

# Housing Enforcement Policy

Teignbridge District Council  
2017



Revision Number	4
Originator of change	Executive 3 <sup>rd</sup> October 2017
Date of change	10 <sup>th</sup> October 2017
Change description	Addendum to policy <b>1.</b> Civil Penalties and Rent repayment orders <b>2.</b> Minor changes to policy: page 6 - choice of appropriate enforcement action page 25 – additional discretionary condition on HMO licence

<b>C o n t e n t s</b>			Page
<b>1</b>		<b>Executive summary</b>	<b>4</b>
	1.01	Background	4
	1.02	What to expect from the Council	4
	1.03	What the Council expects from tenants, owners and letting agents	6
<b>2</b>		<b>All residential dwellings</b>	<b>6</b>
	2.01	Housing Health and Safety Rating System	6
	2.02	Hazard categories	6
	2.03	Choice of appropriate enforcement action	7
	2.04	Tenure	10
	2.05	Powers of entry and power to require information	13
	2.06	Power to charge for enforcement action	14
	2.07	Charges for notices and orders	14
	2.08	Failure to comply	14
	2.09	Revocation and variation of notices	15
	2.10	Works in default	15
	2.11	Authority to serve notice	16
<b>3</b>		<b>Houses in multiple occupation</b>	<b>16</b>
	3.01	Definition of houses in multiple occupation	16
	3.02	Houses in multiple occupation; categories explained	16
	3.03	Standards in houses in multi-occupation; Category A and B	17
	3.04	Standards for hostels	22
	3.05	Other standards for all houses in multiple occupation	23
	3.06	Mandatory licensing of houses in multiple occupation	24
<b>4</b>		<b>Enforcement options for empty homes</b>	<b>28</b>
	4.01	Empty dwelling management orders	28
	4.02	Enforced sale	30
	4.03	Compulsory purchase order	30
	4.04	Back to back sale	30
	4.05	Recovery of costs	31
<b>5</b>		<b>Addendum</b>	<b>32</b>
	5.01	Civil Penalties	32
	5.02	Reductions	36
	5.03	Examples	37
	5.04	Rent Repayment Orders	39
<b>6</b>		<b>Contact details</b>	<b>42</b>

# Housing Enforcement Policy

## 1 Executive summary

The Private Sector Housing Enforcement Policy details how the Council will regulate standards in private housing in Teignbridge.

The policy aims to raise standards in housing throughout Teignbridge working with owners, landlords, letting agents and tenants. It is however recognised that there are circumstances where enforcement action is necessary to protect tenants, owner occupiers, the public and the environment.

### 1.01 Background

The Private Sector Housing Enforcement Policy details how the Council will regulate standards in private housing in Teignbridge. It also provides a background to the legislation and guidance on which it is based.

The principal legislation that governs the condition of housing is the Housing Act 2004. However other legislation seeks to regulate the condition of housing detailed later in this policy.

It is important that Teignbridge Council has a comprehensive and effective enforcement policy. Such a policy will ensure consistency of approach among council officers and allow members of the public to know exactly what to expect from the service. It will also aid clarity if the Council takes legal proceedings, or if enforcement action is appealed against.

The Council will follow the principles of 'Better Enforcement and Regulation' which commits to good enforcement policies and procedures to protect both tenants and landlords, at the same time carrying out enforcement functions in an equitable, practical and consistent manner.

This policy will deal with housing enforcement in:

1. All residential dwellings
2. Houses in Multiple occupation
3. Empty dwellings

### 1.02 What to expect from the Council

#### 1.02a Landlords/Owners

1. When requested, the Council will advise landlords of the legislation and help them understand how they can comply with it
2. The Council will advise landlords as to the action required to comply with the legislation within a specified time period
3. If the Landlord agrees to undertake this action, the Council will monitor the progression of the works to ensure it is carried out within the agreed timescale
4. If the Landlord fails to agree to undertake the work to the Councils satisfaction, the Council will initiate formal action by the service of a Notice, and/or by carrying out Works in Default which may result in prosecution

5. In making the decision to prosecute, the Council will have regard to how serious the offence is, the benefit of prosecution, and whether some other action would be more appropriate
6. Where specified, a charge will be made for the service of the notice
7. Emergency enforcement action will be taken if the Council considers there is an imminent risk to a person's life

#### **1.02b Tenants**

1. The Council will inform tenants about the action they can take and the timescales that they think it will take
2. The Council will keep tenants informed at all key stages of the case

### **1.03 What the Council expects from tenants, owners and letting agents**

#### **1.03a Tenants**

1. Tenants must inform their landlord in writing about issues within their property before contacting the Council. The Council will provide template letters to assist tenants to inform their landlord
2. Tenants must cooperate with their landlord at all times to get the works carried out and tell the Council of any action taken by the landlord
3. If tenant fails to cooperate with their landlord, the Council may consider withdrawing their assistance

#### **1.03b Owners/letting agents**

1. The Council expect owners to maintain the properties they own and let
2. The Council expect owners to cooperate with the Council and carry out any works required within a specified time period

#### **1.03c Owners of Empty homes**

1. The Council will expect owners of empty homes to maintain them and bring them back into use within a specified timescale
2. Enforcement action (Compulsory Purchase Order, Empty Dwelling Management Order, and Enforced Sale) will be considered if an owner does not co-operate, and the empty property has an impact on the neighbourhood

## 2 All residential dwellings

### 2.01 Housing Health and Safety Rating System

The Housing Act 2004 introduced the Housing Health & Safety Rating System (HHSRS). It is a calculation of the effect of 29 possible hazards on the health of occupiers and potential visitors.

The legislation provides a range of actions for addressing identified hazards. It is a two stage calculation combining the likelihood of an occurrence and the range of probable harm outcomes to give a numerical rating for each hazard identified. The assessment will be based on the potential occupant who is the most vulnerable to that risk. The two stages are combined to give a numerical rating in respect of each hazard.

Hazard ratings are banded A-J. Bands A to C (scores of 1,000 and over) are the most severe, and are known as **Category 1 hazards**. Bands D to J, the less severe (scores of less than 1,000) are known as **Category 2 hazards**. HHSRS provides a combined score for each hazard identified and does not provide a single score for the dwelling as a whole. It is applied to all residential premises, whether owner-occupied or rented.

The Council has a duty to inspect premises where the existence of a hazard is suspected.

This Policy takes account of guidance provided by the Government and sets out how the Council will use its powers and reach its decisions in relation to the Housing Health & Safety Rating System (Part 1 of the Housing Act 2004).

### 2.02 Hazard categories

The Council has a **duty** to take action in response to a **Category 1 hazard**. (When a Category 1 hazard is identified, the Council must decide which of the available enforcement options it is most appropriate to use. These are explained in more detail below). The Council has a **power** to take action in response to **Category 2 hazards**. The Council will take action in the following circumstances:

1. Where a Category 2 hazard falling within Band D or E exists in addition to one or more Category 1 hazards
2. Cases involving a member of the vulnerable age group, as defined within the specific hazard of the HHSRS, who would derive specific benefit from having Category 2 hazards (falling within Band D or E) addressed
3. Cases in which multiple Category 2 hazards which when identified, which, when considered together, create a more serious cumulative situation
4. Where a local house condition survey highlights specific local hazards e.g. excessive cold and dampness
5. Any other exceptional case determined by the Business Manager (Housing and Health) in consultation with the Council's Executive Member with responsibility for Housing

## 2.03 Choice of appropriate enforcement action

Unless there is an imminent risk to the health and safety of the occupant or visitors to the property, the Council will attempt to secure the required improvements informally, and within a reasonable timescale.

The Council will require the landlord to advise, within 14 days, of their intention with regard to the works and their proposed time scales to reduce the hazard.

It is expected that hazards identified are reduced within an appropriate timescale. If not satisfied with the landlords intention or proposed timescale or the work is not carried out within this timescale, the Council will move to a formal approach and it will determine which of the specific enforcement options it will use, taking into account the facts and circumstances in each individual case and having regard to the protection of the tenant under the Retaliatory Eviction and Deregulation Act 2015.

If not satisfied with their intention or proposed timescales or the work is not carried out within this timescale the Council **will** move to a formal approach and it will determine which of the specific enforcement options it will use, taking into account the facts and circumstances in each individual case.

A statement of reasons will be provided with any Notice served, explaining why the Council decided to take a particular course of action.

The enforcement options available to the Council are as follows:

1. Improvement notices
2. Suspended improvement notice
3. Prohibition orders
4. Suspended prohibition notice
5. Hazard awareness notices
6. Emergency remedial action, or emergency prohibition notices
7. Demolition orders
8. Clearance areas
9. Service of statutory nuisance notice under the Environmental Protection Act 1990

### 2.03a Improvement notices

It is anticipated that Improvement Notices will be an appropriate and practical remedy for most hazards.

Where the Council determines that an Improvement Notice should be served in respect of a Category 1 Hazard, it will require works that will either remove the hazard entirely or will reduce its effect so that it ceases to be a Category 1 hazard, and will take whichever of these two options it considers appropriate, having considered the circumstances of the case.

If the Council determines that the hazard can only be reduced to a Category 2 hazard rather than removed, it intends to require works to be carried out as far as is reasonably practical to reduce the likelihood of harm.

Where the Council determines that an Improvement Notice should be served in respect of a Category 2 hazard, it will require works it judges sufficient either to remove the hazard or reduce it to an appropriate degree, and will make these decisions having considered the circumstances of the case.

