

London Borough of Lewisham

New licensing scheme complements current enforcement powers

Overview

This document describe show borough wide licensing complements existing powers available to the council in the areas of

- Repairs
- Fire and carbon monoxide safety
- Gas safety
- PAT testing
- Crowding and space
- Pests
- Refuse and waste management
- Antisocial behaviour

Repairs

Current enforcement power and limitations	Additional licensing powers
<p>We have to act on deficiencies when they cause category 1 hazards.</p> <p>We have a discretion to act on deficiencies when they cause category 2 hazards</p> <p>We have no power to act on disrepair when they cause no hazards</p>	<p>We can act on breaches of licence conditions. Although we cannot set licensing conditions to specifically deal with hazards, the model licensing conditions require:</p> <ul style="list-style-type: none"> • The property together with any associated external space and outbuildings must be regularly inspected and any necessary works must be carried out within a reasonable timescale, having due regard to the severity of each defect. • The property must be maintained in accordance with the Council's Standards for Licensable Houses in Multiple Occupation and any other standards or Approved Codes of Practice which the Council or Central Government may from time to time require
<p>We rely upon tenant complaint. Protection from retaliatory eviction is hard to obtain, and reporting puts the tenant at risk of eviction.</p>	<p>We can proactively inspect properties and do not need to put the landlord on notice to inspect them if we suspect a licence condition has been breached.</p>
<p>We have to work with landlords in order to persuade them to carry out repairs before we can move to serving an Improvement Notice or Prohibition Order. The sole exception to this is an Emergency Prohibition Order, which can be served</p>	<p>Breaches of licence conditions attract immediate liability. We may choose to give a landlord time to put things right, and would do so in most cases, but we can take speedy and effective enforcement action when this is necessary...</p>

Current enforcement power and limitations	Additional licensing powers
immediately. The test for this is very high, there must be a significant risk of serious harm.	
There is an immediate 28 day delay where we cannot enforce under the improvement notice. This is to allow the landlord the chance to appeal. The timescale to carry out the work starts after the 28 days expires.	See above. Liability is immediate. The landlord can appeal a Civil Penalty Notice, but cannot refuse to rectify without committing serious and persistent breaches of the licence.
The offence is failing to comply with the Notice or Order not the disrepair itself	See above. The offence is breach of conditions. The disrepair is the breach.
Even if we CPN or prosecute the landlord at the point at which they fail to comply, we cannot compel them to carry out the repairs and have no means to prevent them from renting the property in its appalling state	We cannot force them to carry out repairs, but see above...
We can (theoretically) apply to ban the landlord from renting property. There has been one successful application for a banning order so far, and this was for violent harassment of tenants.	The sanction is to apply to revoke the licence. This may make the landlord no longer fit and proper to hold any licence.

Fire and Carbon Monoxide Safety

Current enforcement power and limitations	Additional licensing powers
<p>Can take action if category 1. Fire is one of the 29 HHSRS hazards. The problems with HHSRS fire enforcement are:</p> <ul style="list-style-type: none"> If the property has a valid EIC, Gas Safe and Pat testing on all appliances, it will score out as a low end category 2 hazard. This is a reflection of the fact that while the consequences of a fire are catastrophic, the likelihood of it happening is low. HHSRS balances harm with likelihood. The Management Regulations apply to all HMOs, licensed or otherwise. A landlord can be compelled to maintain or repair existing fire precautions, but cannot be compelled to upgrade or install alarms, fire doors etc. 	<p>This is generally applicable...</p> <p>The current mandatory licensing conditions require a smoke alarm on every floor with an occupied room on it (this includes kitchens and bathrooms), and a CO alarm where there is a solid fuel burning appliance. This replicates the Smoke and CO alarm regulations.</p> <p>We can apply local licensing conditions requiring fire doors and other fire precautions as these relate to the “condition and contents” of the property-see Housing Act 2004 s67</p> <p>There is a compulsory consultation with the London Fire Brigade before we issue any licence. This gives the lead enforcement authority the chance to raise concerns</p>

Current enforcement power and limitations	Additional licensing powers
<ul style="list-style-type: none"> The Smoke and CO alarms regulations do not apply to HMOs, licensed or otherwise. 	
There is no power to require a landlord to supply furniture that is fire safe.	This is a mandatory condition for all HMO and selective licenses. The licence holder must supply a declaration to this effect.

