accommodation.

### **2.13 Room sizes and permitted occupation**

The following are the minimum floor areas required:

- (a) bedroom for a child under the age of 10 - 4.64m<sup>2</sup>
- (b) bedroom for one person - 6.51m<sup>2</sup>
- (c) bedroom for two persons - 10.22m<sup>2</sup>

### **2.14 Kitchen facilities**

It is important for there to be adequate space for all of the facilities to be installed and properly arranged so that food can be safely and hygienically prepared and cooked. The overall floor area of a kitchen may not be so important as the usable space available. For instance a large

kitchen with three or four doorways opening into it may have less usable space than a smaller kitchen with only one or two doorways.

As a general guide the following minimum overall floor area should be:

- up to 5 persons - 6.5 m<sup>2</sup>
- 6 persons - 7.5 m<sup>2</sup>
- 7 persons - 8.5 m<sup>2</sup>
- 8 persons - 9.5 m<sup>2</sup>
- more than 8 persons - 10.5 m<sup>2</sup>

### Cooking Facilities

The kitchen must be provided with sufficient suitably located cooking appliances to enable food to be cooked and prepared safely and hygienically. In particular:

- There should be a conventional gas or electric cooker with at least 4 burners/hobs, oven and grill.
- It is also recommended that, for larger families, there should be a microwave oven of minimum 20 litres capacity, in addition to a conventional cooker.

### Sinks

There must be a kitchen sink with a draining board, complete with hot and cold water supplies and trapped waste.

For up to and including 7 persons a double bowl sink and drainer is recommended  
Alternatively, a standard sink plus an electric dishwasher will be acceptable

### Food Preparation

There must be sufficient fixed work surfaces to enable the family to prepare food safely and hygienically. A 0.5 metre run of work surface for each occupier is recommended

There should be at least 2 twin switched power sockets set at a convenient height and safe position in relation to the kitchen facilities and work surfaces, in addition to any dedicated sockets serving major appliances such as dishwashers, washing machines and refrigerators.

### Food Storage

Adequate refrigerated food storage must be provided either within the kitchen or within a room directly adjacent to the kitchen if space is limited.

There should be a standard domestic refrigerator of at least 100 litres capacity, with a freezer compartment of at least 15 litres capacity. For the larger family, a tall upright fridge freezer is acceptable, usually with a fridge capacity of around 140 to 180 litres and a freezer capacity of around 70 to 90 litres.

Adequate dry/canned food storage and utensil storage cupboards must be provided. A half standard base unit or standard single wall unit per person will be acceptable for this purpose. The space beneath a sink is not acceptable for food storage purposes.

### Ventilation

All kitchens must be provided with adequate mechanical extract ventilation of minimum 60 litres/second flow rate.

### Dining kitchens

Where a kitchen is large enough for it to be also used as a dining room, it is important that there is sufficient space for the family to be able to sit around a table without impinging upon the working area of the kitchen. The overall shape, layout and positioning of doorways may influence the amount of usable space available.

As a general guide the following minimum floor area will apply:

- up to 5 persons - 11.5 m<sup>2</sup>
- an additional 1 m<sup>2</sup> for every additional person thereafter.

#### Combined Living Rooms and Dining Rooms

There must be sufficient space for the majority of occupiers to sit and eat a meal together, and for other social activities such as watching television, etc. As a general guide, the following floor areas will apply:

- up to 5 persons 11 m<sup>2</sup>
- an additional 1m<sup>2</sup> for every additional person thereafter.

#### Combined Living/Dining Room/Kitchens

It is recognised that this is a growing trend. The kitchen facilities within the open plan room must be suitably arranged such that food preparation and cooking activities are safely separated from the adjoining dining/living area.

As a general guide, a combined living/dining/kitchen for up to 5 persons should be around 17m<sup>2</sup> in floor area  
an additional 1.5m<sup>2</sup> for every additional person thereafter.

Irrespective of overall floor area, consideration will be given to the shape and usable living space within the room when determining its suitability for occupation. No account will be taken of any part of a room where the ceiling height is less than 1.525m (5ft).

## **2.15 Personal washing and bathing facilities**

### Baths and Showers

It is recommended that a bathroom containing a bath or shower should be provided on a ratio of at least one bath or shower for every five persons. A shower facility installed over a bath does not count as an additional shower.

Shared bathrooms must be accessible from a communal area within the property (i.e. not through a bedroom) and must be of sufficient size to enable users to dry themselves and get dressed safely and conveniently.

### Wash Hand Basins

All bathrooms or separate compartments containing a WC must be provided with a wash hand basin together with constant supplies of hot and cold water, trapped waste pipe and a tiled splashback.

## **2.16 Toilet facilities**

It is recommended that toilet facilities are provided on a ratio of at least one WC for every five persons, where the WC is separate from the bathroom, and is accessible from a communal area without going through the bathroom.

There should be one WC for every four persons where the WC is located within the bathroom.

The recommended number of bathroom facilities is:

<b>NUMBER OF PERSONS</b>	<b>FULL SUITE</b>	<b>BATH ONLY</b>	<b>SEPARATE WC</b>
<b>Up to 4</b>	<b>1</b>		
<b>5</b>	<b>1</b>		<b>1</b>
<b>5</b>		<b>1</b>	<b>1</b>
<b>6, 7, or 8</b>	<b>2</b>		

## 2.17 Fire precautions

### 1. Single household occupancy of no more than two storeys

There is no requirement for full 30-minute protected route, but the escape route should have sound, conventional construction and should not pass through risk rooms.

There is no requirement for fire doors but sound, well-constructed and close-fitting conventional doors are required.

Alternatively, provide suitable escape windows from bedrooms and living rooms .

i. Fire separation

No requirement for additional fire resistance, but walls and floors should be of sound, conventional construction. If a basement/cellar is present, 30-minute separation between the cellar and the ground floor escape route is the ideal

ii. Fire detection and alarm system

A Grade D, LD3 system:

- interlinked mains wired smoke alarms with integral battery back-up located in the escape route at ground and first floor levels; **and**
- additional interlinked smoke alarms with integral battery back-up located in any cellar

iii. Lighting of escape routes

There is no requirement for emergency escape lighting, but conventional artificial lighting is required.

iv. Fire-fighting equipment

It is recommended as good practice to provide a fire blanket in the kitchen.

v. Fire safety signs

No requirement.

vi. Surface finishes & floor coverings

No requirement.

vii. Management and maintenance of fire safety

It is recommended that all doors are kept closed at night.

### 2. Single household occupancy of three or four storey

i. Escape routes

There is no requirement for full 30-minute protected route, but the escape route should have sound conventional construction and the travel distance should not be excessive.

There is no requirement for fire doors, but sound, well-constructed and close-fitting conventional doors are required.

ii. Fire separation

There is no requirement for additional fire resistance, but walls and floors should be of sound, conventional construction. If a basement/cellar is present, 30-minute separation between the cellar and the ground floor escape route is required.

iii. Fire detection and alarm system

A Grade D, LD3 system:

- interlinked mains wired smoke alarms with integral battery back-up located in the escape route at all floor levels; **and**
- additional interlinked smoke alarms with integral battery back-up located in any cellar

- iv. Lighting of escape routes  
There is no requirement for emergency escape lighting, but conventional artificial lighting is required.
- v. Fire-fighting equipment  
It is recommended good practice to provide a fire blanket in the kitchen.
- vi. Fire safety signs  
No requirement.
- vii. Surface finishes & floor coverings  
No requirement.
- viii. Management and maintenance of fire safety  
It is recommended that all doors are kept closed at night.

### 3. Single household occupancy of five or six storeys

It is recommended that the landlord undertakes a fire risk assessment, or seeks the advice of the Fire Service.

## 2.18 Heating

There must be an adequate fixed form of heating to all habitable rooms.

Within the main living room the heating appliance must be capable of achieving a room temperature of at least 21°C within one hour of turning on when the air temperature outside is -1°C.

Within any separate bedroom a room temperature of 18°C will be sufficient.

For heating to be properly used by the tenants, it must be affordable. Central heating is the preferred option but electric night storage heaters and balanced flue gas heaters are also satisfactory. Heaters which use full price electricity are not acceptable as the main form of heating.

Paraffin heaters, LPG heaters and freestanding plug-in electric heaters are not acceptable. Where open-flue gas fires are provided in a room used for sleeping purposes, they must be of modern design and fitted with an automatic oxygen depletion cut-off device. The room must also have a carbon monoxide detector.

All heaters, other than water filled radiators, must be suitably positioned such that there is at least two metres between the heater and any bedding, and such heaters must also not be located where curtains are likely to catch fire.

Whichever form of heating is installed it must be controllable by the occupants at all times. Where heating is provided to any communal rooms or areas, the running costs must be met out of general rental charges or general energy charges rather than any type of prepayment meter.

All heating appliances must be fixed to either the wall or the floor and be provided with an appropriate base or surround if one is specified by the appliance manufacturer.

All gas heaters or boilers of any type must be properly serviced and maintained in a safe condition in accordance with the manufacturer's recommendations and the Gas Safety (Installation and Use) Regulations 1998 (as amended).

All bathrooms, whether for exclusive or shared use must also be provided with adequate heating. Electric fan or radiant wall heaters are acceptable in bathrooms provided they are designed to operate in moist atmospheres.

## **2.20 Category A HMOs – bedsit-type accommodation**

### **2.21 Definition**

Bedsit accommodation relates to properties that are occupied by a number of unrelated persons, who live as more than one household, who are on individual tenancy agreements. There is often little interaction between the occupiers.

Within this overall category, there are broadly two sub-categories as follows:-

#### **Bedsit accommodation with cooking facilities within the let**

Houses occupied as individual rooms where there is some exclusive occupation (usually the bedroom/living room) and some sharing of amenities (bathrooms and/or toilets). Cooking and food preparation facilities are provided within the individual units of accommodation. There is usually no communal living room, and each occupant lives independently of others.

#### **Bedsit accommodation with shared kitchen facilities**

Houses occupied as individual rooms where there is some exclusive occupation (usually the bedroom/living room) and some sharing of amenities (bathrooms, toilets and kitchens). Cooking and food preparation facilities are provided within a communal shared kitchen. A communal living room may also be provided in some cases. Bedroom doors will usually be lockable. Initially there may be little or no social interaction amongst the residents, although this may change over a period of time, particularly where there is a communal living room.

### **2.22 General principles of occupation**

Children below the age of 10 years now count as a whole person.

No room be occupied by more than two persons.

Persons of the opposite sex over the age of 10 will not be permitted to share the same room for sleeping purposes unless they are of marriageable age and are either married or living as partners.

The sharing of a room for sleeping purposes by persons who are neither related or living as a married couple is not permitted.

No unit of accommodation shall be occupied on the basis of a divided or shared tenancy or licence. This is to avoid the situation arising whereby a unit of accommodation may be occupied by different persons at different times of the day or different days of the week (for instance shift workers or seasonal/migrant workers who occupy a property in connection with their employment.)

Only rooms designated as a living room, bedroom or bed/sitting room may be used for living or sleeping purposes.

Each separate bedroom within a shared house is regarded as a unit of accommodation for the purpose of assessing amenity standards.

Circulation spaces such as hallways, landings and other rooms such as kitchens, bathrooms or cellars, roof spaces etc. are not suitable for use as sleeping/living accommodation.

Irrespective of overall floor area, consideration will be given to the shape and usable living space within the room when determining its suitability for occupation. No account will be taken of any part of a room where the ceiling height is less than 1.5m.

Rooms that can only be accessed by residents having to go into the external air in order to gain access to the communal facilities within the main part of the premises are not permitted.

## 2.23 Room sizes and permitted occupation

The following minimum floor areas are required:

### 1. **Bedsit accommodation with cooking facilities within the let**

#### One person unit of accommodation

##### (i) One room unit

- A single room including kitchen facilities - 13m<sup>2</sup>

##### (ii) Two or more rooms

- Each bedroom - 6.51m<sup>2</sup>
- Each living room (without kitchen facilities) - 9m<sup>2</sup>
- Each combined living room/kitchen - 11m<sup>2</sup>

##### (b) Two or more person unit of accommodation

##### (i) One room unit

- A bed sitting room including kitchen facilities - 20m<sup>2</sup>

##### (ii) Two or more rooms

- Each single bedroom - 6.51m<sup>2</sup>
- Each double bedroom – 10.22m<sup>2</sup>
- Each bed /sitting room - 15m<sup>2</sup>
- Each living room - 12m<sup>2</sup>
- Each combined living room/kitchen - 15m<sup>2</sup>
- Each separate kitchen for exclusive, use of up to three occupants, living as one household - 4.5m<sup>2</sup>

### 2. **Bedsit accommodation with shared kitchen facilities**

#### One person unit of accommodation

- Each bedroom where the occupants have access to a separate communal living room - 6.51m<sup>2</sup>
- Each bedroom where the occupants do not have access to a separate communal living room - 10m<sup>2</sup>

#### Two person unit of accommodation

- Each bedroom where all occupants have access to a separate communal living room - 11m<sup>2</sup>
- Each bedroom where all occupants do not access to a separate communal living room - 15m<sup>2</sup>

### 3. **Communal Rooms**

#### Kitchens

Communal kitchens will be intensively used with perhaps several people all attempting to prepare their own separate meals at the same time. It is therefore important for there to be adequate space for all of the facilities required to be installed and properly arranged so that food can be safely and hygienically prepared and cooked.

The overall floor area of a kitchen may not be so important as the usable space available. For instance a large kitchen with three or four doorways opening into it may have less usable space than a smaller kitchen with only one or two doorways.

The following minimum overall floor areas for communal kitchens apply:

- Kitchen for 2 to 5 persons - 6.5m<sup>2</sup>
- Kitchen for 6 persons - 7.5m<sup>2</sup>
- Kitchen for 7 persons - 8.5m<sup>2</sup>



- Kitchen for 8 persons - 9.5m<sup>2</sup>
- Kitchen for 9 to 10 persons - 10.5m<sup>2</sup>
- Kitchen for 11 persons - 11.5m<sup>2</sup>
- Kitchen for 12 persons - 12.5m<sup>2</sup>
- Kitchen for 13 to 15 persons - 13.5m<sup>2</sup>

A single kitchen would not normally be suitable for use by more than 15 persons regardless of its' size.

### Dining/Kitchen

Where a kitchen is large enough for it to be also used as a dining room, it is important that there is sufficient space for the majority of the intended number of users to sit around a table without impinging upon the working area of the kitchen. The overall shape, layout and positioning of doorways may influence the amount of usable space available.

