



Housing Enforcement Policy

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Private Sector Housing Team

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Introduction

This Policy sets out how Mendip District Council (the Council) intends to secure effective compliance with the Housing Act 2004 and other relevant legislation while minimising the burden to the Council, individuals, organisations and businesses.

It sets out what owners, landlords, their agents and tenants of residential properties can expect from the Council's Private Sector Housing (PSH) Team when regulating standards.

The policy will ensure consistency of approach whilst allowing members of the public to know what to expect from the service.

This policy deals with housing enforcement in all residential dwellings including privately rented, socially rented, owner occupied properties and Houses in Multiple Occupation (HMOs).

1.0 Our approach

We will work with other departments and service providers to ensure the full range of powers available to the Council are used in the most efficient way. We will also target our resources to ensure the most serious cases are tackled as a priority.

We will provide information in plain English and accessible formats where possible, and publicise the availability of our services. We will be open about our priorities, policies and procedures and we will ensure that officers explain the options available to property owners, landlords and tenants, and their reasoning for pursuing any given course of action.

Enforcement action referred to in this policy includes the formal requirement to take action or carry out remedial work and penalties for offences under housing law (and associated legislation). Typically enforcement options could be:

- The service of notices/orders;
- A simple caution;
- A financial penalty;
- Prosecution in the Magistrate's Court;
- Works in default with recovery of costs.

1.1 Principles of good enforcement

We are committed to the principles of good enforcement as set out in the Legislative and Regulatory Reform Act 2006 and when carrying out our regulatory activities we will do so in a way that is transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

Transparency: We will be open in our approach, explain our decisions and publish our policies and strategies.

Accountability: We will be accountable for the efficiency and effectiveness of our service and the decisions we make. We will be clear when we can help and when we cannot in line with the legislation available to us and where possible signpost customers to other agencies who may be able to assist them.

Proportionality: We will ensure that enforcement action is proportionate to the risk and any sanction applied is appropriate. In most cases, unless immediate action is necessary, for example to ensure the health and safety of tenants or occupiers, we will seek to achieve compliance through informal means and offer the opportunity to discuss the case before formal action is taken. If a landlord has a history of non-compliance, is not fully cooperative or the risk is serious, we may go straight to formal action.

Targeting: We will prioritise and direct our regulatory effort where it is needed most in line with local priorities and needs. As resources allow, The PSH Team will prioritise the reduction and removal of significant health and safety hazards and assisting vulnerable people.

Fairness and Consistency: We will treat all service users fairly and ensure that our enforcement practices are consistent. We will adopt a similar approach in similar circumstances to achieve similar outcomes. We will have regard to national guidance, Codes of Practice and best practice to inform our decision making. We will provide details on how to appeal against decisions and be open and fair in this approach.

1.2 Regulators' Code

The Legislative and Regulatory Reform Act 2006 also requires that we have regard to the Regulators Code and we are committed to ensuring our enforcement activities comply with this Code.

Supporting economic progress: We aim to carry out our activities in a way that supports landlords and businesses comply with their legal responsibilities whilst being able to grow their business. We will always balance this with public protection at the forefront of our minds.

Where possible we will work in partnership with individual landlords, owners and agents as well as voluntary and community organisations to assist them with meeting their legal obligations. Where possible we will try and avoid the need for unnecessary regulatory burden and expense and we will ensure that there is always a clear distinction between those actions necessary to comply with the law, and those which are recommended as best practice.

We are committed to improving the housing sector as well as the confidence within the sector and we recognise the importance of staff having the necessary knowledge and skills to support those we regulate.

Engaging with Service Users: We are committed to engaging with our service users and provide a number of mechanisms to facilitate this including the Landlords Forum in conjunction with our partners. We will support local landlord and tenant groups and provide the opportunity for dialogue, engagement and updating on existing, emerging and new local and national issues within the sector.

Risk based approach: Our enforcement approach is aimed primarily at reducing the risk of harm to individuals and the wider community. Where local issues are identified that require an increased level of intervention then we will tailor our approach accordingly and communicate this as much as possible to the people/sector who may be affected most.

We will regularly review our enforcement priorities and the effectiveness of our approach to ensure we are delivering an efficient and relevant service.

Sharing Information: If there is a shared enforcement role within the Council or with external agencies such as the Environmental Protection Team or Devon and Somerset Fire and Rescue Service, we will co-ordinate with these agencies to minimise overlaps and maximise our effectiveness.

