

Private Sector Housing Policy Framework



Private Sector Housing – Policy Framework

Poor quality housing can have a detrimental effect not only on the health and wellbeing of the people living in poor quality and badly managed homes but also on the general quality of life in an area. Whilst the responsibility for the maintenance and improvement of homes rests with the property owner, the council recognise that some owner occupiers – often the elderly and other vulnerable home owners – may not have the resources necessary to ensure that their homes remain free from disrepair that can affect their health and well-being.

The council also has a critical role to play in ensuring that all rented homes are well maintained and well managed and present no threat to the health, safety or well-being of those who live or otherwise visit them.

This Policy Framework document sets out the council's broad approach to its support for, work with and regulation of 'private sector housing' within the districts, in alignment with specific adopted policies and relevant Government guidance.

The term 'private sector housing' refers to owner-occupied homes and homes rented from a private landlord, homes that go with a job or business and those owned by Housing Associations or Registered Providers, however, all enforcement and regulation provision applies regardless of tenure.

Throughout we describe how the council, as the Local Housing Authority, will meet its private sector housing focussed statutory responsibilities and support residents by providing a range of advice and assistance to improve the provision, quality and management of homes within the District. It includes information on: the licensing of Houses in Multiple Occupation (HMOs), housing enforcement responsibilities, the provision of mandatory and discretionary Disabled Facilities Grant (DFG) adaptations, caravan sites (MALVERN HILLS ONLY) and other functions.

As with any medium term Policy Framework, parts of this document may become outdated as a result of amendments to legislation and the influence of other strategic policy documents produced by the council, Government or other National Authority. It is essential that it is kept under regular review and updated when necessary and appropriate.

It must be noted that any discretionary assistance or discretionary powers identified in this Policy Framework are subject to the availability of funding and other resources and the council is under no obligation to provide assistance or take discretionary action.

All aspects of this Policy Framework can only be delivered in full accordance with the council's corporate governance arrangements so must be read in conjunction with other housing and wider council policies and procedures including but not being limited to council's Procedure Rules and Scheme of Delegation to Officers.

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1. Legislative Context

There are a number of statutory provisions that govern our support for, work with and regulation of the homes within our District, these include but are not limited to:

2. Housing Act 2004

This Act came into force in April 2006 and reformed housing legislation for landlords and owner occupiers. The Act places both mandatory duties on housing authorities as well as giving a range of **discretionary** powers, these include: an amended mandatory licensing scheme for Houses in Multiple Occupation (HMOs) in properties occupied by five or more people, forming two or more households sharing basic amenities. The granting of a licence is dependent on meeting minimum standards for amenities, management and fire precautions.

The Housing Health and Safety Rating System (HHSRS) is the prescribed method for assessing and determining if a hazard exists that could affect the health safety and wellbeing of occupiers and visitors. The Act sets out that a Council shall take action where it finds serious hazards to remove or reduce the risk of harm.

3. Empty Properties

The quality and attractiveness of neighbourhoods where people live and work has a direct impact on economic, social and environmental wellbeing. Vacant and unsightly dwellings can present significant problems as well as remove valuable living accommodation from the area. In addition to their impact on the appearance of a neighbourhood, they are targets for anti-social behaviour such as graffiti, fly posting and fly tipping.

On the 12 November 2012 the Housing (EDMO) (Prescribed Period of Time and Additional Prescribed Requirements) (England) (Amendment) Order 2012 S.I. 2012 No. 2625 came into force in England. This statutory instrument, Section (2), prescribed an increased period of two years as the period the property must be wholly unoccupied before a Local Housing Authority (LHA) may be authorised to make an Interim EDMO. This replaces the six months laid down by Section 134(2) (a) of The Housing Act 2004.

Amendments to Article 4 of the Housing (EDMO) (Prescribed Exceptions and Requirements) (England) Order 2006, SI 2006/367, also require the LHA to comply with additional requirements prior to being authorised by a Property Chamber of the First Tier Tribunal (PC) formerly the Residential Property Tribunal (RPT) to make an Interim EDMO. The additional requirements are:

- LHAs to give property owners a minimum notice period of three months prior to applying to the RPT for an Interim EDMO, S.I. 2012 No. 2625, Article (3) Paragraph (a)

LHAs to provide additional information to the RPT that the empty property has been causing a nuisance to the community and that there is community support of the proposal of the LHA to take control of it, S.I. 2012 No. 2625, Article 3 Paragraph (c).

4. Regulatory Reform (Housing Assistance) (England and Wales) Order 2002

This legislation empowers local housing authorities to provide financial assistance for housing renewal in the form of grants, loans or other assistance to tenants and private owners in accordance with a locally determined policy. Details on housing renewal assistance offered by the council are set out the Housing Assistance policy with the main document located at <https://www.wychavon.gov.uk/housing-publications>.

5. Housing Grants, Construction and Regeneration Act 1996, Disabled Facilities Grant Regulations 2008 and Disabled Facilities Grant General Consent 2008

The Housing Grants, Construction and Regeneration Act 1996, amended by the Regulatory Reform Order 2002, provides the primary legislation governing mandatory Disabled Facilities Grants (DFGs) with the Disabled Facilities Grant General Consent 2008 covering discretionary grant assistance, the current scope of DFGs and setting out the conditions in which a local authority can place a charge on a property in respect of DFGs.

6. Home Energy Conservation Act (HECA) 1995

This places an obligation on a local authority to prepare and publish a strategy to improve the domestic energy efficiency of all residential accommodation in their districts. The council's strategy and the bi-annual updates can be accessed on the council's website at <https://www.wychavon.gov.uk/heca>

7. Energy Act 2011

The Act created a financing framework to enable the provision of fixed improvements to the energy efficiency of households and non-domestic properties. The Act also requires that from April 2016 private residential landlords are unable to refuse a tenant's reasonable request for consent for energy efficiency improvements where a suitable finance package exists and from April 2018 made it unlawful to rent out a residential or indeed business premise that does not achieve a minimum energy efficiency standard (EPC 'E' rating) unless a valid exemption is in place.

We work in partnership with Act on Energy and Warm Worcestershire to help landlords and owner occupier to access additional funding to help improve energy efficiency or help in up-grading their existing heating system. Further advice can be sort at <http://www.actonenergy.org.uk/>

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

This Order made it a legal requirement for all existing lettings agents and property managers to join a Government approved redress scheme by 1st October 2014 and for all new operators from 1 October 2014 to join prior to operating.

The Order provides that tenants, prospective tenants, landlords dealing with letting agents in the private rented sector; as well as leaseholders and freeholders dealing with property managers in the residential sector can complain to an independent person about the service received.

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

This Order identifies the requirements, obligations and actions required by a relevant landlord and the council in relation to smoke and carbon monoxide alarms in privately rented properties.

10. Housing and Planning Act 2016

The Housing and Planning Act introduced a wide new package of measures affecting Local Housing Authorities and local Planning Authorities. The principal matters covered by the Act relevant to this Policy Framework are:

Introducing the framework for Civil Penalties in respect of certain housing offences:

- Allowing Local Authorities to apply for Banning Orders
- Creating a national database of Rogue Landlords and Letting Agents
- Allowing tenants or Local Authorities to apply for Rent Repayment Orders where landlords have committed certain offences.

11. Housing Health and Safety Rating System

The Housing Act 2004 places a duty on the council to deal with Category 1 hazards where they are identified using the Housing and Health Safety Rating System (HHSRS). Category 1 hazards are those hazards that represent the most serious risk of harm to people's health, safety and well-being.

Although this is generally an enforcement role, the council are also committed to helping responsible landlords and owners to achieve high standards in their properties by providing advice, guidance and support wherever possible.

The council's response to complaints about housing conditions will be in accordance with the following principles;

Following a complaint about poor housing standards in a private rented home, the council will take appropriate and proportionate action to investigate the complaint. Initial investigations could result in advice or assistance being given or where necessary a formal inspection of the property will be undertaken.

Inspections can take place in response to a: complaint from a resident (a request for service), in accordance with statutory requirements or as part of any proactive scheme to target poor property conditions. We will only issue a formal Notice of Entry Notice prior to an initial inspection, if the investigating officer deems there is an imminent risk to the health, safety or well-being of any occupant.

Formal inspections are made in accordance with the risk based HHSRS model which is used to identify potential risks and hazards to health & safety arising from any deficiencies identified in the dwellings.

Following a formal inspection, a report will be issued to the person in control within 48 hours of the inspection, which will distinguish between statutory requirements and advice or guidance which is aimed at improvements above minimum standards.

We will also work with all parties concerned when setting reasonable timescales to complete the works. However, the council reserves its right to instigate a more formal action against the person in control or the owner, should it feel that the works will not be completed within the agreed timescales and no reasonable explanation can be provided to mitigate the reason why.

12. Empty Dwelling Management Orders (EDMO)

EDMOs should be considered as tools to be used as a last resort.

The council must be able to demonstrate that they have properly reached the point of applying for an interim EDMO, and to do this we will ensure compliance with the current policy and national guidelines.

Any properties that are subject to a final management order will be managed by the private Sector Housing team and used to reduce the current housing waiting list for vulnerable families.

13. Enforced Sale

The power to carry out an enforced sale sits within the s103 law of property act 1925. In essence the local authority exercises the power of sale conferred by the charge to recover the money that is owed for carrying out the work in default. Once a land charge is registered, the council can then ask for the debt to be paid in full. Where the owner fails to pay the debt, the council can enforce the sale of the property.

14. Partnership Working

In securing acceptable housing standards, other legislation may be used, and the council will consider through partnership working with Worcester Regulatory Services and other council departments including but is not being limited to:

- A. Anti-Social Behaviour, Crime and Policing Act 2014
- B. Environmental Protection Act 1990
- C. Public Health Act 1936
- D. Prevention of Damage by Pests Act 1949
- E. Building Act 1984
- F. Town and Country Planning Act 1990

15. Housing and Planning Act 2016

Wychavon and Malvern Hill District Council's have a range of legal powers available to it for enforcement across many of its districts including as a Local Planning Authority and as an Environmental Health authority. Where any cross over or link with other teams exist, other teams from the council may take the lead in any enforcement action or the council may take multi-disciplinary action.

In cases where the council has evidence to suggest that an offender has financially benefitted from a crime, Wychavon and Malvern Hill District Council's may also seek legal action (in conjunction with) other agencies under the Proceeds of Crime Act 2002.

Caravan site Licences Policy

(Malvern Hills District Council Only)

Anyone stationing a caravan or mobile home on land and using it for accommodation will require planning permission both for the caravan or mobile home and for the use of the land for residential purposes.

There are some limited exceptions to this which covers small numbers of touring caravans (up to 5) on land for a limited period of time, where the owner of the land has a certificate from an organisation such as the caravan club.

Where a site has got planning permission the owner of the site must have a caravan site licence which is granted by Malvern Hills District Council. The purpose of the licence is to regulate the standards being maintained, such as there is adequate space between the vehicles to protect against the spread of fire and that fire precautions are maintained, that the electricity supply to the site is safe and that there is adequate facilities in terms of water, sanitation and recreation space.

