



Council of the
ISLES OF SCILLY

Environmental Health: Private Sector Housing Enforcement Policy

Incorporating housing Intervention fees
and charges, civil penalty notice charges
and licensable HMO amenity standards.

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Summary

This policy sets out the enforcement principles for the Private Sector Housing function within the Environmental Health service delivery for the Council of the Isles of Scilly (CIoS).

This policy provides guidance for inspectors, businesses and members of the public, and is intended to clearly set out the aims, standards and values that will be applied in enforcement situations.

Distribution - who needs to be aware of this policy

Environmental Health staff, landlords, landlords associations, lettings agents, and the public. The Policy will be published on the Council website.

Context

Background - why this policy is needed

The Private Sector Housing interventions within the Council of the Isles of Scilly have been evolving under the new Environmental Health team structure since September 2017. In April 2017 new legislation introduced through the Housing and Planning Act 2016, complimented existing powers local authorities use under the Housing Act 2004. The Legislation is designed to assist local authorities to tackle 'Rogue Landlords' and improve housing conditions. The Government has also been consulting on widening out Mandatory House in Multiple Occupation (HMO) Licensing and it is anticipated that changes will be implemented in April 2018.

These changes in Legislation are significant and have forced Councils to review any prior existing enforcement policy. The changes also provide an opportunity to build on the success of our existing enforcement approach whilst ensuring that the Environmental Health team is working proportionately, efficiently and sustainably in accordance with the overall Environmental Health aims of protecting the health and wellbeing of the Islands inhabitants.

Effective private sector housing intervention throughout the Islands of Scilly is essential to the Council and those living in the private rented sector to prevent poor health through poor housing. This policy provides the framework to allow the Environmental Health team to enhance the local authority statutory role.

Objectives - what the policy aims to achieve

To create the right balance between advice, assistance and enforcement to effectively influence quality and safety standards in the Private Rented Sector in The Isles of Scilly.

We aim for our intervention and enforcement activity to support Landlords in achieving the required standards a strong deterrent to Landlords committing housing related offences. We aim to protect the public by educating and assisting Landlords to achieve their legal responsibilities where applicable.

Scope - what the policy covers

This policy covers the main regulatory activity of the Environmental Health Team.

1. Enforcement Objectives

Our core aims and objectives for this enforcement policy are as follows:

- To empower people to resolve issues through advice and information, building upon what has recently been provided on the Council Web Pages.
- To combine skills of different disciplines across all Council services to make places better, serving the needs of all of the people of the Isles of Scilly.
- To work to remedy the undesirable effects of poor housing conditions where it causes, or has the potential to cause genuine harm to health.
- To influence the standard of the existing housing stock so it meets the needs of the population.
- To help prevent poor quality housing leading to homelessness.
- To safeguard against, and reduce the risk of poor housing impacting on people's health and wellbeing.
- To be both pro-active and reactive in the investigation of breaches of housing law.
- To work with Landlords, agencies and organisations both internally and externally to improve housing conditions in the private rented sector.
- To adhere stringently to the Councils policies for the safeguarding of adults, children and vulnerable people.

2. Combining Resources to achieve better outcomes

There are certain areas of our work where we know that by working together across our multi-skilled and multi-disciplinary teams, and with our external partners we achieve enhanced outcomes. Our priority areas of work are:

- Licensable HMOs operating without a mandatory licence.
- HMOs operating without planning permission.
- HMOs that fall within the Housing Act 2004, Section 257 definition (poorly converted flats) or flats converted prior to the 1991 Building Regulations.
- Licensable HMOs linked to persistent anti-social behaviour.
- Undertaking works in default of statutory notices.
- Preventing retaliatory evictions and assisting with illegal evictions.
- Applying full enforcement to repeat offenders.
- Working with the Isles of Scilly Police to deal with other criminality or antisocial behaviour in the Private Rented Sector that is adversely impacting on the community.
- Working with the Isles of Scilly Fire and Rescue service to regulate high risk properties such as HMOs and flats linked to commercial premises.
- Empty properties.

3. Enforcement Principles

Throughout the Isles of Scilly we are committed to support emerging, improving and good business through provision of advice and guidance. Enforcement is the last option.

The service believes that enforcement should be proportionate to risk, and when action is taken it must be expedient and efficient and consistent.

Our activities will be targeted and based on risk of harm occurring and will be in accordance with the Enforcement Concordat and the statutory requirements of the Regulators Compliance Code.

We believe in open, transparent enforcement. We will be clear about how we operate and provide clear information to manage expectations against those being enforced against.

When appropriate we will distinguish advice and best practice from statutory requirements.

We will take robust action against the people who place others at risk of serious harm.

The burden of responsibility ultimately lies with the Landlord, so when enforcement has been necessary we will recover our enforcement costs whenever possible to do so.

i. Helpfulness

The service is of the opinion that 'prevention is better than cure' and that its role therefore actively involves working with business, especially small and medium sized businesses, to advise and assist with compliance.

We will give advice to tenants about their rights and their own responsibilities.

The Council of the Isles of Scilly wants Landlords and tenants to have a clear way of communicating with the Council. Information is provided on our web pages.

<http://www.scilly.gov.uk/community-safety/housing-1>

We will provide a courteous and efficient service and our staff will identify themselves by name.

We will provide contact points and telephone numbers for further communication with staff, and we will encourage businesses to seek advice/information.

We will continue to provide helpful advice upon request after taking enforcement action.

ii. Proportionality

We believe in applying the law proportionately. We will not take action when the level of risk to the environment, and/or public is low and likely to remain so, but when action is required we will be expedient and robust in our actions to secure compliance.

Our inspections and interventions will be based on risk assessment methodologies and we will only intervene when there is a clear case for protection. Inspections will take place when there is a sound reason for doing so. Pro-active inspections will be delivered with communication to landlords and tenants except where a serious breach of housing standards or Licensing requirements is suspected.

The service will endeavour to minimise the cost of compliance for business by ensuring that any action taken is proportionate to the risk or breach.

iii. Consistency

The service will carry out its duties in a fair, equitable and consistent manner. Consistency of approach does not mean uniformity, it means taking a similar approach in similar circumstances to achieve similar goals. Environmental health Officers will exercise their professional judgment to deal effectively with specific matters but, where possible, will adhere to standards and guidance to promote consistency.

iv. Standards

We will support good business and provide helpful guidance that will encourage improvement and growth but where standards are ignored, or ignorance is pleaded and the environment or people are left at risk, action will be taken to secure compliance.

We will focus our support and advice activities where we have intelligence to suggest that high risk hazards are: a) prevalent, b) where failure to comply poses a serious risk of harm; and c) there is a high likelihood of non-compliance.

v. Openness

The service will provide information and advice on standards that it applies and will distribute this as widely as possible.

We will clearly communicate our fees, charges and methods of cost recovery when taking enforcement action.

vi. Fairness

The service will treat all people equally and fairly.

vii. Transparency

We will provide suitable advice and guidance to those we enforce against to ensure they fully understand the enforcement process, what they need to do, and what they can expect to happen if they do not comply.

