

## Summary Sheet

### **Name of Committee and Date of Committee Meeting**

Cabinet and Commissioners' Decision Making Meeting – 19 February 2018

### **Report Title**

Monetary penalties relating to the Housing and Planning Act 2016

### **Is this a Key Decision and has it been included on the Forward Plan?**

Yes

### **Strategic Director Approving Submission of the Report**

Damien Wilson, Strategic Director of Regeneration and Environment

### **Report Author(s)**

Lewis Coates, Head of Service, Regulation and Enforcement  
Chris Stone, Community Protection Manager

### **Ward(s) Affected**

All

### **Summary**

The Housing and Planning Act 2016 introduced a range of new tools and powers available to the Council. These powers strengthen the Council's enforcement capabilities to tackle poor housing conditions, whilst introducing civil financial penalties on landlords who seek to avoid their responsibilities.

The value of the civil penalties, set by the Council and based on a transparent risk based process, can range from £25 through to £30,000 per offence dependent upon harm and culpability. Importantly, once an individual is subject to a civil penalty, the Council must consider a Rent Repayment to recover monies paid through Housing Benefit or through the housing element of Universal Credit.

The Council's revised Houses in Multiple Occupation amenity standards contained within this report, updates the existing standards, ensuring that they are relevant to existing houses in multiple occupation, providing consistency for residents and landlords alike. Additionally, the standards will complement the anticipated changes to legislation in April 2018 which is likely to conclude with the mandatory licensing of all Houses in Multiple Occupation, subject to occupancy criteria.

## **Recommendations**

1. That the tools, powers and policy for the Use of Civil Penalty and Rent Repayment Orders under the Housing Act 2004 as amended and Houses in Multiple Occupation Guidance and Amenity Standards (Appendix A) be adopted.
2. That the Council's General Enforcement Policy be amended to include the *Policy for use of Civil Penalty and Rent Repayment Orders under the Housing Act 2004 as amended*, referred to at 4.5 in this report.

## **List of Appendices Included**

- Appendix A Policy for use of Civil Penalty and Rent Repayment Orders under the Housing Act 2004 as amended
- Appendix B Houses in Multiple Occupation Guidance and Amenity Standards
- Appendix C Consultation response to the Council's Policy for use of Civil Penalty and Rent Repayment Orders under the Housing Act 2004

## **Background Papers**

None

## **Consideration by any other Council Committee, Scrutiny or Advisory Panel**

No

## **Council Approval Required**

No

## **Exempt from the Press and Public**

No

## **Monetary penalties relating to the Housing and Planning Act 2016**

### **1. Recommendations**

- 1.1 That the tools, powers and policy for the Use of Civil Penalty and Rent Repayment Orders under the Housing Act 2004 as amended and Houses in Multiple Occupation Guidance and Amenity Standards (Appendix A) be adopted.
- 1.2 That the Council's General Enforcement Policy be amended to include the *Policy for use of Civil Penalty and Rent Repayment Orders under the Housing Act 2004 as amended*, referred to at 4.5 in this report.

### **2. Background**

- 2.1 The Housing and Planning Act 2016 introduced important changes in relation to the tools and powers that can be used to tackle poor housing conditions and associated issues. Importantly, the new legislation provides councils with the ability to impose a civil penalty on landlords, as an alternative to prosecution, for certain offences within the provisions of the Housing Act 2004.
- 2.2 The offences contained within the Housing Act 2004 for which civil penalties can be imposed include:
  - Failure to comply with an Improvement Notice
  - Offences in relation to licensing of Houses in Multiple Occupation
  - Offences in relation to Selective Licensing
  - Contravention of an overcrowding notice (Section 139)
  - Failure to comply with Management Regulations in respect of Houses in Multiple Occupation
- 2.3 Subsequently, the Housing and Planning Act 2016 then obliges a Council to consider applying for a Rent Repayment Order on the landlord in cases where a specified offence has been committed. These specified offences include:
  - Failure to comply with an Improvement Notice
  - Failure to comply with a Prohibition Order
  - Failure to license a house in multiple occupation where required
  - Failure to license a property required to be licensed in a Selective Licensing area
  - Using violence to secure entry to a privately rented property
  - Illegal eviction or harassment of the occupiers of a private rented property
  - Breach of a banning order

2.4 Concurrently, the Department for Communities and Local Government is analysing feedback from the consultation around the extension of licensing provisions for Houses in Multiple Occupation. Such properties, which generally have an element of shared amenities between tenants, are considered to be a much higher risk to the tenants than single domestic dwellings. It is anticipated that the conclusion of this analysis will extend mandatory licensing to all Houses in Multiple Occupation and flats above or below commercial units, subject to occupation criteria. The Council's revised amenity standards for houses in multiple occupation, will be relevant to potential changes to legislation.

### **3. Key Issues**

3.1 Whilst the Housing and Planning Act 2016 amends the Housing Act 2004 in relation to civil penalties, there is a need for the Council to adopt the provisions of Chapter 4 of the Housing and Planning Act 2016 to utilise Rent Repayment Orders.

3.2 Rent Repayment Orders, are capped to a maximum of 12 months' rent and enable the recovery of rent monies paid through Housing Benefit or through the housing element of Universal Credit. Additionally, the Council will also assist tenants to recover any rent paid by them to the landlord during the relevant period. A Rent Repayment Order when sanctioned by the First-tier Tribunal will require a landlord to repay a specified amount of rent.

3.3 In addition, the Council is required to adopt a policy that directs the implementation of those powers before the Council is able to utilise the tools.<sup>1</sup>

3.4 The procedures to impose civil penalties, appeals against those penalties and recovery procedures, are prescribed in legislation and Statutory Guidance by the Sentencing Council, which the Council must adhere to.

3.5 The policy which describes the way that the Council will determine the use of Rent Repayment Orders and civil penalties is attached at Appendix A. The policy defines the level of financial penalty in individual cases based on culpability and harm where aggravating and mitigating circumstances are taken into account. In addition, the policy also describes the procedures that must be followed before deciding upon a financial penalty; the appeal process; and the procedure for recovery of the penalty. Critically, the policy should be appended to the Council's statutory General Enforcement Policy to ensure that the Council's approach to enforcement is clear.

3.6 The policy makes provision for up to a maximum 20% discount at the discretion of the Assistant Director of Community Safety and Street Scene, subject to compliance and payment of the penalty.

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<sup>1</sup> *Civil penalties under the Housing and Planning Act 2016: Guidance for Local Housing Authorities*, Department for Communities and Local Government, April 2017, 3.3, p 12

- 3.7 The Council is permitted to use the revenue from both Rent Repayment Orders and civil penalties to meet the costs and expenses incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector.
- 3.8 The tools and powers are equally available to privately rented properties which are let as Houses in Multiple Occupation. It is vital and timely that the standards applied to Houses in Multiple Occupation are reviewed and refreshed. At Appendix B the Council's expectations of the standards demanded from those operating Houses in Multiple Occupation are made clear. Whilst this document will not constitute a legal obligation on landlords, it will provide for consistency and advice on how acceptable standards might be achieved.
- 3.9 The revised standards for Houses in Multiple Occupation are applicable to all such properties whether licensed or not. Larger Houses in Multiple Occupation are subject to mandatory licensing, which in Rotherham represents only thirteen properties. The likelihood is, following potential changes to legislation in April 2018, that smaller Houses in Multiple Occupation will also be subject to mandatory licensing, which will significantly increase the number of such properties licensed by the Council.
- 3.10 The revision of standards for Houses in Multiple Occupation at this time will offer landlords and tenants clarity around a number of aspects of the design, maintenance and management of a property. This will allow landlords a consistent and up to date guide as well as giving landlords affected by potential changes to legislation time to plan ahead for the likely extension of mandatory licensing.

#### **4. Options considered and recommended proposal**

- 4.1 Option 1: The Council does not have an obligation to adopt the tools and powers offered by the Housing and Planning Act 2016. Instead, the Council can continue to utilise existing powers to tackle private rented conditions and health risks to tenants.
- 4.2 Option 2:
- 4.2.1 Through adopting and setting civil penalty powers, together with the Policy, the Council will have flexibility in the level or approach to sanctions. The Council will be provided with a significant tool that acts as a deterrent against landlords who have little regard for the health of their tenants. Where there is very high culpability and risk of harm, then the landlord might face a sanction of up to £30,000. In addition, where relevant offences are committed and penalties are used, this will ensure that the offenders pay some of the additional costs to the Council of lengthy investigations and enforcement activity.

- 4.2.2 The proposed usage of Rent Repayment Orders will ensure that the Council has a methodology to recover rents from landlords that have been received despite the landlord, amongst other things, renting properties that are below the legal minimum standard. Moreover, the ability of the Council to assist tenants to recover rents, will not only provide a deterrent but also balance some of the injustice meted out to some of the poorest and most vulnerable tenants.
- 4.2.3 Provision of revised standards for Houses in Multiple Occupation will ensure that the Council has documented standards to apply to all relevant properties. Importantly, officers and landlords alike will benefit from clear and consistent expectations.
- 4.3 The preferred options are to ensure that the Council can utilise both civil penalties and Rent Repayment Orders to drive improvements in private rented housing conditions. Similarly, the adoption of standardised conditions for Houses in Multiple Occupation, will enable the Council to drive specific improvements in these high risk properties. Consequently it is to the Council's and public's benefit to agree Option 2 detailed at 4.2 of this report as the preferred approach.

## **5. Consultation**

- 5.1 The Council carried out a six week public consultation on the civil penalties policy and the Houses in Multiple Occupation standards document attached at Appendix A and Appendix B. The consultation was carried out on the Council's website. In addition the consultation documents were discussed on 3<sup>rd</sup> October 2017 at the Rotherham/National Landlords Association meeting. Alongside this, over 2,000 consultation documents were sent out to specific interested parties including:
- Local landlords
  - Landlord forums
  - Local letting agents
  - South Yorkshire Fire Service
  - National Landlords Association
  - Citizen's Advice Bureau
  - Rotherfed
  - Neighbouring Councils
- 5.2 Seven formal responses were received from landlords, Rotherfed and a managing agent. Approximately twenty phone calls were received requesting clarification of certain elements, which provided on the whole positive affirmation of the consultation documents. The responses to the consultation have been considered within this report and are contained at Appendix C.

- 5.3 During the design of the Policy and Standards at Appendix A and Appendix B, the Council has also considered similar policies in place at Bristol City Council, Northampton Borough Council, London Borough of Waltham Forest and Amber Valley Borough Council, together with sharing Rotherham's documents with all South Yorkshire Councils to aid consistency with similar policies in the region.

## **6. Timetable and Accountability for Implementing this Decision**

- 6.1 The tools and powers will be implemented and the policy and standards published, on the first day of the first month following approval. Subsequent development of procedural changes and staff training will follow.
- 6.2 The Assistant Director for Community Safety and Street Scene will be responsible for the delivery and implementation of this proposal.