The scheme of delegation can be found

<https://www.malvernhills.gov.uk/documents/10558/371253/Caravan+Site+and+Licensing+Fee+Appendix+2+-+Delegation+of+authority.pdf/026d512c-8af8-435a-997c-7ab8e78d4a93>

Site Licence Fee

The Mobile Homes Act 2013 (which came into force on the 1st April 2014) amended the Caravan Sites and Control of Development Act 1960. Part 1 of the Act includes a power for Local Authorities to charge fees for their licensing function in respect of Relevant Protected Sites (typically known as residential parks, mobile home parks and gypsy and traveller sites). This power also applies to the residential parts of sites with mixed holiday and residential uses.

Licence Conditions

Licences will have specific conditions attached, and if site licence conditions aren't met, Malvern Hills District Council can take enforcement action which includes the serving of Compliance Notices or Fixed Penalty Notices. Site licence conditions are designed to protect the health, safety and welfare of residents and covers things like drainage, distances between mobile homes and so on.

Appeal against Conditions

Section 7 (1) of the Act allows a right of appeal against conditions attached to a site licence. An appeal must be made to the Magistrates' Court within twenty eight days of the licence being issued.

Alteration of Conditions

Section 8 (1) of the Act states that the local authority may, at any time, alter such conditions by varying or cancelling them, by adding new conditions, or by a combination of these methods. Before doing so, the Authority is obliged to afford to the licence holder an opportunity to make representations. No alteration becomes effective unless and until written notification has been received by the licence holder.

Offences and Penalties

Section 9 (1) of the Act makes it an offence for a site licence holder to fail to comply with any conditions attached to the licence. If the local authority is satisfied that a breach of a condition under a site licence has occurred, we will work with the site owner to gain compliance, but if they disregard our advice, we will instigate proceedings in the Magistrates' Court.

If, after having been convicted of breaching site licence condition(s) on three or more occasions, a site licence holder continues to break conditions of the licence, the local authority may, instead of instigating further proceedings, apply to the Magistrates' Court to have their licence revoked.

Where revocation is ordered, another licence may not be issued in respect of land to the same holder for at least three years.

Power of Entry

Under Section 26 (1) of the Act, authorised officers of the Authority have the right to enter, at all reasonable hours (after having given twenty-four hours' notice); land which is used as a caravan site or in respect of an application for a site licence has been made.

Site Rules

Sites rules on residential mobile home sites ensure community cohesion and good management of the site, while also making sure that mobile home owners are clear of the rules that apply to them.

The Mobile Homes (Site Rules) Regulations 2014 detail the procedure that a site owner must use when making, varying or deleting a site rule. They establish the process for consulting on proposed changes, grant appeals rights and require local authorities to keep and publish a register of site rules of sites in their area.

Once the new rules are agreed, the site owner must deposit the new site rules with Malvern Hills District Council no later than 42 days after serving the consultation response document. If an appeal has been lodged, the site owner cannot deposit the site rules until the appeal has been determined.

Once the appeal has been determined, the site owner has 14 days to deposit the site rules with this authority, unless otherwise specified by the tribunal.

Residential Mobile Homes Register

Under the Mobile Homes Act 1983 (as amended by the **Mobile Homes Act 2013**) to keep and publish an up-to-date register of park home rules and this register can be

<https://www.malvern hills.gov.uk/documents/10558/0/Caravan+Licenses+-+MHDC+for+Web+-+FINAL.pdf/a63dcf3a-1799-0e60-8863-a9c77f932062>

Minimum Standard for the Energy Efficiency of Private Rented Properties Policy

Energy efficiency regulations (“the Regulations”) establish a minimum standard for domestic privately rented property, subject to certain requirements and exemptions:

From 1st April 2018, landlords of relevant domestic private rented properties may not grant a tenancy to new or existing tenants if their property has an Energy Performance Certificate (EPC) rating of band F or G.

From 1st April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating of F or G (as shown on a valid EPC for the property).

Where a landlord wishes to continue letting property which is sub-standard, they will need to ensure that energy efficiency improvements are made which raise the EPC rating to a minimum of E. Under prescribed circumstances within the Regulations, the landlord may claim an exemption from prohibition on letting a sub-standard property.

Where a valid exemption applies the landlord must register the exemption on the national Private Rented Sector Exemptions Register. The minimum standard will apply to any domestic privately rented property which is legally required to have an EPC and which is let on certain tenancy types. Landlords of property for which an EPC is not a legal requirement are not bound by the prohibition on letting sub-standard property.

The council will:

- Check that properties in the district falling within the scope of the Regulations meet minimum levels of energy efficiency.
- Issue a compliance notice requesting information where it appears that a property has been let in breach of the Regulations.
- Serve a penalty notice where satisfied that the landlord is, or has in the past 18 months, been in breach of the requirement to comply with a compliance notice or has provided false or misleading information on the exemptions register.
- The council will have regard to the guidance in the application of this legislation, the level of any financial penalty imposed and the publication of the penalty.

Private Sector Housing Enforcement Policy:

- 1.1 This Policy Framework sets out the council's enforcement policy when dealing with non-compliance of relevant legislation related to private sector housing.
- 1.2 The Policy Framework has been written having regarded to;

The Regulators Compliance Code

which promotes proportionate, consistent and targeted regulatory activity through transparent and effective dialogue and understanding between regulators and those who regulate.

- 2.1 Regulators must have regard for this code when developing policies and procedures that guide their regulatory activity. A copy of the code is available on request or may be downloaded from <https://www.gov.uk/government/publications/regulators-code>.
- 2.2 In certain situations the council may decide that a provision in the Regulators Compliance Code is either not relevant or is outweighed by another provision. Officers will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

The Enforcement Concordat

The concordat is a voluntary, non - statutory code of practice which the council has signed up to. It sets out principles with regards to good enforcement practice which are:

- Standards of Service and Performance,
- Openness,
- Helpfulness,
- Proportionality,
- Consistency
- Complaints about Service.

Human Rights and Equality Issues

- 4.1 Investigations and any enforcement action will be conducted in a manner which does not conflict or undermine the fundamental principles of the Human Rights Act 1998.
- 4.2 Enforcement decisions will be fair, impartial and objective and will not be influenced by issues such as the ethnicity or national origin, gender, religious beliefs, political views or sexual orientation of the suspect, victim, witness or offender. The council's full equalities policy is available <https://www.wychavon.gov.uk/equality-and-diversity>

Purpose and Methods of Enforcement

- 5.1 The council expects full compliance with the law and we will not hesitate to use our enforcement powers where necessary. Formal action will be taken, including prosecution, against those who flaunt the law or act irresponsibly.
- 5.2 The council will help property owners to meet their legal obligations by providing clear and concise information about what they need to do to comply with the relevant legislation. However whilst help can be provided, property owners should always seek out and rely upon their own independent advice to ensure legal compliance.
- 5.3 Enforcement includes any action aimed at ensuring compliance with the law. The range of action that may be considered include;

Informal Action

will be considered where one or more of the following circumstances apply;

- there is no legislative requirement to serve formal notice or order and the circumstances are not serious enough to warrant formal action;
- past history suggests informal action will achieve compliance;
- there is confidence in the management or the individual;
- The consequences of non-compliance will not pose a significant risk to occupiers or others.

Serve a Statutory Notice / Order or a civil penalty

This will be considered where it is appropriate and where there is evidence to justify the issuing of a notice, order or penalty.

- 7.1 The Housing Act 2004 (and other legislation) places councils under a general duty to take appropriate action in relation to Category 1 hazards. Wychavon and Malvern Hill District Council's will use any of the following options;
- a) Serve an Improvement Notice in accordance with Section 11
 - b) Make a Prohibition Order in accordance with Section 20
 - c) Serve a Hazard Awareness Notice in accordance with Section 28
 - d) Take Emergency Remedial Action under Section 40 or otherwise undertake works in default
 - e) Make an Emergency Prohibition Order under Section 43
 - f) Make a Demolition Order under Section 265 of the Housing Act 1985
- 7.2 Powers a) to c) can also be used in relation to dealing with Category 2 hazards. We also consider where appropriate to suspend any relevant Notice or Order.
- 7.3 The council also has numerous duties and powers under various other Acts, Orders and Regulations that it can and will use as part of its housing regulation function.
- 7.4 In addition, the council work very closely with Hereford and Worcester Fire and Rescue service on matters of fire safety and fire protection that have separate enforcement powers under the Regulatory Reform (Fire Safety) Order 2005 which they are able to use if needed. Where serious breaches are found that prejudice the health, safety and well-being of our residents, we will consider joint enforcement and joint prosecution where applicable. However, Wychavon and Malvern Hill District Council's will take the lead for fire safety in dwellings.
- 7.5 Wychavon and Malvern Hill District Council's have a duty under Section 5 of the Housing Act 2004 to take the most appropriate course of action (enforcement action) where Category 1 hazards exist. In all cases, the council will take action that is reasonable, justified and proportionate which can include a range of formal and pre-formal stages.
- 7.6 When determining the most appropriate course of action, officers will take account of matters, including but not being limited to, the severity of the issues to hand, the immediacy of the issues to hand and the compliance history of the landlord or agent to most effectively protect the health, safety and well-being of those having cause to resort to the premise.
- 7.7 Section 7 of the Housing Act 2004 gives the council a power (rather than a duty) to take enforcement action in respect of Category 2 hazards. It will be for appropriately authorised officers to consider the individual merits of every case and what if any action to take in respect of reducing or removing Category 2 hazards.
- 7.8 Whilst the council is **not** under a **duty** and we will choose to take action in respect of every deficiency or defect found within any home, the enforcement options open to it include but may not be limited to:
- A. Serving an Improvement Notice in accordance with Section 11
 - B. Making a Prohibition Order in accordance with Section 20
 - C. Serving a Hazard Awareness Notice in accordance with Section 28

- 7.9 The council charge for all forms of formal enforcement action where the law allows. A schedule of fees is set out in schedule 2. Charges will be reviewed at least annually and published.

Power of Entry

- 8.1 Section 239 of the Housing Act 2004 gives the council power of entry to properties in pursuance of its duties under Part 1 of the Act. Under Sub-section(7) officers are entitled to enter premises at any reasonable time without giving prior notice, where the council considers that an offence might have been committed under Sections 72 and 95 (HMO Licensing) and Section 234 (HMO Management Regulations).
- 8.2 We will only issue a formal Notice of entry if it is considered there is an imminent risk to the health, safety or wellbeing to any resident or if enforcement action is to be considered.
- 8.3 In circumstances where entry is refused, the property is empty or where prior warning would negate the purpose of access a warrant will be obtained.

Non Compliance

- 9.1 Where statutory Orders and other Notices are not complied with or where there are serious breaches of legislation/threats to people's health, safety or well-being, the council will further action such as issuing a caution, a Civil Penalty or commencing prosecution proceedings. Prosecutions will be dealt with through the Courts as civil or criminal matters.