Providing Information, guidance and advice: We are committed to openly providing information in an accessible and easily understood format. We will make good use of the council's website to provide information and guidance on our service and how to comply with housing legislation. Where action is considered necessary an explanation of what is required and why such action is required will be given in writing. We will help where we can with explaining works to contractors and making clear to tenants their responsibility to allow access for required work to be carried out. Any right of appeal will be clearly set out when formal enforcement action is taken.

Transparency: We aim to deliver our regulatory activities in an open and consistent way. We will explain our decisions and publish service standards on our website to ensure that service users, those we regulate and our officers have clear guidelines and expectations of our service. We will be courteous and efficient to customers and provide case officers' names and contact details.

2.0 Identifying the need for action

Enforcement action will be proportionate to the seriousness of the offence. Where we have discretion, we will consider whether other measures could lead to effective resolution. We will apply the enforcement policy in every case and make a decision about whether to proceed to formal enforcement action having considered the individual circumstances of the case. In making our decision we will consider relevant factors such as the harm caused or, potential for harm to be caused to individuals, the public and the environment.

3.0 Co-ordinated working

Often a single housing matter may overlap the enforcement responsibilities of several services and agencies such as Devon and Somerset Fire and Rescue Service and The Environmental Protection Team. Where possible we will take a comprehensive approach to enforcement by:

- Co-ordinating action between Council departments and other agencies;
- Ensuring the most effective action is taken and led by the most appropriate agency;
- Sharing information with other agencies.

4.0 Powers of entry

Entry to a property is usually required to enable the PSH Team to carry out its statutory functions. Officers' will normally make an appointment to visit in the first instance and will give at least 24 hours' notice to both the occupants and owners of our intention to enter properties to inspect them.

Officers will carry written authorisation to carryout inspections.

Powers of entry will allow an officer, at any reasonable time, to enter a property to carry out an inspection and gather evidence, take other people with them, take appropriate equipment or materials and take any measurements, photographs, recordings and samples as necessary. In some cases, powers of entry will be used to carry out works.

The PSH Team will exercise its statutory powers to gain entry without giving prior notice to investigate suspected non-compliance with housing related law or to carry out a statutory duty where it is necessary to do so. Reasons for the use of these powers may include:

- To protect the health and safety of any person or to protect the environment without avoidable delay;
- To prevent the obstruction of officers where this is anticipated;
- To determine if a property is an unlicensed HMO or has breached management regulations;
- Joint working with other agencies such as the police, Immigration Enforcement or fire service.

The PSH Team may apply to the Magistrates Court/Justice of the Peace for a Warrant to Enter Premises if entry has been consistently denied, refusal is reasonably anticipated, giving notice would defeat the purpose of the visit or gaining entry has been problematic such as in the case of empty properties. Before applying for a warrant we will consider all the circumstances of the case and ensure that a warrant is a proportionate and reasonable action. A warrant under this section includes the power to enter by force, if necessary.

Obstructing an authorised officer from entering a premises in accordance with their powers is an offence and could result in prosecution.

5.0 Requiring information

Authorised officers have the power to require:

- Documents to be provided under s235 of the Housing Act 2004 to enable them to carry out their powers and duties;
- Electrical and gas safety certificates to be provided in relation to Houses in Multiple Occupation under s234 of the Housing Act 2004;
- Any person with an interest in a property to provide details about its ownership or occupation under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976;
- Specified information for the purpose of deciding whether to apply for a banning order against the person under Section 19 of the Housing and Planning Act 2016;
- Specified information for the purpose of deciding whether to make an entry in the database of rogue landlords and property agents or to complete an entry or keep it up-to-date under Section 35 of the Housing and Planning Act 2016.

Officers will routinely use these powers and it is an offence not to produce the required information as requested or to provide false or misleading information. To address non-compliance, formal action will be considered such as a simple caution, financial penalty or prosecution.