## **7. Financial and Procurement Implications**

- 7.1 It is difficult to predict the number of penalties that the Council will impose from the use of these new powers. The tools are only applicable where one of the relevant offences has been committed. The penalty for an offence will range from £25 to £30,000. Additionally, the tests of culpability and harm ensure that projections are extremely difficult. In calculating penalties, the Council will take into account the full cost of carrying out its enforcement action in respect of these new powers.
- 7.2 There are no revenue streams available from the adoption of standards for Houses in Multiple Occupation.
- 7.3 There are no procurement implications as resources and ICT systems are already in place.

## **8. Legal Implications**

- 8.1 In order to ensure that the Council can utilise the tools and powers contained within the Housing and Planning Act 2016, provisions relating to Rent Repayment Orders in Chapter 4 of the Housing and Planning Act 2016 should be adopted.
- 8.2 The Council is obliged by statutory guidance to adopt a policy that sets out the Council's determination of civil penalties and Rent Repayment Orders together with the associated procedures and policies.
- 8.3 Careful consideration of the harm and culpability criteria contained within the policy will need to be made individually for each offence considered.

## **9. Human Resources Implications**

- 9.1 There are no human resources implications related to this initiative.

## **10. Implications for Children and Young People and Vulnerable Adults**

10.1 There are no implications for Children and Young People or Vulnerable Adults. However, approval of this report will see additional deterrents and improved standards within the private rented housing sector. This will provide improved protection to existing and prospective private rented sector households.

## **11 Equalities and Human Rights Implications**

11.1 There are no equalities or human rights implications.

## **12. Implications for Partners and Other Directorates**

12.1 There are no implications for partners or other directorates

## **13. Risks and Mitigation**

13.1 If the Council does not adopt the powers, tools and policy applicable to civil penalties and Rent Repayment Orders, capabilities to tackle poor housing conditions in some of our most deprived areas will be restricted.

13.2 Failure to adopt revised standards for Houses in Multiple Occupation will negatively affect consistency of enforcement in relation to these high risk privately rented properties.

## **14. Accountable Officer(s)**

Damien Wilson Strategic Director, Regeneration and Environment  
Ajman Ali, Interim Assistant Director, Community Safety and Street Scene

Approvals Obtained from:-

	<b>Named Officer</b>	<b>Date</b>
Strategic Director of Finance & Customer Services	Jon Baggaley	20 <sup>th</sup> December 2017
Assistant Director of Legal Services	Ian Mashader	21 <sup>st</sup> December 2017
Head of Procurement (if appropriate)	Not Consulted	
Head of Human Resources (if appropriate)	Not Consulted	

This report is published on the Council's website or can be found at:-  
<http://moderngov.rotherham.gov.uk/ieDocHome.aspx?Categories=>

**Appendix A**  
**Policy for the Use of Civil Penalty and Rent Repayment Orders under the**  
**Housing Act 2004 as amended**



**Policy for the Use of Civil Penalty**  
**and Rent Repayment Orders**  
**under the Housing Act 2004 as**  
**amended**

**January 2018**

## **Rotherham Metropolitan Borough Council**

### **Policy for the Use of Civil Penalty and Rent Repayment Orders under the Housing Act 2004 as amended.**

#### **Introduction**

This policy is supplementary to the Council's General Enforcement Policy which was approved by Commissioner Ney's meeting of 3<sup>rd</sup> June, 2015 (item 1) and amended at the Cabinet and Commissioner' Decision Making Meeting of 17<sup>th</sup> March 2017 (item 188)

The purpose of this policy is to set out the framework within which decisions will normally be made with regard to applying for a Rent Repayment Order and to issuing civil penalties in relevant cases. This policy may be departed from where the circumstances so justify. Each case will be dealt with on its own merits, having regard to its particular circumstances.

This policy is designed to ensure transparency, consistency and fairness in how and when civil penalties are imposed and Rent Repayment Orders are pursued.

#### **Civil Penalties under the Housing and Planning Act 2016**

When introducing civil penalties through the Housing and Planning Act 2016, Government Ministers made it very clear that they expect local housing authorities to use their new powers robustly, as a way of clamping down on rogue landlords.

In the House of Commons, Marcus Jones MP, Parliamentary Under-Secretary of State at the Department for Communities and Local Government, stated that it is necessary to:

‘... clamp down on rogue landlords, so the civil penalty [has been increased] up to a maximum of £30,000 ...’ carrying on, ‘... because a smaller fine may not be significant enough for landlords who flout the law to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants.’<sup>2</sup>

This policy should be read alongside the Council's, 'General Enforcement Policy' and sets out how Rotherham Metropolitan Borough Council will determine the level of penalty in individual cases, once the decision to impose a civil penalty has been made.

#### **Determining if a civil penalty can be applied the following must be considered:**

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<sup>2</sup> <https://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm160105/debtext/160105-0004.htm>

A civil penalty is only available for the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice (section 30)
- Offences in relation to licensing of Houses in Multiple Occupation (section 72)
- Offences in relation to licensing of houses under Part 3 of the Act (section 95)
- Offences of contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234)

A separate offence is committed for each regulation breached

A breach of a Prohibition Order can only be addressed by prosecution, however a Rent Repayment Order must be considered after a successful prosecution and may be considered before prosecution.

The criminal burden of proof (beyond reasonable doubt) must have been achieved. Consideration should be given to the Code for Crown Prosecutors in making this judgement.

If a civil penalty is the appropriate disposal for the individual case or if prosecution would be more appropriate an authority cannot issue a civil penalty and prosecute for the same offence. Although multiple civil penalties are possible where multiple offences are committed. The effect of the civil penalty is that the offender will not receive a criminal record or be publically named for the offence. However the civil penalty should not be seen as a soft option and can be used for serious offences if it is considered that they will offer the most appropriate punishment and deterrent in a specific case.

The following factors are some of the issues which should be considered in determining if a civil penalty or prosecution should be applied to an individual offence:

- The severity of the offence and the resulting potential harm
- The offending history of the alleged offender
- If the offence was committed by mistake or with knowledge
- The health and capacity of the alleged offender
- The public interest in taking the alleged offender into court where the offence will be publicised and the individual held to account in public.
- The likely impact of Court action verses a civil penalty, in deterring further offending.

### **Determining the level of civil penalty which should be applied:**

The Government recommends that, in order to ensure that the civil penalty is set at an appropriate level, the local housing authority produces its own policy to ensure fair and transparent application of penalties.

The Council has based its level of civil penalty on the Government's guidance and the principles set out in the Sentencing Council Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline. This sentencing guidance issued by the Sentencing Council is considered appropriate to the type of offence likely to be considered under this Policy. The Sentencing Council have set out a range of fines which are linked to the culpability of the offender and the actual and potential harm resulting from the offence.

## **Relevant Considerations**

### **A) Severity of offence**

The more serious the offence, the higher the civil penalty should be.

### **B) The culpability and track record of the offender**

A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations. Relevant previous offences include property related offences, offences relating to drugs, violence, discrimination or fraud, consideration should be given to the nature of the offence and what bearing it could have on the management of a privately rented property.

### **C) The harm caused to tenants**

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

### **D) The punishment of the offender**

A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities. The offender's financial means is a material consideration when determining the level of penalty which will represent an appropriate punishment to that individual.

### **E) Whether it will deter the offender from repeating the offence**

The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in the future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

### **F) Whether it will deter others from committing the offence**

While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that;

- (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and
- (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

**G) Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence**

The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

**H) The cost to the Council of the enforcement action**

The cost of investigating the offence(s) and preparing the case for formal action, together with any costs that it incurs in defending its decision at the First-tier Tribunal.

The actual level of the penalty will be initially determined using an assessment of **culpability** and **harm** factors described in the tables below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment.

**Culpability**

<i>Very high (Deliberate Act )</i>	Where the offender intentionally breached, or flagrantly disregarded, the law e.g. failure to comply with an improvement notice. A person who has a high public profile and knew their actions were unlawful
<i>High (Reckless Act )</i>	Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken e.g. failure to comply with HMO Management Regulations.
<i>Medium (Negligent Act)</i>	Offence committed through act or omission which a person exercising reasonable care would not commit e.g. failure to complete all items on a schedule of works within the required timescale.
<i>Low</i>	Offence committed with little fault e.g. <ul style="list-style-type: none"> <li>• significant efforts were made to address the risk although they were inadequate on this occasion.</li> <li>• there was no warning/circumstance indicating a risk.</li> <li>• failings were minor and occurred as an isolated incident.</li> <li>• Obstruction by tenant or tenant damage.</li> </ul>

**Harm**

The table below contains a non-exhaustive list of factors relating to both actual harm and risk of harm. Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does. Guidance in this area is available in the 'Housing Health and Safety Rating System Operating Guidance'

<i>Category 1 – High Likelihood of Harm</i>	<ul style="list-style-type: none"> <li>• Serious adverse effect(s) on individual(s) and/or having a widespread impact</li> <li>• High risk of an adverse effect on individual(s) – including where persons are vulnerable</li> </ul>
<i>Category 2 – Medium Likelihood of Harm</i>	<ul style="list-style-type: none"> <li>• Adverse effect on individual(s) (not amounting to Category 1)</li> <li>• Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect</li> <li>• The Council and/or legitimate landlords or agents substantially undermined by offender's activities</li> <li>• The Council's work as a regulator to address risks to health is inhibited</li> <li>• Consumer/tenant misled to their prejudice</li> </ul>
<i>Category 3- Low Likelihood of Harm</i>	<ul style="list-style-type: none"> <li>• Low risk of an adverse effect on individual(s)</li> <li>• Public misled but little or no risk of actual adverse effect on individual(s)</li> </ul>

Having determined the **category**, the appropriate level of civil penalty within the category will be assessed from the **starting point for that category and** further adjusted, if necessary, within the category range for aggravating and mitigating features determined by reference to the guidance in 'Relevant Considerations' above, the cost of enforcement and any other relevant aggravating or mitigating factor relevant to the case including the offender's ability to pay.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability before adjustment.

	Starting Point	Range	
		Min	Max
<b>Low culpability</b>			
Harm Category 3	£50	£25	£175
Harm Category 2	£125	£50	£350
Harm Category 1	£300	£125	£750
<b>Medium culpability</b>			
Harm Category 3	£350	£175	£750
Harm Category 2	£1000	£350	£2000
Harm Category 1	£2500	£750	£4500
<b>High culpability</b>			
Harm Category 3	£1000	£500	£2250

Harm Category 2	£3000	£1000	£5500
Harm Category 1	£6250	£2500	£12500
<b>Very high culpability</b>			
Harm Category 3	£2500	£1250	£4500
Harm Category 2	£6250	£2500	£12500
Harm Category 1	£15000	£6250	£30000

### Obtaining financial information

The statutory guidance advises that local authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty.

In setting a financial penalty, the Council may conclude that the offender is able to pay any financial penalty imposed unless the Council has obtained or the offender has supplied any financial information to the contrary. An offender will be expected to disclose to the Council such data relevant to his financial position to enable the Council to assess what an offender can reasonably afford to pay. Where the Council is not satisfied that it has been given sufficient reliable information, the Council will be entitled to draw reasonable inferences as to the offender's means from evidence it has received and from all the circumstances of the case ***which may include the inference that the offender can pay any financial penalty***. It is important that the final penalty removes the advantage gained by the offence and that the level has a punitive and deterrent effect based on the perpetrator having regard to their specific circumstances.