Works in Default

- 10.1 This may be considered as an alternative to, or in addition to, prosecution.
- 10.2 The council will carry out the works in default and seek to recover the full and associated costs, where necessary through legal redress. This will include, where applicable, administration costs and officer time.
- 10.3 Where appropriate the costs will be placed against the property as a local land charge. The council may seek to use its powers to enforce the sale of the property in order to recover the costs.
- 10.4 Each case will be looked at individually and the Head of Housing and Communities or a delegated Manager/ Officer, in accordance with the council's Scheme of Delegation, will make the decision to undertake works in default depending upon the type, extent and the protection of the health, safety and well-being of any occupant.

1.0 Licensing of Houses in Multiple Occupation (HMOs) Policy

- 1.1 The aim of HMO licensing is to ensure that the highest risk properties in the private rental market are identified, meet legal standards and are properly managed. HMOs which are occupied by five or more persons, who comprise two or more households, will be subject to licensing regime (other than those that are exempt from licensing).
- 1.2 The Act places the following general duties on all local housing authorities with respect to HMOs falling within the mandatory licensable description:

Too effectively implement a licensing regime - To this effect a comprehensive licensing administrative process has been developed based on a licence application form designed by the Private Sector Housing Team.

The council will continue to actively seek compliance with mandatory licensing requirements through a range of activities including:-

- Direct mailings to known landlords;
- Area based surveys;
- Advertising and publicity aimed at both landlords and tenants; • Liaison with professional organisations representing landlords, managing agents and letting agents, as well as large scale accommodation providers such as Universities.;
- The maintenance of a website with extensive information about licensing standards and downloadable application forms'
- Working in partnership with other Council departments as well as external agencies to identify potentially licensable properties.

2.0 Data protection and privacy notice

- 2.1 Council will only use any data collect through the licensing process in line with the current data protection legislation. Further information concerning our privacy notice can be found <https://www.wychavon.gov.uk/housing-privacy-notice>
- 2.2 For further information, please refer to the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 and The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licenses) (England) Regulations 2018.

3.0 To determine licence applications within a reasonable time.

- 3.1 The length of the application process will vary depending on a number of factors, such as the individual property circumstances or the total number of applications that the local housing authority has received. Provided that a landlord has submitted a valid application, the HMO can continue to operate legally until the council reaches its decision and any appeals against that decision are complete. Our aim is to determine all valid licence applications within a period of 52 working days.
- 3.2 This is the time between the date that the application is deemed as being valid and the date that the decision is made whether to grant or to refuse to grant a licence.
- 3.3 To be regarded as valid, an application must consist of the following minimum elements:
 - A duly completed application form, signed and dated (this can be subject to certain agreed omissions in certain circumstances);
 - A reasonably accurate plan of the property indicating room dimensions, occupancy level and the position of standard amenities, plus the location of any smoke/heat detectors and fire doors;
 - A valid gas safety certificate (if the property has a gas supply);

- A valid emergency lighting system test certificate issued in the last 12 months (if applicable);
- A valid fire alarm test certificate issued in the last 12 months (if applicable);
- A valid periodic inspection report of the electrical installation;
- A valid recent Portable Appliance Test (PAT) certificate (if applicable);
- A written fire risk assessment;
- Buildings Insurance
- Public Liability Insurance Certificate
- Sample Tenancy Agreement
- The appropriate Licence fee submitted to the council

4.0 The Licensing Process

- 4.1 The licensing process is by nature lengthy and complex. The legal procedures and requirements set out in Part 2 and Schedule 5 of the Act plus associated regulations must be accurately followed. Written procedures have been developed to ensure compliance and consistency.
- 4.2 Wherever possible, licensing decisions will be based upon an in-depth assessment of the licence application form, accompanying plan and a full inspection of the property. The licence application form contains all of the information legally required plus sufficient additional information in order to assess whether proper standards in terms of management practices are being maintained.
- 4.3 Having considered the information provided by the applicant on the application form and any accompanying documentation, and following a satisfactory property inspection the council must grant a licence if it is satisfied that:
- The HMO is reasonably suitable for occupation by the number of persons permitted under the licence, having regard to the number and suitability of facilities available or that it can be made thus suitable by the imposition of licensing conditions;
 - The proposed licence holder is a fit and proper person;
 - The proposed licence holder is the most appropriate person to hold the licence;
 - The proposed manager, if applicable, is a fit and proper person;
 - The proposed management arrangements are satisfactory;
 - That any person involved in the management of the house is competent and that the financial structures for the proper management of the property are appropriate.

5.0 Incomplete Applications

- 5.1 Applicants who have failed to provide the full details required for a valid licensing application will be given a reasonable time to provide the missing information or documentation.
- 5.2 Failure to provide the required information within 14 days will result in the application being made ineffective. Continuing failure to cooperate with information requests may be regarded as deliberate avoidance of applying for a licence and legal proceedings may be instigated, which may result in prosecution.
- 5.3 Non-payment of the licence fee, either in full or in part may also result in the debt being pursued as a civil debt.
- 5.4 In addition the licence may be granted for a lesser period than five years to reflect the delay in making a full valid application.

6.0 Licence Fees

- 6.1 Licence Fees Section 63(3) of the Act enables local authorities to charge a fee to cover the costs incurred in carrying out all duties involved in the administration of the licensing process.

7.0 Refund of Licence Fees

- 7.1 The council will refund an applicant in full any fee that has been paid in respect of a licence application where it is found that a property was not an HMO that was required to be licensed.

8.0 Duration of Licences

- 8.1 Section 68(4) of the Act provides that a licence may be granted for a maximum of five years. Licences will be granted for this period where landlords have been found to be compliant with previous licensing conditions, maintained good property standards and demonstrated good management standards.
- 8.2 If the council has evidence to suggest that management arrangements or property conditions are not entirely satisfactory, or where the council has taken intervention against the landlord which does not warrant refusal to grant a licence, or where concerns are raised by the Police or other statutory enforcement agency, licences may be granted for the lesser period of 3 years.
- 8.3 Where the application has come about only as a result of the council's intervention or by officer intelligence, then a three year licence may be issued. In certain circumstances the period will be reduced accordingly to reflect the period from when the licence should have been applied for and when it was actually applied for. This would ensure equity with those landlords who have applied in good time. In cases where incomplete applications are received and the applicant has failed to promptly provide the information required the application is deemed invalid. In these circumstances, the council may consider it appropriate that the licence period should be reduced accordingly to reflect the delay.
- 8.4 To reflect the complex nature of Bed and Breakfast (B&B) type properties and due to the high turnover and very particular way in which B&B properties are occupied, licences will be granted for a maximum of 2 years to ensure that adequate measures are in place to manage these properties. Where there has been intervention or a history of non-compliance a licence may be issued for a lesser period of 1 year.

9.0 Variation of a Licence

- 9.1 A licence may be varied either by agreement with the licence holder or variation of the licence may be required by the local authority if there has been a material change in circumstances since the date of grant of licence. (Section 69 of the Act).
- 9.2 Assessing Suitability for Occupation under Section 65 of the Act, the council must be satisfied that a licensable premises property is reasonably suitable for occupation by a specified maximum number of persons or households.
- 9.3 In making this assessment, the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 (as amended) and The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 must be taken into consideration.
- 9.4 These regulations require that the following matters must be taken into account when assessing suitability for occupation:-
- The provision of an adequate means of space heating in each unit of living accommodation;
 - The provision of adequate and sufficient toilet facilities, plus facilities for personal washing and bathing;
 - The provision of adequate and sufficient kitchen facilities;
 - The provision of appropriate fire precautions and fire safety equipment.
 - Exact standard regarding minimum room sizes:
 - 6.51 m² for one person over 10 years of age.
 - 10.22 m² for two persons over 10 years of age,
 - 4.64 m² for one child under the age of 10 years.

- It will be a mandatory condition that any room of less than 4.64 m² may not be used as sleeping accommodation.
- 9.5 The councils will use these standards in relation to licenced HMO, but we will also use them as our minimum room sizes in relation to the general living environment as found within Part 1, Housing Act 2004.
- 9.6 For further details of the adopted standards please go to <https://www.wychavon.gov.uk/housing-in-multiple-occupation>

10.0 Fit and Proper Person Assessment

- 10.1 The council must undertake checks to ensure that the proposed licence holder (and manager, if different) is a fit and proper person. In deciding whether a person is fit and proper they must take the following into account:
- Any previous convictions involving fraud or other dishonesty, violence, drugs or specified sexual offences;
 - Contraventions of Housing Law or Landlord and Tenant Law;
 - Whether the person has practised unlawful discrimination;
 - Whether the person has acted otherwise than in accordance with any applicable code of practice approved under Section 233 of the Act.
- 10.2 The HMO application form asks specific questions to obtain relevant information so that the council may assess whether further checks are required to establish if an applicant is fit and proper.
- 10.3 These questions have been designed based on the licensing regulations which specify what information the licence applicant and manager (if different) must declare on the licence application form with respect to their personal circumstances in relation to the matters listed above.
- 10.4 Applicants must complete and sign the Declarations to confirm that all the information provided on the application form is correct to the best of their knowledge.
- 10.5 To provide false or misleading information is potentially an offence under section 238 of the Act. In the majority of cases, no issues are identified and as such a self-declaration will be accepted as sufficient evidence of a person's fit and proper status.
- 10.6 Where an applicant indicates that one or more issues as listed applies to them, or where other information comes to light, it is important to establish further details in order to assess whether this impacts on their implied 'fit and proper' status.
- 10.7 Officers may contact applicants by telephone or by writing, or may invite applicants to attend the council offices with a view to establishing the exact circumstances of the matter. If it appears that the matter is not of relevance to their status as a fit and proper person, then the application may proceed for approval. If it is established that the matter is of relevance to their implied status as a fit and proper person, then this clearly has significant implications in that it may be necessary to refuse to grant a licence.
- 10.8 The final decision as to whether a person is to be regarded as not being a fit and proper person will be made by the delegated officer.
- 10.9 Wherever possible, applicants who are assessed as not being fit and proper will be encouraged to propose an alternative person or company to act as the licence holder on their behalf. The council will work with the initial proposed licence holder to assist in this process wherever possible. As stated above, a self-declaration will be accepted in the majority of cases.