We will distinguish between statutory requirements and advice or guidance about what is desirable, but not compulsory to meet the legislation.

We will enforce and apply penalties in a transparent manner and when we successfully prosecute a person or business and if it is within the interests of the public to do so we will issue a press release.

viii. Accountability

The service is accountable to the public for its actions.

We will ensure that our inspectors are able to interpret and apply relevant legal requirements and we will require them to apply this policy in a fair, helpful and consistent manner.

We will always inform people who we enforce against about any rights of appeal.

ix. Complaints

The Council of the Isles of Scilly has a complaints procedure in place. All complaints will be investigated in full in accordance with the procedure. Further details can be found on the Council website www.scilly.gov.uk

4. Statutory Duties

The Environmental Health team has a statutory responsibility to operate its enforcement activities in accordance with the Housing Act 2004, The Housing and Planning Act 2016, other public health legislation and associated Regulations. This includes a duty to:

- Keep housing conditions under review and consider appropriate methods of regulating the housing stock.
- Inspect residential premises when it is deemed appropriate to do so.
- Take the appropriate action where 'Category 1 Hazard(s)' (the most serious) are identified.
- Consider appropriate action in relation to a 'Category 2 hazard(s)' (less serious)
- Inspect, regulate and licence (where appropriate) Houses in Multiple Occupation (HMOs).
- Respond to complaints or intelligence that suggests a statutory nuisance maybe present, or breach of other public health legislation.
- Consider applying for a Rent Repayment Order when it is substantiated that a relevant housing offence has been committed.

The Environmental Health team will use all available statutory provisions in exercising its powers and duties. This may include working with other partners and utilising provisions under the following Acts of Parliament and delegated legislation made thereunder.

(NB. This is not a comprehensive list)

- Housing Act 2004
- Housing and Planning Act 2016
- Environmental Protection Act 1990
- The Protection from Eviction Act 1977
- Deregulation Act 2015
- The Energy Act 2011
- Local Government (Miscellaneous Provisions) Act 1976
- Local Government (Miscellaneous Provisions) Act 1982
- Building Act 1984
- Town and Country Planning Act 1990
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Housing Act 1985

- Law of Property Act 1925
- Land Charges Act 1975
- Equalities Act 2010
- Human Rights Act 1998

5. Enforcement Decisions

The Environmental Health team will consider the following factors in all enforcement decisions:

- The severity of a matter.
- Extent, severity and location of a hazard.
- The culpability and track record of the offender.
- The harm, or potential for harm caused to the occupier (or any other person).
- Whether enforcement action is appropriate and proportionate.
- Whether enforcement will act as a deterrent for the recipient and other people.
- The vulnerability of the occupiers.
- Financial gain of actions – we aim to ensure that it is not cheaper to operate illegally for financial gain than operate professionally.
- Whether there is a realistic prospect of compliance.
- The cost and practicability of remedial works.
- Likelihood of occupancy changing.
- The views of the current occupiers.
- Whether action is in the public interest.
- The views of the property owners, managers or persons in control of the dwelling.
- The compliance history of the responsible person to which the notice maybe served.
- Guidance given to local authorities as well as appropriate standards and research.
- Non-statutory guidance/ standards/ research.
- Conservation and listed building status and whether a building situated in an area with any other local restrictions.

6. How we handle requests for service

We actively encourage and support tenants who contact the Council with concerns about their housing conditions to try and resolve the matter with the responsible landlord or agent prior to agreeing to an inspection. An [inspection service](#) will only usually be offered if:

- The complainant has attempted to resolve the matter with the responsible landlord or agent and those attempts have failed. Support will be given to tenants if required and evidence of this action will be requested.
- The Council will triage the request for service to determine whether the defect to which the complaint originates is likely to be a Category 1 or Category 2 hazard (as defined by the Housing Act 2004 and relevant guidance). If it is considered appropriate to do so, inspection of the dwelling will be arranged with the complainant.

Exemptions to this initial assessment include situations when:

- There is a history of persistent or serious non-compliance;
- There is likely to be a hazard present in the home that has the potential to cause imminent risk of serious harm to occupiers (typically fire, gas, electrical and structural collapse hazards).
- There is evidence to suggest the landlord or agent is aggressive or is harassing the tenant.
- The tenant is vulnerable for some other reason that would make informal resolution unsuitable.

7. How we will fulfil our statutory duties

The Council has a statutory duty to act when Category 1 hazards are found and a discretionary power to act in respect of Category 2 hazards. Where hazards are found at a dwelling the Council may take one or more of the following courses of action:-

- Serve an Improvement Notice requiring remedial works to be undertaken.
- Make a Prohibition Order, which closes the whole or part of a dwelling or restricts the number or type of permitted occupants.
- Serve a 'Suspended Improvement Notice' or 'Prohibition Order'.
- Serve a 'Hazard Awareness Notice'.
- Take 'Emergency Remedial Action'*.
- Undertake works in default of a statutory notice.
- Serve an 'Emergency Prohibition Order'*.
- Make a 'Demolition Order'.
- Declare a 'clearance area'.

**Only in respect of Category 1 hazards.*

Category 2 Hazards

Category 2 hazards are those that are within the HHSRS hazard bands D to J. Hazard band D, category 2 hazards are the highest risk category 2 hazard and hazard band J hazards are the lowest risk category 2 hazard.

The Council has a power conferred upon it to take enforcement action in relation to Category 2 hazards, but no specific duty is imposed upon it to do so. It is therefore important that the use of discretionary powers is proportionate to risk and is consistently applied.

To provide a consistency of approach with our enforcement activity, (having regard to the Regulators Compliance Code), and to ensure that enforcement responses are proportionate to the risk identified, the Environmental Health team will only take action against Category 2 hazards when the following criteria applies:

- a) Where a Band D, Category 2 Hazard exists the Council will normally consider enforcement action to remedy (or reduce) the hazard. Action would not be taken if for a valid reason enforcement is not deemed the most appropriate course of action.
- b) Where a number of lower risk Category 2 Hazards are present in combination, and due to their association present a greater cumulative risk of harm occurring to the occupier, a Senior Officer may authorise that enforcement action is the most appropriate course of action to be taken.

8. Enforcement across different tenures

The Environmental Health team will have regard to the ownership and extent of control that an owner has over works required to the dwelling. In normal circumstances, this will mean requiring a landlord to carry out works under an appropriate course of action outlined in this policy.

[Owner-occupiers](#) will not normally be required to carry out works to their own home unless there is an imminent risk to the occupiers' health, safety or wellbeing or deficiencies at the property are adversely affecting another property, or any other person. Due to the rarity of involvement and the wide range of circumstances found in owner occupied properties, each decision to intervene will be considered on a case by case basis.