*For illustration;*

*As many offenders will be owners of one or more properties, they are likely to have assets that they can sell or borrow against. Property values and rental incomes have consistently increased over the long term, so in the majority of cases those offenders with mortgaged properties are likely to have value in the property that can be released. Therefore, if an offender claims that they are unable to pay a financial penalty and show that their income is small, consideration should be given to properties owned that can be sold or refinanced.*

### Reductions / Discounts in the level of civil penalty

Circumstance for discount	% Reduction
Where an offender completes all outstanding works to the satisfaction of the Council, before the Notice of Intent expires, e.g. 28 days from service, <b>and</b> pays the civil penalty in full within 14 days of the 'Final Notice'.	The Offender can request a reduction of the calculated Civil penalty. Where the offender has been seen to cooperate in the latter stages of enforcement, the Assistant Director of Community Safety and Street Scene, may at their discretion, apply a discount of up to a maximum of 20% of the calculated Civil penalty.

## **Documentation**

Civil penalties must be fully documented. All issues considered against the areas discussed above must be recorded. This level of detailed justification will be required to explain to the recipient the level of civil penalty and to any subsequent Appeal Hearing.

## **The Process for issuing a civil penalty**

The investigating officer will produce a prosecution case file, presenting evidence to satisfy the criminal burden of proof. The officer will discuss with their Principal Officer which is the most appropriate disposal of the offence, with reference to this Policy and the General Enforcement Policy.

Where a civil penalty is considered the appropriate remedy, the investigating officer will:

- Establish the cost all enforcement activity
- Identify the adjusted level of civil penalty justified in the specific case
- Record the reasons for the level of penalty including any adjustments
- Refer case to the Head of Service for authority to proceed to a civil penalty
- Service notice of the Council's proposal (Notice of Intent) to impose a financial penalty

The Notice of Intent must set out:

- The amount of the proposed financial penalty
- The reasons for proposing to impose the penalty, and
- Information about the right of the landlord to make representations

The Notice of Intent must be given no later than 6 months after the Council has sufficient evidence of the conduct to which the penalty relates or at any time when the conduct is continuing.

Where a civil penalty is issued the offence is considered discharged. However, if the defects persist, a further Improvement Notice can then be served and enforced if that is not complied with, opening the possibility of a further civil penalty or a prosecution.

### **What happens after a person receives a notice of intent?**

A person who is given a Notice of Intent may make written representations to the local housing authority about the intention to impose a financial penalty.

Any representations must be made within 28 days from when the notice was given.

### **The written representation should be sent to;**

Assistant Director of Community Safety and Street Scene,  
Riverside House,  
Main Street,  
Rotherham.  
S60 1EA

The Assistant Director may confirm, vary or withdraw a charge based on the information provide in a representation.

Information which will be considered will include but not be limited to:

- Number of properties owned
- Level of cooperation with the Council
- Period of time the property has been let
- Personal financial circumstances
- History of compliance with Housing Legislation
- Membership of a professional body
- Efforts made to try to comply
- Any reason that indicates the charge has been made unreasonably

### **What happens after representations (if any) have been made?**

After the end of the period for representations, the local housing authority must decide whether to impose a penalty and, if so, the amount of the penalty.

If the local housing authority decides to impose a financial penalty, it must give the person a notice (Final Notice) requiring that the penalty is paid within 28 days.

The Final Notice must contain:

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

The local housing authority may at any time:

- Withdraw a notice of intent or final notice, or
- Reduce the amount specified in a notice of intent or final notice

### **Right of appeal**

A person who receives a final notice may appeal to the First-tier Tribunal against:

- The decision to impose a penalty; or
- The amount of the penalty.

The First-tier Tribunal has the power to confirm, vary (increase or reduce) the size of the civil penalty imposed by the local housing authority, or to cancel the civil penalty. If the First-tier Tribunal decides to increase the penalty, it may only do so up to a maximum of £30,000. Appeal rights are contained within Schedule 13A to the Housing Act 2004. The First-tier Tribunal can dismiss an appeal if it is satisfied that the appeal is frivolous, vexatious or an abuse of process, or has no reasonable prospect of success.

If a person appeals, the final notice is suspended until the appeal is determined or withdrawn.

### **Recovery of Penalty Charge**

The local housing authority will recover any unpaid civil penalty charge on the order of the County Court, as if payable under an order of that Court, as laid out in the '2016 Act'. The Local Housing Authority will use county court bailiffs to enforce the order and recover the debt.

## **Rent Repayment Orders under the Housing and Planning Act 2016**

### **Rent Repayment Orders**

A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent. First introduced for licensing offences in the Housing Act 2004 has now been extended through the Housing and Planning Act 2016 to cover a much wider range of offences.

A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty.

The Council must consider a rent repayment order after a person is the subject of a successful civil penalty and in most cases the Council will subsequently make an application for a rent repayment order to recover monies paid through Housing Benefit or through the housing element of Universal Credit. See below for further detail.

A Rent Repayment Order is defined in Section 40(2) of the Housing and Planning Act 2016 as an order requiring the landlord under a tenancy of housing to:

- (a) Repay an amount of rent paid by a tenant, or
- (b) Pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy

The reference to universal credit or a relevant award of universal credit includes housing benefit under Part 7 of the Social Security Contributions and Benefits Act 1992 pending its abolition. The Council as the local housing authority has a **duty under** section 48 of the Housing and Planning Act 2016 to consider applying to the

First-tier Tribunal ('the Tribunal') for a Rent Repayment Order in cases where an offence from the list below has been committed.

**Offences for which a Rent Repayment Order can be obtained:-**

- Failure to comply with an Improvement Notice, contrary to section 30(1) of the Housing Act 2004 (served under the Housing Act 2004)
- Failure to comply with a Prohibition Order etc., contrary to section 32(1) of the Housing Act 2004 (served under the Housing Act 2004)
- Being a person having control of or managing a house in multiple occupation (HMO) which is required to be licensed under Part 2 of the Housing Act 2004 but which is not so licensed, contrary to section 72(1) of the Housing Act 2004
- Being a person having control of or managing a house which is required to be licensed under Part 3 of the Housing Act 2004 but is not so licensed, contrary to section 95(1) of the Housing Act 2004
- Using violence to secure entry to a property, contrary to Section 6(1) of the Criminal Law Act 1977
- Illegal eviction or harassment of the occupiers of a property, contrary to section 1(2), (3) or (3A) of the Protection from Eviction Act 1977
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016 (enacted on 29<sup>th</sup> November 2017 and coming into force 6<sup>th</sup> April 2018);

The offences under the Housing Act 2004 must relate to hazards within occupied premises and not common parts only. The offence must have been committed on or after 6<sup>th</sup> April 2017. A Rent Repayment Order can be applied for whether or not the landlord has been convicted.

**Evidence of commission**

Where there has been a conviction, a certificate of conviction will suffice to establish commission of the specified offence. In the absence of a conviction, the Tribunal will need to be satisfied beyond reasonable doubt that the landlord committed the specified offence. Officers shall have regard to the Crown Prosecution Service Code for Crown Prosecutors (see Code for Crown Prosecutors) in order to establish whether there is likely to be sufficient evidence to secure a conviction and therefore to establish the necessary burden of proof to the Tribunal.

**Statutory Guidance**

In deciding whether to apply for a Rent Repayment Order, the Council must under section 41(4) of that Act have regard to any guidance issued by the Secretary of State (see the DCLG document 'Rent Repayment orders under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities' - Rent Repayment Orders Guidance).

**Assistance**

Officers may offer advice to tenants who are eligible to claim a Rent Repayment Order in respect of rent paid themselves but in such cases, the tenant will usually be referred direct to Derbyshire Law Centre or other appropriate bodies for further support.

## Considerations for decision as to whether to apply for a Rent Repayment Order

Council officers are granted powers and duties to deliver proportionate and targeted enforcement. It is vital that regulatory resource is used consistently and to best effect by ensuring that resources are targeted on addressing the highest risks. The use of Rent Repayment Orders is only to be used where considered appropriate.

The objective of an application for a Rent Repayment Order is not only to issue a punishment as a consequence of non-compliance with the law, but also to deter the offender and others in a similar position from repeat offences.

**If a conviction for the Offence or a civil penalty has been obtained then it is normally expected that a Rent Repayment Order will be pursued** where the Council have paid housing benefit, or the housing element of Universal Credit. The Tribunal must, in these cases, order that the maximum amount (12 months) of rent be repaid in these circumstances

**In determining if an application for a Rent Repayment Order is appropriate, the following questions shall be considered:**

TABLE 1

No.	Question	Yes or No
1.	Has the offender been prosecuted and convicted of a relevant offence in Court?	If yes, make a Rent Repayment Order application. If no go to step 2.
2.	Has evidence been obtained to confirm that Housing Benefit has been paid by the Council over the last 12 months?	If no – no case for Rent Repayment Order. If yes, proceed to step 3.
3.	Does the Council have sufficient evidence to prove 'beyond reasonable doubt' that a relevant offence has been committed? Is the evidence reliable? Is there no credible defence?	If no – case closed, do not pursue. If yes, proceed to step 4.
4.	Is it in the public interest to proceed to apply for a Rent Repayment Order? (consider the level of harm that has been caused)	If no – case closed, do not pursue. If yes, proceed to step 5.
5.	Is pursuing a Rent Repayment Order proportionate to the offence?	If no – case closed, do not pursue. If yes, proceed to step 6.
6.	Does the offender have any previous convictions?	If yes – proceed to Rent Repayment Order. If no, proceed to step 7.
7.	Where no previous offence – is the issuing of a Rent Repayment Order likely to deter from future offences?	If yes – proceed to Rent Repayment Order. If no, consider closing and not pursuing.

8.	Would the issuing of a Rent Repayment Order cause substantial hardship to the offender, and are there mitigating circumstances to suggest the LA should not proceed?	If Yes, complete notes to justify reason not to pursue. If no, proceed to Rent Repayment Order application
9.	Are there any other factors that would indicate the Council should not proceed with the issuing of the Rent Repayment Order	If Yes, complete notes to justify reason not to pursue. If no, proceed to Rent Repayment Order application

If the conclusion is yes to pursue a Rent Repayment Order, then the amount to be reclaimed should be determined by considering the factors in the table below.

If the offender has already been convicted of the offence, then the amount shall automatically be determined as 12 months rental income.

If no conviction has been obtained, but the decision has been made to pursue a Rent Repayment Order, the factors in the table below should be considered to determine a sum. The amount of rent to be repaid cannot exceed the amount actually collected. Where the tenant is in receipt of Universal Credit, the formula provided in the DCLG guidance in relation to Rent Repayment Orders shall be followed.