- 10.10 However, where accommodation is occupied by persons of a particularly vulnerable group, then the applicant will be required to support their declaration by obtaining a Basic Criminal Bureau Disclosure certificate (CRB). Existing Basic or higher-level CRB certificates will be acceptable provided they are dated not more than 12 months prior to the application.
- 10.11 This requirement will apply to all hostel and B&B type premises for HMO licensing. The proprietors of Supporting People schemes which fall within the mandatory licensing requirements will need to produce a Disclosure certificate to at least a basic level if they have not already done so in connection with their Supporting People contract.
- 10.12 Such disclosure certificates are obtainable from “Disclosure Scotland”. In certain cases, particularly larger hostel-type premises accommodating persons with drug / alcohol dependency backgrounds or who are under the supervision of the Probation Service etc., there may be other agencies who would wish to have their views or concerns taken into account as part of the licensing process (such as the Police, Probation Service, Community Safety Teams, Anti Social Behaviour Team, Drug Intervention Team, etc.) Council will actively work with all such agencies as appropriate and take into account their views as part of the decision making process as to whether or not to grant a licence and whether any specific licence conditions should be applied.
- 10.13 Such concerns may indicate that the proposed licence holder is failing to take reasonable steps to control the behaviour and activities of the occupants of the property and that this is having an impact upon the local community. As such, the competency of the proposed licence holder or manager may be called in to question, even though they may not have declared any outstanding issues and may have clear CRB.
- 10.14 Council will actively work with all such agencies as appropriate and take into account their views as part of the decision making process as to whether or not to grant a licence and whether any specific licence conditions should be applied. Such concerns may indicate that the proposed licence holder is failing to take reasonable steps to control the behaviour and activities of the occupants of the property and that this is having an impact upon the local community.
- 10.15 In all cases, the proposed licence holder must have a permanent address within the United Kingdom before they can be regarded as being suitable to hold a licence.

11.0 Assessment of Management Arrangements

- 11.1 Licence applicants are required to answer questions as part of the application form confirming they have procedures and arrangements in place to ensure their property is well managed.

These include;

- Arrangements for essential repair work and routine maintenance, including financial arrangements to cover such works;
- Dealing with complaints from their tenants about disrepair issues;
- Dealing with anti-social behaviour from their tenants;
- Information about tenancy deposit schemes.

12.0 Licence Conditions

- 12.1 All licences granted are subject to conditions with which the licence holder must either comply with immediately or within a specified period of time.
- 12.2 Breach of any licence condition is an offence punishable by an unlimited fine through the courts or via a civil penalty to a maximum level of £30,000. Furthermore a significant or persistent breach of

a licence condition may be grounds for revocation of the licence and the issuing of a Banning Order and/ or civil penalties, against the licence holder.

- 12.3 Certain conditions as detailed in Schedule 4 of the Act are mandatory and must be included in every licence granted. These mandatory conditions require the licence holder to:-
- Provide the council with a valid gas certificate upon demand;
 - Keep electrical appliances and furniture provided by the licence holder in a safe condition and supply the
 - +Council with a declaration to that effect upon demand;
 - Ensure that fire alarms/smoke detectors are installed and maintained in proper working order and supply the council with a declaration as to their condition and location upon demand;
 - Provide occupiers with a written statement of the terms on which they occupy the property;
 - Ensure that the licensed premises are compliant with all statutory requirements (this includes current and future Management Regulations).
 - Bedrooms will only be occupied by specific number of occupants, taking into account their age.
 - Rooms below 4.64m² will not be used.
 - If applicable, the licence holder will comply with the local waste storage and collection policy.
- 12.4 Taking into account these conditions as identified in the Act, the council has produced a set of Standard Conditions relevant to which are attached to every licence.
- 12.5 The council may also impose any other Specific Property Conditions considered necessary for regulating the management, use and occupation of the premises concerned, including its condition and contents.
- 12.6 Where specific works or actions are required, these will be detailed in a second schedule which specifies what must be done and the timescale for compliance. This will vary from premises to premises.

13.0 Temporary Exemption from Licensing

- 13.1 If a landlord or a person in control of a licensable property intends to stop operating as an HMO or to reduce the number of occupants below five and can give clear evidence of this then he or she can apply for a Temporary Exemption Notice (TEN).
- 13.2 A landlord is not allowed to serve a section 21 Notice on any occupant, just for the intension of removing the property from being licenced.
- 13.3 Where it is intended that a property will cease to be let in multiple occupation, the landlord must be able to provide evidence that any existing tenants have made suitable alternative housing arrangements and that they will have moved out within 3 months from the date of application for the TEN.
- 13.4 In some cases, landlords will wish to apply for a TEN where they are proposing to convert a licensable HMO into self-contained flats, thereby excluding the premises from the definition of HMO and any licensing requirements under the mandatory scheme.
- 13.5 In such cases, evidence that the proposed conversion has Planning Consent and/or Building Regulation approval as appropriate must be produced before considering whether or not to grant the TEN.
- 13.6 If necessary, consideration may be given to issuing a further TEN for another 3 months. However, no more than two consecutive TENs may be granted. A person who applies for a TEN but is refused may appeal to the First-tier Residential Property Tribunal (FTT) within 28 days. Upon

expiry of a TEN, the property must either be licensed, have ceased to be an HMO or be no longer licensable.

14.0 Houses in Multiple Occupation (HMO) Declarations

- 14.1 Where a building, or part of a building, is partly occupied by persons as their only or main residence, but is also partly occupied otherwise than as a residence e.g. a Bed & Breakfast (B&B) establishment providing accommodation for both homeless people or asylum seekers and for holidaymakers, the council may declare the building a HMO if it is satisfied that the occupation by persons as their only or main residence is a significant use of the building, or part of the building.
- 14.2 If an owner or manager does not agree that the building should be subject to a HMO Declaration, he/she can appeal against the council's decision to a First-tier Residential Tribunal (FTT). On appeal the Tribunal must either confirm the declaration or revoke it. The council may revoke an HMO Declaration in force, either of its own volition, or upon the application of the property owner or manager, if it is satisfied the building is no longer used significantly by persons as their only or main residence.

15 Refusal to Grant a Licence

- 15.1 The consequences of refusing to grant a licence are serious for both the landlord and the council in that the council has a duty to take on the management of the property by making an Interim Management Order (IMO).
- 15.2 A full option appraisal will therefore be carried out before any decision to refuse to grant a licence is made and the making of an IMO should be regarded as a last resort. Where a proposed licence holder or manager is assessed as being not fit and proper, Officers will work with that person wherever possible with a view to agreeing an alternative person who is fit and proper.

16 Representations and Provisions for Appeal Representations

- 16.1 Before the council can grant a licence, it must consider any representations made in accordance with the Notice of Intention to Grant a Licence. A representation is a formal statement made to an official body by a person expressing a point of view about some aspect of the Licence.
- 16.2 A representation to the council should be made in writing to Private Sector Housing, Civic Centre, Queen Elizabeth Drive, Pershore, Worcestershire. However, in exceptional circumstances, the council will accept an oral representation.
- 16.3 Representations should be submitted before the date marking the end of the consultation period, which is stated on the notice. If you or any person connected to the property, makes a representation the council will consider the issues raised and make a decision as to whether any action needs to be taken. This action could include modifying some aspect of the Licence, e.g. the conditions attached or carrying out further investigations.
- 16.4 The council will always contact the applicant and all relevant persons to notify them of the decision made. If you disagree with the council's decision, you have the right to appeal against the decision with the FTT.

17 Appeals

17.1 You may appeal to the FTT if the council decides to:

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

17.2 Appeals should be made, normally within 28 days from the issuing of the complete licence.

18 Public register

18.1 It is a legal requirement for local authorities to provide a register of all specific details relating to licensable HMOs and temporary exemption notices. Anyone can request to view a public register by making an appointment at Civic Centre, Queen Elizabeth Drive, Pershore, Worcestershire. The public register will contain information as required by Section 11 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006.

18.2 A reduced public register can view viewed on-line at https://www.wychavon.gov.uk/search/-/journal_content/56/10586/104208?p_p_auth=mh5kjq29&p_p_state=maximized

19 Enforcement of Licensing

19.1 Failure to Apply for a Licence Under section 72(1) of the Act, it is an offence punishable by a unlimited fine through the courts or via a civil penalty to a maximum level of £30,000 for a person having control of, or managing, a licensable HMO to do so without a licence, without reasonable excuse.

19.2 In line with the overall prosecution policy, the person responsible will be given adequate opportunity to apply for a licence before legal proceedings are instigated. In the majority of cases, this will take the form of at least two written invitations to apply. The first invitation will specify a 28 day period for compliance.

19.3 The second invitation will take the form of a reminder emphasising the consequences of failure to comply, and will usually specify a further 14 day compliance period, although a lesser period may be applicable according to the circumstances (for example if the tenant(s) wish to apply for an RRO).

19.4 Failure to respond to the reminder letter may result in an inspection of the property in question to verify whether it is licensable, which will result in the council in taking the most appropriate enforcement action, which would include the consideration of an IMO.

19.5 In all of the above cases, the receipt of an appropriate application once legal proceedings have been instigated but before the case come to court will not be regarded as a reason to withdraw proceedings.

19.6 Permitting Excess Occupation Under Section 72(2) of the Act, it is an offence punishable by a unlimited fine through the courts or via a civil penalty to a maximum level of £30,000 for a person having control of or managing a licensed HMO to knowingly permit it to be occupied by any additional person or persons so as to exceed the maximum number of occupants or households authorised by the licence. Cases may arise, however, whereby other persons move in to a licensed HMO at the invitation of existing occupiers (usually as friends or relatives).

19.7 The licence holder or manager may have no knowledge that this has taken place. In such cases the situation will be brought to the attention of the licence holder or manager and following discovery a period of 14 days will be permitted to afford the licence holder or manager adequate time to take appropriate action to require the excess occupant(s) to move out.

20 Breach of Licence Conditions

21.1 Under Section 72 (3) of the Act, it is an offence punishable by a unlimited fine through the courts or via a civil penalty to a maximum level of £30,000 if the licence holder or a person on whom restrictions or obligations are imposed under the terms of a licence fails without reasonable excuse to comply with any condition of the licence.

21.2 A serious breach or repeated breach of licence conditions may also be grounds to revoke the licence. Legal proceedings will be considered in all cases where a licence is revoked on these grounds.

22 Incomplete Applications

22.1 Applicants who have failed to provide the full details required to make their application valid will be given adequate opportunity to provide the missing information or documentation. This will normally take the form of a letter requesting the missing information or documentation within 14 days of the date of the letter.

22.2 A further reminder letter will be sent where there is no response or an inadequate response to the first letter, advising that the application is being made ineffective.

22.3 Continued failure to cooperate may be regarded as an overall failure to apply for a licence and legal proceedings may be instigated in line with the council's overall enforcement policy. Non-payment of the licence fee, either in full or in part, will also result in the debt being pursued as a civil debt.

23 Planning Permission and Other Statutory Requirements

23.1 Compliance with the provisions of the mandatory licence scheme does not confer exemption from the need to obtain any planning permission necessary for operation of an HMO or from action by the council under other legislation.

23.2 The council may serve a range of notices in respect of houses in multiple occupation. These include notices requiring the execution of works to reduce health and safety hazards identified, notices requiring steps to be taken to reduce the level of occupancy and notices to remedy neglect of management.

23.3 The council also has powers to take over poorly managed properties. These powers operate independently of any licensing scheme.

23.4 You are advised to establish lawful use of your premises under planning legislation. It is also advisable to contact the council's planning departments for advice.

24 Non-Licensable HMOs

24.1 The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 only apply to licensable HMOs (that is those HMOs which fall within the mandatory licensing description or within any additional licensing scheme).