As a general guide the following minimum floor area will apply:

- Dining/kitchen for 2 to 5 persons - 11.5m<sup>2</sup>
- an additional 1m<sup>2</sup> for every additional person thereafter.

### Combined Living Room and Dining Room

In the majority of shared houses there is a communal living room which also serves as a dining room. There must be sufficient space for the majority of occupiers to sit and eat a meal and also for other social activities, such as watching television etc.

As a general guide, the following floor areas will apply:

- Living room and dining room for 2 to 5 persons - 11m<sup>2</sup>
- Living room and dining room for 6 persons - 13m<sup>2</sup>
- an additional 1m<sup>2</sup> for every additional person thereafter.

### Combined living/dining/kitchen

In response to a demand for open-plan living, the kitchen facilities within the open plan room must be suitably arranged such that food preparation and cooking activities are safely separated from the adjoining dining/living area.

As a general guide:

- a combined living/dining/kitchen for 2 to 5 persons should be a minimum of 17m<sup>2</sup>
- an additional 1.5m<sup>2</sup> for every additional person thereafter.

Creating an open plan living/dining/kitchen in a three-storey house may increase the overall risk of harm from fire where the stairs rise directly from such an open-plan room. Suitable fire precautions are required in these circumstances.

## **2.24 Kitchen facilities**

### **Bedsit accommodation with cooking facilities within the let**

Each unit of accommodation must be provided with adequate facilities for the storage, preparation and cooking of food, and the disposal of waste water.

The required kitchen facilities are:

### Bedsitting room with kitchen in the room

The facilities shall comprise:

- For a single person  
a gas or electric cooker with two burners/hobs, oven and grill

- For two persons  
a gas or electric cooker with four burners/hobs, oven and grill  
A microwave oven may be substituted for one or two of the burners/hobs
- A metal or ceramic kitchen sink and drainer with a constant supply of hot and cold water
- Sufficient fixed work surface to enable the user to prepare food safely and hygienically. A minimum of 500mm clear run of work surface will be required for a single person and 1000mm for two persons.
- A suitable refrigerator of sufficient size to store an average person's dietary requirements on a day-to-day basis. A freezer compartment is desirable but not essential for a single person.
- Sufficient storage cupboard space for dry and canned food goods plus cooking utensils, crockery and cutlery.
- Two twin switched power sockets set at a convenient height and safe position in relation to the kitchen facilities.
- The kitchen area must be provided with an easily cleansable non-slip floor covering to an adequate extent and separated from any adjoining carpeted floor area by suitable dividing strips securely fixed in position.
- Cookers must be safely positioned within the room such that they do not compromise escape in the event of a fire associated with the cooker i.e. they must not be positioned adjacent to the exit doorway – in particular gas cookers must not be positioned directly adjacent to openable windows where flames are likely to be extinguished by excessive draughts or where curtains are likely to catch fire.

#### Separate kitchen off the bedsitting room

The kitchen must be of sufficient size and layout to enable food to be prepared safely and hygienically. A minimum floor area of 3.5m<sup>2</sup> for a single person, and 4.5m<sup>2</sup> for two people is required. The facilities to be provided are as those for kitchens within the bedsitting room.

#### Separate kitchen for exclusive use, but accessed outside the unit of accommodation

The facilities are as for separate kitchens off a bedsitting room. The kitchen should not be more than one floor distant from the unit of accommodation.

#### Communal kitchen

A shared kitchen should not be more than one floor distant from any unit of accommodation. It is however, acceptable for a kitchen to be a maximum of two floors distant where there is a communal room adjacent to the kitchen suitable for dining purposes, or where the kitchen is of sufficient size to serve as a kitchen/dining room.

Each shared kitchen shall comprise as a minimum:

##### i. Cooking Facilities

The kitchen must be provided with sufficient cooking appliances suitably located to enable users to cook food safely and hygienically and to minimise waiting time when more than one person wishes to cook food at the same time. In particular:

- For every five persons there must be a conventional gas or electric cooker with at least 4 burners/hobs, oven and grill.

- Up to and including 7 persons, a microwave oven of minimum 20 litres capacity, suitably located on a fixed worktop, may be provided in place of an additional conventional cooker.
- For 8 to 10 persons there must always be at least 2 conventional cookers, whether or not any supplementary microwave ovens are provided.
- For 11 to 15 persons at least 3 conventional cookers, whether or not any supplementary microwave ovens are provided.

ii. Sinks

- For every 5 persons there must be a kitchen sink complete with hot and cold water supplies and trapped waste.
- Up to and including 7 persons, a bowl-and-a-half sink and drainer will be regarded as adequate in place of providing an additional sink. Alternatively, a standard sink plus an electric dishwasher will be acceptable.
- For 8 to 10 persons there must always be at least two standard sinks
- For 11 to 15 persons at least three standard sinks whether or not any supplementary dishwasher is provided.

iii. Food Preparation

- There must be sufficient fixed work surfaces to enable each user to prepare food safely and hygienically. A 0.5 metre run of work surface for each user will generally be sufficient for this purpose, although minor variations of up to 20% shortfall is acceptable, provided there is still a good practical working area.
- For properties with more than 10 occupants sharing the same kitchen, a reduction in this standard may be appropriate as it is unlikely that all persons in the group will be preparing food at the same time.
- At least 2 twin switched power sockets set at a convenient height and safe position in relation to the kitchen facilities and work surfaces must be provided for every 5 persons. This is in addition to any dedicated sockets serving major appliances such as dishwashers, washing machines and refrigerators.

iv. Food Storage

Shared kitchens should not be used for communal food storage purposes (either refrigerated or dry food storage). This is due to the fact there may be little interaction between each occupancy and this could result in poor storage practice and the likelihood of conflict between residents.

A suitable refrigerator and food storage cupboard must be provided within each unit of accommodation. The refrigerator within the individual unit of accommodation must be of sufficient size to store an average person's dietary requirements on a day-to day basis. A freezer compartment is desirable but not essential in a single person bedsit.

viii. Ventilation

All shared kitchens must be provided with adequate mechanical extract ventilation of minimum 60 litres/second flow rate.

## **2.25 Personal washing and bathing facilities**

### Baths and showers

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

suitably located bathrooms to enable those facilities to be used on a shared basis.

Either a shower or a bath is suitable for this purpose, however a shower facility installed over a bath will not count as an additional shower. Baths must be provided with constant supplies of hot and cold water and showers with thermostatically controlled warm water. Such bathroom facilities must be provided not more than one floor distant from any intended user and must be accessible from a common area.

The extent to which such shared bathroom facilities need to be provided will be dependant upon the availability of personal washing facilities within the individual units of accommodation:

- Where there is a wash hand basin within the unit of accommodation, a readily accessible bathroom containing a bath or shower shall be provided not more than one floor distant from any user on a ratio of one bath or shower to every 5 persons sharing.
- Where the unit of accommodation does not have a wash hand basin, a readily accessible bathroom containing a bath or shower shall be provided not more than one floor distant from any user on a ratio of one bath or shower to every 4 persons sharing.

### Wash Hand Basins

Where some or all of the units of living accommodation do not contain personal washing facilities for the exclusive use of each individual household, there must be an adequate number of suitably located full sized (min. 500mm x 400mm) wash hand basins, together with constant supplies of hot and cold water to enable those facilities to be used on a shared basis.

Shared wash hand basins may be located within a bathroom, or other suitable room and must be provided on a ratio of one wash hand basin to every 4 persons sharing. Small wash hand basins or corner wash hand basins, such as those fitted only for hand washing purposes within WC compartments will not be counted for these purposes.

Every room containing a WC must be provided with a wash hand basin. Small wash hand basins or corner wash hand basins within separate WC compartments are acceptable.

For those units of accommodation having an en-suite bathroom containing a WC for the exclusive use of the occupants, but where there is no wash hand basin within the bathroom, it is acceptable for a wash hand basin to be provided within the adjoining bed sitting room.

## **2.26 Toilet facilities**

Toilet facilities shall be provided on a ratio of at least:

- One WC per five persons sharing, where the WC is separate from the bathroom, and is accessible from a communal area without going through the bathroom
- One WC per four persons sharing where the WC is located within the bathroom

Wherever possible, WCs should be located not more than one floor distant from any bedroom

<b>NUMBER OF PERSONS SHARING</b>	<b>FULL SUITE</b>	<b>BATH ONLY</b>	<b>SEPARATE WC</b>
<b>Up to 4</b>	<b>1</b>		
<b>5</b>	<b>1</b>		<b>1</b>
<b>5</b>		<b>1</b>	<b>1</b>
<b>6, 7 or 8</b>	<b>2</b>		
<b>9</b>	<b>1</b>	<b>1</b>	<b>1</b>
<b>9 or 10</b>	<b>2</b>		<b>1</b>
<b>11 or 12</b>	<b>3</b>		

<b>13, 14 or 15</b>	<b>3</b>		<b>1</b>
<b>16</b>	<b>4</b>		
<b>17,18,19 or 20</b>	<b>4</b>		<b>1</b>

## 2.27 Fire precautions

The main fire protection requirements can be summarised as follows:

### Bedsit-type HMO of no more than two storeys

- i. Escape routes  
A 30-minute protected route is required, including 30-minute fire-resisting construction and FD30S doors to all risk rooms. Travel distances must not be excessive.
- ii. Fire separation  
There is no requirement for additional fire-resisting separation between units, but walls and floors should be of sound, traditional construction.
- iii. Fire detection and alarm system  
A mixed system:  
Grade D, LD2 system with interlinked mains wired smoke alarms with integral battery back-up located throughout the escape route

Where cooking facilities are sited within the bedsits:

- interlinked heat alarms with integral battery back-up located in each bedsit; **and**
- additional non-interlinked smoke alarm with integral battery back-up located in each bedsit (Grade D LD3).

Where cooking facilities are sited in shared kitchen:

- interlinked smoke alarms with integral battery backup located in each bedsit;
- interlinked heat alarms with integral battery back-up located in each communal kitchen;
- and**
- additional interlinked smoke alarms with integral battery back-up located in any cellar.

- iv. Lighting of escape routes  
Emergency escape lighting required only if the route is long or complex or where there is no effective borrowed light. Conventional artificial lighting required.
- v. Fire-fighting equipment  
A fire blanket is to be provided in each bedsit with cooking facilities and in shared kitchens. A simple multipurpose extinguisher on each floor in the common parts is recommended
- vi. Fire safety signs  
Signage is required along escape route if the escape route is complex.
- vii. Surface finishes & floor coverings  
See paragraphs 28-29 of LACoRS "Housing – Fire Safety"
- viii. Management and maintenance of fire safety  
A full 30-minute protected route is the preferred option. However, in two-storey, normal risk HMOs the provision of suitable escape windows from all bedsit rooms may be acceptable in lieu of a fully protected route.

### Bedsit-type HMO of three or four storeys

- i. Escape routes  
A 30-minute protected route is required, including 30-minute fire-resisting construction and FD30S doors to all risk rooms. Travel distances must not be excessive.
- ii. Fire separation

There is no requirement for additional fire-resisting separation between units, but walls and floors should be of sound, traditional construction.

iii. Fire detection and alarm system

A mixed system:

Grade A, LD2 system with smoke detectors located throughout the escape route

Where cooking facilities are sited within the bedsits:

- interlinked heat detectors located in each bedsit; **and**
- additional Grade D, non-interlinked smoke alarm with integral battery back-up located in each bedsit.

Where cooking facilities are sited in shared kitchen

- interlinked smoke detectors located in each bedsit;
- heat detectors located in each kitchen; **and**
- additional interlinked smoke detectors located in any cellar.

iv. Lighting of escape routes

Conventional lighting is required.

Emergency escape lighting maybe appropriate if the route complex or there is no effective borrowed light.

v. Fire-fighting equipment

A fire blanket is to be provided in each bedsit with cooking facilities and in shared kitchens

A simple multi-purpose extinguisher on each floor in the common parts is recommended

vi. Fire safety signs

Final exit sign and signage is required along the escape route if the escape route is complex

vii. Surface finishes & floor coverings

See paragraphs 28-29 of LACoRS "Housing – Fire Safety

viii. Management and maintenance of fire safety

See paragraph 32 of LACoRS "Housing – Fire Safety

## 2.28 Heating

All units of accommodation must be provided with an adequate fixed form of heating to all habitable rooms.

Within the main living room (which in the case of a bedsit will usually be the only room), the heating appliance must be capable of achieving a room temperature of at least 21°C within one hour of turning on when the air temperature outside is -1°C.

Within any separate bedroom a room temperature of 18°C will be sufficient.

For heating to be properly used by the tenants, it must be affordable. Central heating is the preferred option but electric night storage heaters and balanced flue gas heaters are also satisfactory. Heaters which use full price electricity are not acceptable as the main form of heating.

Paraffin heaters, LPG heaters and freestanding plug-in electric heaters are not acceptable.

Where open-flue gas fires are provided in a room used for sleeping purposes, they must be of modern design and fitted with an automatic oxygen depletion cut-off device. The room must also have a carbon monoxide detector.

All heaters, other than water filled radiators, must be suitably positioned such that there is at least two metres between the heater and any bedding, and such heaters must also not be located where curtains are likely to catch fire.

Whichever form of heating is installed it must be controllable by the occupants at all times. Where heating is provided to any communal rooms or areas, the running costs must be met out of general rental charges or general energy charges rather than any type of prepayment meter.

All heating appliances must be fixed to either the wall or the floor and be provided with an appropriate base or surround if one is specified by the appliance manufacturer.

All gas heaters or boilers of any type must be properly serviced and maintained in a safe condition in accordance with the manufacturer's recommendations and the Gas Safety (Installation and Use) Regulations 1998 (as amended).

All bathrooms, whether for exclusive or shared use must also be provided with adequate heating. Electric fan or radiant wall heaters are acceptable in bathrooms provided they are designed to operate in moist atmospheres.

## **2.30 Category B HMOs - shared houses and shared flats**

### **2.31 Definition**

Shared houses and flats are where the whole property has been rented out by an identifiable group of sharers, such as students, work colleagues or friends, as joint tenants. Each occupant normally has their own bedroom but they share the kitchen, dining facilities, bathroom, WC, living room and all other parts of the house. All the tenants will have exclusive legal possession and control of all parts of the house, including all the bedrooms. There is normally a significant degree of social interaction between the occupants and they will, in the main, have rented out the house as one group. There is usually a single joint tenancy agreement. In summary, the group will possess many of the characteristics of a single family household, although the property is still legally defined as a HMO because the occupants are not all related.

### **2.32 General principles of occupation**

No room is to be occupied by more than two persons.

Persons of the opposite sex over the age of 10 will not be permitted to share the same room for sleeping purposes unless they are of marriageable age and are either married or living as partners.

