

HYNDBURN BOROUGH COUNCIL

PRIVATE SECTOR HOUSING ENFORCEMENT POLICY



HYNDBURN

The place to be
an excellent council

**Regeneration & Housing Services
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Introduction

The Private Sector Housing Team (PSHT) is part of Regeneration and Housing Services within Hyndburn Borough Council. The PSHT is concerned mainly with the Private Rented Sector however its remit also extends across all forms of tenure where appropriate. The Council have statutory duties to regulate and enforce the Housing, Health and Safety Rating System, Licensing of Houses in Multiple Occupation and other rented dwellings in areas subject to selective licensing. We also use other relevant legislation to ensure that homes are safe and well managed.

The policy sets out the broad principles and processes which Officers will follow when enforcing housing related legislation to ensure the approach is fair and consistent which will stand up to scrutiny. It will explain how the Council will take steps to ensure that housing does not adversely affect the health, safety and welfare of the occupiers or visitors and how it will improve the management of the private rented sector.

The document is divided into three sections:

- Part A – Sets out the policy aims and objectives
- Part B – Sets out the legislation and policies used by the PSHT
- Part C – Sets out the general enforcement policies and principles and describes the types of action available to the Council to ensure compliance with the legislation and duties under the remit of the Private Sector Housing Team.

Part A Policy Aims and Objectives

A1. Aims

- To explain the legal responsibilities, principles and priorities the Council will follow when enforcing legislation in relation to the private housing sector.
- To ensure Officers make balanced and consistent enforcement decisions when carrying out their duties.

A2. Objectives

- Ensure that when brought to the Council's attention, tenants of a private landlord or Registered Provider live in homes free from hazards that pose risks to their health, safety and welfare;
- Ensure the satisfactory management of all rented properties including houses in multiple occupation (HMO's);
- Ensure letting and management businesses are members of a Government registered Redress Scheme;
- Ensure all HMO's and properties situated in a selective licensing area are licensed where required, licensed conditions are met and the properties are safe;
- Work with the Fire and Rescue Service to ensure satisfactory means of escape from fire and other fire precautions in HMOs;
- Ensure landlords implement the requirements detailed in The Smoke Alarm and Carbon Monoxide (England) Regulations 2015
- Reduce the number of long term vacant properties;
- Alleviate overcrowding in private sector accommodation;
- Prevent unlawful evictions and harassment;
- On occasion, in serious cases we will be called to support owner occupiers who are living in homes which could be detrimental to their health and wellbeing.

Part B Legislation and Policies Used

B1. Part 1 of the Housing Act 2004 and the Housing, Health and Safety Rating System (HHSRS)

B1.1 Introduction

The Housing Act 2004 (“the Act”) is a significant piece of legislation and the one that is commonly enforced by the PSHT. This chapter outlines the provisions of the Act; it should be noted that this is not a definitive interpretation of the legislation and does not provide a full statement of the law - it is simply a summary.

Part 1 of the Housing Act 2004 details the system used for assessing the condition of residential premises. This is called the Housing Health and Safety Rating System (HHSRS) and is a way of identifying faults in a dwelling and evaluating the potential effect of those faults on the health, safety and welfare of the occupants and/or visitors.

The principle of this system is that any residential premises should provide a safe and healthy environment for any potential occupier or visitor. The system scores a hazard on the basis of the likelihood of an occurrence that could cause harm over the next twelve months and the probable severity of the outcome, if it did happen.

B1.2 Property Inspections and Keeping Records

If a complaint is received that suggests there is the existence of hazards at a property the need for a HHSRS inspection will be assessed. As the Council receive over 250 complaints of disrepair per year, the assessment will be based upon the information given by the complainant to determine the potential seriousness of the hazards and within in how many days an inspection is required. In some cases of minor hazards the landlord or managing agent will be contacted to facilitate compliance before an inspection is undertaken.

Where there is reason to believe that a property requires an inspection, we will as far as possible, inspect the whole property, both internally and externally in accordance with the HHSRS Operating Guidance.

Where there is a particular hazard requiring immediate action a partial inspection may be carried out initially. Once action to deal with the immediate problem is in progress a follow up inspection of the entire property will be undertaken to assess other hazards.

We are required by the HHSRS regulations to keep an accurate record of all inspections carried out, either in paper copy or electronic form. The private sector housing team use a standard property inspection form when undertaking any inspections.

In a minority of cases an occupier may withdraw their complaint or state that they do not want the Council to undertake an inspection. Where the Council believe that

serious hazards exist at the property or the occupier has withdrawn the complaint under duress the inspection will be pursued.

B1.3 Category 1 Hazards

Under section 5 of the Act the Council have a mandatory statutory duty to take the most appropriate enforcement action where a Category 1 hazard exists in a residential premises. Category 1 hazards are those that could have a serious adverse effect on the health, safety or welfare of the occupiers or visitors to the property. It is still permissible to take informal action unless there are indicators to the contrary such as a previous history of non-compliance or where it is known that the person responsible for the premises has been aware of the hazard and has not taken any remedial action. Informal action will be replaced by a statutory notice if at any time it appears that satisfactory progress to reduce or remove the hazard(s) is not being made. The statutory notices for category 1 hazards can include:

- Improvement Notice
- Prohibition Order
- Hazard Awareness Notice
- Emergency Remedial Action
- Emergency Prohibition Order
- Demolition Order
- Declaration of a Clearance Area

B1.3 Category 2 Hazards

Under section 7 of the Act the Council **DO NOT** have a mandatory statutory duty to take enforcement action where a category 2 hazard exists in a residential premises. The Council can however use discretionary powers to take enforcement action. As with category 1 hazards an informal approach will first be taken followed by a statutory notice if at any time it appears that satisfactory progress to reduce or remove the hazard(s) is not being made. The statutory notices for category 2 hazards can include:

- Hazard Awareness Notice
- Improvement Notice
- Prohibition Order

It is considered appropriate for enforcement action to be taken in relation to category 2 hazards where:

- Any category 2 hazard is assessed as being an F or above;
- A Case falls outside the above general policy where the officer considers that there are justifiable reasons for taking action. An example may be where there are multiple low category 2 hazards leading to the property being in an overall poor state of repair. The decision to proceed in these cases should be agreed with the Private Sector Housing Manager.