- 24.2 There are many HMOs which do not fall within any licensing requirements at the present time as there are no additional licensing schemes in operation; those having less than five occupants or houses converted entirely into self-contained flats prior to the 1991 Building Regulation standard. In these cases it is considered important that appropriate standards of amenity provision, fire precautions and room size should be achieved wherever possible.
- 24.3 Part 1 of the Act brings in a method of assessing housing conditions known as the Housing Health and Safety Rating System (HHSRS) plus associated enforcement powers to deal with any hazards identified.
- 24.4 Furthermore, part 4 of the Act contains provisions for dealing with overcrowding in HMOs. By application of these powers similar overall standards may be achieved as those required for licensable HMOs.
- 24.5 The council has adopted the set minimum bedroom sizes for all HMO's within its district as a starting port for usability.

Civil Penalties and Rogue Landlord Database Policy

The power to impose a **Civil Penalty** as an **alternative** to prosecution for certain Housing Act offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016. A Civil Penalty is

‘a financial penalty imposed by a local housing authority on an individual or organisation as an alternative to prosecution for certain housing offences under the Housing Act 2004’.

- The list of offences (which may from time to time be amended) that may be dealt with by way of a Civil Penalty are:
- 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).

At all times the Local Housing Authority will have *regard* to prevailing Statutory Guidance in respect of civil penalties.

Factors in deciding whether to Prosecute or issue a Civil Penalty.

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

Where the council considers that a relevant Housing Act offence has been committed, it will determine the most appropriate course of action to take, including, whether to prosecute or to issue a Civil Penalty as an alternative to prosecution. A range of factors, including but not limited to those set out below, will be used to determine the appropriate enforcement option:

- The seriousness of the offence
- The immediacy of the risk
- The history of an individual, including any previous non-compliance and convictions
- Whether prosecution is in the ‘public interest’
- Whether the offence was committed as a result of a genuine mistake or misunderstanding, having regard to the seriousness of the offence and the likely ‘human impact’ the enforcement action will have in preventing future offences.

As a Civil Penalty is an ‘alternative’ to prosecution, the burden of proof test to be applied is the same as any criminal prosecution and requires that the case is proved **beyond all reasonable doubt**. The council will satisfy itself that there would be a realistic prospect of conviction if the case were to be prosecuted in a Magistrates Court before issuing a Civil Penalty and will comply with the council’s prevailing Corporate Enforcement Policy and all other prevailing Codes and Statutory Guides, e.g. the Code for Crown Prosecutors and Police and Criminal Evidence Act codes.

Factors determining the level of Civil Penalty The law allows a maximum penalty of **£30,000** to be imposed for each relevant offence. The council will use a range of factors, including but not limited to those set out below in order to set a Civil Penalty at an appropriate level:

- The severity of the offence, the more serious the offence the higher the penalty
- The **culpability**, history and compliance of the offender
- The **harm** caused to the tenant and other relevant people by the offender
- The ‘real terms’ economic impact that a Civil Penalty punishment will have on the offender

- The deterrent value that a Civil Penalty is likely to have on preventing the offender from repeating the offence and failing to meet all of their legal responsibilities
- The deterrent value that civil penalties are likely to have on other landlords from committing similar offences

Removal of any financial benefit gained by the offender from committing the offence.

The nature of the harm will depend on the personal characteristics and circumstances of the victim. Where no **actual** harm has resulted from the offence the council will consider the relative danger that persons have been exposed to as a result of the offenders conduct, action or lack of action as well as the likelihood of harm occurring and the gravity of harm that could have resulted.

In determining the level of **harm** arising from an offence, the council will have regard to any relevant consequences including:

- The harm caused to an individual or individuals, i.e. physical injury, damage to health and psychological distress
- The harm caused to the wider neighbourhood and community i.e. economic loss and harm to public health.

Factors that indicate higher degrees of harm include:

- Where there are multiple victims
- Where there is a serious or long term psychological effect on the victim or
- Where the victim or victims is/are particularly vulnerable

In determining the **culpability** of the offender or offenders, the council will have regard to issues including whether:

- The offender **deliberately and/or intentionally** caused harm
- The offender was **reckless** in their actions or failings. Being reckless here means failing to have had regard to the danger or other negative consequences of any risk or risks that would be obvious to most people
- The offender **knew** of the risks, for example, they had been set out in a notice and not complied with or would have been obvious to most people upon inspection
- The offender was **negligent**. Being negligent here means the offender failed to take reasonable care and did something or failed to do something that would have been reasonable to do, i.e. inspecting or causing to have a property regularly inspected, acting upon the findings of an inspection or failing to act on reports from tenants and others

Where a Civil Penalty is deemed appropriate, to demonstrate transparency, the council will determine the financial level of the Civil Penalty using the matrix set out within this document.

Procedure for imposing a Civil Penalty. Where it has been determined that it is appropriate to impose a Civil Penalty as an alternative to prosecution, the council will follow the process set out within the Housing Act 2004. In summary: A “**Notice of Intent**” shall be served on the person suspected of committing the offence. The Notice shall be served no more than six months after the council has sufficient evidence of the conduct to which the penalty relates. **The Notice shall specify:**

- The amount of any proposed financial penalty
- The reasons for proposing the financial penalty
- Information about the right to make representation to the council.

The person to which the notice relates will be given **28 days** to make written representation to the council about the proposal to impose a financial penalty. The representation may be via any legible written format, but to aid respondents, a form will be included with the Notice of Intent.

Following the 28 day period the council will decide:

- Whether to impose a Civil Penalty on the person, and
- The value of any such penalty imposed.

If the council decides to impose a Civil Penalty, a final notice shall be issued imposing that penalty. The final notice will specify:

- 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,
- information about rights of appeal to the First tier Tribunal
- the consequences of failure to comply with the notice.

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 council 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

Where the council decides to take either action, it will write to the person to whom the notice was served.

Payment of a Civil Penalty Where a person in receipt of a Civil Penalty has exhausted all rights of appeal or has not paid or is not paying the penalty, the council may refer the case to the county court for an Order of that Court. The council may use any reasonable and lawful process, including use of county court and other bailiffs, to enforce the order and recover the debt.

Database of Rogue Landlords Where a landlord receives **two** or more civil penalties over a 12 month period, the council may include that person's details in the national **database of rogue landlords and property agents**. The purpose of the database is to enable local housing authorities to record information about, and target enforcement action against, any landlord who has:

- received a banning order under the Housing and Planning Act 2016;
- been convicted of a banning order offence; or
- received TWO or more civil penalties over a 12 month period.

Charging table for determining value of Financial Penalties

Failure to comply with an Improvement Notice (Section 30)	£
1st offence (note 1)	5000
2nd subsequent offence by same person/company (note 2)	15000
Subsequent offences by same person/company (note 7)	25000
Premiums (use all that apply)	
Acts or omissions demonstrating high culpability (note 8)	+2500
Large housing portfolio (10+ units of accommodation) (note 3)	+2500
Multiple Category 1 or high Category 2 Hazards (note 4)	+2500
Vulnerable occupant and/or significant harm occurred as result of housing conditions (note 5)	+2500
Perpetrator demonstrates Income to be less than £440/week (note 6)	-50%

Offences in relation to licensing of HMOs under Part 2 of the Act (Section 72)	(note1)	£
Failure to obtain property Licence (section 72(1))(note 1)		10000
2nd subsequent offence by same person/company (note 2)		30000
Perpetrator demonstrates Income to be less than £440/week(note 6)		-50%
Breach of Licence conditions (Section 72(2) and (3)) - Per licence breach		5000
Perpetrator demonstrates Income to be less than £440/week(note 6)		-50%

Offences in relation to licensing of HMOs under Part 3 of the Act (Section 95)	£
Failure to Licence (section 95(1))(note 1)	10000
2nd subsequent offence by same person/company(note 2)	30000
Perpetrator demonstrates Income to be less than £440/week(note 6)	-50%
Breach of Licence conditions (Section 95(2)) - Per licence breach	5000
Perpetrator demonstrates Income to be less than £440/week(note 6)	-50%

Offences of contravention of an overcrowding notice (section 139)	£
1st relevant offences(note 1)	5000
2nd subsequent offence by same person/company (note 2)	15000
Premiums (use all that apply)	
Acts or omissions demonstrating high culpability (note 8)	+2500
Vulnerable occupant and/or significant harm occurred as result of overcrowding (note 3)	+2500
Perpetrator demonstrates Income to be less than £440/week(note 6)	-50%

Failure to comply with management regulations in respect of HMOs (Section 234)	£
1 st relevant offences (note1)	1000/offence
Second subsequent offences by same person/company for the same offence	3000/offence

Premiums (use all that apply)	
Acts or omissions demonstrating high culpability (note 8)	+2500
Large housing portfolio (10+ units of accommodation)(note 3)	+2500
Vulnerable occupant and/or significant harm occurred as result of housing conditions(note 5)	+2500
Perpetrator demonstrates Income to be less than £440/week(note 6)	-50%

NOTES

Note 1 – Offences that may be dealt with by way of imposing a financial penalty

The starting point for a financial penalty is based on the number of previous convictions or imposition of a financial penalty for the same type of offence in the previous four years.

After the starting point has been determined, relevant Premiums are added to the starting amount to determine the full financial penalty to be imposed

No single financial penalty may be over £30,000. Where the addition of all relevant premiums would put the penalty above the maximum, it shall be capped at £30,000

Note 2 - 2nd subsequent offence by same person/company

The council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

Note 3 - Large housing portfolio (10+ units of accommodation)

The premium is applied where the perpetrator has control or manages 10 or more units of accommodation.

For the purposes of this premium, the definition of a person having control and person managing are as defined by Housing Act 2004 Section 263.

Note 4 - Multiple Category 1 or high Category 2 Hazards

This premium will apply where the failure to comply with the Improvement Notice relates to three or more Category 1 or high scoring Category 2 hazards associated with different building deficiencies. For the avoidance of doubt this means that where two hazards are present but relate to the same property defect, they are counted as one hazard for purposes of this calculation.

For the purpose of this premium, a high scoring category 2 hazard is defined as one scored following the Housing Health and Safety Rating System as “D” or “E”.

Note 5 - Vulnerable occupant and/or significant harm occurred as result of housing conditions

This premium will be applied once if either the property is occupied by a vulnerable person or if significant harm has occurred as a result of the housing conditions.

For purposes of this premium a vulnerable person is defined as someone who forms part of a vulnerable group under Housing Health and Safety Rating System relating to hazards present in the property or an occupant or group of occupants considered by the council to be at particular risk of harm that the perpetrator ought to have had regard.

For purposes of this premium, significant harm is defined as physical or mental illness or injury that corresponds to one of the four classes of harm under the Housing Health and Safety Rating System Operating Guidance.

At the time of publication this document can be found at www.gov.uk and a summary table is below.

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

Note 6 - Perpetrator demonstrates Income to be less than £440/week

This premium will be applied after all other relevant premiums have been included and if applicable will reduce the overall financial penalty by 50%.

To be applicable, the person served by the Notice of Intent must provide sufficient documented evidence of income.

