

Taunton Deane Borough Council

Executive – 9 November 2016

Housing Enforcement Policy

This matter is the responsibility of Executive Councillor Terry Beale

Report Author: Christian Trevelyan – Partnership Manager

1 Executive Summary / Purpose of the Report

- 1.1 The report seeks Member approval for the Somerset West Housing Standards Policy. The policy has been developed with the assistance of the Council's partners which include; Sedgemoor District Council, West Somerset Council, private sector landlords, tenants, Taunton Association for the Homeless, Bridgwater YMCA, and Somerset Care and Repair. It is a three year policy detailing how the partnership will regulate standards in private sector housing in Sedgemoor, Taunton Deane and West Somerset.
- 1.2 The policy aims to raise standards in housing through 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.

2 Recommendations

The Executive is recommended to approve the Housing Standards Policy and charges.

3 Risk Assessment (if appropriate)

Risk Matrix

Description	Likelihood	Impact	Overall
Lack of resources to implement the Policy. The landlords ignore any informal advice/action given as they know there are not adequate staffing numbers to enforce.	2	4	8
Mitigation – Taunton Deane and West Somerset have agreed amendments to the team structure which will provide adequate cover for the two Councils and safeguard resources.	1	4	4

There is no revenue funding to initiate works in default. There may be situations where tenants are exposed to immediate health risks as a consequence of Category One hazards with a limited budget to act immediately to tackle the defect.	4	4	16
Mitigation - There is a limited budget which can be accessed subject to management approval. Expenditure can be reclaimed through the courts as a result of a successful prosecution. The LA has powers to prohibit properties if necessary.	1	4	4
Elements of the policy are not adopted by one or more of the partner Councils. Policy would need to be rewritten and dependent upon the percentage of changes required, may need further consultation, delaying adoption.	2	3	6
Mitigation - Consultation has already taken place with key Members and stakeholders ensuring the policy has the key ingredients that are required.	1	3	3
A landlord appeals against the formal action being taken by the Council. In some instances, the action required by the Council could be delayed subject to the decision by the Residential Property Tribunal.	4	4	16
Mitigation - Provision in place for appeals. All decisions to take formal action are decided through the Partnership Manager.	1	4	4

Risk Scoring Matrix

Likelihood	5	Almost Certain	Low (5)	Medium (10)	High (15)	Very High (20)	Very High (25)
	4	Likely	Low (4)	Medium (8)	Medium (12)	High (16)	Very High (20)
	3	Possible	Low (3)	Low (6)	Medium (9)	Medium (12)	High (15)
	2	Unlikely	Low (2)	Low (4)	Low (6)	Medium (8)	Medium (10)
	1	Rare	Low (1)	Low (2)	Low (3)	Low (4)	Low (5)
			1	2	3	4	5
			Negligible	Minor	Moderate	Major	Catastrophic
Impact							

Likelihood of risk occurring	Indicator	Description (chance of occurrence)
1. Very Unlikely	May occur in exceptional circumstances	< 10%
2. Slight	Is unlikely to, but could occur at some time	10 – 25%
3. Feasible	Fairly likely to occur at same time	25 – 50%
4. Likely	Likely to occur within the next 1-2 years, or occurs occasionally	50 – 75%
5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%

4 Background and Full details of the Report

- 4.1 The Somerset West Private Sector Housing Partnership (partnership) is a partnership between Sedgemoor District Council, Taunton Deane Borough Council and West Somerset Council to deliver private sector housing services. The local authorities work closely together to ensure consistency across the three Districts and to deliver financial and other benefits to those who live and/or work in the Somerset West area.
- 4.2 A Housing Enforcement Policy provides details of how Council's regulate standards in housing. In the last three years the Council has remedied over 200 Category 1 hazards, improving conditions in 180 properties in the private rented sector through housing enforcement and accredited over 100 properties. This has included taking formal action against 40 landlords.
- 4.3 The national strategy for housing in England set out the government's key areas of action to ensure a thriving, active but stable housing market, that offers choice, flexibility and affordable housing given how critical this is to our economic and social wellbeing. The Strategy contains four priorities, one of which is to support choice and quality for tenants. The Strategy supports growth and investment in the private rented market as the key to increasing choice, access and standards. The document recognises that the sector will continue to grow in size and importance.
- 4.4 Most tenants have a good experience of renting. Recent English Housing Survey research shows that 85 per cent of tenants in the private rented sector are very or fairly satisfied with their accommodation (compared with 81 per cent of social housing tenants). Seventy per cent of private tenants are also satisfied with the way their landlord carried out repairs and maintenance (compared with 69 per cent of social housing tenants).
- 4.5 The Government is committed to supporting growth and innovation by avoiding unnecessary regulatory burdens on landlords but are also keen on measures to deal with rogue landlords and encouraging local authorities to make full use of the robust powers they already have to tackle dangerous and poorly maintained homes.
- 4.6 It is important that landlords and tenants understand their rights and responsibilities. We have recently published newsletters aimed at both, to help them understand the fundamentals. These highlight the extent to which the law protects tenants:
- Landlords must keep the property they are renting in a good state of repair, including carrying out an annual gas safety check.
 - Other than in an emergency, landlords cannot enter the property without giving

proper notice.

- Any deposits given in connection with the property must be protected with a government-approved scheme.
- Landlords must give proper notice before seeking possession.