### **2.03b Suspended improvement notice**

The Council has the power to suspend an Improvement Notice and will consider this course of action where it is reasonable, in all circumstances, to do so. The following are situations in which it may be appropriate to suspend an Improvement Notice:

1. The need to obtain planning permission (or other appropriate consent) that is required before repairs and/or improvements can be undertaken.
2. Works which cannot properly be undertaken whilst the premises are occupied and which can be deferred until such time as the premises falls vacant or temporary alternative accommodation can be provided.
3. Personal circumstances of occupants, for example, temporary ill-health, which suggests ought to be deferred.
4. When deciding whether it is appropriate to suspend an Improvement Notice
5. the Council will consider:
  - a. The level of risk presented by the hazard(s)
  - b. The turnover of tenants at the property
  - c. The response or otherwise of the landlord or owner
  - d. Any other relevant circumstances (e.g. whether the vulnerable age group, as defined within the specific hazard of the HHSRS, is present)

Suspended Improvement Notices will be reviewed after a maximum of 12 months and then at intervals of not more than 12 months, but suspension will not normally exceed 6 months.

Any variation to the approach described above in relation to Improvement Notices of all types will be determined by the relevant Business Manager in consultation with the the Council's Executive Member with responsibility for Housing.

### **2.03c Prohibition orders**

Prohibition Orders can be used in respect of both Category 1 and Category 2 hazards for all or part of a dwelling and are likely to be used:

1. If repair and/or improvement appear inappropriate on grounds of practicality or excessive cost (i.e. the cost is unrealistic in terms of the benefit to be derived). An example might include a dwelling or part of a dwelling where adequate natural lighting or adequate fire escape cannot realistically be provided, or
2. In a house of multiple occupation (HMO), to prohibit the use of specified dwelling units or of common parts. This might, for example, be used if there are inadequate fire safety measures, or
3. To specify the maximum number of persons who can occupy a dwelling where it is too small for the household's needs, in particular, in relation to the number of bedrooms, or
4. In relation to premises lacking certain facilities but which are nonetheless suitable for a reduced number of occupants

In addition to prohibiting all uses in relation to the whole or part of the premises in question (other than uses specifically approved by the Council), Prohibition Orders can prohibit specific uses (section 22 (4)(b) Housing Act 2004); this option may be employed to prevent occupation by

particular descriptions of persons. Use of this power may be appropriate in situations such as the following:

1. Premises with steep staircases or uneven floors which make them particularly hazardous to elderly occupants
2. Premises with open staircase risers or widely spaced balustrades that make them particularly unsuitable for infants

#### **2.03d Suspended prohibition notice**

The Council has the power to suspend a Prohibition Order and will consider this course of action where it is reasonable to do so if the facts of a particular case appear to justify it.

Suspended Prohibition Orders will be reviewed after a maximum of 12 months and then at intervals of not more than 12 months, but suspension will not normally exceed 6 months.

Any variation to the approach described above in relation to Prohibition Orders of all types will be determined by the Business Manager (Housing and Health) in consultation with the the Council's Executive Member with responsibility for Housing.

The Council will consider any written requests made for alternative uses of premises or part-premises which are subject to a Prohibition Order, and will not withhold its consent unreasonably. We will reply, in writing, to any request stating our reasons why we have approved or refused the proposed alternative uses.

#### **2.03e Hazard awareness notices**

Hazard Awareness Notices may be served to notify owner-occupiers or landlords of the existence of hazards (for example where the risk from the hazard is mitigated by the longstanding nature of the occupancy). It might also be applicable where:

1. It is judged appropriate to draw a landlord's attention to the desirability of remedial action;
2. To notify a landlord about a hazard as part of a measured enforcement response
3. An occupant has expressed a particular view that this course of action is desirable (eg a tenant who, because of persistent ill-health, might not be able to tolerate works)

In all cases where the decision to serve a Hazard Awareness Notice has been determined by occupancy, the Council will review the notice annually to ensure that any change of occupancy does not put a more vulnerable occupant at risk.

#### **2.03f Emergency remedial action and emergency prohibition notices**

The situations in which Emergency Remedial Action and Emergency Prohibition Orders may be used are specified by sections 40 to 45 of the Housing Act 2004. Before considering such action, the Council must be satisfied that:

1. A Category 1 hazard exists, and that
2. The hazard poses an imminent risk of serious harm to health or safety, and that immediate action is necessary

If these conditions are met the Council will take appropriate emergency action.

Situations in which emergency action may be appropriate include:

1. Residential accommodation located above commercial premises and which lack a safe means of escape in the event of fire because there is no independent access
2. Risk of electrocution, fire, gassing, explosion or collapse

### **2.03g Demolition orders**

The Housing Act 2004 has retained the power to make Demolition Orders but has amended Section 265 of the Housing Act 1985 to align it with the new method of hazard assessment and enforcement provisions.

Demolition Orders are a possible response to a Category 1 hazard (where they are judged the appropriate course of action). In determining whether to issue a Demolition Order the Council will take account of Government guidance and will consider all the circumstances of the case.

### **2.03h Clearance areas**

The Council can declare a Clearance Area if it is satisfied that each of the premises in the area is affected by one or more Category 1 hazard (or that they are dangerous or harmful to the health & safety of inhabitants as a result of bad arrangement or narrowness of streets).

In determining whether to declare a Clearance Area the Council will act only in accordance with section 289 of the Housing Act 1985 (as amended) and having had regard to relevant Government guidance on Clearance Areas and all the circumstances of the case.

### **2.03i Statutory nuisance notices served under the Environmental Protection Act 1990**

It is anticipated that the vast majority of statutory nuisances will be eliminated using the enforcement provisions of the Housing Health and Safety Rating System using the Housing Act 2004. Where this is not possible, such as dealing with privately rented mobile homes, consideration will be given to the service and enforcement of the use of powers under Section 80 of the Environmental Protection Act 1990.

## **2.04 Tenure**

The Housing Health & Safety Rating System (HHSRS) applies equally to all tenures. Furthermore, it does not specify that particular approaches, or solutions, should be used on the basis of ownership or the occupier's status. All of the enforcement options are available to the Council regardless of whether the premises in question are owner-occupied, privately rented or belong to a Registered Provider (RP).

However, the Council considers that owner-occupiers are usually in a position to take informed decisions concerning maintenance and improvement issues that might affect their welfare and are then able to set their financial priorities accordingly; whereas tenants, and particularly non-RP tenants, are not usually able to do so. For this reason the Council judges that it is appropriate for its powers to be used differently according to tenure, as follows:

### **2.04a Owner-occupiers**

The Council anticipates that Hazard Awareness Notices will frequently be the appropriate course of action and intends only to use Improvement Notices, Prohibition Notices and their emergency equivalents in cases involving:

1. Vulnerable elderly people who are judged not-capable of making informed decisions about their own welfare
2. Vulnerable individuals who require the intervention of the Council to ensure their welfare is best protected
3. Hazards that might reasonably affect persons other than the occupants
4. Serious risk of life-threatening harm such as electrocution or fire

5. Any other exceptional case determined by the Business Manager (Housing and Health) in consultation with the Council's Executive Member with responsibility for Housing

Unless an identified hazard is judged to pose an imminent risk of serious harm, the Council will contact the owner to confirm its involvement, explain the nature of the hazard and confirm the action it is intending to take.

The Council will take account of any proposals or representations made by, or on behalf of the owner. The Council will ask and take account of the opinion of the relevant Welfare Authority in considering both the vulnerability and capability of such persons as well as in determining what action it will then take.

Any exceptions to this approach will be determined by the Business Manager (Housing and Health) in conjunction with the the Council's Executive Member with responsibility for Housing.

#### **2.04b Social landlords**

Registered Providers (RPs) exist to provide suitable and properly maintained accommodation for their tenants. They are managed by Boards (which typically include tenant-representatives) and their performance is scrutinised by the Homes and Community Agency. RPs normally employ staff to both manage and maintain their properties and will usually have written arrangements for reporting problems, setting out the response times they aim to achieve, and also for registering any complaints about service-failure.

On this basis the Council will not normally take formal action against an RP unless:

1. It is satisfied that the problem in question has been properly reported to the RP and
2. The RP has then failed to take appropriate action within a reasonable timescale given the severity of the hazard

If the Council determines that it is appropriate to take action (in accordance with protocol) it will notify the RP that a complaint has been received and/or a hazard identified and seek the RPs comments and proposals within 14 days. Only in cases where it judges that an unsatisfactory response has been received will the Council take further action, and will then determine which of the available enforcement options is the most appropriate, taking into account the facts of the case.

Any exceptions to this approach will be determined by the Business Manager (Housing and Health) in consultation with the Council's Executive Member with responsibility for Housing.

#### **2.04c Private landlords**

The Council will proceed having regard to the principles of the Enforcement Concordat and will initially aim to informally resolve the identified issues. Formal action will be initiated immediately if a hazard in question is judged by the Council:

1. To pose an imminent risk of serious harm to any person (whether or not immediate action is required, and whether the hazard(s) in question is likely to affect a tenant, an employee or a member of the public), or
2. The landlord in question is known to have failed, on a previous occasion, to take appropriate action in response to an informal approach

Where the informal approach is judged appropriate the Council will contact the landlord, (or managing agent) stating the nature of the hazard and request proposals for reducing the hazard(s) identified to an acceptable level. A joint inspection with the landlord may also be required and a Requisition for Information Notice is likely to be served at this point. The landlord/agent will be expected to provide the Council within 14 days a proposed timescale for completing the works. It is expected that the works will commence within 28 days of being notified by the Council. If this proposal is deemed acceptable, and the work proceeds in accordance with the agreed timetable, the Council will not normally need to take any further action.

Landlords are expected either to provide any agent acting for them with sufficient authority to act on their behalf in the event that they are contacted by the Council, or to ensure that they maintain appropriate communication with their agent in order that appropriate decisions and responses can be provided to the Council. The failure of an agent to respond to communication from the Council within an agreed timescale or any failure to take appropriate action may be treated as a failure by the landlord. The agreed timescale will depend on the severity of the hazard.