The figure of £440/week is to be calculated after omission of income tax and national insurance.

The council reserves the right to request further information to support any financial claim, and where this is incomplete or not sufficiently evidenced may determine that the premium should not be applied.

Note 7 - Previous history of non-compliance with these provisions

This premium is applied where there has been a conviction or imposition of a financial penalty for the same type of offence in the previous four years.

The council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

Note 8 – Acts or omissions demonstrating high culpability

This premium will be applied where, the person to which the financial penalty applies, acted in a reckless or deliberate manner in not complying with the statutory notice or previous relevant formal advice.

1. Rent Repayment Orders (RRO) Policy

- 1.1 Local authorities can apply to the First-tier Tribunal to reclaim any housing benefit (up to a maximum of 12 months) that has been paid during the time that a licensable property was operating without a licence where a landlord has been found guilty of the offence of failing to obtain a licence or if the local authority has sufficient evidence that an offence has been committed.
- 1.2 An application to the First-tier Tribunal will be made by the council for a RRO in all cases following a successful prosecution where housing benefit has been paid during the period the property was not licensed.
- 1.3 Any tenant living in a HMO that should have been licensed, but was not, can also apply to the First-tier Tribunal for an RRO to claim back any rent they have paid during the unlicensed period (up to a maximum of 12 months), and will be advised of this in all cases in order that they may pursue a RRO themselves as they consider appropriate.
- 1.4 Rent Repayment Orders (RRO's) 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. NB. 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.
- 1.5 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.
- 1.6 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 (not yet in force but scheduled to be 1 October 2017)
- 1.7 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 6th April 2017.
- 1.8 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.

- 1.9 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.

2. Statutory Guidance

- 2.1 In deciding whether to apply for a RRO, 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).
- 2.2 Council officers may offer advice to tenants who are eligible to claim a RRO in respect of rent paid themselves but in such cases, the tenant will usually be referred direct to an appropriate bodies for further support.
- 2.3 Considerations for decision as to whether to apply for a RRO 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.
- 2.4 The use of RRO's 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.
- 2.5 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.
- 2.6 **In determining if application for a Rent Repayment Order is appropriate, following questions shall be considered:**
 1. Has the offender been prosecuted and convicted of a relevant offence in Court? If yes, make an RRO application. If no go to step 2.
 2. Has evidence been obtained from Benefits to confirm that Housing Benefit has been paid by RMBC over the last 12 months? If no – no case for RRO. If yes, proceed to step 3.
 3. Does the LA 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 an RRO? (consider the level of harm that has been caused) If no – case closed, do not pursue. If yes, proceed to step5.
 5. Is pursuing an RRO 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 RRO. If no, proceed to step 7.
 7. Where no previous offence – is the issuing of a RRO likely to deter from future offences? If yes – proceed to RRO. If no, consider closing and not pursuing.

8. RRO Would the issuing of a RRO 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 RRO application
9. Are there any other factors that would indicate the council should not proceed with the issuing of the RRO If Yes, complete notes to justify reason not to pursue. If no, proceed to RRO application

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

- 2.7 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 RRO, the factors in the table below should be considered to determine a sum.
- 2.8 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 RRO's shall be followed.
 1. Punishment of the offender – the RRO 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. Deter the offender from repeating the offence – level of RRO must be high enough to deter offender from repeating
 3. Dissuade others from committing similar offences – RRO will be in the public domain. Robust and proportionate use is likely to help others comply with their responsibilities.
 4. Remove any financial benefits that the offender may have obtained as a result of the offence – landlord should be losing the benefits that he has accrued whilst not complying with their responsibilities
 5. Is there any other factor the council considers should be taken into account.
- 2.9 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.
- 2.10 If there are mitigating circumstances, then a deduction should be applied from the full 12 months. The amount payable under a RRO is recoverable as a debt.
- 2.11 Officers must fully document the reasons for making the decision to apply based on tables 1&2, as this will be required for the application to the First Tier Tribunal. Application will be made via legal services.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 Policy:

From 1 October 2015 it was a requirement for all landlords/letting agents/property managers of certain residential properties to ensure that smoke alarms are fitted on each floor of any rented property and that any living spaces with solid fuel appliances have a carbon monoxide alarm.

In terms of the council's policy approach, fire safety in residential accommodation is one of the council's priority concerns. As a consequence, the council requires all privately rented accommodation to meet the relevant standards set out in the LACORs guidance document, Housing – Fire Safety.

In summary, the council requires all single occupancy privately rented homes to meet the relevant standards described in case examples D1 – D3 and that **all HMO's** meet the relevant standards described in case examples D7 – D9.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 are linked to Section 150 of the Energy Act 2013 and Schedule 4 of the Housing Act 2004 and can be found at <http://www.legislation.gov.uk/ukdsi/2015/978011133439/contents>

The duties of the landlord in relation to prescribed alarms are summarised as; A smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation; A carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance and checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day any new tenancy starts.

Under the regulations Wychavon and Malvern Hill District Council's are the enforcement body within the district of Wychavon and Malvern Hill District Council's. The process for ensuring compliance is summarised below. Full details are available via the following link:

<https://www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-local-authorities>

Step 1.

If Wychavon and Malvern hills District Council's has reasonable grounds to believe a landlord is in breach of the requirements it will serve a remedial notice on the landlord. Reasonable grounds could include being informed by the tenant, letting agent or a housing officer. The council is not required to enter the property to prove non-compliance.

Step 2.

The landlord has 28 days to comply with the remedial notice. If a landlord does not prove they have taken all reasonable steps to comply Wychavon and Malvern Hills District Council's could decide on the balance of probabilities that the landlord is in breach of the duty to comply. In the absence of evidence such as dated photographs, copy installation records or confirmation by the tenant Wychavon and Malvern Hills District Council's will consider the landlord to be in breach.

Step 3.

Where the landlord has not complied within 28 days and Wychavon and Malvern Hills District Council's is satisfied that the duty has been breached it will arrange (with the occupiers consent) for remedial action to be taken. This will be to ensure that the tenants are protected by working alarms. The council will use a suitably qualified contractor to undertake the works to either install an alarm or repair/check an

existing installation. In the event of having to take this course of action the council will impose a Civil Penalty of up to £5,000 in line with the prevailing statement of principles as published by the council at the time. The council will issue a penalty charge notice in writing along with any other information as required within the regulations.

Step 4.

If a landlord does not agree with a penalty charge notice it can be appealed in writing to Wychavon and Malvern Hills District Council's within the time period specified in the notice. The council will consider the representations made and decide whether to confirm, vary or withdraw the notice. This will be confirmed to the landlord in writing along details of the appeals process to the First Tier Tribunal

1 Property Redress Scheme Policy

- 1.0 From 1 October 2015 it was a requirement for all letting agents and property managers to join a Government approved redress scheme.
- 1.1 **The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc. (England) Order 2014** can be found at <http://www.legislation.gov.uk>
- 1.2 These regulations do not provide any new powers for enforcement as these are already covered in existing consumer protection powers. However the requirement to be registered is enforceable by a Local Housing Authority. The enforcement authority can impose a fine of up to £5,000 where it is satisfied, on the balance of probability that someone is engaged in letting or agency work and is required to be a member of a redress scheme, but has not joined.
- 1.3 Wychavon and Malvern Hill District Council's will monitor registrations to the approved schemes and where it finds agents or managers that are not registered it will contact them and give a 14 day, period of grace, for a registration to be made. If this is not done enforcement action may commence in line with the council's Corporate Enforcement Policy.
- 1.4 A £5,000 will be the normal fine value with a lower amount only being charged where the council consider there are reasonable, justifiable and proportionate extenuating circumstances. In taking any action, the council will follow the enforcement process set out as follows:

Step 1: Notice of Intent Wychavon and Malvern Hills District Council's will give written notice of their intention to impose a penalty, setting out:

- the reasons for the penalty;
- the amount of the penalty; and
- that there is a 28 day period to make written representations or objections, starting from the day after the date on which the notice of intent was sent.

Wychavon and Malvern Hills District Council's may withdraw the Notice of Intent or reduce the amount specified in the notice at any time by giving further notice in writing.

Step 2: Representations and Objections

The person who the Notice of Intent is served on has 28 days starting from the day after the date the Notice of Intent was sent to make written representations and objections to Wychavon and Malvern Hills District Council's in relation to the proposed fine.

Step 3: Final Notice

At the end of the 28 day period Wychavon and Malvern Hills District Council's will decide, having taken into account any representations received, whether to impose the fine and, if so, give at least 28 days for payment to be made. When imposing a fine, Wychavon and Malvern Hills District Council's will issue a final notice in writing which explains:

- why the fine is being imposed;
- the amount to be paid;
- how payment may be made;
- the consequences of failing to pay;
- that there is a right to appeal against the penalty to the First-tier Tribunal and that any appeal must be made within 28 days after the imposition of the fine.

Wychavon and Malvern Hill District Council's may withdraw the final notice or reduce the amount specified in the notice at any time by giving further notice in writing.

Step 4: Appeals

If an appeal is lodged the fine cannot be enforced until the appeal is disposed of. Appeals can be made on the grounds that:

- the decision to impose a fine was based on a factual error or was wrong in law;
- the amount of the fine is unreasonable; or
- that the decision was unreasonable for any other reason.

A First-tier Tribunal may agree with an enforcement authority's Notice to issue a penalty or may decide to quash or vary the Notice and fine. Appeals will be heard by the General Regulatory Chamber, further details on the appeals procedure can be found on the HM Courts website.

Step 5: Recovery of the penalty

The penalty fines received by Wychavon and Malvern Hill District Council's may be used for any of its functions.

If the lettings agent or property manager does not pay any fine imposed within the 28 day period the council can recover the fine with the permission of the Court as if payable under a Court Order.

Where proceedings are necessary for the recovery of the fine, a certificate signed by Wychavon and Malvern Hill District Council's Finance Officer stating that the amount due has not been received by a date stated on the certificate will be taken as conclusive evidence that the fine has not been paid.

Enforced Sale Policy:

Is primarily designed to enable the councils to recover outstanding debts created by actions that result in a land charge against a property.

Failure to comply with a notice amounts to an offence, and the council's may have the right to carry out the works in default and to recover the cost. Statute stipulates that the cost of carrying out the works in default becomes a charge on the property.

Any action under taken will in line with our Enforcement Policy, in terms of transparency and equality.

The council will recover reasonable costs out of the proceeds from the sale and the rest of the monies will be held in trust for the owner. The procedure may ultimately be thwarted by payment of the outstanding debt; however this will mean the owner will have taken notice and hopefully encouraged them to take action. This policy does not cover the right to sell a property because of Council Tax arrears, as that requires an application to court and an order for sale, whilst an ESP requires no court action.

Provide a service which is consistent and transparent, targeting long term empty properties in order to:

- A. Bring empty properties back into useful housing stock,
- B. Reduce debt owed to the council,
- C. Improve property standards which will reduce the negative impact on neighbouring properties and their occupants.