For specific housing purposes the Authority also has the power to:

- Obtain and use Housing Benefit and Council Tax information under Section 237 of the Housing Act 2004;
- Request and use tenancy deposit information under Section 212A of the Housing Act 2004; and
- Access and use information contained within the database of rogue landlords and property agents under Section 39 of the Housing and Planning Act 2016,

6.0 Failure to comply

Non-compliance with housing law referred to in this policy is a criminal offence. Typical offences include:

- Direct breaches of regulations such as the HMO management regulations and the smoke and carbon monoxide alarm regulations;
- A breach of a legal Notice or Order without reasonable excuse. For example, a Housing Act 2004 Improvement Notice or Environmental Protection Act 1990 Statutory Nuisance Notice;
- Failure to licence a property which is required to be licenced under Part 2 or 3 of the Housing Act 2004;
- Failure to comply with the conditions of a licence issued under Part 2 or 3 of the Housing Act 2004;

Several different enforcement options are available to the Council dependent upon the circumstances of the offence. The most suitable option will be decided on a case by case basis in line with this policy.

6.1 Enforcement options for non-compliance

Where there has been a breach of the law, options available to the Council include offering a simple caution, issuing a financial penalty or prosecution. The most appropriate course of action will be considered on a case by case basis.

The Council may also conduct formal interviews under caution to assist in gathering evidence as part of an investigation into an alleged offence.

Before a decision is taken on which option to take if any, the alleged offence will be reviewed in line with the Crown Prosecution Service's [Code for Crown Prosecutors - The Full Code Test](#) which contains two stages: (i) the evidential stage followed by (ii) the public interest stage. We will review our approach as necessary to ensure it remains reasonable, proportionate and in line with current guidance. We will also seek legal advice where appropriate to ensure we are consistent and objective in our decisions.

Simple Caution

A Simple Caution is an alternative to prosecution. It may typically be used where it is appropriate to the offence and likely to be effective in preventing further non-compliance with the law. A simple caution may be appropriate for minor offences or where there is a practical expression of regret by the offender. However, a caution will only be given where the offender admits the offence, understands the significance of the caution and gives their informed consent to the caution. A simple caution will be recorded and be used to inform future decisions on prosecution and may be cited in any subsequent court proceedings.

Financial Penalty

The Housing and Planning Act 2016 introduced the option of a financial penalty (civil penalty) for some offences as an alternative to prosecution. **The Financial Penalty Policy in Appendix 1**, gives full details on how the Council will apply financial penalties under the Housing Act 2004 and the Housing and Planning Act 2016.

Specific offences where a financial penalty may be imposed as an alternative to prosecution include:

- Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004);
- Offences in relation to licensing of Houses in Multiple Occupation (section 72 of the Housing Act 2004);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95 of the Housing Act 2004);
- Offences of contravention of an overcrowding notice (section 139 of the Housing Act 2004)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234 of the Housing Act 2004).
- Breach of a banning order (section 21 of the Housing and Planning Act 2016)

Circumstances where a financial penalty may be considered appropriate include:

- A direct offence where an informal approach has not been successful in achieving compliance, including where there is a history of non-compliance;
- Failure to comply with an improvement notice;
- A flagrant or serious breach of the law;

In all the above cases, the same burden of proof is required as with a criminal prosecution, meaning the offence must be proved beyond reasonable doubt. The difference with this decision is that the judgement will be made by the Local Housing Authority rather than the Court.

To ensure our proposed action is objective, reasonable and proportionate to the individual case:

- we will follow the procedural requirements under the legislation and the guidance (refer to Appendix 1);
- we will follow our internal procedures having regard to the Code for Crown Prosecutors; and

- we will internally review our proposed action before making a final decision.

Prosecution in the Magistrates or Crown Court

Offences will be considered for prosecution in accordance with the legal, evidential and public interest tests within the Code for Crown Prosecutors.

Prosecution will be considered in similar circumstances to financial penalties under the Housing Act 2004 and the Housing and Planning Act 2016 above, and are likely to be appropriate for repeat offenders or where the seriousness of the offence is such that it is necessary to draw attention to the need for compliance with the law.

Factors which inform enforcement decisions

The decision on which enforcement option to take will be a judgement based on the circumstances of the case and will take account of factors which include (but not exclusively):

- Any previous history of non-compliance or lack of co-operation with the Council;
- The length of time over which the offence has been committed;
- The condition of the property taking into account Part 1 of the Housing Act 2004 and relevant management regulations including the type and severity of the hazard;
- The likely exposure of vulnerable individuals to a hazard;
- The impact of the action on the occupier of the premises concerned;
- Financial or other gain by not complying with housing legislation, for example, failure to apply for a licence as soon as required to do so.
- Any adverse health and safety and environmental impact of the action;
- Relevant guidance and protocols that are in place; and
- The degree to which the property is being effectively managed;

Other financial penalties

The Council may also apply a financial penalty for other relevant offences. These include:

- Failure to comply with the Smoke and Carbon Monoxide Alarm (England) Regulations 2015;

- Failure to comply with the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014;

In these cases the Authority have to show on the balance of probabilities that an offence has been committed. We will follow the **Statement of principles for determining a penalty charge in Appendix 2** when applying a financial charge under these pieces of legislation.