The Act permits more than one course of enforcement action to be taken on the same hazard or the same action to be taken again where the Council consider that the action taken by the recipient of the notice so far has not proved satisfactory.

B1.4 Standard of Remedial Work

As a minimum, category 1 hazards should be reduced to category 2 hazards assessed below a band F. Regard will be had to the extent of the work that is reasonable in order to reduce the hazard(s) significantly without incurring excessive costs.

A “patch and mend” approach should be avoided wherever possible. The works should be substantial and specified to be effective for a minimum of five years.

B.1.5 Powers of Entry

Authorised Officers have powers of entry to carry out a survey and examination of any residential premises to determine whether any action under the Act should be taken or whether any offence has been committed.

Where ever possible occupiers and owners will be given at least 24 hours’ notice, usually in writing of an intended inspection.

It is a criminal offence to obstruct an Authorised Officer from inspecting a house.

Authorised Officers will be wearing photographic identification and carry a letter of authorisation signed by the Environmental Protection Manager or the Private Rented Sector Manager.

If entry to a property is refused the Council will consider applying to the Magistrates Court for a Warrant to authorise entry especially where the Council believe serious hazards exist at the property.

B1.6 Vacation of Properties Following a HHSRS Inspection

This is a frequent occurrence in the Borough and is often referred to as a “retaliatory eviction”. Tenants may be deterred from reporting disrepair to the Council for fear of being asked to leave their house by the landlord. Consequently new legislation under the Deregulation Act 2015 contains provisions suspending the operation of Section 21 Notice in order to protect a tenant against retaliatory eviction.

However if the tenant leaves of their own accord or a Section 21 Notice was served before the complaint of disrepair or other grounds for possession such as rent arrears are being pursued the following action will be taken:

- When the property becomes vacant after a HHSRS inspection and after a schedule of remedial work has been sent it will be placed on void monitoring. If the property is re-let by the same landlord that the schedule of remedial work was sent to without the required remedial work being undertaken the Council will serve an enforcement notice.
- If there were Category 1 hazards found at the property a Suspended Improvement Notice will be served.
- If an Improvement Notice has been served prior to the property becoming vacant and the landlord confirms in writing that he/she intends to use the house

for their own family's use, the Improvement Notice will be revoked and replaced with a Hazard Awareness Notice.

- If the property is to be re-let then the Improvement Notice will be suspended.

B1.7 Powers to Require Documents

Section 235 of the Act allows the Council to require documents from a person to assist the Council undertaking their duties in relation to the Act of for the purpose of investigating whether any offence has been committed.

B1.8 Owner Occupiers

As explained in the introduction to this policy the PSHT will in the main deal with the private rented properties, however occasions will arise whereby Category 1 hazards are identified in owner occupied properties. The duty to take action still applies although it would not generally be in the public interest to enforce compliance unless the health and safety of the public or visitors was being endangered by the hazard.

B2. Part 2 of the Act Houses in Multiple Occupation (HMOs)

B2.1 Introduction

HMOs are recognised as an important type of housing accommodation within the Borough and often the only viable source of housing accommodation for vulnerable residents. They are recognised as higher risk accommodation in relation to fire, inadequate facilities, overcrowding and poor management.

Section 254-259 of the Act defines what an HMO is. Although not an extensive explanation a HMO means a building or part of a building (e.g. a flat):

- Which is occupied by more than two households and in which more than two households share an amenity or,
- Which is occupied by more than two households and which is a converted building which does not entirely comprise self-contained flats or,
- Which comprises entirely of converted self-contained flats and the standard of conversion does not meet, at a minimum, that required by the 1991 Building Regulations and more than one third of the flats re occupied under short term tenancies.

B2. 2 The Mandatory Licensing of HMOs

Part 2 and certain provisions in Part 7 of the Act introduce a mandatory licensing scheme for HMO's, the aim of this new regime is to provide greater protection for the health, safety and welfare of occupants of HMO's. Aside from physical standards in HMOs other provisions of the licensing scheme focus on the management of the premises; and the 'fitness' of those managing or providing HMO accommodation.

Mandatory Licensing will ensure that those HMOs which present the most significant health and safety risks come to the attention of the Council, placing a more direct obligation on landlords to provide acceptable standards. Every HMO that has three storeys or more and that has at least five people are living there must be licensed.

The Act places the following general duties on the Council in respect of licensable HMOs:

- **To effectively implement a licensing regime**

A licensing process is in place which requires the owner to make an application. The details of which are set out on the Council's website.

- **To determine licence applications within a reasonable time**

The Council will work towards determining all HMO licence applications within 90 days of a valid licence application being received. To be regarded as a valid application it must comprise of:

- A fully completed application, with all required signatures and dated,
- Associated documentation listed in the application form such as a gas safety certificate and electrical installation report;

- Payment of the correct fee;
- Any other information requested by the Council to assist in determining whether the licence should be granted.

If the required information is not received from the applicant within a reasonable timescale of 90 days the application will be deemed invalid and cancelled.

- **To take all reasonable steps to ensure that applications for licenses are made in respect of HMOs which are required to be licensed but are not currently licensed**

The person who has control or the person who is managing the HMO is required to apply to the Council for a licence. The Council will take all reasonable steps to ensure applications are made to them; such steps will include publicity of the new requirements through the Council's website, the media and Landlord Forums.