TABLE 2

1.	<b>Punishment of the offender</b> – the Rent Repayment Order should have a real economic impact on the offender and demonstrate consequences of non-compliance with their responsibilities. Consider the conduct of landlord and tenant, financial circumstances of landlord and whether landlord has previous convictions
2.	<b>Deter the offender from repeating the offence</b> – level of Rent Repayment Order must be high enough to deter offender from repeating
3.	<b>Dissuade others from committing similar offences</b> – Rent Repayment Order will be in the public domain. Robust and proportionate use is likely to help others comply with their responsibilities.
4.	<b>Remove any financial benefits that the offender may have obtained as a result of the offence</b> – landlord should be losing the benefits that he has accrued whilst not complying with their responsibilities
5.	<b>Is there any other factor the Council considers should be taken into account.</b>

Consideration of the above points will determine whether the full amount of rent should be reclaimed or whether there are mitigating circumstances, this will depend on the severity of the offence and whether this justifies 12 months of non-payment of rent.

If there are mitigating circumstances, then a deduction should be applied from the full 12 months. The amount payable under a Rent Repayment Order is recoverable as a debt.

Officers must fully document the reasons for making the decision to apply based on tables 1 and 2, as this will be required for the application to the First Tier Tribunal. Application will be made via legal services.

#### **Further Guidance**

- The Housing and Planning Act 2016
- Civil penalties under the Housing and Planning Act 2016  
**Guidance for Local Housing Authorities** - Department for Communities and Local Government published April 2017
- **Rotherham MBC's General Enforcement Policy**
- The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017
- Sentencing Council -Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline

# **Houses in Multiple Occupation Guidance and Amenity Standards**

**January 2018**

# Rotherham Metropolitan Borough Council

## Houses in Multiple Occupation Guidance and Amenity Standards

### Contents

1.0 INTRODUCTION	
2.0 WHAT IS A HOUSE IN MULTIPLE OCCUPATION (HMO)?	
2.1 Planning Legislation	
2.2 Housing Legislation	
2.3 HMO declarations	
2.4 Licensable HMOs	
3.0 GENERAL RESPONSIBILITIES OF THE OWNER /LANDLORD/MANAGER.	
3.1 Tenancy Management and Eviction	
4.0 AMENITY, FACILITIES AND MANAGEMENT STANDARDS.	
4.1 Housing Health and Safety Rating System	
4.2 Management Requirements	
4.3 General Requirements	
4.4 Space Standards – (Safety, condensation, quality of life)	
4.5 Washing Facilities	
Baths & Showers	
Sanitary Conveniences (toilet facilities)	
Ratio of facilities required	
4.6 Facilities for the Storage, Preparation and Cooking of Food	
Kitchens for exclusive use: Bedsits	
4.7 Means of Escape in Case of Fire / Fire Standards	
4.8 Standards Specific to Hostels and Bed and Breakfast establishments	
4.9 Addressing other Hazards	
Natural and artificial lighting	
Ventilation	
Space Heating	
Security	
Water supply	
Waste	
Anti-social Behaviour	
4.10 Certification	
5.0 ENFORCEMENT	
6.0 LEGISLATIVE FRAMEWORK for HMOs	

## 1.0 INTRODUCTION

This document sets out Rotherham Metropolitan Borough Council's Standards for Houses in Multiple Occupation (HMOs) operating within the borough. These standards are based on legislative requirements and relevant guidance. They provide detail of the Council's expectations in relation to the management of HMOs within the borough. This document is not a legal requirement in itself, but offers guidance regarding how to comply with a legal requirement where the language in the regulation includes terms like 'adequate', 'reasonable' or 'sufficient'. It is envisaged that in most cases the standard described will be appropriate, however, where either the landlord or the Council consider an alternative more appropriate consideration will be given to how the alternative complies with primary legislation.

The shared nature of most HMOs creates an environment where the responsibility for cleaning and maintaining shared areas can be confused and any deficiencies will affect all those who live in the property. Occupants also have limited private space compared with living in a self-contained home. Where a HMO is poorly designed or managed, tenants can suffer from increased risks to their health or welfare. Poor hygiene, increased risk from fire and noise are typically experienced.

The Council's aim is to encourage the owners and operators of HMOs, to appreciate that improving the quality and design of a property will pay dividends in reduced maintenance and management costs. It will also improve the quality of the accommodation for tenants. It is likely that adopting a minimum investment approach in these types of properties, will result in higher management costs and the property is likely to attract increased enforcement attention.

The standards below illustrate a **minimum** standard which operators of HMOs should consider when creating this type of accommodation. The status of these standards differ, depending on if the HMO is licensable or not and if the standard is laid down in regulation. Landlords are encouraged to discuss their proposals with the Council before letting any HMO.

## 2.0 WHAT IS A HOUSE IN MULTIPLE OCCUPATION (HMO)?

### 2.1 Planning Legislation

**HMOs are defined differently in planning legislation and housing legislation.**

In Rotherham, the creation of small HMOs, where domestic properties accommodate 6 or less individuals does not require Planning Permission. An HMO with the capacity to accommodate 7 persons will require the submission of a Planning Application. Where an application is required the standards for newly created HMO will differ from the standards in this guidance. This mainly affects the minimum room sizes.

Where a HMO is occupied without the proper planning permission, enforcement action under housing legislation is still possible before any planning enforcement has been completed. This may result in a landlord improving a HMO, then having to

revert it back to single occupation. It is important that landlords ensure all correct permissions are in place before letting a HMO.

For further information regarding planning legislation please contact Planning Services by visiting the Council website [www.rotherham.gov.uk](http://www.rotherham.gov.uk) or call 01709 823868.

## **2.2 Housing Legislation**

A House in Multiple Occupation (HMO) is defined in the Housing Act 2004, Sections 254 -260. The definition can be complicated; if there is any dispute over a premise status, reference should be made to this legal definition. For simplicity, below is a summary of the main parts of the definition.

A HMO exists if a building is let as the main residence to;

- 3 or more unrelated people who live there as at least 2 separate households – for example, 3 single people with their own rooms, or 2 couples each sharing a room
- 3 or more people living there who share basic amenities, such as a kitchen or bathroom

A HMO can exist as a single unit of accommodation, a shared house or a flat, a converted larger property with shared facilities or a converted property which is comprised entirely of converted self-contained flats and where the standard of conversion does not meet the minimum that is required by the 1991 Building Regulations, and more than one third of the flats are occupied under short tenancies.

Typically the type of occupation which might be a HMO would be;

- Bedsits
- Shared houses
- Lodgings
- Hostels.
- Individual shared self-contained flats/cluster flats
- Blocks of converted flats
- Halls of residence (privately operated)
- Asylum seeker/migrant accommodation
- Accommodation for workers/employees
- Refuges

## **2.3 HMO declarations**

Where the local authority is satisfied that a building or part of a building is a HMO, they may serve a notice under Section 255 of the Housing Act 2004, an HMO Declaration, declaring the building or part to be a house in multiple occupation.

## 2.4 Licensable HMOs

Some HMOs are required to be licenced. Currently, there is a national requirement to licence a HMO if it is;

- at least 3 storeys high
- has 5 or more unrelated people living in it
- has 2 or more separate households living there

**NOTE: This definition is likely to change in the near future, to remove the requirement for the property to be 3 storeys. Also, any unit associated with commercial properties may also become licensable.**

Local Authorities can also adopt local licensing schemes for other HMOs. Rotherham Metropolitan Borough Council does not presently operate a local HMO licensing scheme, but it does operate a number of Selective Licensing areas. If you own or operate a HMO in a Selective Licensing area and the property does not require a mandatory HMO licence, you will have to apply for a licence and comply with the licence conditions of that scheme.

To identify where the Selective Licencing areas are within the borough, please go to; <http://www.rotherham.gov.uk/landlordlicensing>

Information regarding private sector housing including online HMO license applications can be found on the council's website; [www.rotherham.gov.uk](http://www.rotherham.gov.uk)

### **Enquires about HMOs can be made to:**

Regulation and Enforcement  
Wing B Floor 2, Riverside House  
Main Street  
Rotherham  
S60 1QY  
Tel: 01709 823118

## 3.0 GENERAL RESPONSIBILITIES OF THE OWNER /LANDLORD/MANAGER

If you are letting any residential property you are running a business, and will be expected to manage that business like any other business.

The standards of repair and management of any private let property are laid down in law. This is usually under the Housing Act 2004 and associated regulation, but there is other, specific regulation that covers eviction, deposits, energy, furniture, etc.

It is the responsibility of the owner/landlord/managers running the letting business to understand these requirements and manage their own properties to comply. This includes communicating with tenants, addressing problems and defects and keeping all licences and certification up to date. Guidance is available from the landlords' national bodies and a range of websites. The Council is also available for advice.

Where the landlord fails to discharge this responsibility and forces the Council to act in their stead to address their tenants concerns, the landlord should expect the Council to take enforcement action and recover its costs from the landlord.

A list of relevant legislation is contained in part 6 of this guidance for assistance. As guidance and legislation change regularly this list should be used for guidance only and not relied upon to cover all legislative requirement, it specifically does not include more general business requirements relating to financial, tax, etc.

### **3.1 Tenancy Management and Eviction**

Landlords and agents are expected to actively manage their tenants to ensure they do not cause antisocial behaviour inside the property affecting other tenants and outside the property affecting neighbours. This includes taking references before a tenancy starts, being fully aware of the way the property is being occupied whilst it is let, issuing warning to tenants who are creating problems for themselves or others. Where the landlord cannot influence their tenants to modify their actions, they should instigate the formal eviction process, regardless if the tenants are paying their rent.

Eviction of tenants occurs when the landlord and the tenant cannot amicably agree a date when the tenant will vacate a property. It is a legal process which must be followed precisely, for a court to ultimately uphold the termination of the tenancy. It is likely that if a landlord does not follow the legal process they will either start to harass the tenant or undertake an illegal eviction. There is no situation where a landlord can force a tenant out of a property, only the courts, through a bailiff can do this. The Council will prosecute where it finds evidence of harassment or illegal eviction. Landlords must understand the law in this area and get advice before starting to evict a tenant.

Failure to effectively manage tenants can result in action being taken against the landlord and in some cases the property being formally closed by the Council or Police. In these cases, the property can be closed to all, including the landlord, for up to 6 months.

### **4.0 AMENITY, FACILITIES AND MANAGEMENT STANDARDS**

(Practical guidance to achieving the required standards)

Where a HMO is licensable, compliance with these standards will be considered compliance with licence conditions in the majority of situations. In non-licensable HMOs this standard is for guidance but describe the Council's expectation of adequate accommodation.

If you consider you can provide safe and quality accommodation in an alternative form, whilst complying with legislative framework, please discuss your proposal before work commences and it will be considered by the Council.

#### 4.1 Housing Health and Safety Rating System (HHSRS)

The Housing Act 2004 introduced the Housing Health and Safety Rating System (HHSRS) which provides a risk based methodology for assessing hazards in dwelling houses including HMOs. The assessment considers the type of hazard, severity, potential for harm, etc. The HHSRS is not a standard but a system to enable the hazards to be identified and the risks minimised or removed.

The HHSRS consists of 29 hazards which should be assessed in a domestic property. Landlords are required to manage all these hazards to reduce the risk to tenants and visitors to reasonable levels.