Complainants who reside in social housing will initially be advised to follow the relevant social housing provider's complaints procedure and if appropriate will also be signposted to follow the housing ombudsmen's complaints procedure before the Environmental Health team will consider an inspection. The Environmental Health team will undertake an inspection if it is considered that there is an imminent risk of serious harm to an occupier and/or there is evidence to suggest that the landlord has not taken appropriate action within a reasonable timescale to address the issue.

9. Dealing with overcrowding

The Council recognises that in a stressed housing market [overcrowding](#) can occur without blame to the landlord. Furthermore the psychological risk of harm to those living in an overcrowded household is often a long term exposure risk.

As a result our enforcement responses will be proportionate, as follows:

- The Council will take action against overcrowding cases that constitute a Category 1 hazard only.

- The Council will serve a Hazard Awareness Notice routinely when a Category 1, HHSRS Band C hazard is identified in the private rented sector which is likely to be a reasonable response to a less serious crowding issue.
- Appropriate enforcement interventions will be considered for serious overcrowding.
- The Council will deal with unintentional (no fault of the landlord) overcrowding cases in Registered Provider (RP) housing strategically and will work with the providers to resolve the tenants housing situation.
- The Council will serve a Hazard Awareness Notice on the RP as a discharge of legal duty to act and the enforcement charges may be waived in lieu of our strategic/ coordinated approach.
- If there is evidence that a RP has knowingly caused an overcrowding situation then alternative formal enforcement action will be considered.
- If informal negotiations with RP's fail then the Council will consider use of appropriate enforcement action including cost recovery.
- Overcrowding in HMOs will be dealt with either through a HMO property licence (if applicable to the HMO), or by serving an overcrowding notice under section 139 of the Housing Act 2004.

10. Houses in Multiple Occupation (HMOs)

The Council will proactively seek out, investigate and regulate HMOs that require a [mandatory licence](#) but are operating without one.

For a licence application to be validated the following items are required:

- A signed and fully completed application form
- Designated licence fee
- Periodic certificates in relation to the gas and electrical installations.
- Accurate floor plans (including dimensions) of the property

Invalid licence applications.

When an application is invalid the applicant will be sent a letter outlining what they need to do to make the application valid. The applicant will need to submit the require information within a 14 day period.

The licence fee is non-returnable.

An inspection will be scheduled to determine the premises licensable status where the above attempts fail, enforcement action will be taken as detailed in this policy.

Failure to licence a mandatory licensable HMO:

Where it is believed that a HMO meeting the mandatory licensing definition is operating without a licence and an application has not been submitted, the Environmental Health team will gather all available information and investigate.

Where there is evidence that a licensable House in Multiple Occupation (HMO) is operating without a licence and the management and/or property conditions are poor, placing the health and safety of the occupiers at risk; the Environmental

Health team will give legal instruction to instigate formal proceedings for the offence of operating a licensable HMO without a licence or will use a Civil Penalty Notice as an alternative to prosecution*.

Where there is evidence that a licensable HMO premises is operating without a mandatory licence but the health safety and welfare of the tenants are being protected as both the condition of the property and management of the premises are good, the owner will be invited to make a valid application to the Council within a 14 day period and be required to pay the tracing activity licence application fee. Failure to do so will result in the Environmental Health team issuing a Civil Penalty Notice or it will prosecute*

**Refer to Annex B for the Private Sector Housing Civil Penalty Charging Structure*

Maintaining a good standard in licenced HMOs

It is important that licenced HMOs in The Isles of Scilly operate to a good standard. The EH team will respond to complaints from occupiers of licensed HMOs and proactively test the quality of these properties. The following areas will be assessed as part of this process:

- Compliance with licence conditions.
- Management arrangements.
- Compliance with the Management of Houses in Multiple Occupation (England) Regulations 2006.
- Correct safety certification in place.
- No serious hazards present in the HMO.

Any HMO licence holder who is committing a serious breach will be advised of the following actions:

1. That the HMO licence will be revoked.
2. That they will be invited to re-apply for a 1 year licence to enable closer supervision and monitoring of the property by the EH team (Note where the licence is already within its last year the licence will be revoked and the Licence holder will have to apply for a new licence where new licence conditions will be set to help to maintain the appropriate standards in the property).
3. If standards within the HMO are not improved or maintained following this procedure then further action will be taken in accordance with the powers contained within the Housing Act 2004.
4. The Council will consider other enforcement measures if appropriate.

Determining suitability for a HMO to be licenced

The Council has a duty to determine if an HMO is suitable for the proposed maximum number of occupiers or households ([Annex C](#)). To make this determination the Environmental Health team must have regard to the Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous

Provisions) (England) Regulations 2006 (Statutory Instrument No.373: 2006) and has created an amenity standard to assist with compliance and enforcement of these regulations. The Amenity Standard can be found at Annex C to this policy.

HMO Licence Fees

The EH team strives to provide an effective, proactive HMO licensing service, and not a just a service that regulates landlords who engage with the Council. The team actively seeks out landlords who seek to avoid HMO licensing and takes robust action against those who fail to engage. Due to increasing interventions of our services, a wider scope of enforcement powers, the proposed widening out of mandatory HMO licensing (expected 2018), unprecedented expansion of the private rented sector and reduced Council budgets it is not sustainable for the Council to subsidise the costs of the HMO licensing function. New fees are being introduced with this policy allow the Authority to recover the costs incurred carrying out an efficient and sustainable HMO licensing function for the Council. The Taxpayer should not subsidise individual landlord's business.

[Annex A](#) to this policy provides links to the HMO licence fee structure which will apply to all licence applications submitted on or after the approval date of this

11. Enforcing HMO licence conditions

The Council will enforce the conditions and terms of a HMO licence in order to protect the health, safety and welfare of tenants.

Where a licence holder fails to comply with the conditions of the HMO licence the Environmental Health team will take an appropriate course of action in accordance with the guiding principles of this policy.

12. Revocation of a HMO licence where the licence holder is no longer fit to hold a licence.

Where anyone involved in the running of the HMO is found to no longer be "fit and proper" the HMO licence will be revoked and the owner will be required to reapply for a licence providing alternative arrangements to ensure that the management arrangements at the HMO are suitable, and that anyone involved in the operation of the HMO are "fit and proper" persons as determined by section 66 of the Housing Act 2004.

13. HMO Management Orders

The Council can make application to the Residential Property Tribunal for an Interim Management Order where required by statute and where necessary a Final Management Order where a licence is still unable to be granted on expiry of the Interim Order.

Where a property is a licensable HMO the Council can make an application for an Interim Management Order either where there is no realistic prospect of the property

being licensed in the near future or where the health and safety condition is satisfied in order to protect the occupiers.

Where after the expiry of the Interim Management Order the Council are still unable to grant a HMO licence and there is risk to occupiers a Final Management Order will be sought.

14. Enforcement of the HMO Management Regulations

Where breaches of these requirements are identified in premises the "person managing" will be notified in writing of the breaches of the regulations identified and will be required to carry out prescribed works within specified timescales to remove breaches. Failure to remove these breaches as instructed may result in a civil penalty being issued or a case file being prepared for formal legal proceedings for the summary offence of failing to comply with the requirements of the HMO Management Regulations.