If the Council receives:

1. No response from the landlord/agent or
2. An inadequate response or
3. Proposals that were judged acceptable but which are not then followed-through (for example if works fail to start when agreed, fail to make proper progress or are completed to an inadequate standard)

the Council will proceed with **formal action** by taking whichever of the various available enforcement actions it judges to be the most appropriate in accordance with this Policy.

#### 2.04d Tenants; what is expected of tenants

Before considering taking any action in respect of a tenanted property the tenant(s) will normally be required to contact their landlord about the problems first. Legislation covering landlord and tenant issues require that tenants notify their landlords of any problems with the property. This is because it is more difficult for landlords to meet their legal duty, unless they have been made aware of the problem.

Where a hazard presents an imminent risk to the health and safety of the occupants, it is expected that tenants will still try to contact their landlord, even if this is after they have contacted the Council. It is also expected that the tenant will provide the Council with details of any written or oral communication that they have had with the landlord regarding the hazard.

In certain situations tenants will not be required to write to their landlord first, for example:

1. Where there is an established history of harassment/threatened eviction/poor management practice
2. Where the tenant appears to be vulnerable or where there are vulnerable members of the household
3. Where the tenant could not for some other reason be expected to contact their landlord/managing agent;
4. Where the property is a House in Multiple Occupation which appears to fall within HMO licensing

Tenants are responsible for keeping the Council informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.), which may affect the action the Council is taking

or considering taking. Tenants should also consider seeking independent legal advice about their own individual powers to resolve any dispute with their landlord.

Residential Providers (RPs) tenants have standard complaints procedures to follow if their landlord does not carry out repairs in a satisfactory manner, including a final right of appeal to the Housing Ombudsman Service. However if the RP has not taken appropriate action within a reasonable timescale given the alleged severity of the hazard, the Council will investigate and take appropriate action to ensure that the hazard is reduced to an acceptable level.

### **Situations where a service may not be provided**

Where any of the following situations arise consideration will be given to either not providing a service or ceasing to provide a service:

1. Where the tenant(s), of their own free will, will shortly move out of the property
2. Where the tenant(s) unreasonably refuses access to the landlord, managing agent or landlord's builder, to arrange or carry out works
3. Where the tenant(s) has, in the opinion of the Council, clearly caused the damage to the property they are complaining about, and there are no other items of disrepair
4. Where the tenants only reason for contacting the Private Sector Housing Service, in the opinion of the Council, is to get re-housed and does not wish their property to be brought up to standard
5. Where the tenant(s) has requested a service and then failed to keep an appointment and not responded to a follow up letter or appointment card
6. Where the tenant(s) has been aggressive, threatening, verbally or physically abusive towards staff
7. Where there is found to be no justification for the complaint, on visiting the property
8. Where the tenant refuses to provide the Council with relevant documentation
9. Where the hazard has been created by the actions of the tenant, and the landlord can prove that this is the case.

In these circumstances the Council will notify the tenant, in writing, of the decision not to take action and reasons why.

## **2.05 Powers of entry and power to require information**

The Council has the power of entry to properties at any reasonable time to carry out its duties under the Housing Act 2004 provided that:

1. The Council's Officer has written authority from the 'Proper Officer' as defined in the Local Government Act 1972 stating the particular purpose for which entry is authorised
2. The Officer has given a minimum of 24 hours written notice to the owner (if known) and the occupier (if any) of the premises they intend to enter. No notice is required where entry is to ascertain whether an offence has been committed under Sections 72 (offences relating to HMO Licensing), 95 (offences relating to Selective HMO licensing) or 234(3) (Management of HMOs)

If admission is refused, premises are unoccupied or prior warning of entry is likely to defeat the purpose of the entry then a warrant may be granted by a Justice of the Peace on written application. A warrant under this section includes power to enter by force, if necessary.

The Council also has power under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with:

1. Any purpose connected with the exercise of its functions under Parts 1-4 of the Housing Act 2004
2. Investigating whether any offence has been committed under Parts 1-4 of the Housing Act 2004

The Council also has powers under Section 237 of the Housing Act 2004 to use the information obtained above and Housing Benefit and Council Tax information obtained by the authority to carry out its functions in relation to these parts of the Act.

## 2.06 Power to charge for enforcement action

The local authority has the power under Section 49 of the Housing Act 2004 to make a reasonable charge as a means of recovering certain administrative and other expenses incurred in serving an Improvement Notice, Hazard Awareness Notice, making a Prohibition, Emergency Prohibition or Demolition Order or taking Emergency Remedial Action.

The Council will recover a reasonable amount for expenses incurred in connection with time spent gaining entry, visiting and inspecting the premises to determine the most appropriate action, and the administration costs for the production of a Notice, Order or Remedial Action.

## 2.07 Charges for notices and orders

If the Council receives:

1. No response from the landlord/agent or
2. An inadequate response or
3. Proposals that were judged acceptable but which are not then followed-through (for example if works fail to start when agreed, fail to make proper progress or are completed to an inadequate standard)

And the Council proceeds with **formal action** a charge will be made in all cases for the service of the notice. The current charge is £350 (Nov 2015). This is reviewed annually.

Hazard awareness notices will not be subject to a charge. Suspended improvement notices and suspended prohibition orders are not subject to charging if:

1. There is an owner occupier currently at a property, or
2. The landlord is willing to undertake works but the occupant does not wish for the works to be undertaken
3. A crowding and space hazard exists and the Council does not wish to make the current household homeless but however wishes to limit the number of future occupants

Costs incurred carrying out Work in Default or Remedial Action will be charged separately.

When the charge demand is made the sum recoverable will be a local land charge, which will be removed on receipt of the monies due.

## 2.08 Failure to comply

If a Notice is complied with no further action will be taken. However if the Notice is not complied with the Council will consider the following options:

1. Prosecution
2. Carrying out the works in default
3. Carrying out the works in default and prosecution

#### 4. Whether a formal caution is appropriate

Wherever possible the Council will prosecute before carrying out works in default.

Failure to comply with an Improvement Notice or a Prohibition Order is an offence punishable by an unlimited fine following conviction; it is an offence to carry on using the premises in breach of the Prohibition Order, attracting a daily fine.

The Council will take action to recover its costs in connection with work in default. The Council will also take action to recover the costs incurred in carrying out works associated with Emergency Remedial Action.

As a charge on the property, the costs give the authority the same powers and remedies as a Mortgagee under the Law of Property Act 1925. (Enforced Sale).

### 2.09 Revocation and variation of notices

The Council must revoke an Improvement Notice once the notice has been complied with. However where a Category 1 hazard exists that has not been complied with the Council may revoke the Notice if “special circumstances” exist. If a request is made to revoke a notice in these circumstances then a decision will be made by the Business Manager (Housing and Health) in conjunction with the Council’s Executive Member with responsibility for Housing.

If part of the work required within the notice is carried out then the notice can be varied.

### 2.10 Works in default

In determining if work in default is appropriate, the Council will consider:

1. The effects of not carrying out the work on the health and safety of the occupant of the property concerned
2. The wishes of the tenant where the Notice has been served in respect of a rented property
3. The reason for the work not being carried out in the first place
4. Any other factors that is specific to individual properties

The Council will seek to recover all of the costs associated with undertaking work in default (including time spent by its officers, administrative costs, contractors costs, the cost of any specialist reports, and supervisory costs.)

In the case of officer time, the Council will calculate costs as follows:

1. The actual time spent by Council officers on the chargeable activities and recorded using file notes and database
2. Time spent will be converted into a monetary figure using the appropriate hourly rate set for the officer(s) concerned

The expenses are to be recovered from the person(s) on whom the Notice or Order is/are served (“the relevant person”). Where the relevant person receives the rent on behalf of another, the expenses are also to be recovered from that other person. The expenses will carry interest from the date of service until payment of all sums due under the demand at a rate of 1% over Bank of England Base Rate. The recoverable expenses, together with interest accrued on them, are a charge on the premises.

In addition, as a means of recovering the costs, the Council may also serve Recovery Notices to recover, receive and give a discharge for any rent or sums in the nature of rent.

Any exceptions to this approach will be determined by the Business Manager (Housing and Health) in consultation with the Council's Executive Member with responsibility for Housing.

## 2.11 Authority to serve notice

This policy delegates authority to serve all notices and orders specified under the Housing Act 2004 and statutory nuisance notices under sections 79-82 of the Environmental Protection Act 1990 to the posts of Business Manager (Housing and Health), Team Leader (Private Sector Housing) and Housing Practitioner and Senior Housing Officer.

## 3 Houses in multiple occupation

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

From April 2006 owners of certain types of HMOs must apply to the Council to have their properties licensed. The responsibility for applying for a licence rests with the person having control of, or the person managing the property

### 3.01 Definition of houses in multiple occupation

The definition of an HMO under the Housing Act 2004 is summarised below:

*Any house, or flat, that is occupied by more than one household which shares (or lacks) kitchen, bathroom or toilet facilities. An HMO may comprise of bedsits, certain shared houses, hostels, hostels and houses converted into flats. A single household is made up of persons who are members of the same family.*

The requirement for an HMO to be licensed arises when:

1. A dwelling is three or more storeys high and
2. It has five or more people in more than one household and
3. The occupants share amenities such as bathrooms, toilets, or cooking facilities

Properties exempt from the licensing regime include:

1. Properties consisting entirely of self-contained flats
2. Where the basement is in commercial use and there are only two residential storeys above
3. Where the property is owned or managed by a housing association, a local authority, an education, police, fire or health authority
4. Where the building is occupied only by the owner and members of their household
5. Where the building is occupied by only two persons

### 3.02 Houses in multiple occupation; categories explained

The provision of amenities and health and safety standards that are appropriate for a particular HMO are related to the way the property is occupied and the differing needs of the occupiers. The following adopted standards take this into account and suggest standards for different categories of HMOs as described below:

### 3.02a **Category A**

The essential feature of this type of HMO is that the occupiers tend to live completely independently of each other. Commonly, these HMOs comprise parts that are rented as individual lettings with exclusive use of certain rooms. Occupiers may share washing, WC and kitchen facilities, but do not usually have a communal living or dining room. Individuals or households may have a letting agreement that specifies the part(s) of the accommodation that they may occupy.