4.7 **Current Position** - The Council's existing Housing Standards Policy was advisory: as a joint policy between the Councils could not be drafted until the Partnership Agreement was signed.

4.8 The Government, recognising the growth of the private rented sector, has illustrated its commitment to improving the sector with the introduction of new legislation to help tackle poor illegal practices by landlords and letting agents, whilst recognising that the majority of landlords and letting agents provide decent, well managed accommodation.

4.9 In terms of the local context, of a total of 40,000 private sector dwellings in Taunton Deane, approximately 18% are privately rented. There are 380 Houses in Multiple Occupation and 69 are licensable HMO's. The Council received 129 housing standards complaints in 2015/16 an increase of 8%. The Council served 1 formal notice and issued 4 mandatory HMO licenses with a fee income of £1428.00.

4.10 There are pockets of deprivation in Taunton Deane, particularly Roman Road and Halcon estates. In areas of high deprivation, there are also high concentrations of private rented accommodation. This sometimes encompasses other issues such as anti-social behaviour, drug problems and crime. The policy encourages an area approach to managing housing resources and partners such as the third sector by focusing efforts on an area and looking to improve significant health indicators such as respiratory illnesses attributed to mould growth, slips, trips and falls from poor layout in ageing properties and reducing incidences of fire. Agencies could look to jointly tackle issues by building out crime.

4.11 The Government has introduced the Redress Schemes for Letting Agency Work and Property Management Work (Requirement to belong to a scheme etc.)(England) Order 2014, The Smoke Alarms and Carbon Monoxide Alarm (England) Regulations 2015, the Deregulation Act 2015 – Retaliatory Eviction, and the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 made under the Energy Act 2011 and the Housing and Planning Bill.

4.12 Besides the policy, Members are being asked to consider the attached paper to the report which will give the Council the power to enforce and charge for failure to comply with certain provisions.

4.13 The partnership will continue to sustain tenancies and encourage good practice by working with the Somerset West Lettings and Tenancy service (SWeLT) a multi-agency approach to working with landlords and owners to manage their properties and support tenants. Agencies include the three Council's Housing Options teams, the partnership, YMCA, CAB, Somerset Care and Repair, Probation, and Taunton Association for the Homeless.

5. **Links to Corporate Aims / Priorities**

5.1 Key Theme 1: Work with partners in both the private and public sector to develop a range of additional housing types suitable in particular for single person households,

young people in rural communities and elderly people – The Policy is designed to encourage a good standard of accommodation and management.

- 5.2 Work with others to support the wellbeing of an older population and our most vulnerable residents – The policy is instrumental in improving the current stock to the minimum legal standard and to the decent homes standard and improving the life chances for the most vulnerable in society through healthy housing.

6. Finance / Resource Implications

- 6.1 Within current revenue budget for staffing costs.

7. Legal Implications (if any)

- 7.1 The purpose of the policy is to detail how the Partnership will enforce legislation in a proper, fair and consistent manner. It sets out what owners, landlords, agents and occupiers of private sector properties can expect from the Partnership.

8. Environmental Impact Implications (if any)

- 8.1 Improvements to the private sector stock can lead to energy efficiency improvements such as loft insulation, more efficient heating systems and boilers both of which can lead to a reduction in the impact on the environment from carbon emissions and greenhouse gases. Properties can be brought into use which encourage more sustainable transport by discouraging car use.

9. Safeguarding and/or Community Safety Implications (if any)

- 9.1 Badly managed and neglected private rented properties can be detrimental to the health of the tenants as well as being detrimental to the neighbourhood. Poorly maintained properties tend to attract lower rents which in turn result in occupancy by tenants on lower incomes or on benefits. There are patterns which demonstrate drug or alcohol dependencies associated with lower incomes and recorded incidences of anti-social behaviour. There are also a considerable number of families with young children in the private rented sector. Damp and mould spores resulting from penetrating dampness and poor heating can lead to respiratory illness and hospitalisation.
- 9.2 The team may come across families where there are reported suspected safeguarding issues.

10. Equality and Diversity Implications (if any)

- 10.1 Summary. Main Equalities Impact Assessment is contained in the Appendix.

Analysis undertaken for:	<i>Housing Enforcement Policy</i>	Date undertaken: 30th November 2015
Scope	The policy aims to raise standards in housing through 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.
Evidence used	Evidence and Data used for assessment <ul style="list-style-type: none"> • Private Sector housing staff performance data • Joint Strategic Needs Assessment 2013/14 • ONS data 2014. • Six week consultation to key stakeholders.
Key findings and impacts	The policy is primarily aimed at landlords. A landlord could be anyone of the protected groups defined by : Age; Disability. Gender Reassignment; Pregnancy and Maternity; Race; Religion or belief; Sex; Sexual Orientation; Marriage and civil partnership. In the main a positive impact. The policy has to be delivered in a transparent and consistent way. To some extent, the policy is also guided and supported by the Enforcement Concordat which also sets out the framework for consistency, transparency and fairness.
Conclusion drawn	The EIA was drafted prior to the policy being put together. The conclusions of the EIA have been incorporated into the policy with checks and balances put in place to mitigate any potential discrimination.
Actions	Steps to ensure consistency and transparency when making decisions as to informal and formal action. Ensure appropriate guidance is up to date and decisions are monitored, staff trained and appraised of developments.