Gas Safety

Current enforcement power and limitations	Additional licensing powers
<p>We cannot enforce Gas Safety Legislation as the responsibility to enforce this lies with the HSE. Although a landlord must have a gas safety certificate, if they do not, or refuse to provide one in an unlicensed property we cannot take direct enforcement action. We can request documents and prosecute if they are not provided, but this is a time consuming process, and enforcement action is taken against the refusal to provide documents rather than the failure to ensure the property is safe (see Housing Act 2004 ss235 and 236)</p>	<p>Contrast licence condition:</p> <p>“If gas is supplied to the property, a Gas Safe certificate must be submitted annually to the Council. The gas safety certificate must relate to the whole gas installation and include all gas appliances. It must demonstrate that all appliances have been serviced and safety checked within the previous twelve months. Any defects noted on the certificate must be promptly rectified”</p> <p>Licence condition breaches can be actioned immediately. We can prosecute or issue CPNs. The ultimate sanction is revoking the licence.</p>

PAT testing (safety testing for electrical appliances)

Current enforcement power and limitations	Additional licensing powers
<p>There is no current or proposed requirement for appliances provided by a landlord to be PAT tested. A landlord who provides an unsafe electrical appliance that causes harm to the tenant may be negligent, and the injured party may be able to take civil action against them. This is a private law remedy, and depends upon the tenant being aware of their rights and having the wherewithal to enforce these.</p> <p>Legal Aid availability for housing cases has declined 40% in the past decade and 94% for repairs cases.</p>	<p>All selective and HMO licences must contain a requirement for electrical appliances supplied by the licence holder to be kept in a safe condition, and for the licence holder to provide a declaration to this effect.</p> <p>We can impose local licensing condition requiring all appliances supplied by the licence holder to be PAT tested.</p>

Current enforcement power and limitations	Additional licensing powers
Faulty appliances cause 60 house fires every week in the UK, according to a Which report in 2018	

Crowding and Space

Current enforcement power and limitations	Additional licensing powers
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Dealing with overcrowding in non-licensed properties is always difficult. The cause may be financially and landlord driven, but it may also be caused by the ongoing housing crisis or the birth of children to a family during their tenancy. Nonetheless, cramped and overcrowded conditions have a potentially severe effect upon the mental and physical health of all residents as well as child development. The HHSRS "Crowding and Space" hazard allows us to intervene. The available powers include:

- **Prohibition Orders/Emergency Prohibition Orders**

This order allows us to set the number of residents who can occupy all or part of a property.

Prohibiting a property inevitably makes some or all of the residents homeless. We acquire a duty to house these individuals independently of any duty we may have under the Homelessness Reduction Act.

We may have to suspend the operation of a Prohibition Order to allow landlords time to comply, continuing the overcrowding

We may have to compensate the landlord for any loss of revenue.

The landlord has a right of appeal. The appeal suspends the operation of the notice until it is determined.

- **Overcrowding Notices**

Only applies to non licensable HMOs

Local Housing Authority must serve if the level of occupation is "excessive". This is not defined in the act.

There is a 28 day delay before the notice becomes operational, comprising 7 days before the service of the notice when the occupants, owner and any manager have the right to make representations and 21 days for the owner or manager to consider an appeal.

The appeal suspends the notice until it is determined

This applies specifically to HMOs.

The levels of occupation and room sizes are set nationally and are mandatory licence conditions. This provides certainty and consistency for landlords and tenants alike.

Landlords do have a right to appeal licence conditions, but the level of occupation is set using the mandatory conditions regarding room sizes at [Schedule 4 para 1A Housing Act 2004](#).

Landlords of licensable HMOs have a positive duty to inspect and ensure compliance with licence conditions, including space and occupation.

Enforcement is against the landlord for failure to comply with conditions and we do not create a duty to house tenants.

Landlords can appeal any civil penalty notice, but this does not affect their responsibility to comply with the conditions of their licence.

The ultimate sanction is to revoke the licence.

<ul style="list-style-type: none"> • Hazard Awareness Notices <p>These inform a landlord that hazards are present in the property but put no repair obligation on the landlord</p>	
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Pests

Current enforcement power and limitations	Additional licensing powers
<p>“Domestic Hygiene, Refuse and Pests” is an HHSRS hazard. Infestations are capable of taking a toll on residents’ general quality of life, as well as their physical and mental health. The difficulties enforcing this under the HHSRS are similar to “Fire” above.</p> <ul style="list-style-type: none"> • Must usually be a category 1 hazard to take action • Formal enforcement action is normally by Improvement Notice. The delays and limitations of this route are set out under “fire” • Many landlords include a provision that devolves responsibility for dealing with pests to tenants in their tenancy agreements 	<p>Our current licensing standards for HMOs require:</p> <ul style="list-style-type: none"> • The licence holder must take reasonable steps to proof the property from rats and mice. • If the license holder becomes aware of a pest infestation, steps must be taken to eradicate all pests in a timely manner. <p>Examples of pests are rats, mice, bedbugs, flees, cockroaches, wasps, and pharaoh ants.</p> <p>We do not licence properties that do not confirm to our licensing standards</p> <p>This requirement could be rolled out to selective licensed properties and incorporated as a licence condition if required</p>