6.2 Legal Interventions

Works in Default

The Council will consider carrying out works in default or remedial action where the legislation allows. It will typically be appropriate for:

- Emergency Remedial action under the Housing Act 2004 either before or after a notice is served;
- Where actions have been required by a Notice under any legislation and have not been completed within the agreed timescale, or, reasonable progress has not been made towards their completion.

In these cases, the Council may organise and carry out the work itself or appoint an agent to complete the work on its behalf and recover the cost of works plus all additional costs including agency and administration fees. These costs will be charged to the property owner but can also be placed as a land charge on the property for payment when the property is sold or if money is raised against it.

The Council may also consider prosecution or a financial penalty in addition to carrying out works in default. Following the carrying out of works in default the Council may pursue enforced sale of a property where the legislation allows.

Banning orders and database of rogue landlords and property agents

➤ Banning orders

In accordance with the Housing and Planning Act 2016, the Council may apply to the First-tier Tribunal for a banning order against a residential landlord or a property agent who has been convicted of a [banning order offence](#).

A banning order bans a landlord or property agent from letting houses or engaging in letting agency or property management work in England for a defined period of time (minimum 12 months).

Banning orders are reserved for the most serious offenders who flout their legal obligations and rent out substandard accommodation and will be decided on a case by case basis.

In deciding whether to apply for a banning order and how long to recommend the ban for, we will have regard to [Banning Order Offences under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities](#) and specifically we will consider:

- the seriousness of the offence and the sentence imposed by the Court; and
- the previous history of the offender especially in relation to other banning order offences.

We will also take into account the likely effect of the ban on the person and anyone else who may be affected, including:

- the harm or potential harm to the tenant, specifically in relation to vulnerable people (banning order offences more directly related to health and safety of tenants will be considered more harmful);
- punishment of the offender, ensuring any ban is proportionate and also reflects the severity of the offence; and
- deterring the offender and others from committing similar offences by recommending a sufficiency long enough ban.

If we decide to apply for a banning order, we will first write to the landlord/property agent giving notice of our proposal to apply. This is called a 'notice of intent' and must be served within 6 months of the date of conviction.

The notice of intent will inform the landlord:

- of our intention to apply for a banning order and the reasons for this;
- the length of each proposed ban; and
- the right of the landlord to make representations during the notice period (minimum 28 days).

At the end of the notice period we will consider any representation received and make a decision whether to apply to the First-tier Tribunal for a banning order. We may also require further information to help us decide (see section 5). Once a decision has been made we will advise the landlord whether we intend to apply for a banning order or not. Only the First-tier Tribunal can make, vary or revoke a banning order. Once a decision is made then any appeals must go to the Upper Tribunal.

Breaching a banning order is an offence, subject to either prosecution in the magistrate's court or financial penalty (see section 6.1 and Appendix 1). Mendip District Council will consider prosecuting or issuing a financial penalty to any landlord found to be breaching a banning order in its area.

➤ **Database of rogues landlords and property agents**

The database has been designed to help Local Housing Authorities keep track of rogue landlords and property agents operating across council boundaries.

The Council must place a person on the database if it has successfully made a banning order application. The landlord will remain on the database for the period that the banning order has effect.

We will consider if it is appropriate to make an entry on to the database of rogue landlords and property agents when a landlord has been convicted of a banning order offence or received 2 or more financial penalties over a 12 month period.

In deciding whether to make an entry on the database, and the period of time that a landlord or property agent should stay on the database, we will have regard to the [Database of rogue landlords and property agents under the Housing and Planning Act 2016 - Statutory guidance for Local Housing Authorities](#). We will consider the severity of the offence, any mitigating factors, any history of compliance or non-compliance and deterring the offender and others from committing similar offences.

Before being placed on the database a decision notice will be served on the landlord or property agent specifying the length of time they will be maintained on the database and right of appeal. The minimum period is 2 years.