The sharing of a room for sleeping purposes by persons who are neither related or living as a married couple is not permitted.

Only rooms designated as a living room, bedroom or bed/sitting room may be used for living or sleeping purposes.

Each separate bedroom within a shared house is regarded as a unit of accommodation for the purpose of assessing amenity standards.

Circulation spaces such as hallways, landings and other rooms such as kitchens, bathrooms or cellars, roof spaces etc. are not suitable for use as sleeping/living accommodation.

Irrespective of overall floor area, consideration will be given to the shape and usable living space within the room when determining its suitability for occupation. No account will be taken of any part of a room where the ceiling height is less than 1.5m.

Rooms that can only be accessed by residents having to go into the external air in order to gain access to the communal facilities within the main part of the premises are not permitted.

## 2.33 Room sizes and permitted occupation

The following are the minimum floor areas required:

i. One Person Unit of Accommodation

- i. A bedroom/study where all occupants of the house have access to a separate communal living room – 6.51m<sup>2</sup>
- ii. A bedroom/study where all occupants of the house do not have access to a separate communal living room – 10m<sup>2</sup>

Two Person Units of Accommodation

- i. A bedroom/study where all occupants have access to a separate communal living room - 11m<sup>2</sup>
- ii. A bedroom/study where all occupants do not have access to a separate communal living room - 15m<sup>2</sup>

ii. Communal Rooms

i. Kitchen

Communal kitchens within shared houses will be intensively used, with perhaps several people attempting to prepare their own separate meals at the same time. It is therefore important for there to be adequate space for all of the facilities to be installed and properly arranged so that food can be safely and hygienically prepared and cooked.

The overall floor area of a kitchen may not be so important as the usable space available. For instance a large kitchen with three or four doorways opening into it may have less usable space than a smaller kitchen with only one or two doorways.

As a general guide the following minimum overall floor areas for communal kitchens will apply:

- Kitchen for 2 to 5 persons - 6.5m<sup>2</sup>
- Kitchen for 6 persons - 7.5m<sup>2</sup>
- Kitchen for 7 persons - 8.5m<sup>2</sup>
- Kitchen for 8 persons - 9.5m<sup>2</sup>
- Kitchen for 9 to 10 persons - 10.5m<sup>2</sup>
- Kitchen for 11 persons - 11.5m<sup>2</sup>
- Kitchen for 12 persons - 12.5m<sup>2</sup>
- Kitchen for 13 to 15 persons - 13.5m<sup>2</sup>

A single kitchen would not normally be suitable for use by more than 15 persons, regardless of its' size.

(ii) Dining Kitchen

Where a kitchen is large enough for it to be also used as a dining room, it is important that there is sufficient space for the majority of the intended number of users to sit around a table without impinging upon the working area of the kitchen. The overall shape, layout and positioning of doorways may influence the amount of usable space available.



As a general guide the following minimum floor area will apply:

- Dining kitchen for 2 to 5 persons - 11.5m<sup>2</sup>
- an additional 1m<sup>2</sup> for every additional person thereafter.

(iii) Combined Living Room and Dining Room

In the majority of shared houses there is a communal living room which also serves as a dining room. There must be sufficient space for the majority of occupiers to sit and eat a meal and also for other social activities, such as watching television etc.

As a general guide, the following floor areas will apply:

- Living room and dining room for 2 to 5 persons - 11m<sup>2</sup>
- Living room and dining room for 6 persons - 13m<sup>2</sup>
- an additional 1m<sup>2</sup> for every additional person thereafter.

(iv) Combined Living/Dining Room/Kitchen

In response to a demand for open-plan living, the kitchen facilities within the open plan room must be suitably arranged such that food preparation and cooking activities are safely separated from the adjoining dining/living area.

As a general guide:

- a combined living/dining/kitchen for 2 to 5 persons should be a minimum of 17m<sup>2</sup>
- an additional 1.5m<sup>2</sup> for every additional person thereafter.

Creating an open plan living/dining/kitchen in a three-storey house may increase the overall risk of harm from fire where the stairs rise directly from such an open-plan room. Suitable fire precautions are required in these circumstances.

## 2.34 Kitchen facilities

A shared kitchen should not be more than one floor distant from any unit of accommodation having use of it. It is acceptable for a kitchen to be a maximum of two floors distant where there is a communal dining room adjacent to the kitchen or where the kitchen is of sufficient size to serve as a kitchen/dining room.

Each shared kitchen shall comprise as a minimum:

(a) Cooking Facilities

The kitchen must be provided with sufficient suitably located cooking appliances to enable the users to cook food safely and hygienically and to minimise waiting time when more than one person wishes to cook food at the same time.

- i. For every five persons there must be a conventional gas or electric cooker with at least 4 burners/hobs, oven and grill.
- ii. For up to and including 7 persons a microwave oven of minimum 20 litres capacity, suitably located on a fixed worktop, may be provided in place of an additional conventional cooker.
- iii. For 8 to 10 persons there must always be at least 2 conventional cookers, and for 11 to 15 persons at least 3 conventional cookers, whether or not any supplementary microwave ovens are provided.

(b) Sinks

- i. For every 5 persons there must be a kitchen sink complete with hot and cold water supplies and trapped waste.

- ii. Up to and including 7 persons, a bowl-and-a-half sink and drainer will be regarded as adequate in place of providing an additional sink. Alternatively, a standard sink plus an electric dishwasher will be acceptable.
- iii. For 8 to 10 persons there must always be at least two standard sinks
- iv. For 11 to 15 persons at least three standard sinks whether or not any supplementary dishwasher is provided.

#### (c) Food Preparation

There must be sufficient fixed work surfaces to enable each user to prepare food safely and hygienically:

- i. 0.5m run of work surface for each user will generally be sufficient for this purpose although up to a 20% shortfall is acceptable, provided there is still a good practical working area.
- ii. For properties with more than 10 occupants sharing the same kitchen, a reduction in this standard may be appropriate.
- iii. At least two twin switched power sockets set at a convenient height and safe position in relation to the kitchen facilities and work surfaces must be provided for every 5 persons, in addition to any dedicated sockets serving major appliances such as dishwashers, washing machines and refrigerators.

#### (d) Food Storage

Adequate refrigerated food storage must be provided either within the shared kitchen or within a room directly adjacent to the kitchen if space is a particular problem.

- i. For every 3 persons, there must be a standard domestic refrigerator of at least 100 litres capacity and a freezer compartment of at least 15 litres capacity.
- ii. A tall upright fridge freezer will be acceptable for every 5 persons, with a fridge capacity of around 140 to 180 litres and a freezer capacity of around 70 to 90 litres.
- iii. A combination of separate larder refrigerators and freezers will be acceptable, provided they give an approximate equivalent standard.
- iv. Adequate dry/canned food storage and utensil storage cupboards must be provided. A 500mm base unit or 1000mm wall unit per person will be acceptable for this purpose. The space beneath a sink is not acceptable for food storage.

#### Ventilation

All shared kitchens must be provided with adequate mechanical extract ventilation of minimum 60 litres/second flow rate.

## **2.35 Personal washing and bathing facilities**

#### (a) Baths and Showers

A bathroom containing a bath or shower shall be provided on a ratio of at least one bath or shower for every five persons sharing. A shower facility installed over a bath will not count as an additional shower.

Shared bathrooms must be accessible from a communal area within the property and must be of sufficient size to enable users to dry themselves and get dressed safely and conveniently.

Bathrooms should, wherever possible, be situated not more than one floor in distance from any bedroom. However, as many terraced houses have already have bathroom facilities installed within a ground floor rear extension, it will be acceptable for the bathroom to be situated up to two floors in distance.

**(b) Wash Hand Basins**

All bathrooms or separate compartments containing a WC must be provided with a wash hand basin together, with constant supplies of hot and cold water, trapped waste pipe and a tiled splashback.

**2.36 Toilet facilities**

Toilet facilities shall be provided on a ratio of at least:

- i. One WC per five persons sharing where the WC is separate from the bathroom and is accessible from a communal area without going through the bathroom
- ii. One WC per four persons sharing, where the WC is located within the bathroom

Wherever possible, WCs should be located not more than one floor distant from any bedroom. Since many terraced houses have already have bathroom and toilet facilities installed within a ground floor rear extension, it will be acceptable for the WC to be situated up to two floors in distance.

NUMBER OF PERSONS SHARING	FULL SUITE	BATH ONLY	SEPARATE WC
Up to 4	1		
5	1		1
5		1	1
6, 7 or 8	2		
9	1	1	1
9 or 10	2		1
11 or 12	3		
13, 14 or 15	3		1
16	4		
17, 18, 19 or 20	4		1

**2.37 Fire precautions**

**1. Shared house of no more than two storeys**

**i. Escape routes**

There is no requirement for full 30-minute protected route, but the escape route should have sound, traditional construction and should not pass through risk rooms.

There is no requirement for fire doors, but sound, well-constructed and close-fitting conventional doors are required. Alternatively, provide suitable escape windows from bedrooms and living rooms.

**ii. Fire separation**

There is no requirement for additional fire resistance, but walls and floors should be of sound, traditional construction. If a basement/cellar is present, 30-minute separation between the cellar and the ground floor escape route is the ideal.

- iii. Fire detection and alarm system  
Grade D, LD3 system with interlinked mains wired smoke alarms with integral battery back-up located in the escape route at all floor levels;
  - additional interlinked heat alarm with integral battery back-up located in the kitchen;
  - additional interlinked smoke alarm with integral battery back-up located in the lounge; **and**
  - additional interlinked smoke alarms with integral battery back-up located in any cellar.
- iv. Lighting of escape routes  
There is no requirement for emergency escape lighting, but conventional artificial lighting is required.
- v. Fire fighting equipment
  - A fire blanket is to be provided in the kitchen
  - A simple multi-purpose fire extinguisher in the hallway is recommended.
- vi. Fire safety signs  
No requirement.
- vii. Surface finishes & floor coverings  
No requirement.
- viii. Management and maintenance of fire safety  
It is recommended that all doors are kept closed at night.

Where construction standards are poor, travel distances are long or other higher risk factors are present, a 30-minute protected route may be required.

## 2. Shared house of three or four storeys

- i. Escape routes  
A 30-minute protected route is required, including 30-minute fire-resisting construction and FD30 doors to all risk rooms, without smoke seals. Travel distance must not be excessive.
- ii. Fire separation  
There is no requirement for additional fire resistance, but walls and floors should be of sound, traditional construction. If a cellar is present, 30-minute separation is required between the cellar and the ground floor escape route.
- iii. Fire detection and alarm system  
A Grade D, LD3 system with interlinked mains wired smoke alarms with integral battery back-up located in the escape route at each floor level;
  - additional interlinked heat alarm with integral battery back-up located in the kitchen;
  - additional interlinked smoke alarm with integral battery back-up located in the lounge; **and**
  - additional interlinked smoke alarms with integral battery back-up located in any cellar.
- iv. Lighting of escape routes  
Emergency escape lighting required only if the route is long or complex or where there is no effective borrowed light. Conventional artificial lighting required.

- v. Fire-fighting equipment  
A fire blanket is to be provided in the kitchen.  
A simple multi-purpose fire extinguisher on each landing is recommended.
- vi. Fire safety signs  
Signage is only required if the escape route is complex.
- vii. Surface finishes & floor coverings  
No requirement.
- viii. Management and maintenance of fire safety  
Three-storey properties only - the ideal situation is for the escape route to be enclosed in 30-minutes fire resisting construction and FD30 fire doors. However, in existing three-storey shared houses of low risk it may be possible to accept existing walls and partitions if 20-minutes' fire resistance can be achieved. This is likely to be met if walls and partitions are of sound, conventional construction. Sound lath and plaster construction should meet this requirement.

Doors onto the escape route may be acceptable if they are of sound, solid construction, are close fitting and self-closing.

## 2.38 Heating

All units of accommodation must be provided with an adequate fixed form of heating to all habitable rooms.

Within the main living room (which in the case of a bedsit will usually be the only room), the heating appliance must be capable of achieving a room temperature of at least 21°C within one hour of turning on when the air temperature outside is -1°C.

Within any separate bedroom a room temperature of 18°C will be sufficient.

For heating to be properly used by the tenants, it must be affordable. Central heating is the preferred option but electric night storage heaters and balanced flue gas heaters are also satisfactory. Heaters which use full price electricity are not acceptable as the main form of heating.

Paraffin heaters, LPG heaters and freestanding plug-in electric heaters are not acceptable.

Where open-flue gas fires are provided in a room used for sleeping purposes, they must be of modern design and fitted with an automatic oxygen depletion cut-off device. The room must also have a carbon monoxide detector.

All heaters, other than water filled radiators, must be suitably positioned such that there is at least two metres between the heater and any bedding, and such heaters must also not be located where curtains are likely to catch fire.

Whichever form of heating is installed it must be controllable by the occupants at all times. Where heating is provided to any communal rooms or areas, the running costs must be met out of general rental charges or general energy charges rather than any type of prepayment meter.

All heating appliances must be fixed to either the wall or the floor and be provided with an appropriate base or surround if one is specified by the appliance manufacturer.

All gas heaters or boilers of any type must be properly serviced and maintained in a safe condition in accordance with the manufacturers recommendations and the Gas Safety (Installation and Use) Regulations 1998 (as amended).

All bathrooms, whether for exclusive or shared use must also be provided with adequate heating. Electric fan or radiant wall heaters are acceptable in bathrooms provided they are designed to

operate in moist atmospheres.

## **2.40 Category C HMOs – Halls of Residence**

This section is no longer used

## **2.50 Category D HMOs - Supported Accommodation (Hostels and Bed and Breakfast Establishments)**

### **2.51 Definition**

Properties providing supported accommodation are also known as 'hostels', 'guest houses' and 'bed and breakfast hotels'. They provide accommodation for people with no other permanent place of residence, as distinct from hotels which provide accommodation for visitors to an area.

This category includes establishments used by local authorities to house homeless families or persons, pending permanent placement, and similar establishments which provide accommodation for people who would otherwise be homeless. It also includes bona-fide hotels which used on a casual basis, and hotels housing a mixture of homeless households and visitors.

Each occupant (or family) usually has exclusive use of a room, but generally share bathroom and toilet facilities, although in some cases there may be en-suite facilities.

Some meals may be provided on a catered basis, although some supported accommodation operate on as self-catering. There is usually a communal living room and dining room.