11. Social Value Implications (if any)

11.1 None (there is no commissioning / procurement involved with the implementation of this policy)

12. Partnership Implications (if any)

12.1 Collaborative working between the three districts that comprise SWPSHP enable the efficient and effective use of limited resources, and ensure there is equity throughout the districts avoiding a postcode lottery.

12.2 The NHS within Somerset (and nationally) is current facing a crisis with significant numbers of patients not being able to be released from hospital due to the conditions at home (cold, poor accessibility etc.). The implementation of the policy will help (see also Section 13 below).

13. Health and Wellbeing Implications (if any)

13.1 Improvements to housing standards assists with health and wellbeing. Accordingly, it is a national / local priority to regulate/eradicate Category One hazards in the stock i.e. damp and mould, serious disrepair and tackle cold homes which lead to winter deaths and cold related illnesses. This helps to reduce numbers going into hospital. It also prevents 'bed blocking' due to tenants not being able to go home as a result of unsuitable/dangerous conditions at home. Better health also leads to employment opportunities.]

13.2 The Health and Wellbeing Strategy currently has five priority work-streams, one of which states:

To identify and address the impacts of housing on health and wellbeing

13.3 A supporting 'action' is to 'drive improvements between health providers and the district housing function where housing standards are affecting health'

13.4 The amended policy (by raising standards in housing through working with owners, landlords, letting agents, tenants and a range of partners) will directly support such ambitions.

14. Asset Management Implications (if any)

14.1 None

15. Consultation Implications (if any)

15.1 The policy consultation was undertaken through various stakeholder partners who were representative of all of the stakeholders who will access the service. All of the partners responded and their feedback used to influence the draft and final version.

Democratic Path:

- **Scrutiny / Corporate Governance or Audit Committees – Yes**
- **Cabinet/Executive – Yes**
- **Full Council – No**

Reporting Frequency : Once only

List of Appendices (delete if not applicable)

Appendix A	Housing Enforcement Policy
Appendix B	Appendix 1

Contact Officers

Name	Mark Leeman - Strategy &	Name	Christian Trevelyan – Partnership
------	--------------------------	------	-----------------------------------

	Partnerships Lead		Manager
Direct Dial	01823 356411	Direct Dial	01278 435746
Email	m.leeman@tauntondeane.gov.uk	Email	christian.trevelyan@sedgemoor.gov.uk

Name	Simon Lewis – Assistant Director; Housing and Community Development	Name	
Direct Dial	01823 356397	Direct Dial	
Email	s.lewis@tauntondeane.gov.uk	Email	

Appendix 1

The following legislation has been introduced:

1.0 The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to belong to a scheme etc.) (England) Order 2014

This Order came into effect on the 1st October 2014 and requires letting agents and managing agents to be enrolled in an approved redress scheme of which there are three;

- Ombudsman Services Property (www.ombudsman-services.org/property.html)
- Property Redress Scheme (www.theprs.co.uk)
- The Property Ombudsman (www.tpos.co.uk)

1.1 Memberships of these schemes are subject to annual renewal. The details of the legislation are complex; it phrases the requirements in terms of those who carry out “lettings agency work” and “property management work”. There are a number of exclusions, the most significant of which are:

- Where the work is not being carried out as a business
- Where the work is being carried out by the owner of the property.

1.2 Generally letting agency work means acting on instructions from a landlord wishing to rent a home or the instructions of a prospective tenant wishing to find a home.

1.3 Generally property management work means repairs, maintenance, improvement or insurance carried out by a person acting on the instructions of (i) a landlord or (ii) a resident management company (of a block of leasehold flats).

1.4 The Order identifies two specific breaches in relation to letting agency work and property management work with a maximum fine of £5,000. However it is unclear whether it can be applied to both breaches individually (potentially a £10,000 fine) or whether the £5,000 is a cumulative fine when two breaches occur.

1.5 The guidance indicates that the maximum fine should be levied other than in exceptional circumstances:

- Lack of awareness
- Level of fine disproportionate for the business.

1.6 The Order specifies a specific procedure for levying the fine using Penalty Charge Notices, a new approach to enforcing standards in housing legislation. Before the fine is finalised the business may make representations to the Council. Afterwards the business may make a legal appeal to the First Tier Property Tribunal. The fine is payable to the authority and can be used for any

purpose it sees fit. However it is not possible to predict the value of fines collected.

1.7 **Recommendation**

That the level of fine for offences under the Redress Schemes for Letting Agency Work and Property Management Work (Requirement to belong to a Scheme etc.) (England) Order 2014, is set at £5,000.

That any fines payable to the Authority will be used to support housing enforcement work including training of landlords, promoting the awareness of the scheme to potential agents and to provide additional resources for housing enforcement work, where necessary.

2.0 **The Smoke Alarms and Carbon Monoxide Alarm (England) Regulations 2015**

2.1 These Regulations came into force on the 1st October 2015 and require landlords to:

- Provide a smoke alarm on every level where there is a room which is used as living accommodation
- A carbon monoxide alarm in every room where there is a solid fuel burning combustion appliance (not a gas boiler)
- Checks are made by or on behalf of the landlord that each alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

2.2 The Regulations specifies a specific procedure for levying the fine using Penalty Charge Notices with a fine of up to £5,000. Again, the funding can be used by the Authority for any purpose that it sees fit.