Rent Repayment Orders (RRO)

A RRO can require a landlord to repay up to 12 months' rent. The offences for which an application for an RRO can be made are:

- Using violence to secure entry contrary to section 6(1) of the Criminal Law Act 1977;
- Unlawful eviction or harassment of occupiers contrary to sections 1(2), 1(3) or 1(3A) of the Protection from Eviction Act 1977;
- Failure to comply with an Improvement Notice issued under the Housing Act 2004;
- Failure to comply with a Prohibition Order issued under the Housing Act 2004;
- Operating a licensable property under the Housing Act 2004 without a licence;
- Breaching a banning order issued under the Housing and Planning Act 2016.

The local authority or the tenant can apply to the First-tier Tribunal for a RRO. There does not have to be a conviction but the Tribunal will need to be satisfied beyond reasonable doubt that one of the offences listed above has been committed.

When considering whether to apply for a RRO, the following factors will be taken into account:

- The conduct of the landlord;
- The financial circumstances of the landlord;
- Whether the landlord has been convicted of one of the offences stated above;
- Whether the tenant is in receipt of Local Housing Allowance;
- The Code for Crown Prosecutors;
- Any other factors relevant to the case.

We will always consider applying for a RRO where a landlord has been convicted of one of the above offences in our area.

The Council will also consider assisting tenants in applying for a RRO. A decision on how and if to provide support will be made on a case by case basis in accordance with the above factors. The Council will also consider the vulnerability of the occupant, the likelihood of success and the financial implications to the Council.

We will have regard to [Rent repayment orders under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities](#) and we will inform a landlord if we intend to apply for a RRO and consider any representation received.

If the landlord has been convicted of an offence then the tribunal must order the maximum amount of rent to be repaid (up to 12 months). If the landlord has not been convicted of an offence, we will consider the following factors when decided how much rent we will seek to recover:

- Punishment of the offender – having a real financial impact;
- Deterring the offender and others from committing similar offences;
- Removing financial benefit from committing the offence;

Interim and Final Management Orders

These powers will only be used as a last resort where other attempts to ensure the health safety or welfare of occupiers has failed. Interim Management Orders (IMOs) can be made where there is no realistic prospect of a property licence being granted. By making an IMO the management and rental income from a property is taken away from the current landlord for up to a year. The money is used to carry out necessary works to reduce any significant hazards in the property, to maintain the property and to pay any relevant management expenses. Following an IMO the Council can apply for a Final Management Order (FMO) to be approved that can last for up to five years. The Council may allocate a private company to manage the property.

In exceptional circumstances and where the health, safety and welfare of occupants need to be protected, the Council may apply to the First-tier Tribunal (Property Chamber) for authority to make an IMO for privately rented accommodation that is not covered by a current licensing scheme. The Council may also make an IMO for properties where a banning order has been made.

7.0 Legislation

The PSH Team enforce a number of different pieces of legislation associated with residential dwellings. When taking action using our regulatory powers, the officer will consider which course of action is the most appropriate to deal with the circumstances of the case.

7.1 Housing Act 2004

The Housing Act 2004 is the main piece of legislation enforced by the PSH Team. The Housing Act 2004 and associated secondary legislation covers key areas of the teams work such as minimum housing conditions, HMOs and HMO Licensing.

7.1.1 Housing Health and Safety Rating System (HHSRS)

Part 1 of The Housing Act 2004 is concerned with assessing housing conditions and reducing health and safety hazards using the HHSRS. The HHSRS covers 29 potential hazards in the home. It is a risk assessment approach which looks firstly at the likelihood of someone becoming ill or injured and secondly, how badly harmed a person could be as a result. It is always considered based on the people most vulnerable to the hazard.

The HHSRS applies to all residential premises regardless of tenure and the Council has a duty to inspect premises where there is a suspected hazard.

The Council is under a duty to take enforcement action in relation to the most dangerous health and safety hazards referred to as Category 1 Hazards (those which have a hazard rating within bands A, B or C). When a Category 1 hazard is identified, the Council will decide which of the available enforcement options is most appropriate to use.

The Council has the power to deal with less dangerous Category 2 Hazards (bands D to J). The Council may take enforcement action in relation to Category 2 hazards where it makes the judgement that it would be appropriate to the particular circumstances of the case. The following circumstances will be considered when deciding whether to take action in relation to Category 2 hazards:

- A sufficiently high Category 2 hazard exists in addition to one or more Category 1 hazards;
- Where a member of the vulnerable age group for the specific hazard is present who would derive specific benefit from having the Category 2 hazards addressed;
- Where the cumulative effect from multiple Category 1 or 2 hazards creates a more serious situation;
- Where specific local hazards have been identified and targeted for action.