In circumstances where the breaches of the Management Regulations are either so severe, numerous and/or having a significant, detrimental effect on the health, safety and welfare of the occupiers, a civil penalty will be issued or a case file for formal legal proceedings will be submitted for the summary offences of failing to comply with the requirements of the Management of Houses in Multiple Occupation (England) Regulations 2006 ('the management regulations').

15. Enforcement of the HMO Management Regulations in sub-standard self-contained flats.

The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 will be enforced in HMOs as defined by section 257 of the Housing Act 2004.

Where breaches of the management regulations are identified in these premises the "person managing" will be notified in writing and will be required to carry out prescribed works within specified timescales to remove the breaches. Failure to remove these breaches as instructed may result in a case file being prepared for formal legal proceedings.

In circumstances where the breaches of the Management Regulations are either so severe, numerous and/or having a significant, detrimental effect on the health, safety and welfare of the occupiers the Environmental Health team will prepare a case file for formal legal proceedings for the offence of failing to comply with the requirements of the Regulations.

Where it is disputed that a property meets the definition of a section 257 HMO the Council will accept the submission of evidence from the property owner that the conversion works making the dwellings self-contained comply with the 1991 Building Regulations. Evidence must have been provided by a competent person who is approved to validate works under the requirements of the Building Regulations.

The Environmental Health team will liaise with the Planning team and Building Control team officer when undertaking enforcement activity in HMOs that meet the section 257 definition.

16. Applying the Housing Health & Safety Rating System (HHSRS) in HMOs

The HHSRS will be used to deal with identified hazards posing serious or imminent harm, to assess licensed HMOs for hazards within the licence period, and to tackle poor housing conditions that are not able to be addressed through the HMO management regulations.

17. What happens if it is unclear that a property is a HMO?

Where the Council needs to affirm that a dwelling is a HMO in accordance with section 254 of the Housing Act 2004 it will do so through the service of a 'HMO Declaration Notice'.

A HMO declaration under section 255 of the Housing Act 2004 will be served in such circumstances where the Council are satisfied that the HMO definition is met allowing the owner of the premises; should they wish to do so to appeal to the Residential Property Tribunal regarding the declaration.

18. Inspections of HMOs

Risk assessment methodology will be used in the prioritisation for inspection and taking of action in all HMOs.

19. Enforcement decisions

To ensure consistency and appropriateness all enforcement action will be checked and 'signed off' by a senior member of the Environmental Health team (Principal Officer or Team Manager) before it is taken.

The Senior Officer will check that the action is consistent with the principles contained in this policy. Complex enforcement cases may be referred to the Management Team for review.

20. Cost recovery

In accordance with Sections 49 and 50 of the Housing Act 2004, the Council will normally exercise the power to charge and recover its reasonable costs incurred when:

- serving an improvement notice;
- serving a hazard awareness notice;
- making a prohibition order;
- a suspended improvement notice or suspended prohibition order;
- taking emergency remedial action and preparing the relevant notices;
- making an emergency prohibition order; and
- making a demolition order.

The charge will be calculated using the criteria laid down in Chapter 5 of the Housing Act 2004.

Costs will only be waived in exceptional circumstances such as deficiencies caused by tenant neglect and owner occupied premises, and only at the discretion of a senior officer, principal officer or team manager.

From the time that a 'demand for payment' becomes operative the sum will be recorded as a legal charge against the property which is a local land charge. The charge will remain on the property until the sum is repaid in full.

By virtue of section 50 of the Housing Act 2004, the Council will have for the purposes of enforcing the charge the same powers and remedies under the Law of Property Act 1925 and otherwise as if it were a mortgage by deed, having powers of sale in the lease or accepting surrender of a lease and appointing a receiver. The Council would normally exercise the right to recover enforcement costs through the County Court. The Council will seek to recover the costs of the proceedings and the interest and use such remedies as a court bailiff if an order is not paid.

The Council will make a charge to cover the cost of carrying out a review of Suspended Improvement Notices or Suspended Prohibition Orders, and for serving a copy of the Council's decision on a review and that charge will also be registered as a charge against the property.

Enforcement costs will be based upon the criteria contained within section 49 of the Housing Act 2004, and will be charged at an hourly rate or part of an hour. The hourly rate will be based on the actual cost incurred to the Council for performing the chargeable activity.

21. Works in default of a statutory notice

The Council will consider Undertaking Works in Default of a statutory notice, either with or without agreement, subject to conditions:

The conditions are as follows:

- a) The person responsible for undertaking the improvement work has been issued with a Civil Penalty Notice or has been successfully prosecuted for the offence (or accepted a simple caution) of not complying with the enforcement notice to which the improvement works relate; and
- b) A 'Category 1 Hazard' or 'Band D Category 2 hazard' relating to the notices remains in the property; and
- c) The Council will register a charge against the premises for the costs incurred in undertaking the works.
- d) There is a realistic prospect of recovering the cost of the work undertaken in a reasonable timescale.

In the majority of cases the council will seek to recover the costs incurred in undertaking works through formal action.

22. Charges for works undertaken in default of a notice.

In accordance with Schedule 3 (10) of the Housing Act 2004; expenses incurred by the Council by undertaking works in default of a statutory notice can carry an interest rate. The interest rate charge can commence from the date that a demand for payment notice becomes operative and remains until payment of all sums due. Whilst this is not currently adopted, the Environmental Health team will look to include this option in the future with full Council agreeing to a specified rate.

23. Non-mandatory inspection charges

The Environmental Health team will charge for certain inspections that are non-statutory. These include inspections relating to fitness of dwellings for the purposes of immigration requests. Our fees and charges can be found via information in Annex A to this policy.

24. Empty properties

Officers will endeavour to communicate and engage with owners of empty properties to encourage, assist and enable them to bring their properties back into habitable use through voluntary cooperation. However, should cooperation not be forthcoming, and the owner does not demonstrate a reasonable plan and timescale for remedial action, the Council can where appropriate, intervene and use relevant powers to ensure a satisfactory resolution, e.g. improvement in the condition and re- use of the property. Such powers will be used fairly, proportionately, and consistently.

25. Letting Agents Redress Scheme

On 1 October 2014 legislation came into force making it a requirement for all lettings agents and property managers in England to belong to a Government approved [redress scheme](#). These schemes provide a mechanism for complaints to be investigated and determined by an independent person.

In considering our policy approach in this area we have had regard to two sources of guidance and information. The first being Annex C of the Department for Communities and Local Government (DCLG) "Improving the Private Rented Sector and Tackling Bad Practice – A Guide for Local Authorities". Secondly to an industry standard brought together by the National Approved Letting Scheme (NALS) that encompasses partnership working with a number of key Local Authorities across England.