### **2.52 General Principles of Occupation**

- i. The sharing of a room for sleeping purposes by persons of the opposite sex over the age of 10 years, who are neither related nor living as a married couple or partners, will not be permitted.
- ii. Generally, no bedroom shall be occupied by more than two persons. All children count as one person.
- iii. Family rooms may only to be used as temporary accommodation, and for a maximum of four persons. Occupation must be limited to a maximum of 30 nights unless there are exceptional circumstances, which must be agreed by the local housing authority. Family includes married couples, or couples living as husband and wife or equivalent same sex relationship, parent, grandparent, child, step-child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin.
- iv. Rooms containing cooking facilities are not suitable to accommodate families with children below the age of five years.
- v. No unit of accommodation shall be occupied on the basis of a divided or shared tenancy or licence.  
This is to avoid the situation arising whereby a unit of accommodation may be occupied by different persons at different times of the day or different days of the week (e.g. shift workers or seasonal/migrant workers who occupy a property in connection with their employment).

- vi. Only rooms designated as bedrooms or living rooms may be used for sleeping purposes. Circulation spaces such as hallways, landings and other rooms such as kitchens, bathrooms, cellars, roof spaces etc, are unsuitable for use as sleeping/living accommodation.

Irrespective of overall floor area, consideration will be given to the shape and usable living space within the room when determining its' suitability for occupation.

No account will be taken of any part of a room where the ceiling height is less than 1.5 metres.

- vii. Rooms that can only be accessed by residents having to go into the external air in order to gain access to the communal facilities within the main part of the premises are not permitted.

## **2.53 Room sizes and permitted occupation**

The following are the minimum floor areas required:

- i. Bedrooms where kitchen facilities are provided separately, and there is a separate communal living space of adequate size for the proposed number of occupiers:
- 1 person - 6.51m<sup>2</sup>
  - 2 persons - 10.22m<sup>2</sup>
  - 3 person family room - 15m<sup>2</sup>
  - 4 person family room - 19m<sup>2</sup>
- ii. Bedrooms where kitchen facilities are provided separately, but where there is no separate communal living space of adequate size for the proposed number of occupiers:
- 1 person - 10m<sup>2</sup>
  - 2 persons - 15m<sup>2</sup>
  - 3 person family room - 20m<sup>2</sup>
  - 4 person family room - 24m<sup>2</sup>
- iii. Bedrooms where kitchen facilities are provided within the room, and there is a separate communal living space of adequate size for the proposed number of occupiers:
- 1 person - 10m<sup>2</sup>
  - 2 persons - 14m<sup>2</sup>
  - 3 person family room - 18.5m<sup>2</sup>
  - 4 person family room - 23m<sup>2</sup>
- iv. Bedrooms where kitchen facilities are provided within the room, but where there is no separate communal living space of adequate size for the proposed number of occupiers:
- 1 person - 13m<sup>2</sup>
  - 2 persons - 20m<sup>2</sup>
  - 3 person family room - 24m<sup>2</sup>
  - 4 person family room - 28m<sup>2</sup>
- v. Communal rooms  
In short-term accommodation there must be a communal living room or rooms provided, of at least 15m<sup>2</sup> for the first four persons in occupation plus 1m<sup>2</sup> for each

additional person thereafter, unless the bedrooms meet the higher room area standard as detailed above.

In long-term accommodation, where the occupiers are likely to reside for periods of more than six months, there must be a communal living room or rooms provided, of at least 15m<sup>2</sup> for the first four persons in occupation, plus 2m<sup>2</sup> for each additional person thereafter, unless the bedrooms meet the higher room area standard as detailed above.

## 2.54 Kitchen facilities

### (a) Catered accommodation

Where meals are provided for residents, all food must be stored, handled, prepared and served in accordance with the provisions of the Food Safety Act 1990 and associated regulations (in particular the Food Hygiene (England) Regulations 2006).

All persons who are employed to handle food must have received the appropriate and approved food hygiene training, and the operation must be registered as a food business with the Regulatory Services Department.

Kitchens must be adequately equipped according to the number of meals expected to be served on a daily basis.

The following general principles apply to catered accommodation:

- i. Meals must be served and consumed on the premises in which the occupants reside.
- ii. An appropriate dining room must be provided, together with sufficient tables and chairs for the number of users. Meals may be served on a sitting basis.
- iii. Where there are insufficient catering facilities within a particular premises, meals may be prepared elsewhere and brought in, provided the food is prepared in a food safety compliant kitchen and transported in hygienic conditions under proper temperature control.

It is acceptable for hotels which have an annexe building within the same curtilage to serve meals in the main building, provided that there is safe and well-lit access between the buildings.

- iv. In some properties it is permitted for residents to prepare meals within the catering kitchen which is also used for catering purposes, provided such meals are prepared under the supervision of a person having undertaken appropriate food hygiene training. This will normally be where residents are assisted to gain skills which may help them to live independently in the community.
- v. All residents must have access to adequate kitchen facilities (separate from any catering kitchen) in order to prepare their own food. The following separate kitchen facilities shall be provided for use by residents according to the predominant characteristics of the catering operation:

1. **Two or three meals provided - breakfast and evening meal or breakfast, lunch and evening meal**

Snack kitchen facilities must be sufficient for residents to prepare their own light meals and hot drinks as follows:



- i. One set of facilities shall be provided for every **fifteen** persons consisting, as a minimum, of:
- A minimum floor area of 7m<sup>2</sup> per set of kitchen facilities.
  - One kitchen sink complete with hot and cold water supplies and trapped waste.
  - A conventional four burner/hob cooker with oven and grill or a combination microwave oven/grill of minimum 20 litres capacity,
  - A minimum two metre run of fixed work surface (minimum 500mm depth).
  - A standard work top domestic refrigerator incorporating a freezer compartment.
  - Two twin 13 amp switched power sockets suitably sited in relation to the work surface and in addition to any sockets serving major appliances.
  - Adequate storage for cooking utensils, crockery and cutlery etc.
  - A kettle for making hot drinks or a vending machine if considered appropriate.
  - Mechanical extract ventilation with a minimum 60 litres/second flow rate

Such facilities may be located within a communal room, but should preferably be located within a separate kitchen or kitchens.

ii. **One meal provided per day, usually breakfast**

One set of kitchen facilities shall be provided for every **seven** persons, consisting as a minimum of:

- A minimum kitchen floor area of 7m<sup>2</sup> per set of such kitchen facilities
- One kitchen sink complete with hot and cold water supplies and trapped waste.
- A conventional four burner/hob cooker with oven and grill or two combination microwave ovens/grills of minimum 20 litres capacity each.  
The use of microwave ovens may be more appropriate if there are any concerns over the ability of residents to prepare hot food safely.
- A minimum two metre run of fixed work surface (minimum 500mm depth).
- Two twin 13 amp switched power sockets suitably sites in relation to the work surface and in addition to any sockets serving any major appliances.
- Adequate storage for cooking utensils, crockery and cutlery etc.
- Mechanical extract ventilation with a minimum 60 litres/second flow rate

For food storage purposes a refrigerator plus adequate storage for dry/canned foods and utensils/crockery/cutlery shall be provided within each unit of accommodation.

## **(b) Self-catering accommodation**

In supported accommodation providing self-catered accommodation, food preparation facilities may be located either within each unit of accommodation or within shared kitchens.

### **1. Food Preparation Facilities within the Unit of Accommodation**

The facilities shall comprise as a minimum:

- For a single person, a gas or electric cooker with two burners/hobs, oven and grill
- For two persons, or in a family room, a gas or electric cooker with four burners/hobs, oven and grill. A microwave oven may be substituted for one or two of the burners/hobs respectively and a combination microwave oven / grill in place of a conventional oven.
- A kitchen sink and drainer with a constant supply of hot and cold water.
- Sufficient fixed work surface to enable food to be prepared safely and hygienically.
- A suitable refrigerator of adequate size according to the number of occupants. A family room would require a standard work top height refrigerator with freezer compartment.

- Sufficient storage cupboard space for dry and canned food goods plus cooking utensils, crockery and cutlery.
- Two twin switched power sockets set at a convenient height and safe position in relation to the kitchen facilities.

The kitchen area must be provided with an easily cleansable non-slip floor covering, separated from any adjoining carpeted floor area by suitable dividing strips securely fixed in position.

Cookers must be safely positioned within the room such that they do not compromise escape in the event of a fire associated with the cooker, i.e. they must not be positioned adjacent to the exit doorway. In particular gas cookers must not be positioned directly adjacent to openable windows where flames are likely to be extinguished by excessive draughts or where curtains are likely to catch fire.

## 2. **Shared Kitchens**

One set of kitchen facilities shall be provided for every five persons, consisting as a minimum of:

- A minimum kitchen floor area of 7 m<sup>2</sup> per set of kitchen facilities.
- A kitchen sink complete with hot and cold water supplies and trapped waste.
- A conventional four burner/hob cooker with oven and grill.  
The use of microwave ovens may be more appropriate if there are any concerns over the ability of residents to prepare hot food safely.
- A minimum two metre run of fixed work surface, minimum 500 mm depth.
- Two twin 13 amp switched power sockets suitably sited in relation to the work surface and in addition to any sockets serving any major appliances.

For food storage purposes, a refrigerator plus adequate storage for dry/canned foods and utensils/crockery/cutlery shall be provided within each unit of accommodation.

## **2.55 Personal washing and bathing facilities**

### 1. **Baths and showers**

If some of the units of living accommodation do not contain bathing facilities for the exclusive use of each individual person or household, then there must be an adequate number of suitably located bathrooms to enable those facilities to be used on a shared basis.

Either a shower cubicle or bath is suitable, but a shower installed over a bath will not count as an additional shower. Baths must be provided with constant supplies of hot and cold water. Showers must have thermostatically controlled warm water.

Bathroom facilities must be provided not more than one floor distant from any intended user and must be accessible from a common area.

Where there are wash hand basins within the units of accommodation, a readily accessible bathroom containing a bath or shower shall be provided, not more than one floor distant from any user, on a ratio of one bath or shower to every 5 persons sharing.

Where the units of accommodation do not have wash hand basins, a readily accessible bathroom containing a bath or shower shall be provided not more than one floor distant from any user on a ratio of one bath or shower to every 4 persons sharing.

Only one set of facilities is permitted in any communal bathroom

### 2. **Wash hand basins**

If some of the units of living accommodation do not contain personal washing facilities for the exclusive use of each individual person or household, there must be an adequate number of

suitably located, communal wash hand basins, together with constant supplies of hot and cold water to enable those facilities to be used on a shared basis. Such shared wash hand basins may be located either within a bathroom, a separate WC compartment or other suitable room and must be provided on a ratio of one wash hand basin to every 4 persons sharing.

Small wash hand basins or corner wash hand basins (such as those fitted only for hand washing purposes within WC compartments) will not be counted for communal personal hygiene purposes.

Every room containing a WC must be provided with a wash hand basin. Small wash hand basins or corner wash hand basins in separate WC compartments are acceptable, but such wash hand basins will not be counted towards the total number of communal wash hand basins for personal washing purposes.

Where a unit of accommodation has an en-suite bathroom containing a WC for the exclusive use of the occupants, there must be a wash hand basin within the bathroom or within the adjoining bedroom.

## 2.56 Toilet facilities

Toilet facilities shall be provided on a ratio of at least one WC per five persons sharing, where the WC is separate from the bathroom and accessible from a communal area without going through the bathroom.

Otherwise, one WC per four persons sharing where the WC is located within a communal bathroom

NUMBER OF PERSONS SHARING	FULL SUITE	BATH ONLY	SEPARATE WC
Up to 4	1		
5	1		1
5		1	1
6,7 or 8	2		
9	1	1	1
9 or 10	2		1
11 or 12	3		
13, 14 or 15	3		1
16	4		
17, 18, 19 or 20	4		1

## 2.57 Fire precautions

The required fire precautions are detailed in the document “Fire Safety Risk Assessment, Sleeping Accommodation”, commonly known as the fire sleeping guide. You should contact the Fire Service for advice or undertake a fire risk assessment, and complete all the recommended works.

## 2.58 Heating

All units of accommodation must be provided with an adequate fixed form of heating to all habitable rooms.

Within the main living room (which in the case of a bedsit will usually be the only room), the heating appliance must be capable of achieving a room temperature of at least 21°C within one hour of turning on when the air temperature outside is -1°C.

Within any separate bedroom a room temperature of 18°C will be sufficient.

For heating to be properly used by the tenants, it must be affordable. Central heating is the preferred option but electric night storage heaters and balanced flue gas heaters are also satisfactory. Heaters which use full price electricity are not acceptable as the main form of heating.

Paraffin heaters, LPG heaters and freestanding plug-in electric heaters are not acceptable.

Where open-flue gas fires are provided in a room used for sleeping purposes, they must be of modern design and fitted with an automatic oxygen depletion cut-off device. The room must also have a carbon monoxide detector.

All heaters, other than water filled radiators, must be suitably positioned such that there is at least two metres between the heater and any bedding, and such heaters must also not be located where curtains are likely to catch fire.

Whichever form of heating is installed it must be controllable by the occupants at all times. Where heating is provided to any communal rooms or areas, the running costs must be met out of general rental charges or general energy charges rather than any type of prepayment meter.

All heating appliances must be fixed to either the wall or the floor and be provided with an appropriate base or surround if one is specified by the appliance manufacturer.

All gas heaters or boilers of any type must be properly serviced and maintained in a safe condition in accordance with the manufacturers recommendations and the Gas Safety (Installation and Use) Regulations 1998 (as amended).

All bathrooms, whether for exclusive or shared use must also be provided with adequate heating. Electric fan or radiant wall heaters are acceptable in bathrooms provided they are designed to operate in moist atmospheres.

## **Category E – Care Homes**

This section is no longer used

## **Category F HMOs – Fully Self-Contained Flats**

### **2.71 Definition**

These are buildings which have been constructed, or converted into, fully self-contained flats. Access to the house or building is through a communal entrance doorway and hallway but thereafter the entrance to each individual flat is through a single doorway.

All amenities (WC, wash hand basin, bath or shower and kitchen facilities) must be accessible from within each individual flat, and the flat must be occupied by a single household to be regarded as self-contained.

If the property contains a flat that is in multiple occupation, this may be licensable, and would be considered to be either a Category A bedsit-type HMO or a Category B shared flat HMO, depending upon the type of tenancy agreement that is in place.

Houses which have been converted into fully self-contained flats to a proper standard in accordance with the 1991 Building Regulations or equivalent are exempt from the definition of an HMO. Houses which were converted prior to this date, or which have been subsequently converted to a lesser standard not in accordance with Building Regulations, are not included within the mandatory licensing requirements. However such properties could become subject

to licensing if the City Council were to declare any additional or selective licensing scheme in the future.

Larger individual flats which are occupied by groups of three or more unrelated persons are houses in multiple occupation in their own right, and the standards relevant to either a Category A bedsit-type HMO or a Category B shared flat HMO are applicable within each such flat.