2.3 The legislation requires the Local Authority to produce a Statement of Principles in relation to the level of fines levied which is attached as Appendix 2. The level of fine being proposed is a maximum fine of £5,000 with a reduction of 50% for landlords who pay within 14 days.

2.4 **Recommendation**

To approve the Statement of Principles (Appendix 2) The Smoke Alarms and Carbon Monoxide Alarm (England) Regulations 2015 detailing the level of fines at £5,000 with a 50% reduction for landlords who pay within 14 days.

That any fines payable to the Authority will be used to support housing enforcement work including training of landlords promoting the awareness of the scheme to potential tenants and to provide additional resources for housing enforcement work, where necessary.

3.0 Deregulation Act 2015 – Retaliatory Eviction

3.1 This Act came into force on the 1st October 2015 and was brought in to prevent landlords from evicting tenants who make a complaint regarding the condition of the property directly to the landlord or to the Local Authority.

3.2 Under this legislation a court can refuse to evict a tenant if:

- They complained to their landlord or letting agent in writing
- Their landlord issued a Section 21 (eviction notice) after they made the complaint
- They complained to the Council because the landlord didn't take steps to remedy the problem
- The Local Authority sent the landlord a formal notice telling them to make improvements or that the Council will carry out emergency work
- Once the Council serves an Improvement Notice or Notice requiring remedial action on the landlord, the Section 21 notice becomes invalid
- If the Local Authority serves a notice and the landlord later serves an eviction notice, it will be invalid if it is served within 6 months.

3.3 The partnership's Housing Enforcement Policy initially adopts an informal approach before moving to a formal approach (service of notice). The Policy provides clear guidelines when the Local Authority will move to formal action, ensuring that tenants are protected from retaliatory eviction as well as advice and guidance to tenants on their responsibility to make their landlord aware of disrepair issues.

3.4 Recommendation

Members note the changes in legislation with regard to Retaliatory Eviction and continue to support an initial informal approach with tighter controls to ensure a notice is served within an appropriate timescale.

4. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 made under the Energy Act 2011

4.1 From April 2016, residential private landlords will not be able to unreasonably refuse consent to a tenant's request for energy efficiency improvements where subsidies are available to pay them.

4.2 From April 2018, private domestic and non-domestic landlords will need to ensure that their properties reach at least an E EPC rating before granting a tenancy to new or existing tenants.

4.3 There are certain exemptions to this legislation, for example where a building is listed.

4.4 Approximately 35% (4,000) of the private rented properties in Taunton Deane are currently let which are below energy rating E. This represents 5% of the

total housing stock of 48,000 properties. Much of this is attributed to solid walls and an ageing housing stock. Promotion of existing funding streams to improve the energy efficiency of the private rented sector such as landlord Accreditation grants and loans will help ensure that the energy efficiencies of these properties are improved.

4.5 **Recommendations**

Members note the changes in legislation in relation to energy efficiency of the private rented sector and continue to help to promote funding streams with landlords, as appropriate.

5.0 **Housing and Planning Bill**

5.1 The Housing and Planning Bill (published 13th October 2015) details further proposed legislation to regulate rogue landlords and letting agents in England. It particularly makes reference to Banning Orders, where a Local Authority can apply for this order where certain offences have been committed (to be prescribed regulations) preventing the offender (or associates) from letting properties. It also refers to the setting up of a database for rogue landlords and letting agents as well as changes to how rent repayment orders can be implemented.

5.2 **Recommendation**

Members note the proposed changes in legislation.

6.0 **Area approach to Housing Enforcement Work**

6.1 Traditionally Local Authorities respond to complaints from private tenants about the condition of their private rented property. This may lead to an investigation and informal or formal action. Formal action may be the serving of a statutory notice by the Council. The Council also has a duty to inspect Houses in Multiple Occupation (HMO's). The Council organise the HMO inspections using a risk based approach, scoring the HMO's based upon size, management, numbers of occupants etc.

6.2 This approach is not necessarily the best use of staff resource as they are reacting to complaints which could occur anywhere on the district and inspecting HMO's which could likewise be anywhere. With the increase in public demand for Local Authority intervention there is a need to refocus how staff are directed towards tackling the private rented sector.

6.3 One solution is an area based approach, whereby officers focus their attention on a particular area. The area is chosen due to a number of factors which can include a poor private rented sector (identified through the historical number of complaints and age of the stock), large concentration of HMO's, anti-social behaviour, poor health, deprivation and fuel poverty. Efforts would be on inspecting HMO's and private rented properties. Encouraging landlords to become accredited (accreditation recognising good management), identify and sign post people to appropriate agencies to resolve health and health related issues such as fuel poverty. There are many advantages to this

approach including encouraging an improvement in general health and wellbeing of the community, enhancement of the community environment, resolving anti-social behaviour, encouraging Disabled Facilities Grant take up for vulnerable clients who would otherwise have been hospitalised without an early intervention. There are a number of areas which the principles could be applied such as Taunton and Wellington, or more rural areas.

6.4 Recommendation

Members agree to an area based approach to Housing Standards which compliments the priorities of the Councils Health and Wellbeing Strategy and Somerset County Councils future approach to health intervention.