For the purposes of the legislation the government has approved three redress schemes. They are:

- Ombudsman Services Property
- Property Redress Scheme
- The Property Ombudsman

Failure to join a redress scheme

Any agent or property manager who is found not to be a member of one of the recognised scheme will face the sanction of a financial penalty the level of which (up to a maximum of £5000) will be determined by the Council.

The process

The process followed by the council will involve the service of a 'notice of intent' followed if necessary by a Penalty Charge Notice (PCN). A reasonable length of time (at least 28 days) is provided for the agent or property manager to join one of the recognised schemes.

The level of fine

DCLG guidance (referred to above) directs that £5000 should be considered the normal level of fine to be imposed with consideration to a lower fine only to be considered if it is confident that extenuating circumstances exist. As such the level of fine imposed will be £5000.

(NB - If any extenuating circumstances are submitted to the Council, due to their varying nature, they will be considered on a case by case basis.

Right of Appeal

Anyone served with a PCN has the right of appeal to the First-Tier Tribunal. In the event of an appeal, the PCN is suspended until the appeal has been determined or withdrawn. The Tribunal has the power to quash, confirm or vary the Final Notice.

Recovery of financial penalty

If there is no appeal, or the notice is upheld on appeal and the agent fails to pay the penalty in full, the Council will take all necessary steps to recover the penalty. If circumstances dictate, this will be carried out on the order of a court as if payable under a court order.

26. The Smoke and Carbon Monoxide (England) Regulations 2015.

Private sector landlords are required from 1 October 2015 to have at least one smoke alarm installed on every storey of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire, wood burning stove). The legislation does not apply to licenced HMOs.

The landlord must make sure the alarms are in working order at the start of each new tenancy. The Council will ask for proof of this check being undertaken.

Where a landlord is found to be non-compliant with the regulations then they will be served with a remedial notice. If the notice is not complied with then the improvement works will be undertaken by the Council in default of the notice.

The Council will levy a Civil Penalty Charge of £5000 on a landlord who is found, following non-compliance with a remedial notice, to be non-compliant with these regulations. This charge has been set in accordance with the following guiding principles:

- a. That the charge covers the full cost to the Authority of enforcing the regulations.
- b. That the penalty charge is a reasonable and proportionate response to a serious issue following non-compliance and ignorance to the statutory requirements. The reason this is considered reasonable was the prescribed process within the Regulations (i.e. remedial notice served giving 1 month for compliance).

- c. It is reasonable to assume only a small proportion of EH interventions will result in non-compliance and a fine being levied. Therefore the cost of all intervention must be covered by the fines associated with a limited number of cases.
- d. That the enforcement of the Regulations will form part of the everyday work of the EH team.
- e. That the level of fine is a significant deterrent.

27. Energy Efficiency Regulations

On or after the 1st April 2018 a landlord of a 'sub-standard' property with an EPC rating of F or G must not grant a new tenancy or let the property on such an existing tenancy that has been extended or renewed, unless it is exempt from the regulations by Regulation 25 or one or more of the exemptions in Chapter 4 of the [Energy Efficiency \(Private Rented Property\) \(England and Wales\) Regulations 2015](#). From 1st April 2020 this provision will apply to all existing tenancies.

Enforcement authority

The enforcement authority for the purposes of Regulation 34 of the 2015 Regulations is the Council. Officers of the Environmental Health team are authorised to enforce on the Councils behalf.

Level of fines

The levels of fines set in the table below are set on the penalty maximum for each breach of the 2015 Regulations. The reason for this is that the Authority believes that offenders must bear the full cost of the enforcement of the regulations, minimising the cost to the Council tax payer for providing this intervention.

Regulation	Conditions	Level of fine
23 – Prohibition on letting a substandard property	Tenant has been in occupation less than 3 months	The penalty maximum of £2000 and the publication penalty.
23	Tenant has been in occupation for more than 3 months	The penalty maximum of £4000 and the publication penalty.
36(2) –the landlord has registered false or misleading information.	None	The penalty maximum of £1000 and the publication penalty.
37(4)(a)where a landlord failed to comply with a compliance notice.		The penalty maximum of £2000 and the publication penalty.
Note: Regulation 40(6) states that where the Council enforces penalty notices in respect of regulation 23, and under one or both regulations 36 and 37 the total financial penalty imposed must be no more than £5000.		

Reviews, waiving and modification of penalties

Where a landlord serves a notice on the local authority requesting a review of its decision to serve a penalty notice, the authorised Senior Officer within the EH team will review the application in accordance with Regulation 42.

Appeals

Regulation 43 sets out the process for appeals.

Recovery of financial penalty

The amount of an unpaid financial penalty will be recovered as a debt owed to the Council. This means that the Council will enter into legal proceedings to recover outstanding penalties.

28. Preventing illegal evictions

The Environmental Health & Housing teams strongly opposes all criminal activity in the Private Rented Sector. Illegal eviction and harassment are not only criminal acts but are also a cause of homelessness. The following is an agreed protocol between the EH team and The Isles of Scilly Housing team regarding the division of responsibility for dealing with illegal eviction and harassment complaints:

EH & Housing illegal eviction and harassment complaint handling

Description of eviction	Lead Team	EH Response
Tenant still in occupation, but: <ul style="list-style-type: none">• Threat of eviction• Verbal threats no notice served• S.21 notice served requiring possession	IoS Housing Team (Homelessness prevention)	Refer & support IoS Housing Team
Illegal eviction No court order/ locks changed possessions either locked inside or deposited outside of the property.	IoS Housing Team (Homelessness prevention)	Refer & support IoS Housing Team
Evictions that breach Section 39 of the Deregulation Act 2015 and the Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015.	IoS Housing Team (Homelessness prevention)	Refer & support IoS Housing Team
Harassment	IoS Housing Team	Refer & support IoS Housing Team
Eviction that meets the criteria for retaliatory eviction under the De-Regulation Act 2015	EH	

29. Securing Compliance

Environmental Health team will explain the requirements of enforcement action clearly, and supporting advice and guidance will be issued where appropriate to encourage compliance with enforcement action.

30. Cautions and Prosecutions

Simple or Conditional Cautions

In most cases a Civil Penalty Notice will be used in preference to cautions, however, under certain circumstances, a caution may be used as an alternative to a civil penalty or a prosecution. A caution is a serious matter and it may be used to influence any decision whether or not to issue a civil penalty or prosecute should the individual, organisation or business offend again, and it may be referred to in any subsequent court proceedings. Cautions are intended to:-

- Deal quickly and simply with certain offences.
- Avoid unnecessary appearance in criminal courts.
- Reduce the chance of offenders re-offending.

Before issuing a caution the following conditions must be satisfied:-

- There must be evidence of guilt sufficient to give a realistic prospect of conviction.
- The offence will not be serious in nature and it must not be a continuing offence.
- The offender must understand the significance of the caution and accept a caution by admitting the offence.

Where an individual chooses not to accept a caution the Council will issue a Civil Penalty Notice or prosecute.