The potential hazards are:

1. Damp and mould growth
2. Excess Cold
3. Excess Heat
4. Asbestos and Manufactured Mineral Fibres – MMF
5. Biocides
6. Carbon monoxide and fuel combustion products
7. Lead
8. Radiation
9. Uncombusted fuel gas
10. Volatile organic compounds
11. Crowding and space
12. Entry by intruders
13. Lighting
14. Noise
15. Domestic hygiene, pests and refuse
16. Food Safety
17. Personal hygiene, sanitation and drainage
18. Water supply for domestic purposes
19. Falls associated with baths etc.
20. Falls on the level
21. Falls associated with stairs and steps
22. Falls between levels
23. Electrical hazards
24. Fire
25. Flames, hot surfaces and materials
26. Collision and entrapment
27. Explosions
28. Ergonomics, position and operability of the amenity
29. Structural collapse and falling elements

Guidance for Landlord and Property Related Professionals on HHSRS can be obtained from; [www.communities.gov.uk/documents/housing/pdf/150940.pdf](http://www.communities.gov.uk/documents/housing/pdf/150940.pdf)

## 4.2 Management Requirements

All HMOs, regardless of whether they are licensable or not, are subject to legislation regarding how they are managed. There are two main pieces of management legislation;

- Management of Houses in Multiple Occupation (England) Regulations 2006, relevant to all HMOs,
- Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007, relating to licenced HMOs

This legislation places certain duties on the individuals managing the property. The duties include the following:

- To provide all occupiers with the manager's name, address and telephone number. This information must be clearly displayed within in the property
- To ensure that all fire escapes are clear of any obstacles and that they are kept in good order. To ensure that all fire safety measures are maintained in good working order and that adequate fire safety measures are in place with regards to the design, structural conditions and number of occupiers in the HMO
- The manager must maintain adequate water supply and drainage to the dwelling
- The manager must not unreasonably cause the electric and gas supply to be interrupted
- The manager must ensure that every fixed electrical installation is inspected and tested by a suitably qualified person, at intervals not exceeding five years
- The manager must provide the electrical and gas inspection certificates within seven days of receiving a request of writing from the local housing authority
- To ensure that all common parts of the HMO are maintained in good decorative order, and a safe and working condition. This includes out-buildings, boundaries and gardens
- The manager must ensure each unit of living accommodation and its contents are clean **before** occupiers move in and are maintained in good repair and clean working order throughout the occupation by the tenant
- The manager must provide adequate facilities to dispose of all waste produced by the property

This legislation also puts responsibility on the tenant to:

- Allow the manager access to the accommodation at all reasonable times to carry out the above duties
- Conduct themselves in a way that will not hinder or frustrate the manager in the performance of their duties
- Take reasonable care to avoid damaging the landlord's property.
- Store and dispose of waste properly
- Comply with reasonable instructions regarding fire safety at the property

Failure to comply with these requirements is a criminal offence and will be addressed under the Council's General Enforcement Policy, which can be found at;

[http://www.rotherham.gov.uk/download/downloads/id/1448/general\\_enforcement\\_policy.pdf](http://www.rotherham.gov.uk/download/downloads/id/1448/general_enforcement_policy.pdf).

Additional requirements specific to licenced HMOs are included in each section below.

### **4.3 General Requirements**

#### **Works to the fabric of the property**

Works of repair or alteration within a HMO may require planning permission and will usually require compliance with Building Regulations, this is particularly important in regards to adequate sound insulation and fire resistance between units of accommodation

All works must be completed in accordance with:

- Gas Safety [installation & use] regulations 1998;
- IEE (Institute of Electrical Engineers) Wiring Regulations;
- Furniture and Furnishings (Fire) (Safety) Regulations 1993.
- Building Regulation 2010 and Approved Documents

#### **Services**

Each individual letting should have a separately metered gas and or electricity supply where the tenants pay their own gas and electricity bills. Note: This is not applicable where the gas and electricity bill for the building as a whole is paid for by the landlord/manager.

Where this is not possible, the landlord takes responsibility for ensuring the continuity of services to the property as a whole, regardless of payments being received from tenants.

The Council takes a serious view of the disconnection of electricity, gas or water services. In appropriate cases Section 33, of the Local Government (Miscellaneous Provisions) Act 1976 will be used to take control of rents or recover costs direct from owners in order to pay outstanding accounts. In addition to (or instead of) utilising Section 33, owners and/or agents may be prosecuted for causing or allowing a disconnection in circumstances, which constitute an offence under any appropriate legislation (e.g. breaches of management regulations, Protection from Eviction Act 1977 etc.).

### **4.4 Space Standards**

This document cannot cover all eventualities as layouts, the quoted space standards are appropriate to the majority of typical HMOs in the borough. Where property use or layout is non-typical reference may be made to other standards for the authority to determine what it considers adequate.

#### **Legal requirements**

The minimum size for a bedroom occupied by one person is to be 6.52m<sup>2</sup> and for two people 10.23m<sup>2</sup>. This is stated in the overcrowding provisions of the Housing Act 1985. These are not directly transferable to HMOs as they only relate to sleeping rooms and the resident is expected to have additional living space. The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006, require kitchens, bathrooms and WCs to be of adequate size and number, as set by this guide.

Rotherham Metropolitan Borough Council has adopted the following space standards as the minimum requirements.

### Minimum Room Sizes

The following are considered as the **minimum** room sizes for HMOs:

Bedrooms	
1 Person -where a separate living room, which is not a dining /kitchen and a kitchen is provided	6.52 m <sup>2</sup> (minimum standard)
2 Persons -where a separate living room, which is not a dining /kitchen and a kitchen is provided)	10.23m <sup>2</sup> (minimum standard)

Living, dining and cooking spaces should be separate where possible. Kitchen /diners are acceptable where a separate living room is provided or where the room size allows separation of living and dining activities. En-suites will be ignored when assessing the floor area of a bedroom.

Living Room	
2 to 4 Persons	9m <sup>2</sup>
Area for each additional persons	+1.86m <sup>2</sup>

Dining Room & Kitchen/ Diner	
Dining room, 2 to 4 Persons	9m <sup>2</sup>
Kitchen / Diner (1 to 4 persons)	12.15m <sup>2</sup>
Area for each additional persons	+1.86m <sup>2</sup>

Combined Rooms (bedsits)		
Bedroom/Living room	One Person	10.23 m <sup>2</sup>
	Two Persons	14.86 m <sup>2</sup>

Bedroom/Living room/Kitchen	One Person	15.50 m <sup>2</sup>
	Two Persons	20.00 m <sup>2</sup>

**Kitchens:** must be designed so that the size, design and layout allow the occupants to safely prepare, cook and serve food in a safe and hygienic manner. The required size and location may vary from the guidance below to achieve this.

Kitchens	
2 to 4 Persons	5.5 m <sup>2</sup>
5 to 10 Persons	Additional 1.4m <sup>2</sup> per person to a maximum of 10 persons per kitchen.

A bedsit (single room) can be occupied by a maximum of two persons. Where two persons occupy a single room they must approach the landlord wishing to share. Individual beds within a single room cannot be let separately.

The sharing of bedrooms is not permitted unless the occupants are:

- Married, or living together as if married.
- Parent and child (as long as the child is the same sex as the parent, or the child is under 10 years of age if they are the opposite sex.
- Members of the same family and are both of the same sex
- Children, below 10 years of age,

Self-contained flats occupied as HMOs can be treated as above.

**Note:** The measured space in any room must be 'usable space'. The room should be able to accommodate the required amount of appropriate furniture easily and still allow space for movement about the room. Any floor space that has a ceiling height of less than 1.5m (5ft) shall be disregarded for the purpose of measuring the total space in the room. Regardless of measured area, where the layout of a room makes floor space difficult to use, additional space will be required or the room may not be acceptable as accommodation.

\* The above standards apply to existing HMOs; all new-build accommodation will need to refer to the Councils Planning and Building Control services for approval.

## 4.5 Washing Facilities

### Baths & Showers

Legal requirements: The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 set standards for washing facilities as below:

1. Bath/showers shall be provided in the ratio of at least one to every five persons sharing.
2. The bathrooms or shower rooms shall be readily accessible and normally not more than one floor away from the user. Shared facilities shall be accessible from a common area. Facilities must be inside the building.
3. Bathrooms and shower rooms must be of adequate size and be laid out in such a way as to enable persons to undress, dry and dress themselves in a safe manner.
4. Each bath, shower and wash hand basin shall be provided a continuous and adequate supply of hot and cold running water, designed to ensure reasonable temperature control.
5. Bathrooms and shower rooms must have adequate lighting, heating and ventilation.
6. Bathrooms must be fit for the purpose.

The Council has adopted the following as the minimum requirements.

1. Where a child under 10 lives in the property, a bath must be provided.
2. Bathrooms must have mechanical ventilation to the outside air at a minimum extraction rate of 15 litres/second in addition to any window(s). The system is to be either coupled to the light switch and incorporate a suitable over-run period, or an appropriately set humidistat. This is in addition to any windows.
3. A tiled splash-back shall be provided to all baths and wash hand basins. Shower cubicles shall have fully tiled walls and be provided with a suitable water-resistant curtain or door to the cubicle. Bathrooms and shower rooms shall have smooth, impervious wall and ceiling surfaces, which can be easily cleaned. The flooring should be capable of being easily cleaned and slip-resistant.
4. The following minimum dimensions shall apply:

Item	Dimension
Wash hand basin	500mm × 400mm
Splash-back	300mm high
Bath	1700mm × 700mm
Shower	800mm × 800mm or equivalent m <sup>2</sup>

5. Bathrooms and shower rooms must be constructed to ensure privacy.
6. All baths, showers and wash hand basins in an HMO must be equipped with taps providing an adequate supply of cold and constant hot water.
7. All bathrooms must be suitably and adequately heated and ventilated

8. All bathrooms and toilets must be suitably located in or in relation to the living accommodation in the HMO.

9. Where en-suites are provided in bedrooms, minimum sizes of amenities may be reviewed where it is not possible to fit standard units. It is important that any amenity remains effective for its intended use. Amenities which are not adequate due to location or size will not be accepted. En-suites will be ignored when assessing the floor area of a bedroom.

'Suitably located bathrooms' means that they are not more than two floors distant in relation to the sleeping accommodation.

'Suitably located water-closet (WC)' facilities shall be not more than one floor distant from living and sleeping accommodation.

9. Where reasonably practicable there must be a wash hand basin (WHB) with appropriate splash back in each unit of accommodation. Consideration will be given to the cost and practicalities of providing this amenity.

10. Suitable lock must be provided to all bath/shower rooms and WC.

11. Where separate WC is provided, there must be a WHB contained within the same unit.

12. All baths, showers, WC and WHB should be properly connected to a soil drainage system.

### **Sanitary Conveniences (toilet facilities)**

Legal requirements: The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 set standards for sanitary conveniences.

1. Where there are four or fewer occupiers sharing facilities there must be one toilet which may be situated in the bathroom.