Appendix 2

Statement of Principles

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Introduction

As of the 1st October 2015, a “relevant landlord” of a “specified tenancy” of residential premises must ensure during any period on or after 1 October 2015 when the premises are occupied under the tenancy that:

1. A smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation.
2. A carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
3. Checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

For the purposes of the legislation, living accommodation is a room that is used for the primary purposes of living, or is a room in which a person spends a significant amount of time, and a bathroom and lavatory would be classed within this definition.

Enforcement

Where the Local Housing Authority has reasonable grounds to believe that:

- There are no or insufficient number of smoke alarms or Carbon Monoxide Detectors in the property as required by the regulations or;
- The Smoke Alarms or Carbon Monoxide Detectors were not working at the start of a tenancy or licence.

Then the Authority must serve on the Landlord in a method prescribed by the Regulations a Remedial Action Notice (RAN) detailing the actions the landlord must take to comply with the Regulations. If after 28 days the Landlord has not complied with the Remedial Action Notice the Local Authority must issue a penalty charge levied through a Penalty Charge Notice (PCN).

The Local Authority **must** also undertake works in default in the manner specified in the Regulation.

Principles to be followed in determining the amount of a Penalty Charge

Any penalty charge levied will cover the cost of all works in default, officer time, recovery costs, administration fee and a penalty. The provision of smoke detectors and carbon monoxide alarms does not place an excessive burden on a landlord, and the lack of compliance directly impacts the safety and security of tenants, especially those that are vulnerable and those with families. It is understood that the imposition

of the maximum potential fine, being £5,000 under the regulations, can present an excessive financial burden but this is balanced against the risk and the fact that reasonable opportunity will have been given to comply prior to any penalty charge being levied. Therefore a penalty charge of £5,000 is set for any initial non-compliance of a Remedial Action Notice. The partnership considers that prompt payment of the penalty on the first occasion should attract a reduced penalty in recognition of early admission of liability.

In line with the legislation, a discount of 50% is offered on payment within 14 days of the charge being issued. This discount shall not apply when:

1. The person/company served on has obstructed the Authority in the carrying out of its duties; and/or
2. The person/company has previously received a penalty charge under this legislation;

The discount shall only apply to the first non-compliance of a notice, if a number of remedial notices have been served covering a number of premises under the same persons/company's control.

Recovery of Penalty Charge

The local housing authority may recover the penalty charge as laid out in the Regulations on the order of a Court, as if payable under a Court Order.

Appeals in relation to a penalty charge notice

The landlord can request in writing, in a period that must not be less than 28 days beginning with the day on which the penalty notice was served, that the local housing authority review the penalty charge notice. The Local Authority must consider any representation and decide whether to confirm, vary or withdraw the penalty charge notice. This decision will be made by the Strategic Housing Manager for Sedgemoor or the Assistant Director for Housing and Communities for Taunton Deane and West Somerset in consultation with the Council's Housing Portfolio Holder. A landlord who is served with a notice confirming or varying a penalty charge notice may appeal to the First Tier Tribunal against the Local Authority's decision.

Review of Statement

This Statement of Policy shall be reviewed and amended to reflect any change in legislation, corporate policy or official guidance. Any amendment shall be in line with meeting the requirements of the legislation.

Housing Enforcement Policy

Summary of Housing Enforcement Policy

The Somerset West Private Sector Housing Partnership (partnership) is a partnership between Sedgemoor District Council, Taunton Deane Borough Council and West Somerset Council to deliver private sector housing services. The local authorities work closely together to ensure consistency across the three Districts and to deliver financial and other benefits to those who live and/or work in the Somerset West area. Partnership throughout the document refers to the statutory duties of each of the partner Councils as the local housing authorities.

The Private Sector Housing Enforcement Policy details how the partnership will regulate standards in private sector housing in Sedgemoor, Taunton Deane and West Somerset.

The policy aims to raise standards in housing through 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.

Equalities Statement

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

Data Protection

The Partnership will comply with the Data Protection Act 1998. Any personal data will only be disclosed in accordance with the provisions of the act. All information gathered during the course of carrying out duties under this policy will be treated confidentially. Confidential information will only be divulged if required by law or by some other significant reason that is in the public interest.

What to expect from the partnership:

Landlords/Owners

- When requested, Housing Standards Officers will advise landlords of the legislation and help them understand how they can comply with it.
- Housing Standards officers will advise landlords as to the action required to comply with the legislation within a specified time period.
- If the landlord agrees to undertake this action, the Housing Standards Officer will monitor the progression of the works to ensure it is carried out within the agreed timescale.
- If the landlord fails to agree to undertake the work to an agreed satisfactory standard, the Housing Standards Officer will initiate formal action by the service of a Notice, and/or by carrying out Works in Default. Failure to comply may result in the partnership recommending prosecution.

In making the decision to prosecute, the partnership will have due regard to the Code for Crown Prosecutors and whether some other action would be more appropriate.

Where specified, a charge will be made for the service of the Notice.

Emergency enforcement action will be taken if the partnership considers there is an imminent risk to a person's life.

Tenants

- The Housing Standards Officer will inform tenants about the action they can take and the timescales that they think it will take.
- The Housing Standards Officer will keep tenants informed at all key stages of the case.