## **2.72 General Principles Of Occupation**

The sharing of a room for sleeping purposes by persons of the opposite sex over the age of 10 years, who are neither related nor living as a married couple or partners, will not be permitted.

No bedroom shall be occupied by more than two persons. All children count as one person.

No unit of accommodation shall be occupied on the basis of a divided or shared tenancy or licence.

Only rooms designated as bedrooms or living rooms may be used for sleeping purposes.

Irrespective of overall floor area, consideration will be given to the shape and usable living space within the room when determining its suitability for occupation. No account will be taken of any part of a room where the ceiling height is less than 1.5 metres.

Each flat shall be provided with a lockable post box situated on the ground floor in a lobby or hallway accessible to the postal delivery service, unless the flat has its own front door accessible directly from the exterior.

## **2.73 Room Sizes and Permitted Occupation**

The minimum room sizes are:

One person, four room flat

Bedroom - 7m<sup>2</sup>

Living room - 11.5m<sup>2</sup>

Kitchen - 5.5m<sup>2</sup>

One person flat with separate kitchen

Bed/living room - 14m<sup>2</sup>

Kitchen - 5.5m<sup>2</sup>

One person flat with separate bedroom

Bedroom - 7m<sup>2</sup>

Kitchen/living room - 14.5m<sup>2</sup>

Two person, one bedroom flat

Bedroom - 10.5m<sup>2</sup>

Living room - 13m<sup>2</sup>

Kitchen - 5.5m<sup>2</sup>

Three person, two bedroom flat

Main bedroom - 10.22m<sup>2</sup>

Secondary bedroom - 7m<sup>2</sup>

Living room - 16m<sup>2</sup>

Kitchen - 7m<sup>2</sup>

#### Four person, three bedroom flat

Main bedroom - 10.22m<sup>2</sup>

Second bedroom - 7m<sup>2</sup>

Third bedroom - 7m<sup>2</sup>

Living room - 18m<sup>2</sup>

Kitchen - 7m<sup>2</sup>

## 2.74 Kitchen facilities

Kitchen facilities should be provided in a separate kitchen or clearly defined kitchen area within any flat, and consist of the following minimum provisions:

**Single person** - a gas or electric cooker with two burners/hobs, oven and grill

**Two or more persons** - a gas or electric cooker with four burners/hobs, oven and grill  
A microwave oven may be substituted for one or two of the burners/hobs

□

A metal or ceramic kitchen sink and drainer with a constant supply of hot and cold water

Sufficient fixed work surface to enable each user to prepare food safely and hygienically – usually 500mm per person

A suitable refrigerator of sufficient size according to the number of occupants, A standard worktop height domestic refrigerator with freezer compartment or equivalent is required in most cases.

Sufficient storage cupboard space for dry and canned food goods plus cooking utensils, crockery and cutlery.

Electric power sockets: two twin switched power sockets set at a convenient height and safe position in relation to the kitchen facilities.

Cookers must be safely positioned within the room such that they do not compromise escape in the event of a fire associated with the cooker ie. they must not be positioned adjacent to the exit doorway – in particular gas cookers must not be positioned directly adjacent to openable windows where flames are likely to be extinguished by excessive draughts or where curtains are likely to catch fire.

## 2.75 Personal Washing and Bathing Facilities for Flats

### i. Baths and Showers

Each flat must be provided with its' own bath or shower, together with constant supplies of hot and cold water. Wherever possible the bath or shower should be provided in a separate bathroom. Shower cubicles are permitted within a bedroom or the bed/living room of a one room single person flat, provided that precautions are taken to avoid condensation dampness within the room and electrical hazards

The room containing the shower must be provided with an automatic humidistat-controlled extractor fan of minimum extract capacity 60 litres per second.

Any electrical switches, sockets or equipment must be safely positioned in relation to the shower in accordance with current IEE Regulations and Part P of the Building Regulations.

ii. Wash hand Basins

Each flat must have its' own wash hand basin, together with constant supplies of hot and cold water. The wash hand basin should be provided within the bathroom but may be located within a bedroom.

Each room or compartment containing a WC must be provided with a wash hand basin.

## 2.76 Toilet Facilities for Flats

Each flat must be provided with its' own WC, which must be located either within a bathroom or in a separate compartment.

## 2.77 Fire Precautions in Flats

### Two-storey building converted into self-contained flats

i. Escape routes

A 30-minute protected route is required, including 30-minute fire-resisting construction and FD30S doors to rooms opening onto escape route. No requirement for fire doors within flats, but sound, well-constructed and close-fitting conventional doors are required. Travel distance must not be excessive

It may be possible to accept an existing lower standard of protection in the protected route if there are suitable escape windows from bedrooms and living rooms

ii. Fire separation

30 minutes' fire resistance between flats throughout is the ideal, but on risk assessment there may be no requirement for additional fire-resisting separation between units providing walls and floors are of sound, traditional construction and additional compensatory detection is fitted.

iii. Fire detection and alarm system

A mixed system:

- Grade D: LD2 coverage in the common areas and a heat detector in each flat in the room/lobby opening onto the escape route (interlinked); **and**
- Grade D: LD3 coverage in each flat (non-interlinked smoke alarm in the room/lobby opening onto the escape route) to protect the sleeping occupants of the flat.

iv. Lighting of escape routes

Conventional artificial lighting is required. Emergency escape lighting required if the route is long or complex or where there is no effective borrowed light.

v. Fire-fighting equipment

A fire blanket is to be provided in each kitchen.

A simple multi-purpose extinguisher on each floor in the common parts (ground floor hallway only if no first floor common parts) is recommended.

vi. Fire safety signs

No requirement.

vii. Surface finishes & floor coverings

See paragraphs 28-29 of LACoRS Housing – Fire Safety.

viii. Management and maintenance of fire safety

See paragraph 32 of LACoRS Housing – Fire Safety

Where the fire risk assessment identifies a higher than normal risk, the BS 5839: part 6, LD2 interpretation of “rooms or areas that present a high fire risk to occupants” may include living rooms, bedrooms and kitchens within the flats, thereby providing automatic detection in these rooms in addition to the common parts and internal entrance hall/lobby within flats.

Where this is the case, this additional detection would be an additional grade D system within the flat (i.e. a mixed system overall) so as to avoid whole-house false alarms.

### **Three- or four-storey building converted into self-contained flats**

- i. Escape routes  
A 30-minute protected route is required, including 30-minute fire-resisting construction and FD30S doors to rooms opening onto escape route. No requirement for fire doors within flats, but sound, well-constructed and close-fitting conventional doors are required. Travel distance must not be excessive
- ii. Fire separation  
30 minutes' fire resistance between flats throughout is the ideal, but on risk assessment there may be no requirement for additional fire-resisting separation between units providing walls and floors are of sound, traditional construction and additional compensatory detection is fitted
- iii. Fire detection and alarm system  
A mixed system
  - Grade A: LD2 coverage in the common areas and a heat alarm in each flat in the room/lobby opening onto the escape route (interlinked); and
  - Grade D: LD3 coverage in each flat (non-interlinked smoke alarm in the room/lobby opening onto the escape route) to protect the sleeping occupants of the flat, subject to adequate fire separation.
- iv. Lighting of escape routes  
Conventional artificial lighting required. Emergency escape lighting required if the route is long or complex or where there is no effective borrowed light.
- v. Fire-fighting equipment  
A simple multi-purpose extinguisher on each floor in the common parts.  
A fire blanket is to be provided in each kitchen.
- vi. Fire safety signs  
Final exit sign and signage along escape route if the escape route is complex.
  - i. Fire safety signs  
No requirement.
  - ii. Surface finishes & floor coverings  
See paragraphs 28-29 of LACoRS Housing – Fire Safety.

Where the fire risk assessment identifies higher than normal risk, the BS 5839: part 6, LD2 interpretation of “rooms or areas that present a high fire risk to occupants” may include living rooms, bedrooms and kitchens within the flats, thereby providing automatic detection in these rooms in addition to the common parts and internal entrance hall/lobby within flats.

Where this is the case, this additional detection would be an additional grade D system within the flat (i.e. a mixed system overall) so as to avoid whole-house false alarms.

## **2.78 Heating**

All units of accommodation must be provided with an adequate fixed form of heating to all habitable rooms.

Within the main living room, the heating appliance must be capable of achieving a room temperature of at least 21°C within one hour of turning on when the air temperature outside is – 1°C.

Within any separate bedroom a room temperature of 18°C will be sufficient.



For heating to be properly used by the tenants, it must be affordable. Central heating is the preferred option but electric night storage heaters and balanced flue gas heaters are also satisfactory. Heaters which use full price electricity are not acceptable as the main form of heating.

Paraffin heaters, LPG heaters and freestanding plug-in electric heaters are not acceptable.

Where open-flue gas fires are provided in a room used for sleeping purposes, they must be of modern design and fitted with an automatic oxygen depletion cut-off device. The room must also have a carbon monoxide detector.

All heaters, other than water filled radiators, must be suitably positioned such that there is at least two metres between the heater and any bedding, and such heaters must also not be located where curtains are likely to catch fire.

Whichever form of heating is installed it must be controllable by the occupants at all times. Where heating is provided to any communal rooms or areas, the running costs must be met out of general rental charges or general energy charges rather than any type of prepayment meter.

All heating appliances must be fixed to either the wall or the floor and be provided with an appropriate base or surround if one is specified by the appliance manufacturer.

All gas heaters or boilers of any type must be properly serviced and maintained in a safe condition in accordance with the manufacturers recommendations and the Gas Safety (Installation and Use) Regulations 1998 (as amended).

All bathrooms, whether for exclusive or shared use must also be provided with adequate heating. Electric fan or radiant wall heaters are acceptable in bathrooms provided they are designed to operate in moist atmospheres.

## **2.60 Mixed Category A and F HMOs - bedsits and flats**

In many cases houses are converted to a combination of bedsits, where occupants may share some amenities, and self-contained flats.

Such houses will always fall within the HMO definition and may be subject to mandatory licensing. The relevant standards for Category A and Category F houses would be applied as appropriate.

## **2.70 Temporary accommodation for seasonal or migrant workers**

This type of accommodation is more likely to be prevalent in rural areas, and is not known to be widespread in Birmingham.

The standards for this type of accommodation are likely to be that of either Category B - shared houses or Category D – supported accommodation.

## **Section 3:**

# **General specification applicable to amenities and associated services in all categories of HMO**

### **3.10 Kitchens**

#### **i. The room**

All kitchens, whether for exclusive or shared use, must have floor coverings which are impervious, reasonably smooth and easily cleansable. Ideally floor coverings should be slip resistant. Walls and ceilings must also be reasonably smooth such that they can be kept clean and easily redecorated.

#### **ii. Ventilation**

In addition to any natural means of ventilation, all shared kitchens must be provided with adequate mechanical ventilation. Extractor fans with an extract rate of 60 litres per second, venting directly to the external air is required.

Kitchens for exclusive use may also need to be provided with mechanical extract ventilation where there is inadequate natural ventilation, or where a gas cooker is provided and opening a window would lead to excessive draughts, which might extinguish the burner flames.

#### **iii. Lighting**

Adequate ceiling mounted electric lighting must be provided to the working area of the kitchen.

#### **iv. Layout**

Kitchens must be arranged such that hot food can be prepared and handled safely. In particular, cookers must be located away from any door which might open on to, and collide with, a person standing in front of the cooker.

There must be adequate space in front of any cooker for persons to retrieve hot food from the oven.

There should be fixed work surfaces either side of any cooker to shield any overhanging panhandles and so that hot foods and utensils can be placed down quickly and safely.

#### **v. Sinks**

A sink must be stainless steel or have a comparable impermeable, easily cleansable surface. They must be provided with a drainer, overflow, supplies of constantly available hot and cold water and all requisite drainage. The sink top (or surface into which it is inset) must be a minimum 900mm x 500mm.

Sinks must have a tiled or similar waterproof splashback. Where the sink abuts a window reveal, the sill of the window must be clad in waterproof tiles or similar, extending to a minimum height of 150mm above the sink top. There must be a flexible waterproof joint between the sink and the splashback.

#### **vi. Food Preparation Surfaces**

Work surfaces must be of impermeable, heat resistant, durable and easily cleansable materials. Where these are fixed, the joint between the food preparation surface and any abutting units or the wall must be watertight, and a tiled splashback provided, clad in waterproof tiles or similar, extending to a minimum height of 150mm above the sink top. There must be a flexible waterproof joint between the sink and the splash back.

vii. **Food Storage Cupboards**

The internal and external surfaces of all cupboards must be of durable and easily cleansable materials and, where wall mounted, must be fixed securely to take the weight of stored tinned/bottled foods. Food storage underneath a sink is not acceptable.

viii. **Cooking Appliances**

Cookers must be installed according to the manufacturer's instructions and, in particular, electric cookers must be connected via an appropriately rated switch and fuse. Gas cookers must be fitted with a safety restraint to prevent tipping over.

ix. **Compact Domestic Kitchens**

Compact domestic kitchens in a modular layout may be provided in bedsits and flats. Provided such kitchen facilities are installed in accordance with the manufacturer's recommendations, and give an equivalent level of provision to that required, then their use is acceptable.

## **3.20 Bathrooms and shower rooms**

i. **The Room**

Bathrooms must be of adequate size to enable users to dry themselves and get dressed without undue restriction. Showers fitted in to small restricted spaces such as understairs cupboards may not be suitable.

Floors to bathrooms must be impervious, reasonably smooth, and easily cleanable. Ideally floor coverings should be slip-resistant.

Walls and ceilings must also be reasonably smooth, such that they can be kept clean and be easily redecorated.

Obscured glazing must be provided to bathroom windows and doors as appropriate, and all shared bathrooms to be fitted with a privacy lock/bolt.

ii. **Ventilation**

All bathrooms and shower rooms must be adequately ventilated. Mechanical extract ventilation giving an extract rate of at least 15 litres per second must be fitted where there is no openable window to provide natural ventilation.

Any extractor fan installed in a bath or shower room must be provided with an "overrun" device which is connected to the artificial lighting circuit in the room and ensures that the fan continues to operate for 20 minutes after the artificial room lighting is switched off. This helps to remove moisture from the room, which might otherwise lead to condensation and black mould growth.

Alternatively a humidistat controlled extractor may be provided.

iii. **Baths and Showers**

Baths should be a minimum 1.67m in length and be provided with a tiled splashback to a height of at least 150mm where they abut walls. A waterproof seal between the bath must be provided using a flexible silicon mastic sealant or a sealant gasket with a similar degree (high) elasticity.