Typical examples are:

1. Single room bedsits – may have exclusive use of, or may share, personal washing, WC and kitchen facilities
2. Flatlets – multi-room lettings sharing some personal washing, WC and kitchen facilities
3. Non-self contained conversions
4. Buildings converted into two, or more self-contained flats where the conversion did not comply with Part B of the Building Regulations 1991 (Fire protection facilities and means of escape)

Category A HMOs may or may not need to be licensed depending on the number of storeys, occupants and whether facilities are shared

### 3.02b **Category B**

The essential feature of these types of HMO is that the occupiers tend not to live completely independently of each other and there is some element of communal occupancy. Occupiers will share personal washing, WC and kitchen/dining facilities and will often have a communal living room. Each occupier may have a separate tenancy, or may be on a group/joint contract, commonly students or young professional adults. Larger Category B HMOs may require to be licensed.

### 3.02c **Hostels**

These are HMOs that are generally referred to as hostels, guest houses, or bed & breakfast accommodation which provide accommodation for people with no other permanent place of residence.

The category includes hostel and bed and breakfast establishments used by local authorities for housing homeless people, or similar establishments which provide accommodation for single people whose only financial support is state benefit and who would otherwise be homeless, or foreign language students and migrant workers living in this type of accommodation for 3 months or more.

## 3.03 **Standards in houses in multi-occupation; Category A and B**

*General notes to be read in conjunction with the HMO standards provided on the next pages*

No kitchen facility should be more than one floor distant from the users of that facility. This will not apply if a communal living space or dining space is available on the same floor, or is not more than one floor away from the kitchen.

No personal washing or WC facility should be more than one floor distant in the case of a category A HMO, or two floors distant in the case of a category B HMO, from the users of those facilities.

A small household is one that consists of no more than 2 persons.

These standards apply to all properties specified. In exceptional circumstances a variation to these standards may be agreed at the discretion of the Housing Service Lead and/or the Council's Executive Member with responsibility for Housing.

### 3.03a Category A and B; shared personal washing and WC facilities

Facility	HMOs: Category A and B
<b>Bathroom</b>	1 per 5 occupiers
The provision of baths/WCs will be agreed with the local authority	For up to 5 occupiers: 1 bathroom containing a bath/shower, wash hand basin and a toilet. Where practicable the toilet and wash hand basin should be separate to the bath/shower Student shared houses may not require a separate WC.
	For 6 – 10 occupiers 2 bathrooms containing bath/shower, wash hand basin and toilet. Where practicable the toilet and wash hand basin should be separate to the bath/shower.
	WHB and Bath or fixed Shower to be supplied with an adequate cold and constant hot water
<b>WC</b>	1 per up to 5 occupiers
	2 per 6 – 10 occupiers
<b>Wash hand basins (WHBs)</b>	In licensable HMOs, a WHB to be provided within each letting where it is reasonably practicable. It will be the responsibility of the landlord to demonstrate that is not reasonably practicable for WHB to be provided in each room. Regard should be had to the age and character of the HMO, the size and layout of each room and its existing provision for WHBs toilets and bathrooms. A wash hand basin must be provided with every WC
	Each WHB to be provided with adequate supply of cold and constant hot water
<b>Heating and insulation</b>	Adequate and suitable heating to be provided. A suitable fixed gas fire fitted with an adequate guard; or a suitable electric fire fitted with an adequate guard and properly connected to a dedicated, safe power supply. Adequate Loft and Cavity Wall insulation should be provided where appropriate
	Portable paraffin oil heaters and appliances using liquefied petroleum gas (LPG) are considered a fire hazard and their use is strongly discouraged. They also create excess moisture and therefore increase the likelihood of condensation problems and associated mould growth.
	Adequate and efficient heating is deemed to be provided if the main habitable room can be maintained at a temperature of 18 degrees C or more and any bedroom 16 degrees C or more whilst the outside temperature is -1 degrees C.
	Solid Fuel in an approved appliance – fuel storage facilities should be provided in a readily accessible position for each unit of living accommodation
	Where central heating system is installed it should be operated so that heat is available at any time when it may reasonably be required

### 3.03b Category A and B; kitchen facilities

Facility	Category A	Category B
<b>Cooker</b>	<p>1 per 5 occupiers/small households. The addition of a microwave oven with a grill will allow the facilities to be used by up to 7 persons</p> <p>For 7 to 10 persons 2 cookers must be provided</p> <p>1 person bedsit with exclusive use of kitchen facilities, 2 ring burner, oven and grill or 2 ring burner and combined microwave and grill</p> <p>2 person bedsit with exclusive use of kitchen facilities. 4 ring burner, oven and grill</p>	<p>1 for up to 5 occupiers. The addition of a microwave oven will allow the facilities to be used by up to 7 persons.</p> <p>If there are more than 7 occupants, 2 cookers must be provided, for use by up to 10 occupants.</p>
<b>Sink and drainer Dishwasher not to replace a sink</b>	<p>1 per 5 occupiers/small households.</p>	<p>1 for up to 5 occupiers.</p> <p>If there are 6 or more occupants, 2 sinks and drainers must be provided, for use by up to 10 occupants.</p>
<b>Adequate no. of suitably located electrical power points (adjacent to worktop)</b>	<p>4 single sockets or 2 double sockets are required for every 5 occupiers/small households. Additional sockets are needed for a cooker or refrigerator and washing machine.</p>	<p>4 single sockets or 2 double sockets per 5 occupiers. Additional sockets are needed for a cooker or refrigerator and washing machine</p>
<b>Worktops</b>	<p>2m x 0.6m per 5 occupiers/small households.</p>	<p>2m x 0.6m per 5 occupiers.</p>
<b>Dry food storage</b>	<p>Double wall unit or single base unit (0.16m<sup>3</sup>) for each occupier/small household. Storage in communal areas to be lockable.</p>	<p>Single wall unit per occupier (0.08m<sup>3</sup>)</p>
<b>Refrigerated storage</b>	<p>Standard sized fridge (0.15m<sup>3</sup>) with adequate freezer compartment per 5 occupiers/small household. If no freezer compartment in the fridge, separate freezers should be provided. Storage in communal areas to be lockable.</p>	<p>Standard sized fridge (0.15m<sup>3</sup>) per 5 occupiers. Separate standard sized freezer should be provided per 5 occupiers.</p>
<b>Extractor fan</b>	<p>To be provided (where practicable or necessary to reduce the likelihood of damp and mould growth)</p>	<p>To be provided (where practicable or necessary to reduce the likelihood of damp and mould growth)</p>
<b>Fire door to shared kitchen</b>	<p>30 minute self-closing fire door set with cold smoke seals and intumescent strip</p>	<p>30 minute self-closing fire door set with cold smoke seals and intumescent strip</p>

<b>Fire blanket</b>	To be supplied and wall mounted, but not to be sited immediately adjacent to or over a cooker	To be supplied and wall mounted, but not to be sited immediately adjacent to or over a cooker
<b>Storage space for crockery &amp; kitchen utensils</b>	Adequate cupboard and/or drawer space	Adequate cupboard and/or drawer space
<b>Layout of kitchens/cooking areas and position of facilities</b>	Look at safe use of the equipment provided and the access into and out of the kitchen/cooking area. Particular care should be taken where 2 sets of facilities are required in one room/area	Look at the safe use of the equipment provided and the access into and out of the kitchen/cooking area. Particular care should be taken where 2 sets of facilities are required in one room/area

### 3.03c Category A and B; space standards

Room/s	Category A	Category B
<b>One room unit for one person</b>	13 m <sup>2</sup> including kitchen facilities for exclusive use. 10 m <sup>2</sup> where separate shared kitchen	Not applicable
<b>One room unit for a co-habiting couple</b>	20.5 m <sup>2</sup> including kitchen facilities for exclusive use. 15m <sup>2</sup> where separate shared kitchen	Not applicable
<b>Two or more roomed unit for one person</b>	Kitchen – 4.5m <sup>2</sup> Living / kitchen 11m <sup>2</sup> Living room – 9m <sup>2</sup> Bedroom – 6.5m <sup>2</sup> Bed/living room 10m <sup>2</sup>	Not applicable
<b>Two or more roomed unit for two persons living as a single household</b>	Kitchen – 7 m <sup>2</sup> Living / kitchen -15m <sup>2</sup> Living room – 12m <sup>2</sup> Bedroom – 10m <sup>2</sup> Bed/living room 14m <sup>2</sup>	Not applicable
<b>Shared kitchens</b>	7m <sup>2</sup> for up to 5 occupants. 10m <sup>2</sup> for 6 – 10 occupants.	7m <sup>2</sup> for up to 5 occupants. 10m <sup>2</sup> for 6 – 10 occupants.
<b>Bedroom/study</b>	Not applicable	10m <sup>2</sup> except where a separate communal living room is provided in which case the bedroom may be 6.5 m <sup>2</sup>
<b>Dining/kitchen</b>	Not usually applicable.	11.5 m <sup>2</sup> for up to 5 occupants. 19.5m <sup>2</sup> for 6 – 10 occupants.
<b>Communal living room</b>	Not usually applicable.	12 m <sup>2</sup> for up to 5 occupants. 16.5 m <sup>2</sup> for 6 – 10 occupants.

### 3.04 Standards for hostels

#### 3.04a Hostels; shared personal washing, WC and kitchen facilities

There may be a preference for single sex facilities where shared, check with your local authority.