Legislation consideration;

The power to carry out an enforced sale sits within the s103 law of property act 1925. Set out below is a list of some of the most common statutes which enable a charge to be placed on a property in the event of works being carried out in default by the council.

Also identified below are some differences between the various statutes. If the relevant statute results in a charge on the property, it confers a power of sale under the Law of Property Act 1925 enabling the ESP to be used.

The following list is not exhaustive and is focused on the Housing Act 2004:

Act	Section
Housing Act 2004	S. 11 – Improvement Notice S. 12 – Improvement Notice S. 40 – Emergency Remedial Action S. 49 – Power to charge

In most cases, the council's charge will take priority over any earlier charges, including a mortgagee's charge. However the primacy of the charges will need to be considered at the outset because, if the councils charge does not take priority then pursuing an enforced sale may not be financially viable.

If the Statute(s) does not create a charge then, it will be necessary to consider whether Section 7 of the Local Land Charges Act 1975 can be applied. If the Act can be applied, the policy may still be used as the charge will be registered on the Local Land Charge Register but this may not take priority over

existing charges. As noted above, the existence of any prior charges and the nature of the offending party's title are major considerations when deciding whether to use the policy in such circumstances.

All action will be taken with due consideration to the Enforcement Policy and enforcing the sale of a property would only be considered if all other available actions that are available to the council had been had been considered, but found inappropriate. The officers will take into account the owners personal circumstances and vulnerability when making the final decision.

The Limitations Act

The power to utilise the enforced sales policy is time limited by section 20 of the Limitations Act 1980. This states that no action can be brought to recover a sum of money secured by a charge on the property after a period of 12 years from the date on which the right to receive the money accrued, so anytime 12 years after the date when the expense has occurred prohibits enforced sale action being taken

Criteria for enforcing the sale of a long term empty property will generally only be pursued by the council if all the following criteria are met:

- A. The owner owes outstanding monies, of £300 or more, to the council following the carrying out of remedial works,
- B. The property is been empty or appears to have been abandoned and/or has been a source of frequent complaints received by the council.
- C. There should be no proposed CPO action within a 2 year period.
- D. The property must not be the subject of any bankruptcy action. (This would usually be noted on the title or highlighted through Council Tax Records).
- E. The necessary Statutory Notices and documentation have been served.
- F. The following criteria would also be considered and add weight to a decision regarding whether or not to carry out ESP:
- G. The property is likely to deteriorate and attract more complaints, becoming detrimental to the amenity of the area
- H. The owner is absent, uncooperative, and the property is uninhabitable.
- I. The use of an EDMO has been considered, but due to individual circumstances it is unlikely an order would be agreed by the First-tier Tribunal.

Empty Dwelling Management Order Policy:

When the council's becomes aware of an empty property that is a cause of concern, the investigating officer shall determine whether an application for an interim EDMO is appropriate. The officer shall consider the following issues:

- that the dwelling must have been vacant for at least two years and it must not be owned by a public-sector body
- The rights of the relevant owner as well as the interests of the wider neighbourhood. There is no specific guidance on this matter but it is important to consider Article 8 of The Human Rights Act 1998

The Housing (EDMO) (Prescribed Period of Time and Additional Prescribed Requirements) (England) (Amendment) Order 2012:

Require a balance look between the civil liberties of responsible home owners and the harm caused to the local amenity when homes are left empty.

Wychavon and Malvern Hills Council's will consider the effect the empty dwelling has on the neighbourhood and whether it is a nuisance to the local community. We will do this as follows:

- A. Representations made by neighbours, the community more generally or housing officers and professionals.
- B. To undertake a community based surveys consulting with local residents on the council's intention to bring the property back into use, the reasons why and seeking their views on the proposal.

In addition, we will contact the owner of the property at least twice within a 6 month period to offer our help and support in bring the property back into use. Prior to consideration of the EDMO, we will once again write to the owner of our decision to apply for authorisation for an interim empty dwelling management order, giving the owner at least three months warning before doing so.

We will make all reasonable efforts to notify an owner that we are considering making an order within the three month period and we will include undertaking a land registry search, serving requisition for information notices under Section 16 Local Government (Miscellaneous Provisions) Act 1976, as well as carrying out other reasonable investigative steps to identify and/or contact the owner.

Wychavon and Malvern Hills District Council's will ensure that they follow the regulations that outline the procedures local authorities must comply with in order for an application for an interim EDMO to be submitted.

General effect of interim EDMOs:

Once the interim EDMO has been granted, we will continue working with the owner to bring the property back into use. We will however, have increased access and legal rights, as follows:

- Right to possession of the dwelling and can do anything an owner can do other than to dispose of it.
- We will work with the owner to bring the property back into use and provide effective management of the property through the council's internal property management company.
- The management company will become responsible for the day to day management of the dwelling and may carry out such works as is necessary to secure occupation.
- We will recover any relevant expenditure.
- Take reasonable steps to insure the property against damage by fire or any other causes
- Collect the rent.
- Pay any surplus rent after deductions to the owner along with any interest accrued.
- Manage the property effectively.
- Pay any charges if the property is leasehold.

If there is no expectation, then Wychavon and Malvern Hills District Councils, will consider the issuing of a final EDMO and have management responsibility for the property for a period of 7 years. The right of the owner and the councils legal rights as the same as the interim EDMO.

Appeals

A person affected may appeal to a First-tier tribunal on the following areas:

- The terms of an interim EDMO – relating to the payment of any balance of rent left or any compensation payable to a third party or a dispossessed landlord or tenant
- The decision of a LHA to vary or revoke, or its refusal to vary or refuse an interim EDMO

The Wychavon and Malvern Hills District Council, will defend its decision to apply for an interim or final EDMO up to the Lands Tribunal.

Register of Management Orders

Section 232 of the Housing Act 2004 places a duty on the local authority to keep records of Interim or Final Empty Dwelling Management Orders (under Part 4, Chapter 2 of the act) that have been made. It is a public register that will be available on-line and if requested a copy will be sent, which will be subject to a reasonable fee, depending upon the media copy request.

Fees and Charges Policy.

Enforcement of the Housing Act 2004

- 7.1 The Housing Act 2004 (HA04) allows Local Authorities to charge for any enforcement action that is carried out by way of the serving of improvement notices, prohibition orders, hazard awareness notices, taking emergency remedial action and making an emergency prohibition or demolition order.
- 7.2 This power concerns purely the costs incurred to serve these documents and not for any works in default which are covered by a separate procedure. The costs of reviewing any suspended improvement notice or suspended prohibition order are also included.
- 7.3 Section 49 of the act gives councils the power to make such reasonable charges as they consider appropriate as a means of recovering certain administrative and other expenses incurred by taking any of the courses of action detailed under Sections 5 (Category 1) or Section 7 (Category 2) of the act. For improvement and hazard awareness notices, a demand for payment is to be served on the person(s) served with the original notices.
- 7.4 For prohibition, emergency prohibition and demolition orders, a demand for payment is to be served on the person(s) who own the premises defined by the Housing Act 2004 Part 1 Schedule 1 of the Housing Act 2004 as the 'person having control'.
- 7.5 All charges must be reasonable. There is currently no set maximum fee applicable, but section 49 (6) does allow for the Secretary of State to set such a limit.
- 7.6 The Enforcement Guidance to the HHSRS also advises that in deciding whether to exercise their powers to make charges and the level of those charges, that the local authority should take into account the personal circumstances of the person or persons against whom the enforcement action is being taken.
- 7.7 Delegated authority to the Head of Housing and Communities to look at specific cases, where financial hardship may occur due to the demand for payment and where appropriate restructure the cost by either reducing the amount payable or entering into a monthly payment plan.
- 7.8 As the power to charge relates to each course of action then it could be that each unit of accommodation that attracts a notice will be charged separately. For example, if separate category 1 hazards are established in five bedsit individual rooms and the common parts of a HMO, then the owner may well receive six separate notices all individually charged. However, as these will have been identified on one inspection, the sum charged should reflect this. The council will charge a set fee for the initial notice and then an additional cost for further notices served at the same property under the Housing Act.
- 7.9 The demand for payment becomes operative 21 days after the date of service of the demand, if no appeal is brought against the underlying notice or order. The demand for payment itself has no appeal procedure. However, where a tribunal allows an appeal against the underlying order by Section 49(7) of the act it may make such order as is considered appropriate reducing, quashing or requiring repayment of any charge in relation to enforcement action.
- 7.10 Should an appeal be raised against the underlying notice and related costs the council will be prepared to produce evidence to justify any charge raised. The charge itself is not a valid avenue of appeal.
- 7.11 In the absence or the failure of any appeal and until such time as the payment is made, the amount recoverable is a charge on the premises concerned. The demand becomes a local land charge on the property, so it is important to ensure it is entered on the register.
- 7.12 A statutory demand for payment can be used to ask for payment of a debt from an individual or company. Normally when an individual or company gets a statutory demand, they have 21 days to either settle the debt or reach an agreement to pay, but the authority may stipulate a longer period.

- 7.13 The sum charged is a local land charge on the premises once the demand becomes operative, and the Local Land Charges Act 1975 (Section 5) requires the authority to enter an enforceable charge on the local land charges register.
- 7.14 If there is a delay by the authority in entering the charge, there is the possibility of the premises being sold. If the property changes hands before the charge is registered, then a purchaser who had inquired of the authorities register prior to purchase may seek compensation under Section 10 of the 1975 Act.
- 7.15 If the demand is not paid within the period set out, it will be recovered in accordance with the powers available under the Law of Property Act 1925, which include the power to appoint a receiver and our enforced sale policy.
- 7.16 The charges can be found in section 2 of this document are set as the minimum charge for each specific Notice or Order, as each cost incurred for the council will be individually calculated in accordance with the legislation and best practice.

House in Multiple Occupation Licence fee:

- 7.17 The provision for charging fees was introduced by the Housing Act 2004; Section 63 of the Act provides that the local authority may require the application for an HMO licence to be accompanied by a fee fixed by the authority.
- 7.18 The authority may take into account all costs incurred by them in carrying out their functions under Part 2 of the Act (which deals with HMO licensing) when considering what fees to charge.
- 7.19 Section 23 of the Act makes provision for the national authority to make regulations specifying the maximum fees to be charged (whether by specifying amounts or methods for calculating fee amounts), and cases in which no fees are to be charged or fees are to be refunded. Such regulations have not yet been made.
- 7.20 In the absence of section 23 regulations, local authorities must determine their own fee structure. There is no upper limit on the maximum fee that may be charged but fees must be reasonable and proportionate, and fees must not exceed the costs incurred by the local authority in setting-up and administering the licensing scheme, that is, the local authority cannot make a profit. The cost of monitoring licence holders can also be included in the fee.
- 7.21 The High Court has indicated that local authorities have a duty to administer funds so as to protect the interest of council tax payers in accordance with the accepted principal that licensed activities should be funded by those benefitting from them, rather than council tax payers. It means therefore that the cost of the council regulating the HMO sector should be through HMO licensing fees and not subsidised by the council tax payers.