Following the identification of a significant HHSRS hazard, the Council may, as far as practically possible and reasonable according to the circumstances of the case, seek the views of occupiers, owners and interested parties on the hazard(s) identified and work required. These views will be taken into account when deciding the most appropriate course of enforcement action. Where the Council is confident that action will be taken to address the hazard within a reasonable time scale and it is appropriate to the circumstances of the case, an informal enforcement approach may be taken in the first instance.

Interested parties will be informed of the appropriate course of enforcement action when this decision has been made. In determining the most appropriate action, regard will also be given to the Listed Building status and the impact any course of action would have on the local environment.

Urgent action without consultation can be taken where health and safety hazards pose an imminent risk to the occupants of premises or other members of the public.

The options for formal action to remedy a hazard under Part 1 of the Housing Act 2004 are:

- Improvement Notice (including Suspended Notice);
- Prohibition Order (including Suspended Order);
- Emergency Remedial Action;
- Emergency Prohibition Order;
- Hazard Awareness Notice;
- Demolition Order and slum clearance declaration.

There is a right of appeal to the First-tier Tribunal against formal Notices or Orders. Details on how to appeal will always be included when formal Notices or Orders are served.

Where a HHSRS hazard for crowding and space is assessed as a Category 1 hazard, the appropriate option for enforcement action will usually be a Hazard Awareness Notice in cases where the hazard is created by the actions of the occupier. The full range of options for enforcement action will be considered in cases where the hazard is the result of action by a landlord or where any of the current occupants are considered to be particularly vulnerable or at an increased risk of harm.

7.1.2 Houses in Multiple Occupation (HMOs)

There are a suite of HMO regulations under the Housing Act 2004, including management regulations. The management regulations cover all HMOs and place specific requirements on property managers in relation to management and safety of HMOs. Enforcement action for non-compliance with HMO regulations, in particular the HMO Management regulations will be considered in each case in accordance with this policy.

7.1.3 Licensing of residential properties

Licensing of Houses in Multiple Occupation (HMOs)

Parts 2 of the Housing Act 2004 require certain HMOs to have a licence to operate.

The Council also has the power to designate additional licensing areas for up to five years and require certain HMOs in a specified area to apply for a licence in order to operate legally.

Selective licensing of other residential accommodation

The Council also has the power to designate selective licensing areas for up to five years under Part 3 of the Housing Act 2004 and require certain rented residential properties in a specified area to apply for a licence in order to operate legally.

General

All licences will come with conditions that have to be complied with during the period of the licence.

A fee will be charged for all licence applications as detailed in our published fees and charges.

Licences may be issued for up to a maximum of 5 years. It will usually be the case that licences will be issued for 5 years from the date of application or renewal date. However, licences may be issued for shorter periods appropriate to the circumstances of the case. For example, the duration of the licence may be shortened where the Council has reasonable evidence that the property should have already been licensed or there is concern about the management of the property. No reduction in fee will apply.

All licence holders, managers and other persons involved in the management of the property must be deemed a fit and proper person in accordance with the Housing Act 2004. The Council will specify the information required as part of this process and may require additional checks such as a Disclosure and Barring Service (DBS) check where considered appropriate.

A person's fit and proper person status may be reviewed if they are prosecuted for an offence, if they consistently breach licensing conditions, if there is evidence of poor management or for any other factors deemed relevant by this Authority.

When issuing a licence, opportunity will be given for interested parties to make representation to The PSH Team regarding decisions made and the conditions applied. If agreement cannot be reached there is a right of appeal to the First-tier Tribunal. Details of how to appeal will always be provided.

Failure to comply with the licensing requirements is an offence. Where the Council become aware of a property that requires licensing under Parts 2 or 3 of the Housing Act 2004 but is not so licensed, or where there is non-compliance with licensing conditions, enforcement action will be considered in accordance with this policy.

7.2 Other legislation

The Private Sector Housing Team has a wide range of delegated powers covering multiple pieces of legislation. This allows the team to have a holistic and comprehensive approach to regulating the housing sector in Mendip to keep residents safe and well.