Facility	Hostels
<b>Bathroom</b>	1 per 5 occupiers 1 bathroom and a separate WC (where practicable) with wash hand basin (WHB)
<b>WC</b>	1 per 5 occupiers and separate WC (where practicable) with WHB
<b>Wash hand basin</b>	In licensable HMOs 1 WHB to be provided within each letting where it is reasonably practicable. It will be the responsibility of the landlord to demonstrate that it is not reasonably practicable for WHB to be provided in each room. Regard should be had to the age and character of the HMO, the size and layout of each room, and its existing provision for WHBs toilets and bathrooms. A wash hand basin must be provided with every WC
<b>Cooker</b>	1 cooker for up to 5 persons/small households + microwave oven or other alternative form of cooker. 2 cookers for up to 10 persons and + microwave ovens or other alternative form of cookers 1 cooker per additional 5 persons thereafter + microwave ovens, or other alternative form of cookers
<b>Sink and drainer</b>	1 sink for up to 5 persons. 2 sinks for up to 10 persons and one sink per additional 5 persons thereafter.

#### 3.04b Hostels; space standards

Room/s	Minimum room size
1 person	6.5m <sup>2</sup> if communal area provided. 10m <sup>2</sup> if no communal area.
2 persons	10m <sup>2</sup> if communal area provided. 14m <sup>2</sup> if no communal area.
Kitchen facilities located within the letting	Add 3m <sup>2</sup> to each of the room sizes given above
Shared kitchens (for use by occupants)	7m <sup>2</sup> for up to 5 occupants. 10m <sup>2</sup> for 6 – 10 occupants.
Kitchen/dining rooms	11.5m <sup>2</sup> for up to 5 persons. 19.5 m <sup>2</sup> for 6-10 persons.
Lounge/dining area	12m <sup>2</sup> for up to 5 persons. 16.5m <sup>2</sup> for 6-10 persons. Dining space to be in close proximity to kitchen.

### 3.05 Other standards for all houses in multiple occupation

Other standards	All houses in multiple occupation
<b>Natural lighting</b>	Where practicable every habitable room should be provided and maintained a clear glazed window, and/or a door with clear glazing, opening directly to the external air and having a glass area equal to at least one-tenth (1/10 <sup>th</sup> ) of the floor area
	All glazing to windows in bathrooms and WCs shall be obscured where considered necessary by the Council.
<b>Artificial lighting</b>	All habitable rooms, kitchens, bathrooms, WCs, staircases, landings and passageways should be adequately lit by electricity.
	Time switches will only be allowed to operate lighting in common landings, passages and staircases if they are programmed to stay on long enough to allow for a person to safely climb stairs and enter accommodation. Such switches to be operable on each level.
	There should be suitably located light switches that when operated allow the safe passage of residents and visitors within the building.
<b>Electrical wiring and fittings</b>	All electrical wiring and fittings should be maintained in a safe condition and works undertaken by a competent person.
<b>Ventilation</b>	Where practicable all habitable rooms should be ventilated direct to the external air by a window, the openable area of which shall be equivalent to at least one twentieth of the floor area (1/20 <sup>th</sup> ).
	All kitchens, bathrooms, WC's should comply with the above standard, but where this is not practicable mechanical ventilation meeting current Building Regulations shall be provided.
<b>Water supply</b>	Each unit of accommodation shall have access to a piped cold water supply of potable quality at an adequate pressure. To maintain water quality any storage tank supplying water shall be suitably covered.
<b>Refuse storage</b>	Provide and maintain a sufficient number of refuse/recycling bins, stored outside the building and sited so as to be readily accessible to the occupiers and to the Council's refuse collectors. If unable to provide this please discuss with the Council Officer.
<b>Basic fire safety</b>	All kitchens must have a suitably sited fire blanket and adequate provision of fire doors and fire detection throughout the property as required by LACORS Fire Safety Guidance.
<b>Fire precautions</b>	All communal areas shall be fitted with adequate fire safety measures including appropriate fire detection and fire precaution equipment as identified by a comprehensive Fire Risk Assessment

## 3.06 Mandatory licensing of houses in multiple occupation

### 3.06a Licensing fee

The current licence fees are as follows of per property. This fee is charged to cover the set up cost of the licensing regime, inspections and general administration. To ensure that it reflects the true cost of licensing, the fee will be reviewed annually. The completed application form must be accompanied by the appropriate fee.

### 3.06b Mandatory conditions

All licences must possess the following mandatory conditions

- a. a requirement for gas safety certificates to be provided annually
- b. that electrical appliances and furniture supplied by the landlord meets the appropriate safety standard
- c. that any fire warning system is properly maintained (proven by documentation)
- d. that licence holders provide occupiers of the property with an appropriate written tenancy agreement

### 3.06c Discretionary conditions

The Council has agreed to additional discretionary conditions as follows:

1. The Licence holder shall ensure that all electrical appliances, gas fittings and furniture provided shall be in a safe condition
2. The Licence holder shall ensure that smoke alarms and emergency lighting are installed in the house and kept in proper working order
3. The Manager/ Licence Holder shall inspect the property on a regular basis for the proper management of the HMO
4. The Manager / Licence Holder will attend the property as necessary for the purposes of inspection by the Council
5. The Licence Holder will ensure compliance with The Management of HMOs (England) Regulations 2006
6. The Licence Holder will ensure that the requirements of Landlord and Tenant legislation are properly adhered to
7. A copy of the following documents shall be displayed in a part of the HMO to which all tenants have access:
  - a. The licence
  - b. The Licence Holder or Managers contact details (i.e. name address and telephone number)
  - c. Procedure for notifying the manager of other complaints concerning the property and details of how the manager will address these
8. The Licence Holder is required to notify the Council of any changes at the property, or other circumstances, that may affect the licence
9. The Licence Holder will carry out works to ensure that the HMO complies with national and local standards, within the specified time, to the satisfaction of Teignbridge District Council

10. A copy of the following documents shall be provided to the tenant, if requested:
  - a. Gas safety certificate
  - b. Declaration of safety of electrical appliances and furniture
  - c. Details of testing and servicing of fire detection and alarm system
  - d. Details of Management Regulations
11. The Licence Holder and Manager shall attend specified training course(s) in relation to any applicable code of practice approved under section 233 of the Housing Act 2004, if and when required to do so by the Council
12. The Licence Holder shall take all reasonable and practical steps to prevent or reduce anti-social behaviour by persons occupying or visiting the property.
13. The Licence Holder shall ensure that all requirements of planning legislation has been adhered to.

Licences will be valid for 5 years from the date of issue and will specify the maximum number of occupiers and/or households. The occupancy number will depend on the number and size of the rooms, kitchens and bathrooms. When determining the maximum number, reference will be had to all relevant legislation and the amenity standards as detailed below.

#### **3.06d Granting of the licence**

A licence is to be granted if the following criteria are met:

1. The house is reasonably suitable for occupation having regard to amenity levels, available living space and general health and safety considerations
2. Management arrangements are satisfactory
3. The licensee, manager and others involved in the running of the property are 'fit and proper persons'. This is defined in the 2004 Housing Act. Teignbridge will rely on self-certification to determine whether a person is deemed 'fit and proper'. The Council, however, reserves the right to carry out a full criminal records bureau check. In deciding whether a person is a fit and proper person, the Council will have regard to amongst others; the severity and number of breaches, time elapsed since breach and its relevance and training received since breach.

#### **3.06e Licensing standards**

Where a licensable HMO does not comply with the appropriate amenity or space standard at the time of application for a licence, the Council may reject the application. Alternatively, the Council may use its discretion to issue a licence subject to a condition that the property will comply with the appropriate standards within an agreed period of time from the granting of the licence.

#### **3.06f Appeals**

The Council will enable licence applicants to make representation to the Housing Service Lead and the Council's Executive Member with responsibility for Housing if they are aggrieved with an officer's decision to set particular conditions or to refuse, revoke or vary a licence. They will also be able to make representations against an intention to serve an Interim Management Order

A landlord may also appeal formally to a Residential Property Tribunal if the Council decides to:

1. Refuse a licence
2. Grant a licence with conditions
3. Revoke a licence

#### 4. Vary a licence or refuse to vary a licence

##### **3.06g Register of houses in multiple occupation**

In accordance with the requirement of the Housing Act 2004, Teignbridge will hold a public register of licensable HMOs.

##### **3.06h Licensing offences for houses in multiple occupation**

The Housing Act lays down a number of licensing related offences including:

1. Operating an un-licensed HMO, or allowing an HMO to be occupied by more people than a licence allows: fine up to £20,000
2. Breach of licence condition: fine up to level 5
3. Supplying incorrect information in a licence application: fine up to level 5

In addition to the above, a landlord who operates an un-licensed HMO can be subject to a Rent Repayment Order (RRO) by a Residential Property Tribunal. An RRO requires repayment of rent received by the landlord over a period of up to 12 months. Teignbridge will consider applying for such a measure if the landlord has received rent that has been paid by Housing Benefit.

Where an unlicensed HMO is identified by the Council, the Council will assess whether there are good reasons why an application has not been received. If there are no good reasons, the Council will look to take formal proceedings with a view to prosecution in the courts.

If a landlord of an unlicensed HMO approaches the Council for licensing, and the landlord fully co-operates with the Council, including addressing any management, safety or amenity issue within an agreed timescale, the Council would not normally take enforcement action.

Generally any breach of licence condition will be dealt with informally initially. However if the breach is serious and affects the safety of the occupants or the responsible person does not carry out necessary works within an agreed time scale, the Council will pursue legal proceedings.

##### **3.06i Enforcement options for houses in multiple occupation**

As well as the options discussed in Section 2 the Council have specific powers in relation to houses in multiple occupation.