Where showers are provided, they must either be purpose-designed waterproof shower cubicles, or be formed from a proper shower base with waterproof wall tiling and associated waterproof screen/doors. Seals between the shower base and walls must be provided with elastic mastic sealant as specified for baths. Shower trays should be minimum 800 mm x 800 mm

Showers which rely on a curtain to contain the water spray are not permitted above the ground floor.

Baths or showers shall not be provided in kitchens.

All baths and showers must be provided with an adequate supply of constantly available hot and cold water and adequate drainage. Hot water to showers must be capable of being delivered at a thermostatically controlled temperature.

iv. **Wash hand basins**

All wash hand basins must be provided with supplies of constantly available hot and cold water, plus adequate drainage. Wash hand basins must be firmly and securely anchored to the wall which they abut or surface in which they are inset.

Unless there are space constraints, the minimum dimension of wash-basins shall be 500mm x 400mm.

All washbasins must be provided with an overflow and splashback with a minimum height of 150mm where they abut a wall and be sealed to the splashback using a flexible silicon mastic sealant.

v. **Water closets**

Every separate room or compartment containing a WC must have:

- an easily cleansable impervious floor covering
- reasonably smooth wall and ceiling surfaces which can be easily cleaned and redecorated
- adequate natural or mechanical extract ventilation supplemented by permanent background ventilation in the form of an air brick or trickle vent
- obscured glazing to windows and doors as appropriate
- a privacy lock fitted to the door

WC pedestals must be securely fixed to the floor and properly connected to the drainage system in accordance with current building Regulations. They must have a high or low level cistern fitted with an efficient flushing mechanism.

WCs accessed from outside do not count towards the overall number of WCs available for use in a property.

### **3.30 Cold Water Supplies**

All HMOs must be provided with an adequate water supply via a proper service connection from the public supply provided by the statutory undertaker.

The supply of water for drinking purposes must be taken from the rising main. Where there is any doubt as to whether a supply point is suitable for drinking water it shall be conspicuously marked accordingly.

All water supply pipes and any water control valves, apparatus and fittings connected with a supply of water must be protected from frost where they are vulnerable to freezing.

The water supply must be capable of being turned off in case of emergency or to enable repair works to be carried out – stop valves should therefore be provided to isolate individual units of accommodation or each floor within the HMO as appropriate.

### 3.40 Hot Water Supplies

All systems supplying hot water must be designed and installed so that hot water is available at wash hand basins, sinks, baths or showers at all reasonable times. Electric batch boiling appliances are not acceptable as a means of heating water. Electric instantaneous type heaters are only acceptable for sinks if they are rated at 5 Kw or above, and are fitted with a proper hot water delivery arm.

The cost of supplying hot water to wash-basins, sinks, baths or showers which are exclusive to particular lets may be met out of general rental charges, or may be charged for by meter, as long as the occupier of the let has total and exclusive control over the use of that hot water.

Any hot water storage tank must be provided with an accessible stop cock to the down service pipe, and be adequately insulated.

Hot water to showers must be capable of being delivered at a thermostatically controlled temperature.

### 3.50 Disposal of waste water and drainage

All waste pipes serving sinks, wash hand basins, baths and showers must be of the appropriate diameter and fitted with a trap. Waste pipes must be adequately supported along their entire length to prevent sagging and to maintain proper drainage falls. Waste water must be discharged in to the correct drainage system in accordance with current Building Regulations and Water Authority Bye-Laws.

## Section 4: Property and Tenancy Management Standards

### 4.10 The Management of Houses in Multiple Occupation (England) Regulations 2006

These regulations apply to most HMOs, whether licensable or not, but do not apply to HMOs comprising properties converted into self-contained flats – these will become subject to a separate set of management regulations due to come in to force in October 2006. In the meantime, houses converted entirely in to self-contained flats will continue to be subject to The Housing (Management of Houses in Multiple Occupation) Regulations 1990 which were previously in force. The new regulations detail the management standards to be met and require the manager of the premises to carry out certain duties to maintain their property, taking account of the age, character, locality and prospective life of the house. The Regulations are summarised below but a full copy may be obtained by clicking on the link [www.opsi.gov.uk](http://www.opsi.gov.uk). Follow the links to *legislation*; *statutory instruments*; *year 2006*; *statutory instrument number 372*. They may also be purchased from The Stationery Office Limited.

The duties of the manager are as follows:

- i. **To display their contact details** (Regulation 3)  
The manager's name, address and contact telephone number must be clearly displayed in a prominent position. On the wall in the entrance hall is usually the best place.
- ii. **To maintain all means of escape from fire** (Regulation 4)  
All fire doors must be maintained in a good condition, free from damage and fully self-closing into the rebates of the frame.

The main routes of escape e.g. exit doors, landings, staircases and hallways must be kept free from obstruction.

Escape routes must be clearly indicated by fixing notices in appropriate places in all HMOs having five or more occupants.

The fire detection and warning system and emergency lighting system must be tested regularly. For most small and medium sized HMOs, a monthly test by the landlord should suffice, in addition to a thorough annual test by a suitably competent person (such as a qualified electrician or specialist fire alarm engineer). For larger HMOs, more regular testing may be required.

Fire-fighting equipment, where provided, must also be maintained in good working order.

iii. **To take safety measures** (Regulation 4)

All necessary measures must be taken to protect the occupiers from injury, having regard to the design, the structural condition and the number of occupiers in an HMO. In particular this relates to the prevention of accidents associated with access to any roof or balcony and any low window sill

iv. **To maintain the water supply and drainage system** (Regulation 5)

The water supply or drainage system must be maintained in a good, clean and working condition. It must not be unreasonably interrupted from use by any occupier, and any water storage tank must be covered and kept clean. Any water fitting which is liable to damage by frost must be suitably protected

v. **To maintain gas and electrical supplies and to provide safety certificates** (Regulation 6)

The gas installation, and any appliances, must be tested annually by a Gas Safe registered engineer who will issue a gas safety record. This must be supplied to the local authority within 7 days of any written request to do so.

The electrical installation must be inspected and tested at least every five years by a qualified electrician who must issue a test certificate. Again, this must be supplied to the local authority within 7 days of a written request to do so.

Neither the gas or electricity supplies must be unreasonably interrupted.

vi. **To maintain all common parts and installations within the property** (Regulation 7)

All common parts of the HMO e.g. entrance hallways, entrance doors, porches, steps, staircases, landings, shared bathrooms and communal kitchens, plus all shared fittings and appliances must be maintained in a good state of repair and safe and working condition and kept clear from obstruction. Communal areas must also be kept clean and well decorated.

In HMOs where the occupants are previously acquainted with each other and rent the house under the terms of a single tenancy agreement, for example a student shared house, it may be acceptable to expect the tenants to undertake the cleaning of the common areas on a group basis. The manager should visit from time to time, by prior appointment, to ensure that the common areas are being maintained to a satisfactory standard of cleanliness.

In all other types of HMO, cleaning of communal areas will normally be the responsibility of the manager

- vii. **To maintain in good order and repair any outbuildings, yards, gardens or boundary fences** (Regulation 7)  
Any outbuilding, yard, forecourt, boundary wall, fence or railing belonging to the HMO must be maintained in good and safe repair so as not to constitute a danger to the occupiers. Any yard or garden belonging to the HMO must be kept in a safe and tidy condition
- viii. **To maintain each unit of accommodation** (Regulation 8)  
Each unit and any furnishings must be clean at the beginning of a person's occupation. The internal structure, any fixtures, fittings or appliances, any window or other means of ventilation must be maintained in good repair, as long as the tenant has treated the accommodation properly in accordance with the conditions contained within his lease or tenancy agreement.
- ix **To ensure refuse is stored and disposed of adequately** (Regulation 9)  
A sufficient number of bins must be provided for the storage of refuse pending disposal. Arrangements must be in place to ensure that all refuse is removed and disposed on a regular basis. It is expected that one standard wheelie bin be provided per three occupiers or one large wheelie bin for more than three occupants, and that appropriate instructions are provided to each tenant at the beginning of the tenancy as to the refuse collection arrangements. or larger hostel type premises (10 or more occupiers), a trade refuse contract with the local authority would be expected. This may also be necessary for smaller premises, particularly where meals are provided
- x **The duty on all occupiers of an HMO** (Regulation 10)  
The regulations place a duty on all occupiers of an HMO to:
- Conduct themselves in a way that will not hinder or frustrate the manager in the performance of his duties.
  - Allow the manager at all reasonable times to enter any living accommodation to enable him to carry out any duty. Except in the case of emergencies, at least 24 hours' notice, either in writing or by phone, of any intended visit should be given to the occupiers.
  - Provide the manager with any information requested to enable him or her to carry out their duties.
  - Take reasonable care to avoid causing damage to the property and its' contents.
  - Store and dispose of refuse in accordance with the arrangements made by the manager.
  - Comply with the reasonable instructions of the manager in respect of any means of escape from fire, the prevention of fire and the use of fire equipment.

Under Regulation 11, the manager is not expected to carry out any works or actions with respect to the supply of water, gas or electricity or to the drainage of the house where responsibility for a particular fault or problem lies with either the local authority or the supply company. The manager is however expected to bring any such faults or problems to the attention of the appropriate person, authority or company as necessary as soon as he becomes aware of the matter (for example a blocked sewer or power failure)

It is an offence not to comply with these Regulations. A person who is found to be in contravention of these Regulations may be subject to a civil penalty or to an unlimited fine upon conviction.

This applies to both the manager of a property and to the occupiers as appropriate.

## 4.20 Management arrangements and the competency of the manager

### i. Management Arrangements

Before issuing a licence, the Council must be satisfied that the management arrangements for the property are satisfactory, and that the person involved in the management is a fit and proper person, and competent to do so. Where there are any concerns over the competency of the manager, the Council can require that s/he attends an approved training course as a condition of a licence.

Management arrangements will differ for each property, depending upon the age, size and type of house, the number and the type of tenants and the type of accommodation provided.

The issues for which arrangements should be in place are:

- A procedure for tenants to report any repairs.
- A procedure for ensuring that any repair work or general maintenance work is carried out.
- To ensure that sufficient funds are available to enable emergency repairs to be carried out.
- A procedure for checking that the emergency lighting and the fire detection and warning devices are in good working order.
- To ensure that all tenants are made aware of the fire safety procedures and the proper use of fire safety installations.
- A procedure for ensuring that the escape routes are kept free from obstructions.
- Arrangements to ensure that the gas installation and all appliances are kept in safe and good working order.
- Arrangements to ensure that the electrical installation and appliances are kept in a safe and good working order.
- To ensure that tenancies are created and terminated in accordance with the law.
- To ensure that the common areas, such as communal kitchens, bathrooms, entrance hallway and stairwells, are kept clean and in good order.
- To ensure that satisfactory arrangements are in place for the storage and collection of refuse.
- To ensure that the front and rear yards, gardens and fencing are kept in good order.

### ii Financial arrangements

The Council must ensure that suitable financial arrangements are in place, before a licence can be issued. These arrangements will vary from property to property but, in the majority of cases, the manager will need to demonstrate that arrangements have been made for the following:

- Financing the cost of repairs and general maintenance
- Receiving rents
- Receiving and handling deposits
- Paying the mortgage if appropriate
- Paying the Council Tax if appropriate
- Paying utility bills, if they are the owner's responsibility

For supported accommodation, further financial arrangements may need to be in place, such as to hire and pay staff such as caretakers, cooks, cleaners etc. and to purchase food and other supplies



## 4.30 Terms of Occupation

When a licence is issued by the Council, it will contain a number of conditions, some of which are mandatory for all licences (Schedule 1 conditions), and others will be specific to that particular property (Schedule 2 conditions).

It is a requirement for the licence holder to supply to the occupiers of the house, a written statement of the terms on which they occupy it. In many cases the landlord may already have fulfilled this requirement by the provision and signing of a Tenancy Agreement at the start of each tenancy. It is important that any such statement or tenancy agreement contains certain information, as listed below:

- Name of tenant(s) or licensee and address of property
- Name and address of landlord(s)
- Name and address of agent (if any)
- Tenancy or licence start date
- Amount of deposit paid, how held and terms of return
- Inventory of items supplied by landlord e.g. furniture
- The length of the tenancy, if a fixed term tenancy
- The amount of rent and how often it is due
- Arrangements for payment/collection of rent
- Recording of rent i.e. rent book or receipt
- How and when the rent can be increased
- Who is responsible for payment of Council Tax, water rates and fuel bills
- The repairing obligations for both parties
- Arrangements for reporting repairs
- A statement as to expected standards of behaviour of tenants and their visitors and the consequences of failing to abide by these prohibited behaviours.
- The tenants' right to quiet enjoyment of the property.
- Ending a tenancy – the notice requirements on both parties, including the need for a Possession Order and a Warrant before eviction. Procedure for ending a term of occupation under a licence.
- The landlord's right of access into the property
- The duty of the tenant to enable the landlord to perform his or her management responsibilities
- The duty of the tenant to avoid causing unnecessary damage to the property and its contents
- The duty of the tenant to store and dispose of refuse as arranged by the landlord and in accordance with local authority arrangements for refuse collection.
- The duty of the tenant to comply with the landlord's reasonable instructions in respect of any means of escape from fire, the prevention of fire and the use of fire equipment

There is a procedure to be followed to terminate any tenancy. It is a criminal offence to either illegally evict or to harass a tenant so as to cause them to leave a property, for example threatening them or cutting off supplies of fuel or water.

The Council will take legal action against anyone committing harassment or illegal eviction. In addition, the HMO licence may be revoked and a Management Order may be made whereby the Council will take over the day to day management of the property, including receipt of the rent.

## 4.40 Temporary Exemption Notices

If a landlord or a person in control of a licensable property intends to stop operating as an HMO, or reduce the number of occupants, and can give clear evidence of this, then he or she can apply for a Temporary Exemption Notice (TEN).

Where occupation levels are to be reduced, the tenants being displaced must confirm (in writing if possible) that they intend to vacate the property.

Where it is intended that a property will cease to be in multiple occupation, the landlord must be able to provide evidence that any existing tenants have made suitable alternative housing arrangements and that they will have moved out within 3 months from the date of application for the TEN.

If necessary, consideration may be given to issuing a further TEN for another 3 months but each case will be considered separately. A person who applies for a TEN but is refused may appeal to HM Courts and Tribunal, First-tier Tribunal (Property Chamber) Residential Property within 28 days.

Upon expiry of a TEN, the property must either be licensed, cease to be an HMO, be no longer licensable or become subject to an Interim Management Order.