What the partnership expects from tenants and owners or letting agents

Tenants

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

Owners/letting agents

- The partnership expects owners to maintain the properties they own and let. The partnership expects owners to cooperate and carry out any works required within a specified time period.

Owners of Empty Homes

- The partnership will expect owners of empty homes to maintain them and bring them back into use within a specified timescale.
- 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 home has an impact on their neighbourhood. Please refer to the Somerset West Private Sector Housing partnership – Empty Homes Strategy 2016 – 2019.

1. Background

The Private Sector Housing Enforcement Policy details how the partnership will regulate standards in private sector housing in Sedgemoor, Taunton Deane and West Somerset. 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 the partnership have a comprehensive and effective enforcement policy. Such a policy will ensure consistency of approach among Housing Standards Officers and allow members of the public to know exactly what to expect from the service. It will also aid clarity if any of the Council's takes legal proceedings, or if enforcement action is appealed against.

The partnership 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;

- All residential dwellings
- Houses in Multiple Occupation
- Empty dwellings

2. All residential dwellings

2.1 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 partnership 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's will use their powers and reach their decisions in relation to the Housing Health & Safety Rating System (Part 1 of the Housing Act 2004).

2.2 Hazard Categories

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

- Where a Category 2 hazard falling within Band D or E exists in addition to one or more Category 1 hazards.
- 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;
- Cases in which multiple Category 2 hazards which when identified, when considered together, create a more serious cumulative situation.
- Where a local house condition survey highlights specific local hazards e.g. excessive cold and dampness.
- Any other exceptional case determined by the Strategic Housing Manager for Sedgemoor in the case of enforcement action in Sedgemoor or the Assistant Director for Housing and Communities in Taunton Deane and West Somerset for enforcement action in Taunton or West Somerset in consultation with the respective Council Housing Portfolio Holder.

2.3 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 partnership will attempt to secure the required improvements informally, and within a reasonable timescale.

The partnership 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 the landlord will commence works within 28 days of being notified by the partnership of the issues identified.

If not satisfied with their intention or proposed timescales or the work is not carried out within this timescale the partnership **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 partnership decided to take a particular course of action.

The enforcement options available to the partnership are as follows:

- Improvement Notices (including Suspended Improvement Notice)
- Prohibition Orders (including Suspended Prohibition Notice)
- Hazard Awareness Notices
- Emergency Remedial Action or Emergency Prohibition Notices
- Demolition Orders
- Clearance Areas
- Service of Statutory Nuisance Notice under the Environmental Protection Act 1990.

a) Improvement Notices

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

Where the partnership 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 partnership 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 partnership 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.

b) Suspended Improvement Notice

The partnership 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:

- The need to obtain planning permission (or other appropriate consent) that is required before repairs and/or improvements can be undertaken.
- 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.
- Personal circumstances of the occupants, for example, temporary ill-health, which suggests the case should be deferred.

When deciding whether it is appropriate to suspend an Improvement Notice the partnership will consider:

- The level of risk presented by the hazard(s);
- The turnover of tenants at the property;
- The response or otherwise of the landlord or owner;
- 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 Strategic Housing Manager for Sedgemoor or the Assistant Director for Housing and Communities Taunton Deane and West Somerset in consultation with the Council's Housing Portfolio Holder.

c) 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:

- 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 be realistically provided, or
- In a house in 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
- 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
- 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:

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

2.4 Suspended Prohibition Order

The partnership 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 Strategic Housing Manager for Sedgemoor or the Assistant Director for Housing and Communities Taunton Deane and West Somerset in consultation with the Council's Housing Portfolio Holder.

The partnership 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. The partnership will reply, in writing to any request stating reasons why the partnership has approved or refused the proposed alternative uses.

2.5 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:

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

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

2.6 Emergency Remedial and Prohibition Action

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 partnership must be satisfied that:

- a) A Category 1 hazard exists, and that;
- b) The hazard poses an imminent risk of serious harm to health and safety, and that immediate action is necessary.

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

Situations in which emergency action may be appropriate include:

- 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;
- Risk of electrocution, fire, gassing, explosion or collapse.

2.7 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 to be the most appropriate course of action). In determining whether to issue a Demolition Order the partnership will take account of Government guidance and will consider all of the circumstances of the case.

2.8 Clearance Areas

The partnership 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 hazards (or that they are dangerous or harmful to the health and safety of the inhabitants as a result of bad arrangement or narrowness of streets).

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

2.9 Statutory Nuisance Notices Served Under The Environmental Protection Act 1990

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

2.10 Tenure

The 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 partnership 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 partnership judges that it is appropriate for its powers to be used differently according to tenure, as follows:

a) Owner-Occupiers

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

- Vulnerable elderly people who are judged not-capable of making informed decisions about their own welfare,
- Vulnerable individuals who require the intervention of the partnership to ensure their welfare is best protected,
- Hazards that might reasonably affect persons other than the occupants,
- Serious risk of life-threatening harm such as electrocution or fire,
- Any other exceptional case determined by the Strategic Housing Manager for Sedgemoor or the Assistant Director for Housing and Communities Taunton Deane and West Somerset in consultation with the Council's Housing Portfolio Holder

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

The partnership will take account of any proposals or representations made by, or on behalf of the owner. The partnership 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 Strategic Housing Manager for Sedgemoor or the Assistant Director for Housing and Communities Taunton Deane and West Somerset in consultation with the Council's Housing Portfolio Holder.