##### **3.06j Interim and final management orders for houses in multiple occupation**

Where there is no prospect of an HMO being licensed, the Council is required to apply to the Residential Property Tribunal to grant an Interim Management Order. This will allow the Council to take over the management of an HMO, become responsible for running the property and collecting the rent. This normally lasts up to a year.

In exceptional circumstances the Council can also apply for a Final Management Order. This lasts up to 5 years. Such powers will only be used in exceptional circumstances and will be agreed by the Housing Service Lead and the Council's Executive Member with responsibility for Housing. As management of any HMO will be resource intensive, the Council will look to develop a procedure with partner Registered Social Landlords and Managing agents so that they can manage such properties on behalf of the Council.

##### **3.06k Temporary exemption notices for houses in multiple occupation**

Where a landlord is, or shortly will be taking steps to make an HMO non-licensable, the Council may serve a Temporary Exemption Notice (TEN). A TEN can only be granted for a maximum period of three months. In exceptional circumstances a second TEN can be served for a further 3

month period. A TEN will be served where the owner of the HMO states in writing that steps are being taken to make the HMO non licensable within 3 months.

### **3.06l Inspection policy for houses in multiple occupation**

Whilst there is no requirement to inspect the property prior to issuing a licence, Teignbridge Council Officers will carry out an inspection to assess compliance with licensing requirements, amenity standards and to assess whether any Category 1 or high scoring Category 2 hazards identified by the Housing Health and Safety Rating System (HHSRS) need to be addressed.

### **3.06m Discretionary licensing of houses in multiple occupation**

Teignbridge has powers to apply to extend licensing to:

1. A group of HMOs closely located together where there is a significant problem with antisocial behaviour
2. An area of private housing which is subject to low housing demand or antisocial behaviour

### **3.06n Raising standards of houses in multiple occupation**

Many HMOs will not require a licence. These include houses containing self-contained flats and smaller HMOs. Many of these still pose a significant degree of risk to occupants and/or have a history of being poorly managed.

Teignbridge will continue to regulate such HMOs through enforcement of the HMO Management Regulations and by the use of the Housing Health and Safety Rating system. All HMOs will however be subject to a risk assessment which will allow the prioritisation of proactive inspections to secure appropriate improvement work.

The Local Authority will work closely with Devon and Somerset Fire and Rescue Service through consultation and joint inspections to ensure that Fire Safety in HMOs is adequate and appropriate.

### **3.06o Fire safety in houses in multiple occupation**

Statistically HMOs have one of the highest incidences of deaths caused by fire in any type of housing. It is therefore essential that HMOs possess an adequate means of escape in event of a fire and adequate fire precautions.

The actual level of fire protection and detection required will be determined by a risk assessment. Guidance on risk assessments and the level of fire protection works required in HMOs can be found on the Chartered Institute of Environmental Health website. [www.cieh.org](http://www.cieh.org) (search for guidance on fire safety provisions’).

It offers ‘[guidance on fire safety provisions for certain types of existing housing](#)’ (ISBN 978-1-84049-638-3)

The Council is generally the lead enforcing authority for fire safety in HMOs, however there are circumstances where Devon and Somerset Fire and Rescue Service will be the lead authority. A protocol between Teignbridge District Council and Devon and Somerset Fire and Rescue Authority identifies discrete areas of responsibility for inspection and enforcement of fire safety in HMOs.

### **3.06p General management of houses in multiple occupation**

‘The Management of Houses in Multiple Occupation (England) Regulations 2006’ and ‘The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 (as amended)’ require the person having control of the house to ensure that:

1. All services, furnishings, fixtures and fittings are maintained in good, sound, and clean condition.
2. The structure is kept in good order
3. All communal areas of the interior are regularly cleaned and redecorated as necessary
4. All yards, boundary walls, fences, gardens and outbuildings are maintained in a safe and tidy condition
5. Satisfactory arrangements for the disposal of refuse and litter have been made
6. At the commencement of all tenancies the lettings are clean, in a satisfactory state of repair and decoration, and comply in all respects with these standards.
7. All staircases and multiple steps should be provided with suitable handrails
8. All Tenants should fulfil their tenancy obligations

## 4 Enforcement options for empty homes

Empty homes can be a blight on the community, as well as a wasted housing resource. The Council's approach will be to work with empty homeowners, to support and encourage voluntary action, but the Council is committed to take appropriate enforcement action where reasonable negotiations fail, subject to appropriate funding being available to do so.

In deciding the most appropriate course of action regard shall be had to the risk assessment of the empty property, including its impact on the neighbourhood and the housing need in the area.

As well as the options discussed in Section 2 the Council have specific powers in relation to empty homes

### 4.01 Empty dwelling management orders (EDMOs)

Under the Housing Act 2004 the Council can apply to a Residential Property Tribunal to impose an 'empty dwelling management order' on the owner of an empty home in order to achieve occupancy of the dwelling. This order would give the Council management of the house, but not ownership, for a set period of a maximum of seven years, after which another order can be sought. The house would be let to a tenant and the costs recovered through the rental. If there is any excess income from the rent, it must go to the owner.

Practically, this option is only available to homes that are in a good state of repair and ready for occupancy. The Council will work in partnership with a registered social landlord, or other agency, to manage any properties for which it has taken responsibility through the EDMO process.

There are two types of Empty dwelling management order and 'Interim EDMO' and a 'Final EDMO'.

#### 4.01a Conditions of granting an empty dwelling management order

Empty dwelling management orders allow the Council to secure occupation and proper management of privately owned houses and flats where the following conditions apply:

1. The dwelling has been unoccupied for at least six months
2. There is no reasonable prospect that the dwelling will be occupied in the near future
3. There is a reasonable prospect that the dwelling will be occupied if an EDMO is made
4. The Council has complied with its duties in seeking to make an EDMO including any matters that may be prescribed in regulation

An Interim empty dwelling management order must be approved by a Residential Property Tribunal before it can have effect. Once approved it will usually last for a maximum period of

twelve months, but this can be extended. With an Interim EDMO the Council cannot arrange occupation of the dwelling without seeking the consent of the owner. This means that the owner has a final opportunity to reach an agreed solution. If an agreement cannot be reached, an Interim EDMO can be revoked and replaced with a Final EDMO.

The making of a final EDMO does not require the approval of a Residential Property Tribunal. Once in force an EDMO lasts for a fixed period of not more than seven years. The Council does not require the consent of the owner to grant occupation rights under a Final EDMO.

Properties will revert to their owners on an agreed date, or sooner, if the owner so requires, provided due notice is given and arrangements to repay any reasonable costs incurred by the Council are settled. The Council has the right to possession of the property whilst the EDMO is in force, which enables it to undertake the management of the property. The Council however does not acquire a legal interest, or estate.

#### **4.01b Notification of empty dwelling management orders**

The Council must notify the owner of the property of its intention to apply for an EDMO and ascertain the intentions of the owner in respect of the future use of the property in question. If the EDMO is the most appropriate course of action, the Council must seek the authorisation of the Residential Property Tribunal which must be satisfied that the property has been unoccupied for in excess of six months and that there is no reasonable prospect of the property being occupied in the near future.

In addition the Council must demonstrate that it has a reasonable prospect of securing the properties occupation and must have complied with all of the duties and procedures. An empty dwelling management order will not be approved if any of the following exemptions apply:

1. the property has been empty for less than 6 months
2. the property is the principal home of an absent owner
3. the property is a second home or holiday home
4. the property is undergoing repair or renovation
5. the property is awaiting planning or building regulation approval
6. the property is being marketed for sale
7. the owner has died within specified time period

To obtain a Final EDMO, the proposed order must be served on the owner and representations invited. A Management Scheme is required that must set out how the dwelling will be managed with details of any work the Council proposes to carry out with expenditure estimates, open market rent and proposed rent (where different) and how and when any surplus income will be passed on to the owner.

All income and expenditure must be accounted for and facilities for inspecting accounts must be made available. The rent collected must be used to offset the expenditure incurred by the Council and any surpluses must be paid to the owner on the expiry of the order. The Council cannot recover any deficit from the owner unless this forms part of any agreement reached with the owner in respect of the early revocation of the order or if the deficit relates to a service charge.

#### **4.01c Revocation and appeals**

The owner may seek revocation at any time and the Council may seek revocation if:

1. It fails to secure occupation of the property
2. The dwelling will be occupied following revocation
3. The dwelling is to be sold

4. The Final EDMO is replacing an Interim EDMO
5. The EDMO interferes with the rights of a third party
6. Other circumstances the Council considers appropriate

If there are tenants in occupation the consent of the owner would be required before revocation and the Council may refuse the revocation if the property is likely to remain unoccupied.

A person affected may appeal to Residential Property Tribunal against:

1. The decision of the Council to make a Final EDMO
2. The terms of the Final EDMO (including the terms of the management scheme)
3. The terms of the Interim EDMO (relating to payment of rent / compensation)
4. The decision of the Council to vary or revoke / refusal to vary or revoke the EDMO
5. The decision of the Council not to pay compensation / the amount of compensation

#### 4.02 Enforced sale

An enforced sale is an option available to the Council where an empty dwelling has accrued costs to the Council for works which have had to be done to the house, which the owner has neglected, and refused to repair or clear up, and has then refused to pay the resultant bill. The council can seek an order to complete the sale of the house on the open market to recoup its costs. The owner takes the balance of the sale price.

The enforced sale procedure enables the sale of a property to be forced via auction to enable the recovery of costs incurred in dealing with an empty property, the Council will:

1. Request the owner carries out remedial work to the property through formal serving of notice
2. Works in default carried out by the Council following non-compliance with notice.
3. a legal charge attached to the title of the property and
4. an application to HM Registry to enforce the sale of the property (Law of Property Act 1925)

#### 4.03 Compulsory purchase order (CPO)

The Housing Act 1985 gives the Council the power to apply to the Secretary of State to allow the Council to compulsorily purchase the property. This power will be used as a last resort to bring dwellings back into use and stop the anti-social "knock on" effects that empty properties inflict upon neighbouring residents.