31. Prosecution

If an offender fails to comply with the requirements of an enforcement notice or Order, fails to licence, fails to comply with a licence condition or a regulation, or other such contraventions, the Council will apply the full code test contained in the Code for Crown Prosecutors to establish if a matter is suitable for prosecution.

If a matter is deemed suitable for prosecution then the following sanctions are available:

- Taking a prosecution through the law courts.
- Civil Penalty Notices (available for certain housing offences).
- Simple or Conditional Cautions.
- Work in default of a statutory notice (where applicable).

Criminal offences not within the scope of Civil Penalty Notices will routinely be dealt with by prosecution through the law courts or where suitable and appropriate a caution will be offered. All cases will be investigated to the criminal standard, and will be subjected to the full code test. Authorisation to take legal proceedings or

issue a civil penalty will be given by a relevant team manager and an authorised officer of the Councils legal team.

Prosecution proceedings will generally be instigated, against persons or companies who disregard the law, refuse to achieve basic minimum legal requirements or put the public at risk through their actions. Prosecution is likely in one of the following circumstances:

- A major contravention of the legislation has occurred.
- There is an adverse history of offences by the same person or organisation.
- There is a serious risk to the public.
- A conviction is likely to result in a significant sentence.
- There is evidence that the offence was premeditated.
- The offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics.
- There is any element of corruption.
- The defendant's previous convictions or cautions are relevant to the present offence.
- The applicant has been issued with a minimum of two civil penalties relating to two different time periods, within a two year time period and the penalty has not deterred the offender from re-offending.
- An occupier, or other person has suffered a serious injury or there has been a death as a result of the offence.
- Where the Council believes that the most appropriate course of action would be to secure a conviction for a banning order offence, and make an application for a banning order.

32. Civil Penalty Notices

Section 126 and Schedule 9 of the Housing and Planning Act 2016 ('The 2016 Act') amends the Housing Act 2004 ('The 2004 Act') to allow financial penalties to be imposed as an alternative to prosecution for certain offences. The offences are as follows:

- Failure to comply with an improvement notice - Section 30 of the 2004 Act.
- Licensing of HMOs - Section 72 of the 2004 Act.
- Licensing of houses under Part 3, Section 95 of the 2004 Act.
- Failure to comply with an overcrowding notice - Section 139(7) of the 2004 Act.
- Offences committed under The Management Regulations in respect of HMOs - Section 234 of the 2004 Act.

The Government has by regulations made it a requirement that a local housing authority may use any financial penalty recovered under section 249A of the 2004 Act to meet the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector.

Criminal offences within the scope of Civil Penalty Notices will normally be dealt with by the Council by issuing an appropriate Civil Penalty as an alternative to prosecution. Where the Council believes that a civil Penalty Notice is not the most appropriate course of action to take, it will consider alternative legal disposals (as detailed in policy 31 above).

The 2016 Act states that the amount of a financial penalty imposed must be determined by the local housing authority, but must not be more than £30,000. It is therefore left to the discretion of The Council of the Isles of Scilly to decide an appropriate level financial penalty to impose.

In April 2017 the Government issued statutory guidance 'Civil Penalties under the Housing and Planning Act 2016'. The Council of the Isles of Scilly has adhered to the principles of the statutory guidance document in setting the following penalty notice charges. The guidance can be found online on the following website: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606653/Civil_Penalties_guidance.pdf

The Council of the Isles of Scilly has adopted a scale of Civil Penalty charges that are designed to be a significant penalty according to the circumstances of a case. In determining an appropriate financial penalty for a relevant housing offence, the Council has given consideration to the following guiding principles:

1. That the penalty is designed to be a significant punishment in the circumstances, with a high enough economic impact on the offender taking into account the offenders assets and income (not just rental income).
2. The penalties are set at a high enough level to deter landlords and lettings agents from committing housing offences, and deter an offender from committing further offences or repeating the same offence.
3. That the penalties are designed to remove the financial benefit of letting a substandard dwelling, and ensure that it is not cheaper to offend and let out a substandard dwelling than comply with the law.
4. That the penalties reflect the severity of the offence, and the potential impact on the health and safety of occupiers (whether in residence or not).

Annex B to this policy sets out how the Environmental Health team applies civil penalties.

33. Rent Repayment Orders

The Council has a duty to consider a rent repayment order when a landlord has been convicted of a relevant offence. The Council may also assist a tenant to apply for a rent repayment order by helping them to make an application, by conducting proceedings or by giving advice to a tenant. The Environmental Health team will make a decision on a case by cases basis in respect of providing such assistance.

In addition the Local Authority or a tenant may make an application to the First Tier Property Tribunal for a rent repayment order if satisfied that one of the following relevant housing offences has been committed (whether or not convicted).

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

The Environmental Health team will consider a rent repayment order in all cases, and will make the decision whether or not to apply for an order based on the circumstances of each case, using the guiding principles contained within this enforcement policy.

Where a rent repayment order is granted, the Environmental Health team will use all legal means available to recover the amount awarded.

The law permits the Council to use income received through rent repayment orders to support and further the Councils statutory functions in relation to enforcement activities covering the private rented sector.

34. Banning Orders

Banning orders are part of a range of measures introduced in the Housing and Planning Act 2016. The Environmental Health team will consider applying for a banning order for all relevant banning order offences. The following will be considered before making an application:

- Regulations relating to banning orders.
- The seriousness of the offence.
- Any previous convictions that the person has for a banning order offence.
- Whether the person is or has at any time been included in the database of rogue landlords.
- The likely effect of the banning order on the person and anyone else that may be affected by the order.
- The objectives and principles contained within this enforcement policy.

35. Breach of a Banning Order

A person who breaches a banning order commits an offence. Any person who is found guilty of breaching a banning order is liable on summary conviction to imprisonment for a period not exceeding 51 weeks or to a fine or both.

A financial penalty can be imposed by the Council as an alternative to prosecuting for a banning order offence. The Council of the Isles of Scilly will consider the use of a financial penalty in all cases relating to a breach of a banning order. Where a financial penalty is determined it will be the penalty maximum of £30,000 unless there are extenuating circumstances that deem the penalty maximum to be inappropriate.

If a breach continues for more than 6 months then another financial penalty will be imposed. The penalty will be the 'penalty maximum' unless there are extenuating circumstances that deem the penalty maximum to be inappropriate.

Further financial penalties will be imposed for each additional 6 month period for whole or part of which the breach continues. The penalty will be the 'penalty maximum' unless there are extenuating circumstances that deem the penalty maximum to be inappropriate.

36. Database of Rogue Landlords and Property Agents

The authority has a duty to make an entry into the database where a banning order is made and power to make an entry where a person has been convicted of a banning order offence, but no banning order has been made.

In addition the authority has the power to make an entry into the database where a person has at least twice in a period of 12 months received a financial penalty in respect of a banning order offence committed at a time when the person was a residential landlord or agent.

The Environmental Health team will have regard to criteria provided by statutory guidance when deciding whether to make an entry in the database.