## **4.50 HMO Declarations**

The Council may declare a building or part of a building to be an HMO if it is used for some other purpose, but the living accommodation is also occupied, by persons who do not form a single household, as their main residence and this constitutes a significant use of that accommodation.

This may be most commonly used for premises operating as bed & breakfast type Establishments, where a number of rooms are also used to house people who would otherwise be homeless.

Such use will be deemed as significant if 25% or more of the total number of sleeping rooms are occupied by persons in receipt of housing benefit or paying a weekly or monthly rent as opposed to an overnight charge.

In order to make such a declaration, the Council must serve a notice on the owner and/or manager of the premises who will have the right to appeal to HM Courts and Tribunal, First-tier Tribunal, (Property Chamber) Residential Property within 28 days. If no appeal is made the premises will be deemed to be an HMO and may require to be licensed. If circumstances change and the premises is no longer occupied in a similar manner, the Council may revoke the declaration, either by its own initiative or on application by the owner or manager.

## **4.60 Regulatory Powers**

### **i. Offences**

It is an offence if a landlord or the person in control of a property either fails to apply for a licence for a licensable property, or allows a property to be occupied by more people than are permitted under the licence without reasonable excuse. A civil penalty or unlimited fine upon conviction may be imposed.

It is also an offence to break any of the licence conditions without reasonable excuse and a civil penalty or unlimited fine upon conviction may be imposed.

### **ii. Interim Management Orders**

Where the condition of a property is such that it presents an imminent risk to the health and safety of the occupiers, or if a landlord fails to apply for a licence, or to bring an HMO up to the required standard, or fails to meet the fit and proper person criteria, the Council can issue an Interim Management Order (IMO), which allows it to step in and manage the property. The owner keeps their rights as an owner, but the rental income will be collected by the Council and can be used to fund repairs and other charges incurred in managing the property.

The order can last for a year but, once it has expired, the Council must decide whether a licence can now be issued, or whether to make a Final Management Order (FMO).

An IMO can also be issued if the Council intends to revoke a licence and it is necessary to make the order to protect the health, safety and welfare of the occupants of the property.

iii. **Final Management Orders**

A Final Management Order (FMO) cannot be made unless immediately beforehand an IMO or another FMO was in force.

A Final Management Order lasts for a maximum of five years, but can be renewed. It transfers the management of the house to the Council for the duration of the order. As with an IMO the owner retains rights as an owner, but the Council will collect the rental income to fund repairs and other charges incurred in managing the property and may also create new tenancies without the owner's agreement.

The Council would need to produce a written management scheme detailing how it would intend to manage the property during the period the FMO was in force.

A person who is aggrieved by the making of a FMO may appeal to HM Courts and Tribunal, First-tier Tribunal, (Property Chamber) Residential Property within 28 days.

## **4.70 Rent Repayment Orders**

A tenant living in a HMO that should have been licensed, but was not, can apply to the HM Courts and Tribunal, First-tier Tribunal, (Property Chamber) Residential Property to claim back any rent they have paid during the unlicensed period, up to a limit of 12 months. HM Courts and Tribunal, First-tier Tribunal, (Property Chamber) Residential Property must make such an order if the landlord has been found guilty of the offence of failing to obtain a licence or where an order has already been made in favour of a local authority to claim back housing benefit payments.

Councils can also reclaim any housing benefit that has been paid during the time the property was without a licence, where a landlord has been found guilty of the offence of failing to obtain a licence, or if the Council has sufficient evidence that an offence has been committed.

## Appendix 4

### SCHEDULE 1 LICENCE CONDITIONS

#### ***CONDITIONS FOR REGULATING THE CONDITION, MANAGEMENT, USE AND OCCUPATION OF HOUSES REGULATED BY BIRMINGHAM CITY COUNCIL UNDER MANDATORY, ADDITIONAL AND SELECTIVE LICENSING SCHEMES.***

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**ANY PARTICULAR WORKS OR ACTIONS REQUIRED TO COMPLY WITH THE CONDITIONS CONTAINED IN THIS SCHEDULE ARE SPECIFIED IN SCHEDULE 2 ATTACHED**

#### **1. GENERAL MANAGEMENT, OCCUPATION AND PROVISION OF INFORMATION**

The Licence Holder must:

- clearly display a copy of the licence within a suitable common part of the house where it can be seen by all occupiers. The schedule of licence conditions must also be provided to any occupier upon request or may be displayed adjacent to the licence.
- must obtain references from all persons who wish to occupy the house. Where references cannot be obtained, the licence holder must provide evidence of efforts made to carry out reference checks. (NOTE: This condition only applies to Selective Licensing Schemes)
- supply to all occupiers of the house a written statement of the terms of occupation. This may take the form of a tenancy agreement or a separate written statement.
- ensure that the correct legal procedure is followed when bringing any tenancy to an end.
- protect any tenancy deposit taken under an assured shorthold tenancy by placing it in a statutory tenancy deposit scheme, and must advise the tenants where it has been placed.
- not permit the house to be occupied by more than the number of households or persons specified in the licence.
- comply with any direction issued by the Council restricting or prohibiting the use or occupation of any particular part or parts of the house.
- consult with the Council before making any material changes to the property layout or occupation limits of the house.
- inform the Council of any changes to the ownership or management of the house.
- ensure that the common areas of the house, including shared living rooms, kitchens, hallways and landings etc. are not used for sleeping purposes either by any of the occupiers or their guests.
- ensure that all outhouses, garages and sheds are kept secured and used for their intended purpose. The Licence Holder must not allow them to be occupied as individual habitable rooms, kitchens or bathrooms.

- ensure that the house is properly managed at all times and in particular that the requirements of the Management of Houses in Multiple Occupation (England) Regulations 2006 are complied with.
- ensure that any person or persons involved with the management of the house are to the best of their knowledge “fit and proper persons” for the purposes of Section 66 of the Act.
- notify the Council within 10 working days of any changes in circumstances that will adversely impact on their status to act as a ‘fit and proper person’.
- ensure that appropriate procedures are put in place to respond to emergency repairs within a period of 24 hours of any initial notification and that sufficient funds are available at all times to finance such emergency repair work. Emergency repairs work shall include rainwater penetration, water leaks, faulty fire alarms, disruption to the electric, gas or water supplies, heating failure, insecure windows or doors and blocked drains.
- ensure that procedures are in place to respond to general repairs within an appropriate period according to the nature and extent of the reported defect.
- make regular inspections (at least every 6 months) of the property to ensure that the property is in a decent state of repair and that the occupiers are not in breach of tenancy terms and conditions.
- allow any Authorised Officer of the Council access to the premises at all reasonable times for the purposes of carrying out any duties under the Housing Act.
- not knowingly discriminate against any occupier or potential occupier of the Premises on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race including colour, nationality, ethnic or national origin, religion or belief, sex and sexual orientation. (Any house that operates on the basis of accommodating a specific gender would not be regarded as being in breach of this condition on the grounds of sex discrimination).
- if required by the Council attend a training course in relation to any applicable code of practice approved under Section 233 of the Act.

## **2. MINIMUM SLEEPING ROOM SIZES**

The licence holder must:

- ensure that the floor area of any room used as sleeping accommodation by one person aged over 10 years is not less than 6.51m<sup>2</sup>
- ensure that the floor area of any room used as sleeping accommodation by two persons aged over 10 years is not less than 10.22m<sup>2</sup>
- ensure that the floor area of any room used as sleeping accommodation by one person aged under 10 years is not less than 4.64m<sup>2</sup> (NOTE: Only applicable to houses in single family occupation)
- ensure that any room with a floor area of less than 4.64m<sup>2</sup> is not used as sleeping accommodation.

*NOTE: Any part of the floor area of a room where the ceiling height is less than 1.5metres is not to be taken into account in determining the floor area of the room.*

### **3. FIRE PRECAUTIONARY FACILITIES AND EQUIPMENT**

The Licence Holder must:

- carry out a fire risk assessment to identify the fire hazards, reduce the risk of those hazards and to decide what physical fire precautions and management arrangements are needed and provide a copy to the Council upon request.
- ensure that the premises is provided with a satisfactory means of escape from fire according to the size, layout and type of accommodation provided.
- ensure that an automatic fire detection and warning system is installed in the premises in accordance with the appropriate category and grade of British Standard 5839.
- ensure that the automatic fire detection and warning system is maintained in proper working order and provide to the Council, on demand, a test certificate or report stating the condition of the automatic fire detection and warning system issued by a suitably qualified person stating that the system is installed in accordance with the appropriate British Standard.
- ensure that an emergency lighting system is installed within the communal fire escape route of the house in accordance with British Standard 5266.
- ensure that the emergency lighting system is maintained in proper working order and provide to the Council, on demand, a test certificate or report stating the condition of the emergency lighting system issued by a suitably qualified person stating that the system is installed in accordance with the appropriate British Standard.
- ensure that all fire-fighting equipment, where provided, is maintained in accordance with the manufacturer's recommendations and that replacement or refilled equipment is provided without delay after use.
- ensure that all upholstered furniture supplied by them for use by any occupier of the house is compliant with the Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended in 1989 and 1993). The Licence Holder must on demand provide to the Council a declaration as to the safety of such furniture.

### **4. PROVISION OF STANDARD AMENITIES**

The Licence Holder must:

- ensure that the house is provided with sufficient standard amenities for use by the current or intended number of occupiers according to the type of accommodation offered.
- ensure that all standard amenities and equipment provided for use by the occupiers of the house are maintained in good repair and proper working order.

### **5. PROVISION OF ADEQUATE MEANS OF SPACE HEATING**

The Licence Holder must:

- ensure that the house including all bathrooms, whether shared or for exclusive use, are adequately heated in accordance with the Council's approved standards for Privately Rented Accommodation.

## **6. GAS SAFETY**

The Licence Holder must:

- if gas is supplied to the premises, provide to the Council a Landlord's Gas Safety Record issued in accordance with the Gas Safety (Installation and Use) Regulations 1998 (as amended) with respect to all gas appliances, fittings, flues and pipework. Such a Gas Safety Record must have been obtained from a competent person and be dated within the 12 months prior to the date of application for this licence.
- have a valid gas safety record in place for the duration of the licence.
- install a carbon monoxide detector in any room which contains a solid fuel burning appliance.

## **7. ELECTRICAL SAFETY AND PORTABLE APPLIANCES**

The Licence Holder must:

- ensure that the fixed electrical installation of the premises is inspected and tested at intervals not exceeding five years by a person qualified to undertake such inspection and testing and must provide to the Council on demand a current Electrical Installation Condition Report for the premises in accordance with British Standard 7671.
- ensure that all recommendations for urgent attention and improvement (Codes 1 and 2) on the report are carried out within 28 days.
- ensure that all portable electrical appliances supplied by them for use by any occupier of the premises are maintained in a safe condition and must provide to the Council, on demand, a declaration as to the safety of such electrical appliances issued by a suitably qualified person with respect to each item of electrical equipment so supplied.

## **8. ENERGY PERFORMANCE CERTIFICATE**

The Licence Holder must:

- hold a valid Energy Performance Certificate (EPC) with a minimum energy performance rating of E for any house that is let to a single family, is let as self-contained flats or is let as a shared house. A copy must be made available to all new tenants and to the Council on demand.

## **9. CONTROL OF ANTI-SOCIAL BEHAVIOUR**

The Licence Holder must:

- take reasonable steps to prevent or where appropriate, reduce anti-social behaviour by persons occupying or visiting the house. This would include notifying the appropriate authority of any problems of anti-social behaviour which may be beyond the licence holder's reasonable capability to control and to reasonably co-operate with any action being taken in respect of the matter.
- ensure that any written tenancy agreement or licence contains a clause holding the occupants responsible for any anti-social behaviour by themselves and/or their visitors and that all occupants are aware of the existence of this clause by advising them upon taking up residence.

- respond to complaints of anti-social behaviour that concern occupiers of the premises or their visitors. Where anti-social behaviour is discovered, the Licence Holder must inform the tenant of the matter within 14 days and of the consequences of its continuation.
- keep records of any correspondence and written notes relating to anti-social behaviour for the premises for a period of 5 years.
- if requested by the Council, the Licence Holder and/or their nominated agent must provide details of investigations undertaken in relation to their tenants and/or their visitors, providing the names of all involved persons.

## **10. DISPOSAL OF HOUSEHOLD WASTE**

The Licence Holder must:

- make the necessary arrangements with the Council to ensure that a suitable sized wheelie bin is provided to allow the occupants of the house to adequately dispose of their household refuse. The wheelie bin sizes available are 180L for a household of up to six persons, 240L for a household of six or more persons and 360L for a household of nine or more persons.
- state in any written agreement with the tenant that no refuse (or rubbish) must be kept in the front or rear gardens (other than in the storage facilities provided).
- ensure that any items of bulky waste from the licensed property, such as furniture, mattresses, refrigerators etc. are properly disposed of either by taking them to an authorised waste disposal site or presenting them for collection by prior arrangement with the City Council's Waste Management Department. Such items must never be placed on the public footpath or highway other than in accordance with an arrangement made with the City Council.

## **11. ENVIRONMENTAL AND NEIGHBOURHOOD MANAGEMENT**

The Licence Holder must:

- ensure that the exterior of the house is maintained in a reasonable decorative order and in reasonable repair.
- ensure that all outbuildings, yards, forecourts and gardens surrounding the house and alleyways within the property curtilage are maintained in reasonable repair. They must also be kept in a clean, tidy and safe condition, and free from infestations.
- visit the property, if the occupier misses a rent payment, no later than one month from the date the payment was due. This is to ensure that the property is secure and has not been abandoned.
- if the property becomes empty, ensure the property is fully secure and maintained for the period that it remains empty.

## **12. ADDITIONAL CONDITIONS FOR HOUSES USED AS SUPPORTED ACCOMMODATION**

The Licence Holder must:

- ensure that the needs of all new residents who arrive at the house are properly assessed to ensure they receive an appropriate level of support and supervision.



- ensure that a written register is maintained containing the names and date of birth of all the occupants and the date they moved in and moved out. The register must be updated within one day of each new occupant moving in and must be made available for inspection at all reasonable times, on demand, by any Officer authorised under the Housing Act 2004 or any West Midlands Police Officer.
- ensure that an appropriate security system is maintained to check the identity of all persons entering the house and to ensure that access is given only to authorised persons who have a legitimate reason to be in the house. Any person employed to maintain security and prevent unauthorised access must be registered with the Security Industries Agency (SIA)
- ensure that all new residents are given advice and instruction with respect to the fire alarm drill and evacuation procedure, laundry arrangements, complaints procedure and how to access support services.
- ensure that access to the house is made available at all reasonable times to any health professional such as a GP, Community Psychiatric Nurse, District Nurse, Drug Intervention worker etc., any officer of the West Midlands Probation Service or any voluntary sector worker whose aims are to assist with the rehabilitation or recovery from alcohol or drug addition of any resident or the resettlement of any resident in to long term settled accommodation and that a system is put into place to inform any resident whenever a person of such a description is on the premises who wishes to see them
- ensure that any person employed as a manager be appropriately trained to deal safely with persons who may be intoxicated due to drugs or alcohol or who may be ill and in need of medical attention.
- ensure that any tenancy or licence agreement includes a clause expressly forbidding the bringing of illegal drugs into the house and the consequences to the occupier for a breach of this requirement.