The legal procedures and requirements in relation to the granting or refusing of a HMO licence are detailed in Part 2 and Schedule 5 of the Act as well as associated regulations. Although it is not necessary to undertake an inspection of the HMO before the decision is made to grant the licence the Council will undertake such an inspection as a matter of course. For a licence to be granted the following conditions must be met:

- The dwelling is reasonably suitable for the occupation of the number of persons or households specified in the application or determined by the Council;
- The proposed licence holder is a fit and proper person who is the most appropriate person to be granted the licence;
- The proposed manager of the HMO is a person having control of the house and is also a fit and proper person;
- The proposed management arrangements are satisfactory.
- The proposed fire precaution arrangements are satisfactory.

B2.4 Reasonably Suitable for Occupation

Under section 65 of the Act the Council must be satisfied that the HMO is reasonably suitable for occupation by a specified maximum number of persons. In making this assessment, regard must be taken of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 (as amended). These regulations require that the following matters must be taken in to account when assessing suitability for occupation:

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

The regulations do not specify an exact standard, nor do they contain any requirements regarding minimum room sizes. It is for the local authority to set their own standards, based upon these general headings, and to determine the minimum room sizes that will be imposed in order to assess maximum occupancy levels. A document on the required standards for HMOs has been produced, which identifies these requirements,

B2.6 Duration of the Licence

The maximum period for a licence is prescribed by the Act and as 5 years. The majority of licences will be granted for this period. A licence may have to be granted for a reduced period if the applicant is under lease for less than 5 years.

B2.7 Section 255 HMO Declarations

Where there may be a dispute or confusion over whether a building is an HMO, and the Council are satisfied that the building is an HMO, it will issue a declaration which puts beyond doubt that such a building is to be regarded as an HMO.

B2. 8 Discretionary Licensing

Discretionary powers are available to extend the scope of licensing within the private rented housing sector beyond the mandatory scheme for HMOs. Under the heading of discretionary licensing, there are two distinct types:

- Additional HMO Licensing (Part 2 of the Housing Act 2004) Section 56 of the Act gives powers to the Council to designate areas, or the whole of the area within their district, as subject to additional licensing in respect of some, or all, of the HMOs in its' area that are not already subject to mandatory licensing. An additional licensing area can only be made where widespread and significant problems of ineffective management can be identified.
- Selective Licensing (Part 3 of the Housing Act 2004) Section 80 of the Act gives powers to the Council to designate areas, or the whole of the area within their district, as subject to selective licensing in respect of all privately rented accommodation, provided certain conditions are met. Selective licensing can only apply in areas of low housing demand, or in areas experiencing problems of widespread and persistent anti-social behaviour, or both. Both types of discretionary licensing require approval of the Secretary of State, and will only be approved where specific conditions of the legislation and guidance issued by the Department of Communities and Local Government have been met

The current position in Hyndburn is that there are currently no Additional Licensing areas. There is however an area of the Borough that has been designated a Selective Licensing area.

B3. Part 3 Selective Licensing

B3.1 Introduction

The Council has and may in the future declare areas in the Borough as selective licensing designation areas.

A licence is required for each privately rented dwelling in these areas.

B3.2 Securing an Application

The Council will take all reasonable steps to secure an application from the person having control or managing a house situated in a selective licensing designation area that is required to be licensed. This will include:

- Advertising that a selective licensing designation area has come into force following the legal requirements;
- Where properties are known to the licensing team sending an application pack or reference to the online service to the owners and or managers;
- Sending a reminder letter where applications are not received.
- Providing guidance and advice on the completion of the application process.

It is however the owner or managers responsibility to determine whether their house is required to be licenced and to request an application pack from the Local Authority if they have not received one.

B3.3 Determining a Licence Application

The Council will work towards determining all a selective licence application within 90 days of a valid licence application being received. To be regarded as a valid application it must comprise of:

- A fully completed application, with all required signatures and dated,
- Associated documentation listed in the application form such as a gas safety certificate and electrical installation report;
- Payment of the correct fee;
- Any other information requested by the Council to assist in determining whether the licence should be granted.

If the required information is not received from the applicant within a reasonable timescale of 90 days the application will be deemed invalid and cancelled.

The legal requirements in relation to granting or refusing a licence are detailed in Part 3 and Schedule 5 of the Act as well as associated regulations. For a licence to be granted the following criteria must be met:

that the proposed licence holder—

- is a fit and proper person to be the licence holder, and
- is, out of all the persons reasonably available to be the licence holder in respect of the house, the most appropriate person to be the licence holder;

that the proposed manager of the house is either—

- the person having control of the house, or

- a person who is an agent or employee of the person having control of the house;
- that the proposed manager of the house is a fit and proper person to be the manager of the house; and
- that the proposed management arrangements for the house are otherwise satisfactory.



B3.4 Failure to Apply for a Licence

It is a criminal offence if a person having control of or managing a house or HMO which is required to have a licence has not applied for one. Any decision to authorise a prosecution or impose civil penalties, in relation to these offences, will be made by the Environmental Protection Manager or a more senior Officer in consultation with the Council's Legal team.

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B3.5 Invalid Application Forms

The Local Authority will seek to invalidate an application for a licence if upon request, missing information is not received or if the full fee does not accompany the application form and no payment plan has been agreed with the authority.

Invalidated applications will then be addressed as an offence for operating a house or HMO that is required to be licensed without a licence.

B3.6 Rent Repayment Orders

Failure to obtain a licence for a licensable house or a HMO can have serious financial consequences for the landlord. If the landlord is found guilty of an offence for failing to apply for a licence the Council will consider pursuing a Rent Repayment Order (RRO). Such an order is made to the Residential Property Tribunal requiring the landlord to repay the housing benefit received during the time the house was not licensed.