b) 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 partnership will not normally take formal action against an RP unless:

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

If the partnership 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 partnership 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 Strategic Housing Manager for Sedgemoor or the Assistant Director for Housing and Communities Taunton Deane and West Somerset in consultation with the Council's Housing Portfolio Holder.

c) Private Landlords

The partnership will proceed having regard to the principles of the three partners, Council's Enforcement Concordats 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:

- 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 an employee or a member of the public), or
- 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 partnership 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 partnership within 14 days, with a proposed timescale for completing the works. It is expected that the works will commence within 28 days of being notified by the partnership. If this proposal is deemed acceptable, and the work proceeds in accordance with the agreed timetable, the partnership 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 partnership, or to ensure that they maintain appropriate communication with their agent in order that appropriate decisions and responses can be provided to the partnership. The failure of an agent to respond to communication

from the partnership 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 partnership receives:

- No response from the landlord/agent or,
- An inadequate response or,
- 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 partnership 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.

d) Tenants

i) 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, if unless they have not 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 partnership. It is also expected that the tenant will provide the partnership 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:

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

Tenants are responsible for keeping the partnership informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.), which may affect the action the partnership is taking or considering taking. Tenants should also consider seeking independent legal advice about any legal powers they may be able to use 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 partnership will investigate and take appropriate action to ensure that the hazard is reduced to an acceptable level.

ii) Situation where a service may not be provided

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

- Where the tenant(s) of their own free will shortly move out of the property
- Where the tenant(s) unreasonably refuses access to the landlord, managing agent or landlords building contractor to arrange or carry out works
- Where the tenant(s) has in the opinion of the partnership clearly caused damage to the property they are complaining about, and there are no other items of disrepair
- Where the tenants only intention for contacting the Housing Standards team, in the opinion of the partnership, is to get rehoused and does not wish their rented property to be brought up to standard
- 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
- Where the tenant(s) has been aggressive, threatening, verbally or physically abusive towards staff
- Where there is found to be no justification for the complaint on visiting the property
- Where the tenant refuses to provide the partnership with relevant documentation
- 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 partnership will notify the tenant in writing of the decision not to take action and reasons why.

2.11 Powers of Entry and Power to Require Information

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

- Each Housing Standards Officer in the partnership has written authority from the 'Proper Officer' of Sedgemoor District Council, Taunton Deane Borough Council and West Somerset Council as defined in the Local Government Act 1972 stating the particular purpose for which entry is authorised
- 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 Section 72 (offences relating to Selective HMO licensing) or 234(3) (Management of HMO's).

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

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

The partnership 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.

2.12 Power to Charge for Enforcement

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 partnership 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.

2.13 Charges for Notices and Orders

If the partnership receives:

- No response from the landlord, agent or,
- An inadequate response or,
- 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 partnership proceeds with **formal action** a charge will be made in all cases for the service of the notice. The current charge is £150 as at the 1st January 2016. This is annually reviewed.

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

- There is an owner occupier currently at a property, or
- The landlord is willing to undertake works but the occupant does not wish for the works to be undertaken
- A crowding and space hazard exists and the partnership 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.

2.14 Failure to Comply

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

- Prosecution
- Carrying out the works in default
- Carrying out the works in default and prosecution
- Where a formal caution is appropriate.

Wherever possible the partnership 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 partnership will take action to recover its costs in connection with work in default. The partnership 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).

2.15 Revocation and Variation of Notices

The partnership 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 partnership 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 Strategic Housing Manager for Sedgemoor or the Assistant Director for Housing and Communities Taunton Deane and West Somerset in consultation with the Council’s Housing Portfolio Holder.

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

2.16 Works in Default

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

- The effects of not carrying out the work on the health and safety of the occupant of the property concerned
- The wishes of the tenant where the Notice has been served in respect of a rented property
- The reason for the work not being carried out in the first place
- 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:

- The actual time spent by partnership officers on the chargeable activities and recorded using file notes and database.
- Time spent will be converted into a monetary figure using the appropriate hourly rate set for the Housing Standards 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 made by the Strategic Housing Manager for Sedgemoor or the Assistant Director for Housing and Communities Taunton Deane and West Somerset in consultation with the Council's Housing Portfolio Holder.

2.17 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 Strategic Housing Manager, Sedgemoor District Council, Partnership Manager (SWPSHP), and the Housing Standards Officers in the partnership.

3.0 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 Local Authority 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.

3.1 Definition of a House 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 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:

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

Properties exempt from the licensing regime include:

- Properties consisting entirely of self-contained flats
- Where the basement is in commercial use and there are only two residential storeys above
- Where the property is owned or managed by a RP, a Local Authority, an education, Police, Fire or Health Authority
- Where the building is occupied only by the owner and members of their household
- Where the building is occupied by only two persons.

3.2 Licensing Fees

The current licensing fee is £380 per licence for an HMO occupied by 5 persons. An additional £30 is charged per additional household in HMO's where the number of persons exceeds 5. 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. Further details can be found on the partnership website at www.swpshp.org

3.3 Licensing Conditions

All licences must possess the following mandatory conditions:

- A requirement for gas safety certificates to be provided annually
- All oil fired and solid fuel systems to be appropriately serviced & maintained and any chimneys in use are similarly maintained & swept
- That electrical appliances and furniture supplied by the landlord meets the appropriate safety standard
- That any fire warning system is properly maintained (proven by documentation)
- That licence holders provide occupiers of the property with an appropriate written tenancy agreement.