Other legislation enforced by the PSH Team in accordance with this policy includes, but not limited to:

- Housing and Planning Act 2016
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, enacted under the Energy Act 2013
- The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014, enacted under the Enterprise and Regulatory Reform Act 2013
- Environmental Protection Act 1990
- Housing Act 1985
- Public Health Act 1936 and 1961
- Prevention of Damage by Pests Act 1949
- Building Act 1984
- Local Government (Miscellaneous Provisions) Act 1976
- Local Government (Miscellaneous Provisions) Act 1982
- Local Government and Housing Act 1989
- Anti-Social Behaviour, Crime and Policing Act 2014
- Caravan Sites and Control of Development Act 1960
- Mobile Homes Act 2013

8.0 Owner occupiers

Enforcement action on owner occupiers and long leaseholders will be based on the health and safety risk to the occupants or other affected persons. The Council will generally not take action where a more appropriate contractual remedy exists.

Where a HHSRS inspection identifies a significant hazard, the Council anticipates that a Hazard Awareness Notice may be the most appropriate course of action. However, all Housing Act 2004 Part 1 enforcement options (see section 7) are available to the Council and will be considered.

Enforcement options requiring action to be taken such as an Improvement Notice or Prohibition Order will be considered in cases involving:

- Vulnerable people who are not capable of making informed decisions about their own welfare or who require the intervention of the Council to ensure their welfare is best protected;
- Hazards that might reasonably affect other people e.g. other occupants, visitors, neighbours;

- Serious risk of life-threatening harm e.g. electrical hazards.

Where the condition of one property is affecting the occupant of another property or the general public, such as a health and safety hazard or statutory nuisance, appropriate enforcement action will be considered regardless of property tenure.

We will always consider the most appropriate option dependent on the circumstances of the case and will make the owner aware of any suitable financial assistance available from the Council.

9.0 Landlords and managing agents

We will work with landlords and managing and letting agents to help them comply with their legal obligations and advise them of the legislation that applies and how to comply with it.

Where we are aware of other requirements outside of our remit or best practice in the sector, we will advise landlords where to seek further assistance.

If there are serious hazards identified in a rented property we will undertake enforcement action requiring relevant defects to be repaired or improvements made. If a landlord proposes reasonable alternative works or solutions, we will consider these along with the required outcome.

We will consider each case on its own merits and only take enforcement action when it is considered appropriate. If enforcement action is taken we will explain why such action is necessary.

Where we need to take enforcement action we will usually charge for this action as the legislation allows.

Where a landlord has shown a history of non-compliance, is not fully cooperative or the risk is serious, we may go straight to formal action.

In making a decision to prosecute or issue a financial penalty, we will have regard to the seriousness of the offence, the benefit of the sanction and whether some other action would be appropriate. Where we prosecute we will look to recover all of our costs.

10.0 Tenants

If tenants are unhappy about their housing conditions, they are expected to give their landlord the opportunity to resolve any problems before the Council become involved.

Unless there are exceptional circumstances, the PSH Team will generally not visit a property at the request of a tenant unless the tenant has first been in contact with their landlord or agent to try and resolve the matter.

Example of exceptional circumstances include, but not exclusively:

- an imminent risk to health and safety;
- a history of harassment/threatened eviction/poor management practice;
- where the tenant could not reasonably be expected to contact their landlord/managing agent due to the special circumstances of the case e.g. vulnerability.

This does not preclude the Council from making unannounced visits to properties where it feels it appropriate to do so.

Where the matter appears to present an imminent risk and the Council become involved to try and quickly resolve the matter, it is still expected that tenants will make every effort to contact their landlord.

Where landlords are taking action in a reasonable time frame then the Council will not seek to interfere with this process.

Tenants are expected to:

- allow reasonable access to their landlord, managing agent or contractor to arrange or carry out works;
- keep prearranged appointments or give sufficient notice of cancellation;
- be courteous and non-threatening to our officers;
- provide information in a timely manner when requested;
- keep officers informed of any contact they have had with their landlord (agent or builder etc.) which may affect the action the Council take.

The Council will consider withdrawing its service if the above conditions are not followed.

11.0 Empty homes

The Empty Homes Strategy sets out how the Council will work to bring empty properties back into use, including the use of enforcement action.

The PSH Team will work with owners of empty homes to help them bring them back into use and encourage access to financial assistance where it is available.