B3.7 Failure to Comply with Licence Conditions

The licence holder or individuals bound by the licence commits an offence if they fail to comply with any condition of the licence. The Council will seek to revoke the licence if:

- The licence holder or any other person commits a serious breach of the licence condition or repeatable breaches of the conditions.
- The Local Authority no longer considers the licence holder or manager to be a fit and proper person.

Failure to comply with a licence condition is an offence for the licence holder or individuals bound by the licence. The Local Authority will determine whether a prosecution case should be taken in cases where there are serious or repeated breaches. Any decision to authorise a prosecution or impose civil penalties, in relation to these offences, will be made by the Environmental Protection Manager or a more senior Officer in consultation with the Council's Legal team.

B3.8 Management Orders

The Local Authority will use Management Orders to take over the control of problematic properties:

- When there is no reasonable prospect of the property being licenced;
- To protect the health, safety or welfare of the tenants;
- To protect the health, safety or welfare of other occupiers or landowners in the neighbourhood of the property.

B3.9 Variation of licences

The Council can vary the terms of a licence with or without the agreement of the licence holder if the circumstances regarding the relevant HMO or other property have changed.

B3.10 Revocation of licences

The Council may have to revoke a licence. The grounds for revoking a licence include:

- A request of revocation from the owner
- Where the Council believes that the licence holder is no longer a fit and proper person
- As a result of the number of occupants or other current standards that apply the HMO would not have been licensable under its current conditions.

B3.11 Temporary Exemption Notice

The Council may serve a temporary exemption notice where a person who is required to be licensed notifies the Council that they propose to take steps to ensure the property is no longer required to be licensed. The notice is served on this person and exempts that property from being licensed for a period of 3 months. In exceptional circumstances the Council may serve a second temporary exemption notice that lasts a further 3 months. No further notice can be served after the expiry of the second. The Council can refuse to serve a temporary exemption notice which allows a right of appeal. Such circumstances where the Council may refuse to serve a temporary exemption notice is where the owner has failed to supply clear evidence showing that they are taking steps to exempt the HMO or other property from the criteria for licensing.

B3.12 Licence Appeals

The applicant or any relevant person may appeal to the First Tier of the Lands Tribunal against a decision by the Council to:

- Refuse or grant a licence
- Grant a licence
- To vary or revoke a licence
- To refuse to vary or revoke a licence.

B3.13 Public Register

Section 232 of the Housing Act 2004 requires every housing authority to establish and maintain a register of:

- all licenses granted under Part 2 and 3 of the Act (HMO and selective licensing);
- all temporary exemption notices served and
- all management orders made.

The register may be in such a format as the authority consider necessary subject to requirements prescribed in regulations.

B4. The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014

New legislation has been introduced which means that from 1st October 2014 it is a legal requirement for all lettings agents and property managers in England to join one of three Government-approved redress schemes.

Whilst the majority of lettings agents and property managers provide a good service there are a minority who offer a poor service and engage in unacceptable practices. This requirement will mean that tenants and landlords with agents in the private rented sector and leaseholders and freeholders dealing with property managers in the residential sector will be able to complain to an independent person about the service they have received. Ultimately the requirement to belong to a redress scheme will help weed out bad agents and property managers and drive up standards.

The requirement will be enforced by the Council who can impose a fine of up to £5,000 where an agent or property manager who should have joined a scheme has not done so.

B5. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

The regulations require private rented sector landlords, from 1st October 2015, to have:

1. At least one smoke alarm installed on every storey of their rental property which is used as living accommodation.
2. A carbon monoxide alarm in any room used as living accommodation where solid fuel is used.
3. The landlord must make sure the alarms are in working order at the start of each new tenancy.

Failure to comply with these regulations will result in a remedial notice being served. Failure to comply with the remedial notice could result in a penalty fine not exceeding £5,000. The Council's statement of principles for determining the financial penalties in relation to this legislation is available on the Council's website.

B6. HOUSING ACT 1985 (as amended)

B6.1 Section 265 - Power to make Demolition Order

A demolition order is an option for the Council to use to deal with the existence of Category 1 hazards on a residential premises. A demolition order requires the property to be vacated within a specific time and subsequently demolished. It is a criminal offence to allow the property to be occupied after the demolition order has come into effect. If the person upon whom the order has been served does not demolish the building, the Council can demolish it instead and recharge the person accordingly. Should the Council be required to demolish the property, and the demolition leaves an adjacent terrace property party wall exposed, then the Council will construct a new gable wall and will recover the cost from any compensation monies owing to the owner.

B6.2 Section 289 - Declaration of clearance area

A clearance area is an area that is to be cleared of all buildings. Where Category 1 hazards exist on a residential premises, the Council can declare a clearance area. If this is chosen as the most appropriate enforcement action. The Council is required to consult on the declaration of a clearance area and publish its intentions. Owners and in certain cases occupiers of properties are compensated accordingly.

B6.3 Section 324 – Overcrowding

A property is overcrowded when the number of persons sleeping in the dwelling contravenes either the specified room or space standard. It is an offence for either an occupier or landlord to cause or permit overcrowding. The Council can prosecute the person causing such an offence. Where a dwelling is found to be overcrowded the Council may serve notice on the occupier, in writing requiring him to abate the overcrowding within 14 days from the date of service of notice.

B7. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

Section 16 - Requisition for Information

When the Council need to obtain information about a property in respect of which we are proposing to take enforcement action we will serve a requisition for information on the occupier and/or any person who has a legal interest in it, or who directly or indirectly receives rent, or is authorised to manage or to arrange for its letting.

It will always indicate the Act and section of the Act that it is proposing to enforce. Generally speaking a Requisition for Information is served at an early stage to ensure that it is corresponding with the correct person(s) but where the Council feel that urgent enforcement action is necessary it may be served at the same time as a formal Notice.