The Council will have exhausted all efforts to persuade the owner to deal with their house by this stage. The Secretary of State will consider the application made by the Council and, if the owner contests the application, offer the owner the opportunity to put a case as to why the house should not be compulsorily purchased. This submission can take the form of a written representation or a public enquiry. In any case the circumstances will be judged by an independent Government appointed inspector.

#### 4.04 Back to back sale

This is a transaction that immediately follows a CPO and involves selling the property as quickly as possible to another buyer in order to recover the costs.

The Council will work in partnership with a Registered Social Landlord or other agency to purchase such properties where there is an identified housing need. Alternatively sealed bids can be invited from private buyers. Attempts would be made to secure a purchaser before taking action to compulsorily purchase a property, which will reduce the risk to the Council and enable it to recoup the money spent in taking the action and in purchasing the property.

Other legislation that will be considered and used as appropriate to deal with issues arising from empty properties, include:

Legislation	Powers
Local Government (Miscellaneous Provisions) Act 1982 S29	Enables the council to secure a property that is open to access
Buildings Act 1984 S77 and 78	Enables the council to require an owner to make a property safe or allow emergency action to be taken to make it safe
Town and Country Planning Act 1990 S215	Enables the council to take action to address unsightly external appearance
Housing Act 1985 S265	Enables the council to demolish a property that cannot be satisfactorily repaired (i.e. derelict properties)

#### 4.05 Recovery of costs

The Council will seek to recover all of its costs where possible in bringing empty properties back into use. The extent of enforcement activity undertaken by the Council will be determined by the resource available to fund both the revenue and capital related elements of the activity. We will work closely with officers in the Finance and Legal Teams prior to taking enforcement action to ensure that the Council is not being subjected to unnecessary risk.

##### 4.05a Complaints procedure

Any complaints will be dealt with in accordance with the Council's Corporate Complaints Procedure

##### 4.05b Monitoring and review

In accordance with the Regulators' Compliance Code, the Service will keep its regulatory activities and interventions under review, with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose.

The Service will set up a monitoring system to examine a sample of enforcement cases. The quality system will aim to promote consistency in the enforcement procedures. Feedback and the results from the monitoring will be discussed as part of regular one to one and team meetings. The results will also be reported regularly at Housing Management Team meetings.

This document will be subject to an annual review with additional reviews as and when required. Changes will be introduced to accommodate new legislation, guidance and local needs. The Service Lead will consult with the Council's Executive Member with responsibility for Housing before any such changes are implemented.

##### 4.05c Application of the policy

All officers will refer to this policy and the appended documents when making enforcement decisions. Any departure from this policy must be exceptional, capable of justification and be fully considered by the Business Manager (Housing and Health) before a final decision is taken. This provision shall not apply where a risk of injury or to health is likely to occur due to a delay in any decision being made.

## 5. Addendum

This policy document is an addendum to Teignbridge Council Housing Enforcement policy and sets out how Teignbridge Council will deliver section 249a of The Housing Act 2004 (as implemented by section 126 of the Housing and Planning Act 2016) in order to issue civil penalties as an alternative to prosecution.

It also sets out when Teignbridge Council will seek a Rent Repayment Order under Chapter 4 of Part 2 of the Housing and Planning Act 2016.

### 5.01 Civil Penalties

Section 126 and schedule 9 of the Housing and Planning Act 2016 came into force on the 6th April 2017.

These provisions give the local housing authority the power to issue a financial penalty for certain Housing Act 2004 offences as an alternative to prosecution.

The civil penalties option can be used for the following Housing Act 2004 offences:

- a) Failure to comply with an improvement notice
- b) Offences in relation to HMO licensing
- c) Offences relating to the contravention of an overcrowding notice
- d) Failure to comply with the HMO management regulations

The council is required to have a policy in place that details when to prosecute and when to consider a civil penalty. The council must also provide guidance on how the fine levels will be set.

The guidance document issued by the Department of Communities and Local Government (DCLG) provides details on the considerations that must be taken into account as part of the fine setting process. It places particular emphasis upon the severity of the offence and the landlord's previous record of offending. A scoring mechanism has been devised to reflect the considerations set out in the DCLG guidance. This scoring mechanism is set out below.

#### 5.01a When to prosecute and when to consider a civil penalty

The same criminal standard of proof is required for a civil penalty as for prosecution.

Teignbridge Council will firstly satisfy itself that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.

In order to do so Teignbridge Council will consider its own enforcement policy and consult the legal department who will advise, taking into consideration the Code for Crown Prosecutors.

Once satisfied that there would be a realistic prospect of conviction a decision will be taken as to whether to prosecute or to issue a civil penalty. All decisions will be taken on a case-by-case basis.

The guidance document issued by DCLG suggests that prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past.

It is likely that a civil penalty will be considered as the most appropriate course of action except in the aforementioned circumstances.

### 5.01b Levels of fine to be set

The guidance document issued by DCLG provides the following considerations when determining the level of a civil penalty;

#### 1. Severity of the offence - *The more serious the offence, the higher the penalty should be.*

In order to measure the severity of the offence the following criteria will be used;

- a. **Level one: Major impact** – serious and substantial risk to the health and safety of the occupiers and/or community as a result of the offence, with potentially life threatening results or loss of major limbs.

**For each Level 1 issue considered a score of 5 will be added.**

- b. **Level two: Serious Impact** – serious risk to the health and safety of the occupiers and/or immediate neighbours, potentially leading to serious injury or disease requiring prolonged treatment and/or hospital admission.

**For each Level 2 issue considered a score of 3 will be added.**

- c. **Level three: Minor impact** – Risk of injury or disease to the occupiers potentially resulting in treatment at the doctors.

**For each Level 3 issue considered a score of 1 will be added.**

**A one-off premium of 10 points will be added where any hazard or issue would affect more than 1 household i.e. whole building issues or common parts issues in HMO's. This is to ensure that the scope of the hazard or issue is considered in addition to its ability to harm.**

### 5.01c Culpability and track record of the offender

Landlords are running a business and should be expected to be aware of their legal obligations. 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..

In order to measure the culpability of the perpetrator the following criteria will be used;

#### i Culpability

- a. **Deliberate**– An intentional breach by a landlord or property agent or flagrant disregard for the law for example by failing to comply with a notice or regulations.

**For Deliberate acts a score of 20 will be added**

- b. **Reckless**– An actual foresight of, or wilful blindness to the risk of offending but decides to take the risk nevertheless for example failing to comply with a strict liability in the HMO regulations.

**For Reckless acts a score of 15 will be added**

- c. **Negligent**– The failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding the offence, for example partial compliance

with a schedule of work to an enforcement notice but failure to fully comply with all schedule items.

**For Negligent acts a score of 10 will be added**

- d. Low or no culpability– The offence committed has some fault on the part of the landlord or property agent but there are other circumstances for example obstruction by the tenant to allow a contractor access for repairs, or damage caused by tenant negligence.

**For Low culpability acts a score of 5 will be added**

A premium of 15 will be added where the requirement to licence a property under Parts 2 or 3 of the Housing Act 2004 has not been complied with.

Where a landlord or person managing fails to obtain a licence without direct contact by Teignbridge Council requiring them to do so a score of 5 will be added.

Where a landlord or person managing fails to obtain a licence despite direct contact by Teignbridge Council requiring them to do so a score of 15 will be added.

**ii Track record**

- d. **1st offence** – no previous conviction or civil penalty imposition for the same type of offence in the previous four years irrespective of the locality to which the offence relates.

**For 1<sup>st</sup> offences a score of 10 will be added**

- e. **2nd subsequent offence by same person/company** – any conviction or civil penalty imposition for the same type of offence within four years of the 1<sup>st</sup> offence, irrespective of the locality to which the initial offence relates.

**For 2<sup>nd</sup> offences a score of 20 will be added**

- f. **Ongoing non-compliance** - any conviction or civil penalty imposition for the same type of offence within four years of the previous instance (at least 3<sup>rd</sup> occurrence) irrespective of the locality to which the initial offence relates.

**For ongoing offences a score of 30 will be added**

**5.01d The harm caused to the tenant**

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

The severity of harm calculation above reflects the types of issues encountered however a premium score will be added for actual harm having occurred and the vulnerability of the tenant as set out in the Housing Health and Safety Rating System and in the table below;

<b>Hazard</b>	<b>Vulnerable age group (age of occupant)</b>
Damp and mould growth	14 and under
Excess Cold	65 or over
Excess Heat	65 or over
Carbon Monoxide	65 or over
Lead	under 3 years
Personal Hygiene, Sanitation and Drainage	under 5 years
Falls associated with baths etc.	60 or over
Falling on level surfaces etc.	60 or over
Falling on stairs etc.	60 or over
falling between levels	under 5 years
Electrical hazards	under 5 years
Fire	60 or over
Flames, hot surfaces etc.	under 5 years
Collision and entrapment	under 5 years
Collision and entrapment - low headroom	16 or over
Position and operability of amenities etc.	60 or over

**A score of 10 will be added where the occupiers have suffered harm due to the defects noted.**

**A score of 3 will be added for each hazard or issue noted where the vulnerable age group are present**

#### **5.01e 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.

Following the initial scoring calculation consideration will be given as to whether or not this element has been suitably met. If there is a decision to increase the fine level the reasoning behind the decision will be clearly set out in the Notice of Intent and any Final Notice.

#### **5.01f 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.

Following the initial scoring calculation consideration will be given as to whether or not this element has been suitably met. If there is a decision to increase the fine level the reasoning behind the decision will be clearly set out in the Notice of Intent and any Final Notice.