37. Proceeds of Crime

The service will consider the use of the Proceeds of Crime Act 2002, to recover the proceeds relating to a crime from a convicted individual where it can be proven that the defendant has financially benefitted from committing an offence.

38. Unreasonable Customer Behaviour

The Council does not normally limit the contact people have with it, whether complaining, making requests for service, information or help and guidance. The Council is committed to dealing with these requests fairly and impartially and to providing a high quality of service to those who make them. It is keen to resolve any dispute and/or complaint as early as possible.

The Council understands that people sometimes feel frustrated, but the Council will not tolerate behaviour which is deemed unacceptable, threatening, abusive or unreasonably persistent towards members, officers or any other person.

Listening & Learning Policy, including Unreasonably Persistent and Unreasonable Customer Behaviour Policy:

<http://www.scilly.gov.uk/sites/default/files/document/policy-documents/Complaints%20Policy.pdf>

Management

Policy management

The EH Service is responsible for implementing and monitoring this policy.

Breaches and non-compliance

Non-compliance with this policy could lead to the Council not fulfilling its statutory duties, or being liable for malpractice or abuse of powers.

If the Council does not act when people are at imminent risk of serious harm risk then there is a possibility that real harm could occur to members of the public.

How the impact of the policy will be measured

The policy will be measured through existing performance management methods and service performance indicators.

Evaluation and review

The policy will be reviewed 12 months following implementation to establish whether the policy is effective and having the required impact. Adjustment to the policy may be necessary as a result.

Document information

Contacts

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Further information

Further information can be obtained from the Environmental Health team
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Alternative formats

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Telephone: **0300 1234 105** email:

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Please consider the environment. Only print this document if it cannot be sent electronically.

Annex A – Private Sector Housing Fees and Charges

These fees and charges commence on the date this Policy is approved. They do not apply to enforcement cases and HMO licence applications received before that date.

1. Fees and Charges

Fees and Charges for all of Environmental Health's Private Sector Housing interventions are published annually on the Council's web site here

<http://www.scilly.gov.uk/community-safety/housing/private-sector-housing-policy>

Annex B – Civil Penalty Notices

Table 1 below sets out the criteria that the Environmental Health team use to assess the appropriate level of civil penalty.

Table 1 – Civil Penalty Charging Matrix.

Criteria	Level 1 Penalty - £500 per breach of the HMO Management Regulations	Level 2 Penalty - £2500 to £5000 Level 2 penalties will be imposed if ALL of the following criteria applies:	Level 3 Penalty – £7500 to £15,000 Level 3 penalties will be imposed if criteria 1 AND any other criteria applies:	Level 4 Penalty – £15000 to £30,000 Level 4 penalties will be imposed if criteria 1 and ANY of the other criteria applies:
1. Severity of offence	Minor breaches of the HMO management regulations where occupiers were not placed at imminent risk of serious harm.	The tenants were not placed in imminent risk of serious harm but at considerable risk of harm; or Major breaches of the HMO management regulations where contraventions places occupiers at significant risk of harm, but not imminent risk of serious harm. Non-compliance with a S.12 improvement notice where a member of the vulnerable group is not currently in occupation.	The tenant(s) were placed at risk of serious harm but not imminent risk of serious harm; or Offences that relate to the licensing of Houses in Multiple Occupation (Section 72 of the Housing Act 2004) where the tenants are not placed at imminent risk of serious harm; or Non-compliance with a S.12 improvement notice where a member of the vulnerable group <u>is</u> currently in occupation. or Non-compliance with a S.11 improvement notice where a	The tenant(s) were exposed to imminent risk of serious harm; or Offences that relate to the licensing of Houses in Multiple Occupation (Section 72 of the Housing Act 2004) where the occupiers are placed at imminent risk of serious harm. Offences that relate to the HMO management regulations were contraventions placed occupiers (or any other person) at imminent risk of serious harm. Non-compliance with a S.11 improvement notice where a member of the vulnerable group (relevant to the hazard) is in

			<p>member of the vulnerable group <u>is not</u> currently in occupation.</p> <p>Contravention of an overcrowding notice (s.139)</p>	occupation.
2. Track record of offender	There is no adverse history of non-compliance and it is the defendant's first housing related offence in The Isles of Scilly.	There is no adverse history of non-compliance and it is the defendant's first housing related offence in The Isles of Scilly.	There is an adverse history of non-compliance, or the landlord is known to have been prosecuted, accepted a simple or conditional caution or received a civil penalty for one relevant housing offence within the last 5 years.	Where the lives of tenants (or any other person) are placed at imminent risk of serious harm, the track record of the offender is deemed to be of no relevance.
3. Culpability	The defendant is believed to have been ignorant in their duties as a landlord as opposed to reckless or deliberate in their actions.	The defendant is believed to have been ignorant in their duties as a landlord as opposed to reckless or deliberate in their actions.	The defendant has been reckless in their duties and through negligence has placed a tenant (or any other person) at serious risk of harm, but not imminent risk of harm; or A lettings agent; or A landlord who is control of three or more dwellings.	The defendant has been reckless in their duties and through negligence has placed the health and safety of tenants(s), or other persons at imminent risk of serious harm;
4. Potential for harm	The tenant(s) were not exposed to imminent risk of serious harm caused by breach of the regulations.	The tenant(s) were not exposed to imminent risk of serious harm and the occupier is not vulnerable to the hazard (as defined by the Housing Health and Safety Rating System Operating Guidance).	<p>a) The tenant(s) were exposed to serious hazards or defects, but not imminent risk of serious harm.</p> <p>b) One or more breaches of the HMO Management regulations that have placed an occupier of the HMO at serious risk of harm but not imminent or serious risk of harm.</p>	The tenant(s), or other persons, were exposed to imminent risk of serious harm such as fire safety, gas or electrical defects from defects or substandard management practices.

Costs incurred to the Council

All costs incurred in investigating offences including case file preparation time will be added to the total value of the Civil Penalty. The amount will normally be based on the hourly rate for the Senior EHO post including on-costs as detailed within the overarching Environmental Health Enforcement and Compliance Policy.

Penalty reductions

When the level of penalty has been determined the penalty amount will be the maximum of the scale. This amount will only be reduced if the following criteria are met:

Table 2 – Penalty reductions

HMO licence applications submitted within 14 days of the Council requesting an application; or	A maximum 25% Reduction of penalty level maximum
Relevant improvement works completed but out of the timescales specified on the relevant notice or not to the satisfaction of the Authority; or	
Admission of guilt received within 28 days of receiving the 'Notice of Intent' and the offender wishes to pay the penalty within 28 days.	
The offender provides the Council with evidence to enable an assessment of their assets and income (not just rental income) to be carried out and assets/ income are deemed insufficient.	25% Reduction of penalty level maximum

The maximum penalty reduction in any qualifying case will be no more than 50%.