B8. Re-Possession of a Property – The Housing Act 1988/Rent Act 1977

This legislation details the correct procedure that landlords must follow to end a tenancy agreement; any variation of this procedure may be classed as an illegal eviction. The Protection from Eviction Act 1977 makes harassment and illegal eviction a criminal and civil offence. The Council will investigate any complaints of harassment or illegal eviction. Officers will talk to landlords regarding the potential consequences of illegal eviction; help tenants to get back into their home after an illegal eviction and may prosecute landlords who illegally evict or harass their tenants.

Under the Deregulation Act 2015 and The Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 new assured shorthold tenancies in England starting from October 1st 2015 onwards will have to use the new standardised Section 21 form and abide by all the requirements for valid service. For the purpose of this legislation new assured shorthold tenancies include the renewal of tenancies but not statutory periodic tenancies.

A Section 21 cannot be served in the first 4 months of the original tenancy but it may be served at the outset of a replacement tenancy.

For tenancies after October 1st 2015 a valid Section 21 can only be given when the tenant has been provided with a copy of a valid Energy Performance Certificate, Gas Safety Certificate and the most recent version of 'How to rent: The checklist for renting in England'. This should all be provided at the start of the tenancy. Additionally, if an updated gas safety certificate is obtained during the course of the tenancy a copy of this must have been given to the tenant.

For new and old Section 21 notices the deposit needs to be protected correctly and the prescribed information given to all relevant parties if a deposit was taken.

Retaliatory eviction is where a tenant informs the landlord of a repair that needs to be performed and the landlord serves an eviction notice in response.

Landlords will not be able to serve a valid Section 21 if;

- The tenant has made a written complaint to the landlord about the condition of the property prior to its being served; and
- The landlord has not provided an adequate written response within 14 days (this does not mean the work actually has to be done within this period); and
- The tenant has then complained about the same matters to the relevant local authority who have decided to serve an Improvement Notice in respect of the property or have carried out emergency remedial action themselves using their powers under the HHSRS.

B9. Protection From Eviction Act 1977

This Act contains measures to protect residential occupiers from illegal eviction and harassment. The Act makes it a criminal offence for a landlord to evict a residential occupier without having followed the stated legal procedure to bring the tenancy or licence to an end. The Act also makes it a criminal offence for a landlord or a person acting on the landlords behalf to carry out acts of harassment to force a tenant to give up or leave their tenancy.

B10. Protection From Harassment Act 1997

This Act makes it a criminal offence for a person to commit acts of harassment against another. Whilst not specifically designed to protect private tenants it can be used as an enforcement tool for cases where the available evidence does not allow for a prosecution under the Protection From Eviction Act 1977.

B11. Vacant Properties

B11.1 Introduction

Hyndburn currently has approximately 1724 vacant properties which create a negative impact on the local environment by attracting anti-social behaviour and vandalism. The Council's empty property strategy details how vacant properties within Hyndburn will be tackled. The purpose of the strategy is to encourage owners to bring their properties back into use; however enforcement action will be used where informal tools fail.

B11.2 Compulsory Purchase Orders

Where an owner cannot be found or refuses to take action to deal with an empty property which has been empty for more than six months and/or is giving rise to problems in the neighbourhood, or compulsory purchase is considered the most satisfactory way of dealing with a particular problem, the Council will consider compulsory purchase action to buy the property. In some cases the property would be sold prior to renovation with a Building Licence. This licence requires the person acquiring the property to renovate it to a specified standard within a specified timescale or usually between 6 and 12 months.

B11.3 Empty Dwelling Management Orders

EDMOs were introduced in the Housing Act 2004 to address the problem of empty homes by bringing vacant properties back into use and addressing the poor state of repair. There are two types of EDMO – interim and final. They both allow the Council to manage vacant properties on behalf of the owner or contract a third party to do so, i.e. a Registered Provider. The Council does not become the legal owner of the property and cannot sell or mortgage the property.

B11.4 Enforced Sale

The Enforced Sales Procedure is a process by which the Council brings about the sale of a privately owned house. It is used as a means to "sell on" a long-term vacant house (vacant longer than six months) to a new owner, in circumstances where the present owner is either unwilling or unable to deal with the house and its associated problems.

Enforced sale can be used for those properties that have charges raised against them following statutory improvement works, where the property remains empty and is causing a significant nuisance to the surrounding area.

B11.5 Section 215 of the Town and Country Planning Act 1990

This section allows the Council to take steps requiring land/premises to be cleaned up when its condition adversely affects the amenity of the area. If it appears that the amenity of part of the borough is being adversely affected by the condition of neighbouring land and buildings the Council can serve a notice on the owner requiring the situation to be remedied.

The notice will detail the action that needs to be taken and the time in which the action must be complete. If the required action is not undertaken by the owner the Council can undertake the clean-up works and recover costs from the owner.

The notices can be used to address the appearance of vacant properties which have in some cases resulted in the owner then continuing remedial work to bring the property back into use.

Not complying with a notice is a criminal offence; the Council can prosecute the person who received the notice if he intentionally failed to comply with the notice. Owners can appeal against the section 215 notice to the Magistrates Court.

B11.6 The Building Act 1984

Further, the Council is empowered to take action in relation to ruinous, dilapidated and dangerous properties under the following sections:

Section 76 - Notice of intention to remedy defective state of premises

Section 77 - Dangerous buildings and structures

Section 78(2) - Notice of intention to carry out emergency measures to deal with dangerous building or structure

Section 79 (1) - Notice requiring owner to deal with ruinous or dilapidated building

Section 79 (2) - Notice requiring owner to remove rubbish, etc.

The Council, in the event of noncompliance with the above Notices, have powers to carry out the remedial works themselves and to recover costs from the owner(s) or place a charge on the land via Land Registry if ownership details are unknown.

In addition, non-compliance with the requirements of a Notice can lead to prosecution in the Magistrates Courts.