2. Where there are five or more occupiers there must be one separate toilet with wash hand basin for every five sharing occupiers.

3. Toilets are to be provided in bathrooms or separate compartments of an adequate size and layout. The rooms shall have smooth, impervious wall and ceiling surfaces, which can be easily cleaned. The flooring should be capable of being easily cleaned and slip-resistant.

4. Toilets shall be readily accessible and normally not more than one floor away from the user. Shared facilities shall be accessible from a common area. Facilities must be inside the building.

5. A toilet provided in a separate compartment must have a wash hand basin with an appropriate splash-back.

## Ratio of facilities required

Legal requirements: The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 set standards for the number of bathrooms/showers and toilet facilities in HMOs.

1. Where there are four or fewer occupiers sharing facilities there must be one bathroom with fixed bath or shower and a toilet (which may be situated in the bathroom).
2. Where there are five or more occupiers sharing facilities, there must be:
  - One separate toilet with wash hand basin for every five sharing occupier's
  - One bathroom (which may contain a toilet) with a fixed bath or shower for every five sharing occupiers.

The information below explains this requirement in more detail:

Number of people irrespective of age	Facilities required (If a child under 10 lives in the property, a bath must be provided)
1–4 people	The minimum provision is 1 bathroom containing toilet, bath or shower and wash hand basin. The bathroom and toilet may be in the same room.
5 people	The minimum provision is 1 bathroom with a bath or shower and 1 separate toilet with wash hand basin. The separate toilet may be located in a second bathroom.
6–10 people	The minimum provision is 2 bathrooms containing a bath or shower
11–15 people	2 toilets with wash hand basins, one of which must be in a separate room.
Bedrooms with en-suites	<p>The minimum provision is 3 bathrooms containing a bath or shower and 3 toilets with wash hand basins, one of which must be in a separate room.</p> <p>Where a room is provided with a complete en-suite facility (bath/shower, toilet and wash hand basin) for the exclusive use of that occupant then that occupant will be disregarded when considering the provision of sanitary facilities.</p> <p>Six occupants and one occupant had exclusive use of a fully equipped en-suite. The requirement for the remaining occupants would be for five people.</p> <p>If, however, the en-suite only provides one facility (either a bath/shower or a WC) then the occupant will not be disregarded for the missing amenity.</p>

## 4.6 Facilities for the Storage, Preparation and Cooking of Food

Legal requirements: The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 require:

1. A kitchen, suitably located in relation to the living accommodation, and of such layout and size and equipped with such facilities so as to adequately enable those sharing the facilities to store, prepare and cook food.
2. The kitchen must be equipped with the following equipment, which must be fit for the purpose and supplied in a sufficient quantity for the number of those sharing the facilities:
  - (i) Sinks with draining boards
  - (ii) An adequate supply of cold and constant hot water to each sink supplied
  - (iii) Installations or equipment for the cooking of food
  - (iv) electrical sockets
  - (v) Worktops for the preparation of food
  - (vi) Cupboards for the storage of food or kitchen and cooking utensils
  - (vii) Refrigerators with an adequate freezer compartment (or, where the freezer compartment is not adequate, adequate separate freezers)
  - (viii) Appropriate refuse disposal facilities; and
  - (ix) Appropriate extractor fans, fire blankets and fire doors.

The Council has adopted the following as the minimum requirements.

The kitchen must be available 24 hours a day and equipped with the following equipment, which must be fit for the purpose and supplied in a sufficient quantity for the number of those sharing the facilities:

Number of people irrespective of age	Minimum provision of kitchen facilities
2–5 people	<p>A complete set of kitchen facilities consisting of the following items must be provided for every five persons:</p> <p><b>Sink:</b> A stainless steel sink, integral drainer and an impervious splash-back, on a base unit. The sink must have constant supplies of hot and cold running water and be properly connected to the drains. The cold water must come directly from the rising water main. It must be possible to stand directly in front of the cooker and sink and to place utensils down on both sides of each.</p> <p><b>Cooker:</b> A gas or electric cooker with four ring burners, oven and grill, that are capable of simultaneous use. The cooker is to be located away from doorways with a minimum of 300mm worktop to both sides.</p> <p><b>Electrical sockets:</b> At least three double 13amp electrical power points (in addition to those used for fixed appliances, such as washing machines).</p> <p><b>Worktop:</b> A kitchen worktop that is level, secure and impervious.</p>

	<p>The minimum dimensions are 1000mm length and 600mm width.</p> <p><b>Storage:</b> A food storage cupboard for each occupant that is at least one 500mm wide base unit or a 1000mm wide wall unit. This may be provided within each occupant's room. (The space in the unit beneath the sink and drainer is not allowable for food storage).</p> <p><b>Fridge/Freezer:</b> A refrigerator with a minimum capacity of 130 litres plus a freezer with a minimum capacity of 60 litres. If not in the kitchen the fridge/freezer must be freely accessible and adjoining the kitchen.</p> <p><b>Refuse disposal:</b> Appropriate refuse disposal facilities must be provided.</p> <p><b>Ventilation:</b> Mechanical ventilation to the outside air at a minimum extraction rate of 60 litres/second or 30 litres/second if the fan is sited within 300mm of the centre of the hob. This is in addition to any windows.</p> <p><b>Fire precautions:</b> Please see section 4.7 Means of Escape in Case of Fire / Fire Standards</p>
6-7 people	<p>Two complete sets of kitchen facilities as above with a 1500mm x 600mm work surface.</p> <p>However;</p> <ul style="list-style-type: none"> <li>• Combination microwave is acceptable as a second cooker</li> <li>• Dishwasher is acceptable as a second sink</li> </ul>
8-10 people	<p>Two complete sets of kitchen facilities as above with a 2000mm x 600mm work surface.</p>
11-12 people	<p>At least two separate kitchens containing three complete sets of kitchen facilities as above, each kitchen with 2500mm x 600mm of work surface. However,</p> <ul style="list-style-type: none"> <li>• Combination microwave will be acceptable as a third cooker</li> <li>• Dishwasher will be acceptable as a third sink</li> <li>• Two x 130 litre refrigerators with an additional 20 litres capacity of refrigerator space per person over 10</li> <li>• Two x 60 litre freezer space with an additional 10 litres capacity of freezer space per person over 10.</li> </ul>
13-15 people	<p>At least two separate kitchens containing three complete sets of kitchen facilities as above, each kitchen with 5000mm x 600mm of work surface.</p>

Where the landlord provides a catering service the facilities must comply with The Food Safety and Hygiene (England) Regulations 2013. In addition, some self-catering facilities will need to be provided and the level of facilities required will be determined on a case-by-case basis, taking into account the level of provision by the landlord. The Council will provide advice on request.

### **Kitchens for exclusive use: Bedsits**

A bedsit is where sleeping, living and cooking amenities are provided for exclusive use by occupants within a single unit of accommodation (i.e. one room).

Legal requirements: The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 requires rooms without shared amenities to be provided with adequate equipment.

The Council has adopted the following as the minimum requirements.

#### Minimum provision of kitchen facilities in a bedsit

**Cooking:** A gas or electric cooker with a minimum two-ring hob, oven and grill.

**Storage:** A 130 litre refrigerator with freezer compartment plus at least one food storage cupboard for each occupant in the bedsit (base units shall be 500mm wide and wall units shall be 1000mm wide). The sink base unit cannot be used for food storage.

**Worktop** of at least 500mm deep and 1000mm long, comprising a minimum of 300mm both sides of the cooking appliance to enable utensils and pans to be placed down. All worktops must be securely supported, impervious and easy to clean.

**Electricity:** Two double 13 amp power sockets suitably positioned at worktop height for use by portable appliances, in addition to sockets used by fixed kitchen appliances, plus two double sockets located elsewhere within the bedsit.

**Washing:** A stainless steel sink and integral drainer set on a base unit with constant supplies of hot and cold running water. The sink shall be properly connected to the drainage system. The cold water shall be direct from the mains supply. A tiled splash-back shall be provided behind the sink and drainer.

**Ventilation:** Mechanical ventilation to the outside air at a minimum extraction rate of 60 litres/second or 30 litres/second if the fan is sited within 300mm of the centre of the hob. This is in addition to any windows.

**Layout:** The same principles of safe layout and design apply in bedsits as for shared kitchens. Cookers must not be located near doorways to avoid collisions.

**Notes:** Where a gas appliance is provided within a unit of accommodation, a carbon monoxide detector should also be provided.

#### 4.7 Means of Escape in Case of Fire / Fire Standards

Legal requirements: The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 require that appropriate fire precaution facilities and equipment must be provided of such type, number and location as considered necessary. The Regulatory Reform (Fire Safety) Order 2005 requires all HMOs to have a sufficient risk assessment with regard to fire. The Management Regulations require fire-fighting equipment and fire alarms to be maintained in good working order. Fire is also a hazard to be assessed under the Housing Act 2004 part 1.

Legislation dictates that the Council and the South Yorkshire Fire and Rescue Service have a duty to consult and cooperate, when considering the standards for fire

precautions which are relevant in a HMO. Both organisations recognise the Local Authorities Coordinators of Regulatory Services (LACORS) Fire Safety, Guidance on fire safety provisions for certain types of existing housing, published by LACORS, Housing – July 2008 (ISBN978-1-84049-638-3), as the appropriate national guidance in this area. This document contains advice for landlords and fire safety enforcement officers in both local housing authorities and fire and rescue authorities on how to ensure adequate fire safety. In larger or higher risk HMOs joint inspections will be undertaken by the Council and the fire authority.

The information below is summarised from the Fire Safety Guidance document and is provided to help landlords understand their responsibilities and the type of fire safety precautions judged necessary for HMOs. As fire assessment is a risk based assessment, any element in a specific property may cause additional or increased levels of fire protection to be required, which may depart from the guidance below.

### **Fire Risk Assessment**

A Fire Risk Assessment is required, it provides an organised and methodical look at the premises, the activities carried on there and the likelihood that a fire could start and cause harm to those in and around the premises.

The aims of a Fire Risk Assessment are:

- To identify fire hazards;
- To reduce the risk of those hazards causing harm to as low as reasonably practicable; and
- To decide what physical fire precautions and management arrangements are necessary to ensure the safety of people in the premises if a fire does start.

### **Fire precaution requirements**

The requirements expected by the Council will vary according to the observations and findings arising from any inspection undertaken and will be based on the advice detailed in the LACORS Fire Safety guide.

Landlords should also be aware that where premises are occupied in a manner other than that intended under the original construction, compliance with the Building Regulations at the time of that construction will not necessarily negate the requirement for additional fire safety measures.

Although an exhaustive list of likely requirements cannot be given in this document necessary measures may include the provision of: fire doors on high risk rooms, fire separation, fire blanket in the kitchen, automatic fire detection systems, emergency lighting, and protected routes of escape.

Landlords are required to test and maintain fire alarm and emergency lighting systems in accordance with the British Standards. See certification in section 4.10

### **Non-standard layout / Higher risk homes**

The level of fire precautions required will be dictated by the specific level of fire risk presented by that property. If the property is of a non-standard layout or if the occupants present a higher risk due to factors such as drug/alcohol dependency or

limited mobility then the risk may increase and additional precautions may need to be taken. This must be factored into your Fire Risk Assessment.