Notice of Intent

When The Council of the Isles of Scilly has made a determination as to the amount of financial penalty to impose the defendant will be issued with a 'Notice of Intent'. This notice will set out the amount of the penalty, the reasons for proposing to impose the penalty, and the information about the right of the landlord to make representations.

It is at this stage that the offender will be invited to make an admission of guilt, and provide evidence to enable an assessment of their means to pay the penalty.

Amenity Standards for Licensable Houses in Multiple Occupation.

Background

The Housing Act 2004 ('The Act') sets out the legal requirement for certain Houses in Multiple Occupation (HMO) to be licensed. Section 65 of the Act states that the Council cannot be satisfied that the house is reasonably suitable for a particular maximum number of households or persons for the purposes of licensing the house fails to meet prescribed standards.

Schedule 3 of 'The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 (as amended)' prescribes standards for deciding the suitability for occupation of an HMO by a particular maximum number of households or persons.

The Council of the Isles of Scilly has reproduced this standard to clarify the legal requirements for licensable HMOs. The standard will be used to determine the suitability of a HMO for a maximum number of households or persons that may occupy it, and/or for enforcing an appropriate level of compliance through licence conditions.

1. Room measurements

A decision of the Upper Tribunal decided that Local Government cannot prescribe a standard outside of Part 10 of the Housing Act 1985 which lays down [overcrowding](#) standards applicable to all kinds of property. This, in effect, sets a minimum room size of 6.5 square meters for adults. The Licensing decision as to the suitability of premises has to take into account the premises as a whole; not just individual room sizes. The Council must consider every property on its merits. (*Residential Landlords Association, 2017*)

The Space Standard: Room Sizes (Housing Act 1985)

110 sq ft (10.2 sq m approx)	2 people units
90 to 109 sq ft (8.4 to 10.2 sq m approx)	1.5 people units
70 to 89 sq ft (6.5 to 8.4 sq m approx)	1 people units
50 to 69 sq ft (4.6 to 6.5 sq m approx)	0.5 people units

Note: children under one year old are not taken into account and children between the ages of one and nine years count as half a "person unit": Over 10 yrs old = 1 person unit.

Number of rooms	Number of persons (occupying)
1	2
2	3
3	5
4	7½
5 or more	2 for each room

2. Licensed HMO Amenity Standards (Legal standard)

These amenities must be provided in all Licensed HMOs. If not present a condition will be included in the licence requiring that they are provided and setting a time limit (maximum 5 years)

AMENITY STANDARDS FOR BATHROOMS/TOILETS IN RELATION TO NUMBER OF PERSONS	
1 – 4 persons	No requirement for wash hand basins (WHB) in sleeping rooms At least 1 bathroom and 1 WC (the bathroom and WC may be combined) WHB not required in bedrooms
5 persons	1 WHB required in each sleeping room plus 1 bathroom AND 1 separate WC with WHB (but the WC can be contained within a second bathroom)
6 – 10 persons	1 WHB required in each sleeping room plus 2 bathrooms AND 2 separate WCs with WHB (but one of the WCs can be contained within one of the bathrooms) 3 separate compartments required
11 – 15 persons	1 x WHB required in each sleeping room plus 3 bathrooms AND 3 separate WCs with WHB (but two of the WCs can be contained within 2 of the bathrooms). 4 separate compartments required

Notes:

1. The above table for both baths and w.c's relates to shared used. Where a unit has its own bath/w.c. see Para 9 below.
2. You can have either a bath or shower. There are interchangeable.
3. Although mandatory HMO licensing only applies for 5 persons and upwards on 3 or more storeys, Additional HMO licensing can apply where there is smaller accommodation. This is why a standard for 1 to 4 is included.

The other National Minimum Standards are as follows:-

Heating

1. Each unit of living accommodation in an HMO must be equipped with adequate means of space heating. *(The installation should be a fixed form of heating and compliant with Part L of the Building Regulations. Internal temperatures should be able to achieve 20-22°C when the outside temperature is -1°C. In multi-occupied buildings provision for space heating may be centrally controlled. Such systems should be operated to ensure that occupants are not exposed to excess heat or cold and should be provided with controls to allow the occupants to regulate the temperature within their dwelling unit).*

Washing facilities

2. All baths, showers and wash hand basins in an HMO must be equipped with taps providing an adequate supply of cold and constant hot water.
3. All bathrooms in an HMO must be suitably and adequately heated and ventilated.
4. All bathrooms and toilets in an HMO must be of an adequate size and layout.
5. All baths, toilets and wash hand basins in an HMO must be fit for the purpose.
6. All bathrooms and toilets in an HMO must be suitably located either in the living accommodation itself. Alternatively, so long as they are suitably located in relation to where the living accommodation is located in the HMO this suffices.

Shared Kitchens

7. Where any of the unit of accommodation within the HMO does not contain its own facilities for the cooking of food—

(a) there must be a kitchen, suitably located in relation to the living accommodation

(b) the kitchen must have a layout and be of a size and be equipped with such facilities as adequately enable those sharing the facilities to store, prepare and cook food;

(c) the kitchen must be equipped with the following equipment.

- (i) sinks with draining boards;
- (ii) an adequate supply of cold and constant hot water to each sink
- (iii) installations or equipment for the cooking of food (i.e. cookers);
- (iv) electrical sockets;
- (v) worktops for the preparation of food;
- (vi) cupboards for the storage of food or kitchen and cooking utensils;

- (vii) refrigerators with an adequate freezer compartment (or, where the freezer compartment is not adequate, adequate separate freezers);
- (viii) appropriate refuse disposal facilities; and
- (ix) appropriate extractor fans,
- (x) fire blankets
- (xi) fire doors to the kitchen

This equipment must be fit for the purpose and supplied in a sufficient quantity for the number of those sharing the facilities

Individual kitchens (within units of accommodation)

8. Where there is a kitchen within the unit, the unit must be provided with—

- (a) adequate appliances and equipment for the cooking of food;
- (b) a sink with an adequate supply of cold and constant hot water;
- (c) a work top for the preparation of food
- (d) sufficient electrical sockets;
- (e) a cupboard for the storage of kitchen utensils and crockery; and
- (f) a refrigerator.

Note: This applies where a unit of living accommodation contains kitchen facilities for the exclusive use of the individual household, and there are no other kitchen facilities available for that household.

Individual bathroom/toilet facilities

9. When a unit has its own bath/toilet facilities it must have an enclosed and adequately laid out and ventilated room with a toilet and bath or fixed shower. Adequate cold and constant hot water must be provided. These facilities must be for the exclusive use of the occupiers of that unit either

- (a) within the living accommodation; or
- (b) within reasonable proximity to the living accommodation .

Fire Precautions

10. Appropriate fire precaution facilities and equipment must be provided of such type, number and location as is considered necessary.

It should be noted that Local Authorities and the Fire Rescue Authority can require that a higher level of fire safety precautions are provided. It is essential all HMO's are subject to a written fire risk assessment under the Regulatory Reform (Fire Safety) Order 2005.

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