Other provisions included in the following acts may also be considered:

Environmental Protection Act - Section 80 - nuisance

Anti-social Behaviour, Crime & Policing Act 2014 – Part 4, Community Protection Notices

Prevention of Damage by Pests Act 1949 - Section 4

Public Health Acts - verminous premises

B12. Park Homes

The PSHT are responsible for licensing Park Home Sites. Sites can apply for a licence if they have gained or are in the process of obtaining the required planning permission to operate as a recognised caravan, mobile home or park home site. These sites are commonly known as 'protected sites'. The PSHT will determine whether the site comply with the Model Standards 2008 for Caravan Sites in England before a licence can be granted. Licensed sites will be inspected annually; any breaches will be enforced under the Mobile Homes Act 2013. There are associated costs with the licensing and inspection of the Park Homes Sites. The Charging policy is available on the Council's website.

Part C – General Enforcement Policies and Principles

C1. The Regulators' Compliance Code

The Council are required by the Legislative and Regulatory Reform Act 2006, to have regard to The Regulators' Compliance Code.

This Enforcement Policy is compliant with the Code in that it aims to promote efficient and effective approaches to regulatory inspection and enforcement, thereby improving regulatory outcomes without imposing unnecessary burdens upon property owners and occupiers. Any departures from the Code will be properly reasoned, documented and based upon material evidence.

The Code does not however apply to actions under Part 1 of the Housing Act 2004 relating to the HHSRS. Actions under Part 1 will therefore continue to be subject to the principles of the Enforcement Concordat.

C2. Human Rights Act 1998

All enforcement activity will be undertaken with due regard to the provisions of the above legislation, which derives from the European Convention on Human Rights especially:

Article 6 – the right to a fair trial;

Article 8 – the right to respect for private and family life;

Article 1 of the First Protocol, which relates to the protection of property.

C3. Data Protection Act 1988

In the course of their work Officers will comply with the Data Protection Act. All information and evidence gathered during the course of carrying out the duties will be treated confidentially. Confidential information will not be divulged unless required by law or by some other significant reason that is in the public interest.

C4. Intervention

The Private Sector Housing Team will work both proactively and reactively to improve the conditions and management of private sector housing.

C4.1 Proactively

Proactively we will

- Identify houses in multiple occupation (HMOs) by carrying out surveys of the borough
- Inspect licensed HMOs to assess hazards under the HHSRS, to ensure compliance with the licence conditions and the management regulations
- Inspect properties in priority areas and selective licensing areas to assess hazards under the HHSRS and to ensure compliance with the licencing scheme and the associated licence conditions
- Review the condition of Hyndburn's housing stock through house condition surveys
- Inspect property portfolios in the ownership or management of a particular landlord or managing agent where serious concerns over management standards or condition are identified in any one of the properties in the portfolio.
- Identify vacant properties by utilising Council Tax data and carrying out surveys of the borough, Officers will then respond according to the level of vacancy

C4.2 Reactively

Reactively we will respond to:

- Requests for advice and assistance from owners and residents of all tenures on housing condition and the management of those houses.
- Private sector tenants who contact the Council complaining about disrepair in the properties they live in.
- Registered Social Landlord (RSLs) tenants who contact the Council about disrepair in the properties they live in.
- Private sector and RSL tenants who contact the Council about illegal eviction and harassment.
- An official complaint from a MP, local Councillor or Officers in other partner agencies such as Social Services, the Fire Brigade or the Police explaining that hazards may exist in a residential premises.

C5. Ensuring Compliance with the Legislation

As detailed in this policy there are a variety of tools available to the Council to ensure the required standards are met and improved in Private Sector Housing.

C5.1 Advice and Guidance

We will provide advice on appropriate housing standards, HMO standards, fire safety, legislation and legal procedures to stakeholders within the private housing sector. We cannot however give specific legal advice on a particular matter.

Advice and guidance is an essential part of the work that we do to raise standards within the private rented sector. The following methods will be used to provide advice:

- The posting of information on the Council's website,
- Verbal advice,
- Written advice, guidance, information leaflets, dissemination of official good practice guidance,
- The provision of training for landlords and managing agents through Landlord Development Days
- Attending meetings of professional bodies regarding the private rented sector.

C5.2 No Action

The assessment may conclude that some cases cannot be resolved by the range of powers detailed in this policy. In such cases the decision to take no action will be confirmed in writing and where appropriate sign posted to other units within the Council or to other organisations.

In other cases it may not be appropriate to pursue action. This can be where the cost of the remedial action to ensure compliance far outweighs the detrimental impact of the contravention.

C5.3 Pre-Enforcement Action

Through the referral of a complaint unless the complaint is assessed as potentially having the existence of a Category 1 hazard the landlord and or managing agent of the property will be contacted and given 7 days to address the received complaint before a HHSRS inspection is arranged.

If the complaint is resolved within 7 days the case will be closed, alternatively the case will be referred to a HHSRS inspection.

In considering whether pre-enforcement action is appropriate in particular cases, consideration will be given to the track record (if any) of the person (or company). In particular, Officers will consider whether any enforcement notices have had to be served in the past, the recipient's response to them and the ability and willingness of the recipient to keep to agreed timetables of work.

Pre-enforcement action will be used predominantly where the identified hazards are relatively minor and do not pose a serious risk to the health, safety and welfare of the occupants, or other persons. Pre-enforcement action can be used to resolve matters of a more serious nature in exceptional circumstances. However, even though advice has been given initially, the Council reserves the right to proceed to formal action where the property owner is clearly not going to carry out the repairs within a timescale acceptable to the Council and the occupying tenant, if any.

It should be noted that it is not always possible to use pre-enforcement action especially where the legislation requires formal action to be taken straight away.

C5. 4 Formal Action

Formal action involves the serving of enforcement notices and orders. Most notices and orders served require the recipient of the notice or order to commence and complete specified works within the specified time limits.