The Licence Fee Structure

- 7.22 The application fee for a new licence and licence renewal are set out within a standard fee matrix and does not include the cost of taking enforcement action.
- 7.23 Where it is considered legally appropriate, the council will take enforcement action against landlords who fail to apply for a licence for a licensable HMO.

Calculation of licence fees

- 7.24 In setting its fee policy and the fees to be charged, the council has had regard to the LGA guidance on locally set licence fees and fees set in other local authority areas.
- 7.25 The fee amounts for new and renewal applications are set out in Schedule 1.

Caravan and Mobile Home Site Fees

Malvern Hills District Council has powers under the Caravan Sites and Control of Development Act 1960 ('the Act') as amended by the Mobile Homes Act 2013 ('the 2013 Act') to issue licences in respect of 'relevant protected sites' and to charge fees for the provision of their licensing functions.

- A relevant protected site is defined in the Act as any land to be used as a caravan site other than one where a licence is:
- Granted for holiday use only
- In any other way subject to conditions which restrict the usage of the site for the stationing of caravans for human habitation at certain times of the year (such as planning conditions)
- It does not include sites that are owned by the local authority Therefore a protected site relates to all sites that are used for permanent residential use, apart from local authority owned sites.

Local authorities can charge;

A licence fee for applications to grant or transfer a licence or an application to alter the conditions attached to a licence and;

- An annual licence fee for administering and monitoring licences.
- A fee for the deposition of site rules

Before a local authority can charge a fee, it must prepare and publish a fees policy. When determining a fee the local authority:

- Must act in accordance with their fees policy
- May set different fees in different cases
- May determine that no fee is required in some cases

Any fees charged must fairly cover the costs (or part of the costs) incurred by a local authority under its functions in Part 1 of the Act, other than the costs of enforcement action. They must be reasonable and transparent and whilst different fees can apply to different types of cases, there must be consistency in the fee structure and its application.

The Fee Structure

In calculating a fee structure, the council has calculate its fees in accordance with the provisions of the 2013 Act which allows a local authority to include all its reasonable costs and this includes administrative costs, officer visits to the site, travel costs, consultations, meetings, undertakings and informal advice.

The council will, when deciding its fee structure, base it on the size of a site because the cost to the council in terms of Officer time and administration is proportional to the number of units on a site. Sites are banded according to the number of units on each site and costs are apportioned to take into account the costs incurred.

	Band A	Band B	Band C	Band D
Units	1-5 (including family owned & occupied sites)	6-24	25-50	51-100
Annual Fee	£0* £194	£100	£180	£290
New site licence Application	£0	£170	£250	£360
Transfer of site licence	£90	£120	£120	£120
Amendment of site licence	£110	£150	£190	£220
Registering of site rules	£55	£55	£55	£55

* Single family wholly owned and occupied sites where there is no commercial letting of pitches or caravans will be exempt from an annual fee as it is not intended to undertake annual inspections of these sites.

Review of the Fee Structure

A review of the fee structure will be carried out annually and revised if necessary. Any adjustments will take into account variations in actual officer and administration time to those predicted any changes to officer hourly rates, mileage costs or any other typical associated costs in providing the licensing function.

Where a deficit appears because expenditure was more than anticipated the shortfall will be reflected in the fee charged to the site owner in the next year. Similarly, where a surplus is made the fee for the following year will be reduced by that amount.

Publishing the Fees Policy

The fees policy for licensing of caravan sites will be published on the councils website.

If the council revises its fees policy, it will replace the published policy with the revised policy.

There will be a copy of the fees policy kept within the Private Sector Housing Team which will be available to view during normal office hours at the council Offices.

How fees are to be paid

The council requires all fees to be included with any application for a new site licence, for amending a site licence or transferring a site licence.

In the case of sites, where an annual fee is payable, the request for payment will be made in April each year and must be paid to the council within 28 days of the date of request.

Where an annual fee payment to the council becomes overdue, the council may apply to the First Tier Tribunal for an Order requiring the licence holder to pay to the council the amount due by the date specified in the Order. Where a licence holder fails to comply with such an Order within the period of 3 months from the date of the Order, the council may apply to the First Tier Tribunal for an Order revoking the site licence.

Any licence holder has the right to apply to the First Tier Tribunal where they disagree with the licence fee being charged.

Where a new site is licenced is issued part way through the year then an invoice with 28 day payment terms will be issued for the pro-rata amount.

Where a site is expanded part way through a year to include additional units and hence an alternative banding applies, the corresponding higher fee would apply from that point. In such cases an invoice with the same payment terms, covering the difference between the original and increased fee for the remainder of the financial year will be sent shortly after the amended licence has been issued.

Enforcement Costs

Where there has been a breach in a site licence condition which comes to the attention of the council we may serve a Compliance Notice.

The Mobile Homes Act 2013 has amended the Caravan Sites and Control of Development Act 1960 so that it now details the elements which the local authority may include when imposing a charge for enforcement action. These include the time involved in deciding to serve and prepare the Notice. Schedule 3 shows the time and tasks included within the cost.

A detailed breakdown of the relevant expenses would be provided with the Compliance Notice. Charges would be based upon an hourly rate in addition to any costs incurred, for example legal costs.

Please note that once the application form and all necessary supporting information, including the correct fee, has been submitted to the council the application will be deemed as complete and the council will aim to determine the application within 8 weeks.

If the application is not approved then the applicant is not entitled to a refund, as the application has been processed.

Disabled Facility Grants Mandatory Grants Policy

These grants are mandatory under the Housing Grants, Construction and Regeneration Act 1996 and are subject to statutory means test.

These grants are awarded to enable applicants to have access to and around their homes, or to use essential facilities in the home to enable them to live independently. Mandatory Disabled Facility Grants can only be given for purposes set out in this Act.

Ongoing maintenance and repair of adaptations and equipment provided under the grant will become the responsibility of the applicant or landlord as relevant.

The maximum amount of the mandatory Disabled Facility Grant is £30,000. Discretionary Disabled Facilities Assistance for costs above £30,000 may be considered.

Where the cost of a major adaptation exceeds the maximum of a Disabled Facility Grant (£30,000) discretionary assistance can be provided up to £10,000 above the mandatory limit, subject to funding from other sources being unavailable or being very resource intensive.

The councils work closely with Care & Repair Worcestershire (Home Improvement Agency), who provides an optional, added value service for a fee, to support applicants through the process of seeking assistance. This can include help with making applications, detailing the works required, getting necessary quotes, appointing contractors and monitoring work through to completion.

However, you are not required to use this service and consideration will be given to any reasonable fees in relation to your application. We cannot pay for your or families time or work if they assist you.

If considered to be unreasonable given the age and condition of the property, alternatives including the following will normally be considered;

- A. Referral to Social Services for their consideration of providing additional resources.
- B. Alternative schemes of work.
- C. Assistance to enable a move to alternative accommodation, with funding for adaptations to the new accommodation.

The local land charge will be repayable, subject to the considerations set out within the Disabled Facilities Grant General Consent 2008, if the property is sold or otherwise disposed of within 10 years (the maximum period set out in Regulation) of the grant works being completed.

If equipment e.g. portable ramps and stairlifts are no longer required, an assessment will be made to determine if it is possible to recycle them for another application. Please note that any change to the law or legal framework governing the use, value or other qualification to DFG will take immediate precedence over the detail set out in this Policy Framework.

Discretionary DFG - The provision of assistance other than mandatory disabled facilities grants is subject to the availability of funding. All applications will be considered based on the identified needs and circumstances of the household. Housing advice will be provided in all cases to ensure the right option for the household is being pursued to address their need.

Housing advice may include information about housing rights, entitlement to benefits, adaptations, home repair / improvements, energy efficiency, re-housing, and signposting to other services.

The councils will work with a range of partners including other statutory services, voluntary sector services and landlords to enable appropriate help to be provided.

The councils work closely with Care & Repair Worcestershire (Home Improvement Agency), who provides an optional, added value service for a fee, to support applicants through the process of seeking assistance. This can include help with making applications, detailing the works required, getting necessary quotes, appointing contractors and monitoring work through to completion.

Housing assistance will be provided not only for eligible works but also necessary associated costs e.g. architect and other professional fees.

The provision of financial assistance will be subject to internal and external auditing to ensure adequate procedures are in place and followed and that there is an appropriate use of public funds.

The Head of Housing and Communities, in conjunction with the Portfolio Holder for Economic Growth and Housing at Wychavon District Council and/or in conjunction with the Portfolio Holder for Sustainable Development and Infrastructure at Malvern Hills District Council may use their discretion to provide assistance for any other works at any time as deemed necessary and appropriate, based on the merits of the household circumstances. This includes service development / investment to ensure continual improvement in our services under this policy, investment of funding into new initiatives, acquisitions or to enable effective delivery to our customers. Expenditure over £50,000 will be subject to Executive Committee / Executive Board approval of the relevant council.

Works undertaken as Discretionary Standard Adaptations Assistance, under the value of £10,000, can be delivered through a shorter process. This is a discretionary assistance and subject to available resources.

There is no means test associated with this assistance however in the event the councils or Care & Repair Worcestershire become aware that the applicant has sufficient funds to make a contribution at pre-approval stage then their application will be processed as a Mandatory Disabled Facilities Grant and the means test required through that process will be applied.

If the works recommended by the COT or a trusted assessor are for a stair lift, hoist tracking systems, level access shower, or ramps, this application will be pass ported through if the cost is up to £5,000. A single quote will be accepted and minimal paperwork will be required, which means that this single adaptation can be provided quickly.

Schedule 1:

HMO licence fee for 2019/ 20

HMO	Single Application	Multiple Application
Standard HMO licence fee	£647	£583
Increased Occupany Numbers		
11 to 15	£971	£907
16 to 20	£1,133	£1,069
20 Plus	£1,295	£1,231
Renewal Application		
Standard HMO licence fee	£492	£428
Increased Occupany Numbers		
11 to 15	£816	£752
16 to 20	£978	£914
20 Plus	£1,140	£1,076

Schedule 2.

Action	Resonable fee
Fee for Improvement Notice and Hazard Awareness Notice	£556.28
Fee for Emergency Remedial Notice	£400.97
Fee for Emergency Prohibition Order and Prohibition Order or Demolition Order	£559.42
Fee for Reviewing Suspended Prohibition Order and Improvement Notice	£151.56
Non-Statutory Functions	
Fee for Immigration Verification Visit	£224.42
Subsequent request on same dwelling within 12 months of HHSRS assessment	£100.00
Revisit due to missed access appointment by client	£42.73

Schedule 3

Enforcement function for caravan site licences

Task	Time
Initial enquiry	10
Sending out application	20
Receipt of documents, letter to arrange visit	20
Create a hard file/ scanning document	20
Obtaining planning permission documents	20
Processing the licence fee/ enforcement fee	50
Land registry search	10
Reviewing document/ evidence	40
Initial visit	150
Indicative travel time	30
Preparing report on contraventions/ action required	120
Drafting or amending the licence	30
Review of case by manager	40
Updating of public register	10