## Appendix 5

### Private Sector Empty Property Strategy 2013-2018

#### 1. Foreword

Like many major cities in Britain, Birmingham is faced with an acute and ongoing housing shortage. This gives rise to increased homelessness and housing affordability problems for many people.

Empty properties seriously affect the lives of people in the vicinity and have a direct and adverse impact economically driving down values in and around the problematic property. They are a magnet for anti-social behaviour and an unnecessary drain on public services.

Though empty property numbers have declined since Birmingham published its first proactive Empty Property Strategy in 2003, there are still approximately 7,700 empty homes in the private sector in the city. Birmingham has a high need for affordable housing.

This strategy aims to bring more of the remaining empty homes back into use and provide good quality, affordable housing to meet that need.

At a time when local government resources are reducing and will continue to do so, it is imperative we position ourselves to make best use of available resources. The strategy and action plan that supports it outlines how we propose to do this.

Empty homes are not the whole answer to the current housing crisis, but government and local authorities cannot ignore their potential and the need to ensure that owners are both encouraged, and where appropriate, required to unlock the potential of this wasted resource.

The success Birmingham has had in tackling empty properties has been considerable. Birmingham's 2007-2012 Empty Property Strategy has been identified as a model of good practice, and the city has been commended nationally by the Empty Homes Agency for its proactive stance in dealing with problematic and long term empty homes.

We aim to continue to build on this, to ensure the city has the largest, highest quality stock possible to accommodate both its existing and future citizens.

#### 2. Key Objectives

In developing the strategy we have identified a number of clear objectives we wish to achieve:

- Have a coordinated approach to empty property work to ensure the broadest corporate ownership of the need to address the blight of empty homes
- Ensure delivery of the Empty Property Strategy is linked with the City Council Leader's Policy Statement and the Birmingham Development Plan
- Use information and publicity to raise awareness of empty property initiatives
- Provide encouragement and support to empty property owners
- Develop and adopt enforcement procedures
- Enhance our approach to returning empty homes to use by continuing to work and share experiences with other local authorities
- Utilise funding available to bring empty homes back into use and provide affordable housing solutions across the city for people in housing need.

#### 3. National Context

Nationally, 2012 saw an increasing acknowledgement of the wasted resource empty properties represent and the problems associated with them.

A Channel 4 series highlighted the two million families who lack adequate housing while nearly one million homes stand empty.

The Coalition Government's Housing Strategy identified the importance of returning empty homes stating *"We are committed to bringing empty homes back into use as a sustainable way of increasing the overall supply of housing and reducing the negative impact that neglected empty homes can have on communities"*

Launched in April 2011, the New Homes Bonus is a grant paid by central government to local councils for increasing the level of housing. This bonus is for every additional home paid each year for six years. The bonus is based on the amount of extra Council Tax Revenue raised for new build homes, conversions and long term empty homes brought back into use. There is also an additional payment for providing affordable homes.

The Department for Communities and Local Government has set aside almost £1 billion over the Comprehensive Spending Review period for the scheme.

The scheme is intended to act as an incentive for local authorities to have effective empty homes strategies. Rewards will only be paid for a net increase in housing, meaning that local authorities could miss out on rewards for new homes built if empty property levels are allowed to increase.

At October 2013, Birmingham's New Homes Bonus payments had totalled in excess of £15M.

It is clear that at a time when local government resources are diminishing, the potential financial benefits BCC can accrue from the New Homes Bonus remain significant.

Tackling empty homes forms part of the Homes and Communities Agency's 2011-15 Affordable Homes Programme.

As part of the Comprehensive Spending Review in October 2010, the Government announced a first round funding programme of £100m fund to bring more empty homes back into use.

In November 2012 HCA announced a second round of empty property funding with an emphasis on boosting local centres where there is evidence of decline.

As well as tackling empty homes this bid round had an additional emphasis on the refurbishment of empty commercial and non-residential properties as affordable housing.

#### **4. Local Context and Analysis**

Published in July 2013, the Birmingham City Council Leader's Statement acknowledges that good quality housing is a fundamental requirement for health, wellbeing and prosperity.

The statement identifies 'Birmingham's Strategic Housing Challenge'. The challenge being 'to make individuals and families proud to live in Birmingham in a decent home at a price they can afford, enjoying good standards whether they rent or buy'.

In terms of increasing the supply of houses, returning empty homes to use is the quickest and most cost effective means of meeting this challenge. To meet the challenge effectively BCC must ensure it adopts a corporate/cross directorate approach to securing funding and supporting empty property initiatives.

Birmingham's Development Plan sets out the statutory planning framework to guide decisions on development and regeneration in Birmingham until 2031. It sets out how and where the homes, jobs and services will be delivered in the city.

By 2031, Birmingham's population is projected to grow by 150,000. This level of growth, based on recent trends, is greater than previously anticipated and presents a significant challenge in addressing future housing and employment needs in the city.

If Birmingham is to achieve its ambitions and prosper, it is vital that a positive and proactive approach is taken to plan for these homes and jobs in a sustainable and deliverable way.

The Birmingham Strategic Housing Market Assessment was undertaken to inform the Core Strategy by providing an understanding of how the city's housing market operates and changes.

The SHMA is a comprehensive study of the nature and dynamics of Birmingham's housing market and estimates the scale and characteristics of housing need and demand.

The SHMA projects a total of 80,000 additional homes are required in the city by 2031 to meet the needs of its current and future population.

Returning the city's existing empty homes to use can make a valuable contribution towards providing these homes. Although Birmingham has about 7,730 registered empty homes in the private sector, given it is the largest authority in the UK this number is a relatively low one.

Within any conurbation, churning of the housing market will result in a proportion of property being empty for a period of time. This period of time is usually relatively short.

Council Tax records indicate that at December 2013 there were 7,730 empty homes in the private sector in Birmingham. This represents 2.48% of the total private sector properties in the city. At December 2013, 2,862 of Birmingham's empty properties had been unoccupied for less than six months. This figure represents 37% of the total number of properties empty and 0.9% of the city's total private housing stock. A further 2,945 had been empty for less than two years, and as a cumulative total, 81.5% had been empty for less than three years.

Numbers continue to drop off steadily after three years. Numbers only rise again where properties empty for nine years or longer have been banded together. This figure includes cases where ownership of empty homes is unknown and difficult to establish.

Birmingham is the largest metropolitan authority in the country with a diverse housing market divided into ten districts. The level of privately owned housing stock varies considerably between districts so it is useful to look at empty properties in individual districts as a percentage of their overall private housing stock.

At December 2013 the average citywide private sector empty property rate was 2.48%. Five of the city's ten districts (Ladywood, Hall Green, Perry Barr, Edgbaston and Erdington) had an above average empty property rate. These five districts contain 48.9% of the city's private housing stock but account for 60% of its privately owned empty properties.

In general areas of the city with higher than average levels of private sector rental properties will also have above average empty property levels.

To inform Birmingham's 2007-12 Empty Property Strategy, the city commissioned the MORI Social Research Institute to conduct a survey of empty private sector properties in Birmingham. Headline findings included:

- 64% of empty properties were houses
- 17% were flats above commercial premises
- 54% of owners rated the condition of their property as very good or fairly good

- 23% described the condition as very poor or fairly poor

When asked how they came to own the empty property, 73% had purchased it; 33% of those lived in themselves, and 43% of owners had a mortgage or loan on their property.

In 2012, Birmingham made a successful bid for HCA funding to bring empty homes back into use. To gain a greater understanding of why owners leave properties standing empty and to inform targeting of the funding received, 300 questionnaires were sent out to owners of properties identified as being unoccupied for over six months.

The results identified two main reasons for continued non-occupation:

- An inability to afford the refurbishment to realise an acceptable sale price or rent level was the single biggest reason for properties standing empty.
- Owners lacking the knowledge, confidence or energy to overcome the inertia of dealing with the property were also common.

Owners were also asked to estimate how much would need to be spent on improving their property prior to letting, the results being as follows:

- Less than £10K - 37%
- Less than £10K to £15K - 17%
- Less than £15K to £20K - 22%
- £20K+ - 22%

## **5. Achievements 2007 to 2012**

Empty Property Team efforts have been particularly focussed on affordable, family size properties in areas of the city where a high dual incidence of empty homes and overcrowding has been identified. Targets included:

- Reducing the number of problematic and long term empty properties in the city by 1,250
- Ensuring 60% of properties returned to use citywide were family sized homes (three or more bedrooms) in the more affordable Council Tax bands A-C
- Ensuring 40% of all properties returned to use were in East Birmingham and North West Birmingham – areas of the city where both overcrowding and empty property levels are known to be disproportionately high
- Investigation of all reported empty properties and proactive investigation of all identified long term empty properties.

The team has exceeded strategy targets, returning close to 1,500 problematic and long term empty homes that are unlikely to have been returned to use without sustained intervention. The team have used enforcement powers to secure over 300 dwellings to prevent unauthorised entry to them.

The value of partnership working in effective local government is well known. In addition to exceeding strategy targets the team have been successful in developing strong links with community groups, the Police, and emergency services.

Birmingham has also played a leading role in the West Midlands Empty Property Officers' Group, the National Association of Empty Property Practitioners, and the Empty Homes Network.

To further incentivise the occupation of empty homes, Birmingham has introduced a number of changes in the way its council tax charges operate in relation to empty properties. Discounts relating to unfurnished properties or properties in need of structural repair have been abolished. In addition, where a property has been empty and unfurnished for two years, a council tax charge of 150 per cent is now applied.

Birmingham City Council has been successful in securing £500k funding to bring empty homes back into use. This provides the opportunity to offer a solution to empty property owners rather than taking enforcement action. We are proposing to rent properties on behalf of owners as affordable housing.

Our aim is to return at least 15 homes, which have been empty for more than 6 months, back into use as affordable housing. The proposal is to:

- Lease empty properties from private owners on an average lease of ten years, with a minimum of five years
- Undertake any necessary repairs to improve them to the BCC Decent Homes Standard
- Manage them as affordable rent properties for the length of the lease, letting them to people on our waiting list
- Return the property to the owner at the end of the lease in a condition that meets the BCC Decent Homes

In January 2012, DCLG published guidance for Community and Voluntary groups applying for funding to bring empty homes back into use through the government's Empty Homes Programme. Six agencies operating in Birmingham were successful in securing funding to act as managing agents of empty private sector properties for allocation to service users on BCC's housing waiting list - St Basils, YMCA, Springfield Residents Group, Nishkam, Start Again, and New Servol were successful in their proposals to bring 127 properties empty for an average of two years back into use as affordable homes to serve a client group that are a high priority for the City Council.

Using all the powers and resources at its disposal, Birmingham City Council remains committed to bringing empty homes back into use to provide affordable housing solutions for as many people as possible. To do this we will use a combination of existing programmes and new initiatives.

The City Council has a number of measures it can use to assist in returning empty properties to use. These range from offering advice and assistance to enforcement.

Where the council considers enforcement action to be appropriate the approach will be fair, equitable and incremental. The primary function of central and local government enforcement work is to protect the public and the environment. There is a need to carry out enforcement functions in a consistent, proactive and equitable manner, which, in turn will help promote thriving local communities.

Where appropriate, owners of homes that are long term empty or problematic are contacted and asked about their future intentions for the dwelling. General advice is offered including signposting to resources to support the owner.

We will update empty property pages on the City Council website with links to other relevant websites and an enquiry and reporting facility for all people with concerns about empty property.

We will continue to develop our use of social media to advertise and disseminate advice and information on empty property issues to customers and partners.

As already outlined, BCC considers enforcement action to be appropriate only as a last resort where lower level interventions have made no impact. Powers at our disposal include:

- Town & Country Planning Act 1990 (Section 215) – A notice can be served on the homeowner where a home is considered to be 'detrimental to the amenities of the neighbourhood'

- Local Government (Miscellaneous provision) Act 1982 – Under Section 29 the Council has the power to secure empty homes against access, where there is considered to be a danger to public health
- Enforced Sale (Law of Property Act 1925) – The use of enforcement actions on empty properties can result in the gradual build-up of debt if the work is carried out in default of the owner failing to comply with the enforcement notice. Where a reasonable charge has been registered against the property it is possible to force the sale of the property to recover that debt
- Compulsory Purchase Order (CPO) S17 Housing Act 1985 – where owners cannot be traced, or are unwilling to bring their property back into use, the Council can seek to compulsorily purchase a property and then sell it on the open market
- Empty Dwelling Management Orders (EDMOs) Housing Act 2004 – The Housing Act 2004 gives local authorities the power to apply to the Residential Property Tribunal for an interim management order, which may lead to compulsory leasing of the property for a fixed period of time.

BCC's Empty Property Team have a strong record in returning long term and problematic empty homes to use. For the lifetime of the 2013-18 Strategy we aim to ensure a minimum of 200 empty properties are returned to use each year.

As in the 2007-12 Strategy the team will place emphasis on some specific, strategic areas and property types.

- Tackling Overcrowding  
The Survey of English Housing uses a 'bedroom standard' as an indicator for occupation density, allocating a number of bedrooms to each household according to the age, sex and marital status composition coupled with the relationship of the members to one another. Using the bedroom standard measurement, Birmingham's 2010 Private Sector House Condition Survey revealed that with scores of 22.8% and 20.5% respectively, Hodge Hill and Ladywood districts are the only two districts with a score in excess of the 6.9% city average. For this reason we will ensure that at least 40% of all properties returned to use are in these two districts.
- Affordable and Family Sized Homes  
As part of a wider, citywide focus on delivering affordable, family sized homes, Empty Property Officers will continue to ensure that a minimum of 60% of properties returned to use have three or more bedrooms and are in the most affordable (A-C) Council Tax bands.
- Empty Property Website - Review and develop empty property pages on the Council's website with links to other relevant websites and an enquiry and reporting facility for people with concerns about empty properties
- Social Media - Continue to develop use of social media to advertise and disseminate advice and information on empty property issues to customers and partners
- Hand held technology – To be introduced if cost effective, to support officers delivering the programme.