The decision regarding when to serve a notice or order depends upon whether there is a duty or a power to take such action and will take into account the following:

- Where the pre-enforcement action has not resulted in compliance with the legislation,
- There is a lack of confidence that the recipient of the notice or order will comply,
- There is a history of non-compliance,
- The consequences of non-compliance have a serious risk of harm to the health, safety or welfare of the public.
- The owner/person having control is unknown or unable to be contacted.

All notices and orders have notes with them that explain the effect and the recipient's right of appeal. Officers will always be willing to discuss the works specified in the notice or order and the reason for the service.

Statutory notices and orders are legal documents. Once served failure to comply with them has serious implications, normally resulting in one or more of the following sanctions.

Any extensions of time limits for compliance with a statutory notice or order, once served must be justified, recorded and confirmed in writing to all recipients of the notice or order.

C6. Sanctions

Failure to comply with a statutory notice or order will normally result in the Council seeking to prosecute and or undertake the work in default. Alternatively some of the statutory provisions impose monetary penalties for failing to comply.

C6.1 Work in Default

Work in default is a power contained in several types of statutory notice. The legislation authorises the Council, to employ a contractor to enter the property and carryout the work required to ensure compliance. If the Council has to do this, it will charge the appropriate person for the cost of the works, together with the costs involved in arranging for the work to be done. These costs will be added to those already incurred in serving the original notice.

The Council has a duty to ensure that the works are carried out a fair price and to an adequate standard. However the Council has to undertake the works in a short timescale. This can be expensive as contractors carrying out emergency works often do so at a premium rate. It is usually cheaper for the landlord or manager to organise their own remedial work.

It should be noted that carrying out work in default does not exclude the Council from either issuing a formal caution or prosecuting the offender. The Council is entitled to ensure that the work is carried out and Officers will then also consider if it is appropriate to take further action.

C6.2 Cautions

An alternative to prosecuting a person is the issuing of a formal caution. A formal caution is where an offender is given written details of the offence and he/she signs to say that he/she admits the offence. It is not a form of sentence.

A record of the caution will be kept at the Council for a period of three years and it may subsequently influence a decision to instigate proceedings should the offender break the law in the future. It may also be cited if the Council takes legal action for a subsequent offence.

The service of a formal caution will be considered when the circumstances of the offence satisfy the criteria detailed below:

- The offence is sufficiently serious to warrant prosecution; and
- It is a first offence; and/or
- The offence occurred through ignorance and the offender has expressed remorse and a willingness to comply with the law in future; and
- The officer believes that a formal caution will prevent repeat offences.

A formal caution may only be issued if the following criteria are satisfied:-

- There is sufficient evidence of the offender's guilt to give a realistic prospect of conviction.

- The offender admits that they are guilty.
- The offender will accept the formal caution and understands its significance.
- It is in the public interest to issue a formal caution rather than instigate prosecution proceedings.

C6.3 Prosecution

The Council recognises that the decision to prosecute is important. In making a decision to prosecute, a two stage test is applied:

- The first stage is the evidential test, which requires that there must be sufficient, admissible and reliable evidence that an offence has been committed by an identifiable individual or company, that there is a realistic prospect of conviction. If the case does not pass this test, it must not proceed, no matter how serious or important it may be
- Secondly, a decision must be made as to whether a prosecution would be in the public interest.

A prosecution will normally be pursued in the following circumstances:

- Where an individual or company has deliberately, negligently or persistently breached legal obligations
- Where an individual or company has deliberately or persistently ignored written warnings or formal notices and / or orders
- Where an individual or company has endangered the health, safety or wellbeing of occupiers, visitors or the public to a serious degree
- Where an individual has assaulted or obstructed an Officer in the course of their duties
- Where a HMO or house is required to be licensed and has been operating without a licence.

Any decision to authorise a prosecution or impose civil penalties will be made by the Environmental Protection Manager or a more senior Officer in consultation with the Council's Legal team. All prosecutions will be brought without unavoidable delay, and there is a requirement to lay information with the Courts within six months of the identified date that the offence was committed.

C.6.4 Civil penalties

C6.4.1 Introduction

The Council may serve notices imposing Civil Penalties, as an alternative to prosecution, of up to a maximum of £30,000 in respect of the following offences:

- Failure to comply with an Improvement Notice
- Failure to license or other licensing offences relating to Houses in Multiple Occupation (HMOs)
- Failure to licence or other licensing offences under the Council's Selective Licensing Scheme
- Failure to comply with an Overcrowding Notice
- Failure to comply with a regulation in respect of an HMO
- Breaching a Banning Order

The Council will determine, on a case by case basis, whether to instigate prosecution proceedings or to serve a civil penalty in respect of any of the offences listed above.

C6.4.2 Burden of Proof

The criminal burden of proof, i.e. beyond all reasonable doubt must be satisfied before a Civil Penalty can be issued as an alternative to prosecution. The Council must satisfy itself that there would be a realistic prospect of conviction, applied objectively, to the evidence available.

In assessing the evidence regard must be given to the Code for Crown Prosecutors and when deciding whether there is sufficient evidence to prosecute consideration must be given as to whether the evidence can be used and is reliable.

Due regard must be given to any potential defences available and in certain circumstances the Local Housing Authority may decide to conduct an interview under caution in accordance with PACE codes of practice to assist in determining whether the issue of a Civil Penalty is appropriate or not.

C6.4.3 Factors in deciding whether to issue a Civil Penalty

Each case will be decided upon its own merits taking into account all the evidence available.

Where the Council considers that a Housing Act offence has been committed it must decide whether to prosecute or to issue a civil penalty as an alternative to

prosecution. The following factors, whilst not exhaustive, are examples of where it would be appropriate to consider the issuing of a Civil Penalty :-

- No previous convictions recorded
- No evidence of previous non-compliance with appropriate legislation
- Not in the public interest to prosecute
- Offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence)
- Prosecution is likely to have a serious adverse effect upon an individual's e.g. a landlord physical or mental health, always bearing in mind the seriousness of the offence.