The partnership may apply additional discretionary conditions which can be found in the partnership HMO handbook.

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.

3.4 HMO 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:

a) 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 2 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.

b) 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.

c) 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.

3.5 Standards in HMO's

General notes to be read in conjunction with the HMO handbook.

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 Strategic Housing Manager for Sedgemoor or the Assistant Director for Housing and Communities Taunton Deane and West Somerset in consultation with the Council's Housing Portfolio Holder.

3.6 Granting of the Licence

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

- The house is reasonably suitable for occupation having regard to amenity levels, available living space and general health and safety considerations
- Management arrangements are satisfactory
- 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. The partnership will rely on self-certification to determine whether a person is deemed 'fit and proper'. The partnership 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 partnership will have regard to amongst others; the severity and number of breaches, time elapsed since breach and its relevance, training received since breach etc.

3.7 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 partnership may reject the application. Alternatively, the partnership 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.

3.8 Appeals

The partnership will enable license applicants to make representation to the Strategic Housing Manager for Sedgemoor or the Assistant Director for Housing and Communities Taunton Deane and West Somerset and the Council's Housing Portfolio Holder 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 partnership makes a decision to;

- Refuse a licence
- Grant a licence with conditions
- Revoke a licence
- Vary a licence or refuse to vary a licence.

3.9 HMO Register

In accordance with the requirement of the Housing Act 2004, the partnership will hold a public register of licensable HMOs. This is available on the partnership website at www.swpshp.org

3.10 Licensing Offences

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

- Operating an un-licensed HMO or allowing an HMO to be occupied by more persons than a licence allows: fine up to £20,000
- Breach of licence condition: fine up to level 5
- 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. The partnership 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 partnership, the partnership will assess whether there are good reasons why an application has not been received. If there are no good reasons, the partnership will look to take formal proceedings with a view to prosecution in the courts.

If a landlord of an unlicensed HMO approaches the partnership for licensing, and the landlord fully co-operates with the partnership, including addressing any management, safety or amenity issue within an agreed timescale, the partnership 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 partnership will pursue legal proceedings.

3.11 Enforcement Options for houses in multiple occupation

As well as the options discussed in Sections 2.3 the Council have specific powers in relation to houses in multiple occupation.

a) Interim and Final Management Orders

Where there is no prospect of an HMO being licensed, the partnership is required to apply to the Residential Property Tribunal to grant an Interim Management Order. This will allow the partnership 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 partnership 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 Strategic Housing Manager for Sedgemoor or the Assistant Director for Housing and Communities Taunton Deane and West Somerset and the Council's Housing Portfolio Holder

As management of any HMO will be resource intensive, the partnership 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 partnership.

b) Temporary Exemption Notices

Where a landlord is, or shortly will be taking steps to make an HMO non-licensable, the partnership 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.

3.12 HMO Inspection Policy

Whilst there is no requirement to inspect the property prior to issuing a licence, Housing Standards 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.

3.13 Discretionary licensing

The partnership has powers to apply to extend licensing to:

- A group of HMO's closely located together where there is a significant problem with antisocial behaviour
- An area of private housing which is subject to low demand or antisocial behaviour.

3.14 Raising Standards in HMOs

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.

The partnership 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.

3.15 Fire Safety in HMOs

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 in the document 'Housing – Fire Safety' produced by the Local Authorities Co-ordination of Regulatory Services. A downloadable copy can be obtained from the partnership website at www.swpshp.org

The partnership 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 the partnership and Devon and Somerset Fire and Rescue Authority identifies discrete areas of responsibility for inspection and enforcement of fire safety in HMOs

3.16 General Management of HMOs

'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:-

- All services, furnishings, fixtures and fittings are maintained in good, sound and clean condition
- The structure is kept in good order
- All communal areas of the interior are regularly cleaned and redecorated as necessary

- All yards, boundary walls, fences, gardens and outbuildings are maintained in a safe and tidy condition
- Satisfactory arrangements for the disposal of refuse and litter have been made
- 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
- All staircases and multiple steps should be provided with suitable handrails
- All tenants should fulfil their tenancy obligations.

4.0 Empty Homes

Empty homes can be a blight on the community as well as a wasted housing resource. The partnerships approach will be to work with empty homeowners, to support and encourage voluntary action, but the partnership 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.

The partnership has published an Empty Homes Strategy www.swpshp.org which sets out how the partnership intends to tackle empty homes and engage with the owners.

5.0 Complaints procedure

Any complaints will be dealt with in accordance with each partner Council's Corporate Complaints Procedure. The relevant procedure will depend upon which council area the property is residing.

6.0 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 with staff and team meetings. The results will also be reported regularly at the partnership management meetings and Housing Management Team meetings.

This document will be subject to regular review with additional reviews as and when required. Changes will be introduced to accommodate new legislation, guidance and local needs. The Partnership Manager will consult with the Strategic Housing Manager for Sedgemoor and the Assistant Director for Housing and Communities at Taunton Deane Council and the relevant Portfolio Holder for Housing before any such changes are implemented.

7.0 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 Partnership Manager 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.