An example of a non-typical layout is ‘inner rooms’ where the bedroom is located such that the occupant passes through risk rooms (living rooms, kitchens or dining rooms) in order to reach the means of escape. There are various solutions available such as ‘escape windows’ or water suppression systems; these should be discussed with the Council’s case officer before undertaking works.

To assess the level of fire precautions necessary in any given property reference should be made to the LACORS guide described above, having consideration to any factors which may increase the risk to occupants in a fire. For ease, it is usually better to produce a plan of the property indicating all fire precautions. This should be discussed with the Council’s Community Protection Unit, before any work commences.

For the purposes of offering an example, the following case study, based on the LACORS guidance is offered, but should not be considered a template for any specific property.

This example is based on;  
 A typical low risk, **shared house with a simple layout** i.e. where all bedrooms lead onto the means of escape (i.e. the landing and hallway) without passing through any other room. It is also based on low risk occupants. This shared house is let on a joint contract with shared kitchen facilities (this is not a bedsit). Based on the above, the following requirements apply:

Area	Item	1-2 Storey Property	3 Storey Property	4+ Storey Property
Fire doors	Doors to kitchens must be 30 minute fire doors with heat and smoke seals	✓	✓	✓
	Bedroom doors must be solid and close fitting	✓	✓	✓
	Bedroom doors must be 30 minute fire doors with heat seals			✓
	Fire door to living room with heat and smoke seals	✓	✓	✓
	Doors to any cellars must be 30 minute fire doors with heat and smoke seals			✓
Fire alarm system	Grade D fire alarm system with smoke detectors in escape route at all levels and heat alarm in the kitchen	✓	✓	✓
	Additional interlinked smoke alarms in any cellar	✓	✓	✓

	Additional smoke interlinked alarm in living room		✓	✓
	Additional smoke alarms to bedrooms – only if smoke seals fitted to bedroom doors			✓
Equipment	Fire Blanket in kitchen	✓	✓	✓
Locks on Doors	Final exit doors must have a security lock that can be opened from the inside without a key. Break glass boxes are not acceptable.  Locks on bedroom doors (where provided) must be provided with a lock that can be opened without a key from the inside. Break glass boxes are not acceptable.		✓	
Protected route of escape	Understairs cupboards must have a ceiling that is 30 minutes fire resistant.	✓	✓	✓
	Cellars must have a ceiling that is 30 minutes fire resistant.	✓	✓	✓
	30 minute protected escape route			✓

**Note:** The case studies in Part D of the LACORS guidance are based on a number of assumptions and should not be interpreted as a standard that must be followed in every premises that match the basic descriptions given. In practice, there are relatively few premises that will match these case studies exactly. The guidance must be read in full.

#### 4.8 Standards Specific to Hostels and Bed and Breakfast Establishments

Kitchen facilities used by the management to provide meals for residents must comply with the Food Safety Act and they are to be separate from the self-catering facilities.

The sharing of bedrooms is not permitted unless the occupants are:

- Married, or living together as if married.
- Parent and child (as long as the child is the same sex as the parent, or the child is under 10 years of age if they are the opposite sex.
- Members of the same family and are both of the same sex
- Children, below 10 years of age, and of opposite sexes can share a room.

**Note:** There may be exceptions to the above sharing rule if a landlord presents a robust management and a business plan, which focusses on the provision of accommodation for a specific clientele. The Council will consider such proposals on a case by case basis.

Suitable office accommodation for the staff is to be provided according to the needs of the establishment.

In the event of living accommodation being provided for staff the accommodation must afford all amenities necessary to ensure reasonable comfort.

Adequate staff supervision is to be provided according to the needs of the establishment. Where necessary the Council may require the continuous presence of a member of staff 24 hours per day.

The Fire Authority will normally be the primary enforcement authority for fire safety in this type of premise.

#### **4.9 Addressing other Hazards**

Legal requirements: The housing health and safety rating system, as discussed earlier, describes 29 hazards to be controlled in residential accommodation. Some of these hazards are also controlled in the HMO Management Regulation

The Council has adopted the following guidance as a recommended means of managing the most common hazards.

##### **Natural and artificial lighting (prevents accidents and psychological problems)**

All habitable rooms should have an adequate level of natural light, provided via a clear glazed window or windows. It is advisable that the glazed area is to be equivalent to at least one-tenth of the floor area. Where practicable, all staircases, landings, passages, kitchens, bathrooms and toilets should be provided, with a window.

Windows to bathrooms and toilets should be glazed with obscured glass.

Artificial Lighting: All rooms and circulations areas within the property should have provision for electric lighting and should be controlled from suitably located switch points. Lighting on stairs should be capable of being switched on and off from both upstairs and downstairs.

##### **Ventilation- (removes pollutants and reduced condensation)**

All habitable rooms require adequate ventilation:

1. Either directly to external air by a window, with an openable area equivalent to at least 1/20th of the floor area of the room; or
2. If there is no natural ventilation in kitchens, bathrooms, WC's, mechanical ventilation should be provided to allow an adequate number of air changes per hour.

Habitable rooms need suitable and adequate floor to ceiling height and layout to allow proper circulation of air.

##### **Space heating – (protects both residents and the fabric of the building)**

An efficient and safe fixed space-heating appliance that is capable of maintaining each room at a minimum temperature of 18°C when the outside temperature is -1°C must be provided. The fixed space-heating appliance may be an adequate central heating system with thermostatic radiator valves (TRVs) or a fixed electrical appliance. The heating must be under the control of the occupiers for timings and temperature settings.

Heating appliances that are dependent upon liquid fuel or liquid fuel gas under pressure are not acceptable.

The insulation rating of the units of accommodation, affect the type of heating required and its cost of use. If tenants cannot afford to heat a property they suffer health affects but the property will also suffer condensation and deterioration

**Note:** The Energy Efficiency (Private Rented Sector)(England and Wales) Regulations 2015 fulfil a duty on the Secretary of State in the Energy Act 2011 to introduce regulations to improve the energy efficiency of buildings in the domestic and non-domestic private rented sector in England and Wales. In summary, the regulations mean that on or after 1st April 2018 a landlord who lets a privately rented property which is F or G SAP rated on a current legally required energy performance certificate (EPC) (10 year life) must carry out works to bring the property up to at least an E SAP rating before the property is rented out, unless the landlord qualifies for an exemption and the exemption is registered on the Public Exemptions Register.

### **Security**

All entrances to property should be well lit, especially ground floor/basement rooms/external staircases.

External entrance doors to communal areas should be self-closing.

Security devices/locks should not hinder the means of escape in case of fire and should be operated from the inside without the need for a key.

### **Water supply**

An adequate supply of cold drinking water, under adequate mains pressure, must be supplied from the kitchen sink and available to each resident.

### **Management of Waste**

Including; household refuse / unwanted items, mattresses and furniture.

Landlords/agents are responsible for ensuring that tenants have the correct information and facilities for them to store, recycle and dispose of all waste produced at the property and to take action where this fails to happen.

Landlords/managers should ensure;

- Sufficient refuse and recycling receptacles must be provided for tenants use;
- An external hard standing area with suitable and convenient access for use by tenants for storage of receptacles;
- Communal areas for the storage of waste must be kept clean;
- All refuse should be removed from the property between tenancies, this should not be delegated to the incoming tenant.
- Tenants to be made aware of refuse and recycling collection systems, including; advising tenants that receptacles should be returned to the boundary of the property on collection day Households with 6 or more people are entitled to an additional general refuse bin;
- Tenants should be advised how they can legally dispose of larger items.

Landlords will be held responsible for legally disposing of waste from the property. It is expected that they will instruct and assist tenants to legally dispose of large items and use their influence/management to ensure household waste is correctly presented for collection/recycling at the correct time and in the correct receptacle. Any waste

remaining on the property at the end of the tenancy becomes the landlord's responsibility to dispose of legally. Landlords should not require incoming tenants to dispose of waste left by the previous tenant.

### **Anti-social Behaviour**

Anti-social behaviour covers a wide range of problems and includes any behaviour that is capable of causing alarm, distress, nuisance or annoyance to an individual(s) or the wider community. This type of behaviour can include:

- Harassment and intimidating behaviour;
- Hate crime, for example racist or homophobic abuse;
- Behaviour that creates alarm and fear;
- Noisy neighbours and loud parties;
- Problems associated with people supplying, dealing or using drugs;
- People acting in a manner which is likely to cause distress or nuisance to others, due to the consumption of alcohol;
- Vandalism, graffiti and other deliberate damage to property;
- Rubbish or litter lying around, abandoned cars etc.

Landlords have a duty to take reasonable steps to ensure that their tenants and any visitors do not cause problems within the boundaries of the property or to the surrounding community through anti-social behaviour. In extreme cases, where a landlord fails to manage such activity from their premise, both the Police and the Council have a power (on application to the court) to close and secure the property.

The Council will support landlords, where possible, who are actively working towards tackling issues of anti-social behaviour emanating from their properties. Where landlords have attempted to manage their own tenants without success they should contact the Council's Regulation and Enforcement team for advice on 01709 823118.

### **4.10 Certification**

To ensure that the property is maintained in a safe condition, the landlord must demonstrate that works have been carried out by competent persons and records kept of any works undertaken. This may be a legal obligation or provide useful mitigation in a civil action after an incident.

Landlords can verify if their contractor is a member of the relevant professional body below.

Approved persons can be checked here <http://www.competentperson.co.uk/>

See Competent person schemes here

<https://www.gov.uk/building-regulations-competent-person-schemes>

### **Gas Safety (Installation and Use) Regulations 1998**

As a landlord, you are responsible for the safety of your tenants. The Gas Safety (Installation and Use) Regulations 1998 specifically deal with the duties of landlords to ensure that gas appliances, fittings and flues provided for tenants' use are safe.

As a landlord, you have a duty to ensure:

- Gas fittings (appliances, pipework) and flues are maintained in a safe condition;
- All installation, maintenance and safety checks are carried out by a Gas Safe registered Installer;

- An annual safety check is carried out on each gas appliance/flue by a Gas Safe registered Installer. Checks need to have taken place within one year of the start of the tenancy/lease date, unless the appliances have been installed for less than 12 months, in which case they should be checked within 12 months of their installation date;
- A record of each safety check is kept for two years;
- A copy of the current safety check record is issued to each existing tenant within 28 days of the check being completed, or to any new tenant before they move in (in certain cases the record can be displayed).

### **Electrical Safety.**

The electrical installation for the property should be installed and maintained in accordance with a recognised standard, such as the current edition of the IEE (Institute of Electrical Engineers) Wiring Regulations and certification should be provided as prescribed under Appendix 6 of BS 7671:1992 (as amended) to confirm that the whole installation is to a safe and satisfactory standard. The installation should be retested and certified, as described every five years, or following any alterations or extensions to the system.

All work to the electrical installation should be carried out and certified by a NICEIC (National Inspection Council for Electrical Installation Contracting) member or approved body or competent person.