In circumstances where the Council has determined that it would be appropriate to issue a civil penalty as an alternative to prosecution, the level of the penalty would be calculated using the methodology as set out in Paragraph 7.4.4 below. This methodology has been developed having regard to the statutory guidance issued under Schedule 9 of the Housing and Planning Act 2016.

C6.4.4 Factors in determining the level of Civil Penalty

In order to ensure that the civil penalty is set at an appropriate level the following factors will be considered

- The seriousness of the offence, determined by harm caused and culpability of the offender
- The history of compliance of the offender
- The punishment of the offender for the offence
- The deterrent from repeating the offence
- The deterrent from others committing similar offences
- Removing any financial benefit obtained from committing the offence

Harm Caused

In determining the level of harm the Local Housing Authority will have regard to

- The individual i.e. physical injury, damage to health, psychological distress
- To the community i.e. economic loss, harm to public health
- Other types of harm i.e. public concern/feeling over the impact of poor housing condition on the local neighbourhood

The nature of the harm will depend on the personal characteristics and circumstances of the victim e.g. tenant.

Where no actual harm has resulted from the offence the Local Housing Authority will consider the relative danger that persons have been exposed to as a result of the offenders conduct, the likelihood of harm occurring and the gravity of harm that could have resulted

Factors that indicate a higher degree of harm include:

- Multiple victims
- Especially serious or psychological effect on the victim
- Victim is particularly vulnerable

Examples of Harm Categories

High	Housing defect giving rise to the offence poses a serious and substantial risk of harm to the occupants and/or visitors for example danger of electrocution, carbon monoxide poisoning or serious fire safety risk
Medium	Housing defect giving rise to the offence poses a serious risk of harm to the occupants and/or visitors for example falls between levels, excess cold, asbestos exposure
Low	Housing defect giving rise to the offence poses a risk of harm to the occupants and/or visitors for example localised damp and mould, entry by intruders

Culpability

In determining culpability the Local Housing Authority will have regard to 4 levels of culpability

Where the offender

- Has the **intention** to cause harm, the highest culpability where an offence is planned
- Is **reckless** as to whether harm is caused i.e. the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences even though the extent of the risk would be obvious to most people
- Has **knowledge** of the specific risks entailed by his actions even though he does not intend to cause the harm that results
- Is guilty of **negligence**

Examples of Culpability

High (Deliberate Act)	Intentional breach by landlord or property agent or flagrant disregard for the law i.e. failure to comply with a correctly served improvement notice
High (Reckless Act)	Actual foresight of, or wilful blindness to risk of offending but risks nevertheless taken by the landlord or property agent for example failure to comply with HMO Management regulations
Medium (Negligent Act)	Failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding commission of the offence for example. part compliance with a schedule of works but failure to fully complete all schedule items within notice timescale
Low (Low or no culpability)	Offence committed with little or no fault on the part of the landlord or property agent for example obstruction by tenant to allow contractor access, damage caused by tenants

Determining the Civil Penalty Amount

In assessing the seriousness there is a need to consider both culpability and harm. The table below sets out the interrelation between harm and culpability as a determinant of the Civil Penalty banding

Low Culpability/High Harm Band 4	Medium Culpability/High Harm Band 5	High Culpability/High Harm Band 6
Low Culpability/Medium Harm Band 3	Medium Culpability/Medium Harm Band 4	High Culpability/Medium Harm Band 5
Low Culpability/Low Harm Band 1	Medium Culpability/Low Harm Band 2	High Culpability/Low Harm Band 3

Banding Levels

Band 1	£0 - 4999
Band 2	£5000 - 9999
Band 3	£10000 – 14999
Band 4	£15000 - 19999
Band 5	£20000 - 24999
Band 6	£25000 - 30000

The starting point in each band will be the mid-point i.e. for Band 3 the mid-point will be £12,500.

Aggravating Factors

The penalty may be increased by 1K for each aggravating factors up to a maximum of £5,000.

Mitigating Factors

The penalty may be decreased by £1,000 for each mitigating factor up to a maximum of £5,000.

Reference will be made to Sentencing Council guidelines when considering relevant aggravating and mitigating factors.

An offender will be assumed to be able to pay a penalty up to the maximum amount unless they can demonstrate otherwise.

C6.5 Rent Repayment Orders (RROs)

The Housing Act 2004 introduced rent repayment orders (RRO's) to recover Housing Benefit / Universal Credit that was paid to criminal landlords who were running unlicensed properties. RRO's have now been extended through the Housing and Planning Act 2016 to cover a much wider range of offences. The new grounds for seeking a rent repayment order are:-

- Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004
- Failure to comply with a Prohibition Order under section 32 of the Housing Act 2004;
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016;
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.

If a landlord is found guilty of any of the above offences the Council will consider pursuing a Rent Repayment Order (RRO). Such an order is made to the Residential Property Tribunal requiring the landlord to repay up to 12 months housing benefit received.

C6.6 Penalty Charge Orders

Several new pieces of legislation have introduced a monetary penalty notice for failure to comply with legislation or remedial orders. The Council will serve and pursue such orders where there is evidence of non-compliance.

C6.7 Recovery of Costs

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

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

The charges that the Council will make for taking statutory action will be based upon the hourly pay rate of the officer(s) involved with any particular case inclusive of all associated overheads (such as stationary and office accommodation).

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

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

The costs of carrying out the work in default will be invoiced to the owner. If after 30 days the invoice has not been paid the Council will look at recovering the debt from the rent if the tenant is in receipt of Housing Benefit.

C7 Review of the Policy

Date of Review	June 2017
Next Review	June 2019