#### **5.01g 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.

Following the initial scoring calculation consideration will be given as to whether or not this element has been suitably met. If there is a decision to increase the fine level the reasoning behind the decision will be clearly set out in the Notice of Intent and any Final Notice.

#### **5.01h 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.

Following the initial scoring calculation consideration will be given as to whether or not this element has been suitably met. In particular the fine level must not be less than it would cost to undertake any necessary works contributing to the initial offence. The inspecting officer will evaluate the cost of rectifying the deficiencies based upon their knowledge and experience of the local building industry. A costing sheet will be produced and any fine must be at least 50% greater than this total up to a limit of £30K. If there is a decision to increase the fine level the reasoning behind the decision will be clearly set out in the Notice of Intent and any Final Notice.

### **5.02 Reductions**

#### **5.02a Level of compliance by perpetrator, their attitude in doing so and early payment**

Where the decision has been taken that a prosecution is appropriate or subsequently a civil penalty notice should be issued, it is unlikely that the perpetrator could be deemed compliant however if there is a clear behavioural change and a will to ensure future compliance, followed by a payment within the prescribed 28 days a reduction of 10% may be attributed to the total.

#### **5.02b Financial hardship**

Local housing authorities should make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty. The perpetrator will have the opportunity to make representations following the service of the Notice of Intent and may decide to set out any financial hardship in those representations. It will be for the perpetrator to provide sufficient documented evidence of income when relying upon such representations.

The Council reserves the right to request further information to support any financial claim, and where this is incomplete, appears to be inaccurate or is not sufficiently evidenced may determine that the representation should not be considered. It should be noted that due to the average value of property in the Teignbridge area and the upper limit of £30K associated with any civil penalty action, it is unlikely that perpetrators with multiple properties will be able to demonstrate financial hardship.

## 5.03 Examples

### 5.03a Person A has failed to comply with an improvement notice containing 6 hazards;

Excess Cold, Fire Safety, Falls on Stairs, Electrical hazards, Damp and Mould and Entry by Intruders (2 at level 1, 2 at level 2 and 2 at level 3). They were prosecuted for failing to comply with an improvement notice 3 years ago at a different address. The occupant is a 67 year old lady who has recently been in hospital with pneumonia.

A Scoring	
Severity of the offence	$2 \times 5 + 2 \times 3 + 2 \times 1 = 18$
Multiple households affected	0
Culpability - Deliberate as failed to comply with notice	20
Premium added for Licensable HMO	0
Track record – 2 <sup>nd</sup> offence in 4 years	20
Harm – Pneumonia (excess cold)	10
Vulnerability – excess cold, falls on stairs & fire	$3 \times 3 = 9$
Total	77
Penalty charge	£20,000

Once the Notice of intent is served the perpetrator engages positively with the LA. They accept the charge and pay within 28 days.

Reductions = Compliance, attitude, acceptance and early payment –10%

Subtotal = £18K

### 5.03b Person B is the person managing a poorly converted HMO

During an inspection 8 contraventions of the HMO Management Regulations are noted. The most serious relate to fire safety provisions and the electrical installation. There are 3 at level 1, 2 at level 2 and 3 at level 3. The landlord was written to recently at another HMO to remind him of the need to comply with the management regulations at all of his properties.

B Scoring	
Severity of the offence	$3 \times 5 + 2 \times 3 + 3 \times 1 = 24$
Multiple households affected	10
Culpability - Reckless as failed to comply with HMO Management Regs	15
Premium added for Licensable HMO	0
Track record – 1 <sup>st</sup> offence despite recent advice	10
Harm – non demonstrated	0
Vulnerability – 3 x over 60's living in the property (fire)	$1 \times 3 = 3$
Total	62
Penalty charge	£15,000

### 5.03c Person C has failed to comply with an improvement notice requiring an excess cold hazard to be addressed

This is the 1<sup>st</sup> time the LA has had any engagement with the landlady who claims that she has had difficulty organising the works and gaining access. A young family occupy the property.

<b>C Scoring</b>	
Severity of the offence	1 x 3 = 3
Multiple households affected	0
Culpability - Deliberate unless evidence to the contrary	20
Premium added for Licensable HMO	0
Track record – 1st offence	10
Harm – non demonstrated	0
Vulnerability	0
<b>Total</b>	<b>33</b>
Penalty charge	£5,000

Once the Notice of Intent is served Landlady makes representations suggesting that she would suffer financial hardship. She has 3 properties and the income is her only income. The cost of the works is estimated to be £3K

Person C has assets in the form of property from which she would be able to derive funds to pay the charge. No reduction is made.

In order not to undermine consideration g (above) the charge should be a minimum of £4,500

### 5.03d Person D has failed to licence a licensable HMO

She was written to following an initial visit 1 month ago advising that a licence was necessary. The property needs some attention however no notices have been served and it is not considered that the HMO management regulations have been breached. There is no history of non-compliance in the past.

<b>D Scoring</b>	
Severity of the offence	0
Multiple households affected - despite housing multiple households, there is no hazard or issue affecting health or wellbeing	0
Culpability - Reckless	15
Premium added for failure to licence	15
Track record – 1st offence	10
Harm – non demonstrated	0
Vulnerability	0
<b>Total</b>	<b>40</b>
Penalty charge	£5,000

### 5.03e Person E has failed to licence a licensable HMO

During the initial inspection 8 contraventions of the HMO management Regulations are noted. The most serious relate to fire safety provisions and the electrical installation. There are 3 at level 1, 2 at level 2 and 3 at level 3. Despite being written to no action has been taken to rectify the issues or licence the property. There are elderly occupants who are the most vulnerable to hazards relating

to fire safety. In the past 8 years, Person E has been prosecuted on 2 other occasions for a similar offences at neighbouring local authorities, the most recent within the last 4 years.

<b>E Scoring</b>	
Severity of the offence	$3 \times 5 + 2 \times 3 + 3 \times 1 = 24$
Multiple households affected	10
Culpability - Reckless for failing to comply with HMO Management Regulations and Deliberate for failure to licence	20
Premium added for failure to licence	15
Track record – 3 <sup>rd</sup> offence	30
Harm – non demonstrated	0
Vulnerability 2 x over 60's living in the property (fire)	$1 \times 3 = 3$
<b>Total</b>	<b>102</b>
<b>Penalty charge</b>	<b>£30,000</b>

### 5.03f Scoring Chart

<b>Score</b>	<b>Penalty Charge</b>
1-10	£1,000
11-20	£2,000
21-30	£3,000
31-40	£5,000
41-50	£7,500
51-60	£10,000
61-70	£15,000
71-80	£20,000
81-90	£25,000
91-100+	£30,000

### 6.01 Rent Repayment Orders

The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of Houses in Multiple Occupation. Rent repayment orders have now been extended through the Housing and Planning Act 2016 to cover a much wider range of offences.

In deciding whether to apply for a RRO, the Council must have regard to guidance issued by the Secretary of State. Search [www.GOV.UK](http://www.GOV.UK) for '[Rent repayment orders under the Housing and Planning Act 2016](#)'.

A rent repayment order is defined as an order requiring a landlord under a tenancy of housing to:-

- a) repay an amount of rent paid by a tenant, or
- b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy. (This also include housing benefit)

Rent repayment orders have been extended to cover the following situations:

- a) Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004;
- b) Failure to comply with a Prohibition Order under section 32 of the Hosing Act 2004;
- c) Breach of a banning order made under section 21 of the Housing and Planning Act 2016;3
- d) Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
- e) Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.
- f) Breach of a banning order (not yet in force)

An application for a rent repayment order to the First Tier Tribunal can be made when the landlord has committed an offence, whether or not they have been convicted of one of the offences. Where the landlord has not been convicted of an offence the first tier tribunal must be satisfied beyond reasonable doubt that the landlord has committed an offence. The tenant may also make an application to the First Tier tribunal for a Rent repayment order.

Where a landlord has been convicted of an offence to which the rent repayment order relates, the First-tier Tribunal **must** order that the maximum amount of rent is repaid (capped at a maximum of 12 months). In all cases where a criminal prosecution has been secured Teignbridge Council will make an application to the First Tier Tribunal for a Rent Repayment order (subject to the availability of the relevant rental information)

Where a landlord has not been convicted of the offence to which the rent repayment order application relates, the following factors will be taken into account when considering if and how much rent a local housing authority should seek to recover:

- a. Punishment of the offender.** Rent repayment orders should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. Factors that will be considered will include the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has previously been convicted of similar offences;
- b. Deter the offender from repeating the offence.** The level of the penalty will be set at a high enough level such that it is likely to deter the offender from repeating the offence;
- c. Dissuade others from committing similar offences.** Rent repayment orders are imposed by the First-tier Tribunal and so the fact someone has received a rent repayment order will be in the public domain. Robust and proportionate use of rent repayment orders is likely to help ensure others comply with their responsibilities.
- d. Remove any financial benefit the offender may have obtained as a result of committing the offence.** This is an important element of rent repayment orders: the landlord is forced to repay rent, and thereby loses much, if not all, of the benefit that accrued to them by not complying with their responsibilities.

Before applying for a rent repayment order, the local housing authority must give the landlord a notice of intended proceedings; State the amount that the local housing authority is seeking to

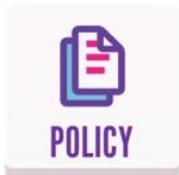


## 6 Contact details

If you would like this in another format, please contact us:

Housing Services  
Forde House  
Brunel Road  
Newton Abbot  
TQ12 4XX  
[housing@teignbridge.gov.uk](mailto:housing@teignbridge.gov.uk)

Policy page:  
[www.teignbridge.gov.uk/housing](http://www.teignbridge.gov.uk/housing)  
Tel: 01626 215 202



File location: <G:\Housing\Strategy\TDC Housing Policy>  
[01 November 2017](#)