The Council will consider the full range of enforcement options including Compulsory Purchase Orders, Empty Dwelling Management Orders (EDMOs) and enforced sale where an owner does not co-operate and the empty property has not been brought back into use within a reasonable period.

Where an empty property presents a serious or imminent risk to health and safety or is causing a statutory nuisance, appropriate enforcement action will be considered depending on the circumstances of each case.

12.0 Mobile homes, caravan parks and camp sites

The Private Sector Housing Team's main involvement with mobile home (including caravan and park home) sites is the duty to licence applicable sites (holiday, touring and residential), under the Caravan Sites and Control of Development Act 1960.

We will also licence applicable camping sites under the Public Health Act 1936. If the land is to be used as a camping site by the public for more than 42 days consecutively - or 60 days in a year - a licence is required. There are exceptions for organisations that hold camping exemption certificates.

We will normally issue a licence unless the site does not have the correct planning permission, planning permission is to expire within 6 months or the applicant has had a site licence withdrawn in the previous three years.

It is an offence to operate certain types of sites without a licence and complaints of unlicensed sites will be investigated in conjunction with the Council's Planning Department.

Licences are issued with conditions which concern maintaining adequate health and safety on sites. They will also specify the number and type of pitches, the spacing between pitches, whether the pitches are residential, static holiday or touring, water supply and drainage, toilets and washing facilities, fire precautions and electrical installations.

Breaches of licence conditions will be investigated in line with current enforcement objectives and priorities. Appropriate enforcement action may be taken in relation to any breaches of the licence conditions, based on the risk of the breach in relation to occupiers' health, safety or welfare.

The Mobile Homes Act 2013 introduced the power to serve a compliance notice to ensure that conditions on relevant protected sites are complied with.

The Mobile Homes Act 2013 also introduced the power to require a fee to accompany licensing applications for protected sites as well as an annual fee. Before applying any charges we will publish and review a fees policy in accordance with the legislative requirements.

The Council will consider enforcement action against site owners who fail to meet their basic responsibilities.

The Council will also licence campsites under the Public Health Act 1936 and apply appropriate conditions as required.

13.0 Cost recovery

Proceeds of Crime Act 2002

Where appropriate to the case, the Council, will consider taking proceedings under the Proceeds of Crime Act following a successful prosecution.

Charging for services

The Council has the power under the Housing Act 2004 to recover costs for certain action such as serving notices or carrying out the licensing function. These charges will be made in line with our published fees and charges.

Where charges for enforcement action are lawfully incurred and levied they will be registered as a local land charge. This means that when the property is sold the debt has to be repaid including any interest accrued on the initial charge.

Unpaid debts and invoices

We will pursue all debts owed as a result of enforcement charges, charges for carrying out works (as well as any other charges), unpaid invoices or unpaid financial penalties.

The Council may consider enforcing the sale of the property to recover costs or recovering the money owed in the relevant Court, including the County Court.

14.0 Complimentary documents

This policy does not stand alone and should be read as part of a wider approach to improving homes and enforcement.

- **Somerset District Authorities Regulatory Services Enforcement Policy** – is the countywide policy which the Council conducts all enforcement in accordance with.
- **Corporate Enforcement Policy** – is the Council's corporate policy for enforcement which this policy sits under and supplements.
- **Safeguarding Policy and Procedure for Children, Young People and Vulnerable Adults** – sets out our responsibility to safeguard children and vulnerable adults through our service delivery.
- **Safe and Healthy Homes Policy** – explains our approach to providing financial assistance.
- **Empty Homes Strategy** – outlines our approach to empty homes in the area.
- **Code for Crown Prosecutors** – outlines what tests need to be met before considering a prosecution.

15.0 Feedback

We encourage comments on our service and we will use them to actively improve what we do.

You can contact the Private Sector Housing Team:

- by telephone on 0300 303 8588
- by email at PSH_Enquiries@mendip.gov.uk
- by writing to Private Sector Housing, Mendip District Council, Cannards Grave Road, Shepton Mallet, BA4 5BT

Compliments, Comments and Complaints.

The Council has a formal procedure in place for dealing with Compliments, Comments and Complaints. For further information please contact customer services on 0300 303 8588 or visit <http://www.mendip.gov.uk/feedback>

Appendices

Appendix 1: Financial Penalty Policy

Appendix 2: Statement of principles for determining a penalty charge

This document is also available on our website at www.mendip.gov.uk

Adopted by Mendip District Council 17th September 2018