All electrical work must be carried out in accordance with Part P of the Building Regulations, where appropriate.

### **Fire Safety.**

The recommended test and certification periods differ, depending on the type of detector system installed, and they are prescribed in the British Standard. The test is usually carried out by a specialist alarm engineer under a maintenance contract and should be recorded in a log book, with a periodic inspection and test certificate issued.

For the benefit of an example, the following should be considered:

- Grade D fire alarm systems should be tested weekly. All detectors must be cleaned at least annually. Testing and maintenance must be in accordance with the manufacturer's instructions. Landlords can self-certify this has been completed.
- Grade A fire alarm systems should be tested weekly. The system must be inspected and serviced at periods not exceeding six months in accordance with the recommendations of Clause 45 of BS 5839-1:2013. An inspection and servicing certificate of the type contained in H.6 of BS 5839-1:2013 should be issued by a suitably qualified and competent person.
- Any emergency escape lighting present should be serviced and maintained in accordance with BS 5266-8: 2004 (BS EN 50172: 2004) Emergency escape lighting systems. The requirements of BS 5266: part 8, require the annual test to be carried out by a competent person.
- Where fire extinguishers are provided, these should be checked periodically to make sure they are in place and available to use. Extinguishers must be tested and maintained on an annual basis in accordance with BS 5306-3 and with the manufacturer's instructions.

### **Furniture Safety.**

All furniture provided with the accommodation must comply with the Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended). You are required to sign a declaration on the application form to the effect that the above condition is met.

## **5.0 ENFORCEMENT**

The Council's Regulation and Enforcement team work closely with the Planning Service and South Yorkshire Fire and Rescue to regulate HMOs. It is expected that any landlord who enters the HMO market makes themselves fully aware of their responsibilities, especially as this is the higher risk element of the private rented sector. All enforcement is undertaken in a fair and transparent manner governed by the Council's General Enforcement Policy, available at;

[http://www.rotherham.gov.uk/download/downloads/id/1448/general\\_enforcement\\_policy.pdf](http://www.rotherham.gov.uk/download/downloads/id/1448/general_enforcement_policy.pdf).

It is expected that landlords and managers play an active part in operating their properties and that in most cases the Council will not have to become involved. Where issues are raised with the Council they will be investigated and brought to the landlord's attention. Where the Council is not convinced that the landlord is taking effective and timely action to resolve the matter, formal enforcement will commence. Where this happens, landlords should expect the Council to recover all costs incurred by them from the landlord, until the issue is resolved.

## **6.0 LEGISLATIVE FRAMEWORK for HMOs**

HMOs are regulated by several pieces of legislation, which determine licensing arrangements and management standards together with amenity and fire safety requirements. Below are a number of the most relevant pieces of legislation;

Copies of all up to date Regulations can be accessed through;

<http://www.legislation.gov.uk/>

**The Housing Act 2004**, provides the definitions of an HMO and details HMO licensing requirements.

**The Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006** defines which HMOs must be licensed.

**The Management of Houses in Multiple Occupation (England) Regulations 2006** impose duties on the manager in relation to the running of the HMO and are applicable to all HMOs, (except converted blocks of flats), whether or not they are licensable

**The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006** details standards of management applicable to Licensable HMOs, (except converted blocks of flats), and clarifies some definitions in the 2004 Act

**The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007** require that minimum standards are achieved for bathroom, WC and kitchen facilities in converted blocks of flats and that there are suitable fire precaution facilities and equipment located in appropriate areas and in sufficient numbers. It also details the duties imposed on the manager in the running of the HMO.

**The Houses in Multiple Occupation (Certain Block of Flats) (Modifications to the Housing Act 2004 and Transitional Provisions for S 257 HMOs) (England) Regulations 2007** amend the primary legislation concerning converted blocks of flats which fall into the definition of an HMO.

**The Housing Health and Safety Rating System (HHSRS)** is a method of risk assessment which focuses on hazards within residential properties, including HMOs. It covers 29 hazards including fire, excess cold and entry by intruders. Guidance is available in the 'Housing health and safety rating system (HHSRS) enforcement guidance: housing inspections and assessment of hazards'

**The Energy Efficiency (Private Rented Sector) (England and Wales) Regulations 2015**

**Local Authorities Coordinators of Regulatory Services (LACORS) Fire Safety, Guidance on fire safety provisions for certain types of existing housing**, published by LACORS, Housing – July 2008 (ISBN978-1-84049-638-3),

**The Regulatory Reform (Fire Safety) Order 2005** - All premises where the main use is to provide sleeping accommodation, e.g. hotels, guest houses, B&Bs, hostels, residential training centres, holiday accommodation and the common areas of flats, maisonettes, HMOs and sheltered housing are covered by this Order.

**Health and Safety at Work etc. Act 1974.** This legislation is relevant in any premise where a work activity takes place. This may include the use of contractors, cleaners etc. Landlord should be aware that they are responsible for managing their property to minimise hazards to occupants, contractors, staff or visitors.

**The Gas Safety (Installation and Use) Regulations 1998**

Copies of all Regulations can be accessed through;

<http://www.legislation.gov.uk/>

Information regarding private sector housing including online HMO license applications, can be found on the council's website, [www.rotherham.gov.uk](http://www.rotherham.gov.uk)

**Enquires about HMOs can be made to:**

Regulation and Enforcement  
Wing B Floor 2, Riverside House  
Main Street  
Rotherham  
S60 1QY  
Tel: 01709 823118

## Appendix C

### Consultation response to the Council's Policy for use of Civil Penalty and Rent Repayment Orders under the Housing Act 2004

#### **Consultation: Policy for use of Civil Penalty and Rent Repayment Orders under the Housing Act 2004**

The following comments were recorded during the period of consultation;

#### Policy for use of Civil Penalty and Rent Repayment Orders under the Housing Act 2004

07/11/17

Just read the details of the proposals. I support those proposals – they appear to be well thought out. It's about time this sort of action was taken – as a landlord in Maltby almost every tenant I've taken on, has complained that their previous landlord would not improve the property regardless of the amounts of complaints the tenant made. Best of luck getting the proposals passed. All you have to think of now is how to resource and finance the inspection force.

01/11/17

Page 13 is missing ?

31/10/17

Rotherham Federation of Communities welcomes the proposed 'Policy for the Use of Civil Penalty and Rent Repayment Orders under the Housing Act (January 2018)'. We particularly welcome the importance in assessing financial penalties of the risk of harm to the tenant. The tenants' needs and interests must always be of prime consideration in such policies and this document's recognition of this is to be much applauded.

30/10/17

As a private landlord with just one property in your area, I thoroughly agree with the proposal as outlined in the document you sent me.

Our property is in Maltby and we have spent an awful lot of money on it trying to attract decent tenants. However, due to the generally run down state of the immediate local area, we are currently unable to attract a rental figure which covers the mortgage repayments, let alone the total expenses involved in owning a property.

Therefore I am happy with any measures which improve this situation.

30/10/17

I have 3 properties in Maltby in the Rotherham MBC area.

I have read the document, but do feel that as a "good" landlord, some notice should be taken of delinquent tenants or at least acknowledgement of that.

I have had a bad run in the last 2 or 3 years of several tenants absolutely trashing properties after a period of normal behaviour. All of it evidenced by photographic Inspection reports. Also, another property where an ex-partner of a female tenant smashed several windows, poured glue into the door lock and caused internal damage – all of which comes down to me to repair. The standard answer is "get the Police involved" or "what about the tenancy deposit"?

Of course, Housing Benefit tenants do not have cash for deposits (imagine Universal Credit dealing with that) or after a huge amount of effort with the Police and Insurers, the offenders have no money (or the usual court order for £5 a week or a month, which stops almost immediately as the offenders HAVE no money). Insurers will just not put up with more than the odd claim of this kind.

All this is exacerbated by the imposition over the last couple of years of immediate payment of Council Tax by the Landlord, even when he has not been informed that the tenant has disappeared, until suddenly the rent does not appear, several weeks later, and rent repayment is demanded. Even a 3 month Void allowance would allow for repairs and a re-let.....

The quality of housing provision is important, but there are two parties in this; tenants have the impression they can get away with destructive behaviour as the Council has a duty to provide temporary Housing for – for example – a single mother and her baby. Unfortunately many are from environments where cleaning the carpets or keeping the kitchen clean and hygienic has just not been taught to them either at home or at school – or if it has, they did not get the message.

The improvement of the Private Rented housing stock is in everybody's interest, but I for one have lost money on the 7 "Social Housing" properties I own, but made money on the 13 Privately rented to working tenants. You may feel that balances out, but overall I am at zero as demonstrated by the fact that I have paid no tax on my fully reported income for the last 3 years, even though I am in receipt of State Pension. These properties were supposed to form my personal pension.

The several short-sighted tax changes on landlords established by George Osborne to deal with the London property market major capital gains, are just not applicable in the majority of the North, and this fact is hardly referred to in the National commentary. I am sure this fact has not been missed by your organisation.

Now that's off my chest I feel better, but really would like to contribute more on these matters if possible.

### Houses in Multiple Occupation Guidance and Amenity Standards

22/11/17

Thanks for the invitation. I'm sorry but I will not be able to attend. I have about 2 intensive weeks' worth of work to complete a large tender document. Would it be possible to send me a copy of the recorded minutes of the consultation or the preparations developed after the consultation.

15/11/17

I have a few comments and questions with regard to the HMO standards document that I was recently sent that is under consultation.

First I refer to page 11 under point 4, with regard to the dimensions of the wash hand basin and the shower. Are these minimum sizes to apply to en-suites? A basin of 500mm x 400mm in an en-suite would simply be too big and would reduce bedroom size to making the en-suite bigger and would in fact offer no more usable space as the sanitary ware would be bigger. Again with regard to the shower cubicle the most common size is a 760mm x 760mm therefore asking for an odd size of 800mm x 800mm will prove difficult and cause the same issues as the minimum sink sizes. Possibly a minimum overall size either for an en-suite or for the shower cubicle would be better as some spaces within bathrooms / en-suite will only fit an odd size like 1000mm x 700mm shower cubicles yet are still big enough spaces.

We specialise in HMOs and own / manage many in the Rotherham area. Looking at what tenants want and factoring in the Council requirements etc. is something we do on an ongoing basis. The tenants we provide rooms for mostly want en-suite bedrooms and are more interested in decent size bedroom space meaning we make the en-suite functional but small. I feel that en-suites should have different minimum criteria to main shared bathrooms as they are only for personal use and are within the tenant's personal bedroom.

I also refer to page 14, under the section 2-5 people whereby it states that a tiled splash back area should be present at the sink area. The new kitchens that we put in now have upstands

which have become more modern and what many people now use. I would suggest that the wording would include tiles or upstand.

Continuing on page 14 under Storage. 500mm base units for tenants are fine, however tenants seem to prefer wall units and most are happy with 500/600mm so 1000mm seems excessive for one tenant (I realise it is similar capacity as the floor units but obviously a lot more wall space is required). We always have plenty of units but felt it was worth commenting on as a 500mm width unit whether it is base or wall should be sufficient.