Refuse and waste management

Current enforcement power and limitations	Additional licensing powers
<p>Currently we can use the HHSRS to address a “Domestic Hygiene, Refuse and Pests” hazard. For the limitations of this approach, see “fire”, “overcrowding” and “pests” above.</p> <p>The HMO Management Regulations apply to all HMOs, including those that are not currently licensable. Breaches of management regulations are criminal offences, and there is no requirement to put the landlord on notice prior to taking</p>	<p>Provision of adequate facilities for waste management can be incorporated into licence conditions for HMO and selective licences. This would enable prompt enforcement action.</p>

Current enforcement power and limitations	Additional licensing powers
enforcement action. Although there is a right of appeal, this would be against enforcement action rather than any requirement to rectify a breach.	
Unlike a breach of licence conditions, a serious or persistent breach or breaches cannot lead to the licence being revoked.	The ultimate sanction of the revocation of the licence.
There are no similar provisions relating to non HMO properties	Licence conditions can apply to HMO and selective properties

Antisocial Behaviour

Current enforcement power and limitations	Additional licensing powers
<p>We have very limited powers to tackle ASB within a licenced premise, there are obvious types of ASB or issues that are often associated with ASB such as littering, untidy gardens and disrepair of outbuildings that can be addressed under The Management of Houses in Multiple Occupation (England) Regulations 2006.</p> <p>All mandatory and additional licenses include conditions set out to help prevent and address ASB. These conditions give clear guidance as to what acts can be considered ASB.</p> <p>There is also a condition currently set out on the licence that requests that the landlord / owner / managing agent can demonstrate when requested what has been done to address reported cases of ASB.</p> <p>There are teams within the London Borough of Lewisham who have delegated powers under S80 of the Environmental Protection Act 1990, these deal with statutory nuisance and often used to tackle issues such as noise nuisance.</p> <p>There are teams within the London Borough of Lewisham who have delegated powers under the Anti-social Behaviour, Crime and Policing Act 2014. This act gives these departments the tools to deal with ASB through the service of a Community Protection Notice. Section 43 of this Act gives the power to issue notices</p>	<p>An ASB term in the licence allows action to be taken against landlords who fail to demonstrate that they are addressing ASB committed by their tenants, residents and their visitors quickly, and with the sanctions available ranging from Civil Penalty Notices and prosecution to the ultimate sanction of revoking the licence.</p> <p>It is recognised that this is not a panacea for ASB issues, and that treating this as solely a housing issue creates a danger of moving problem tenants on without addressing any underlying causes. We are committed to rolling out a tenants' information and training service in parallel to the licensing schemes. See appendix XX.</p>

Current enforcement power and limitations	Additional licensing powers
<p>on an individual or body, setting out requirements designed to stop the reoccurrence of acts deemed to be antisocial.</p> <p>Limitations of taking action under this legislation is that the gathering of evidence can be difficult, RIPA might need to be considered, a written warning has to be issued and breached before the actual notice can be served, meaning that the process could be fairly drawn-out. A person served with a CPN can appeal the notice at the Magistrates Court, they can appeal under the grounds that the conduct did not take place, did not have a detrimental effect, has not been persistent, is not unreasonable, that they cannot be expected to control or affect the conduct and that any of the requirements in the notice, or any of the periods within which or times by which they are to be complied with, are unreasonable. There are also the normal rights of appeal i.e. incorrectly served or addressed.</p>	

- 1.1. The current schemes are severely limiting in coverage as only 10% of all HMOs and less than 2% of all properties in the PRS are covered by the current scheme.
- 1.2. Other key limitations of the existing schemes are listed below:-
- Not all landlords voluntarily license their properties under the existing licensing schemes. There has been evidence of some landlords reducing occupancy level below licensing thresholds by illegally evicting tenants or claiming that tenants are part of the same household when in fact they are not. When this happens, it prevents the Council from being able to use licensing to regulate tenancy management and housing conditions.
 - Unkempt dirty properties and inhospitable environments due to debris etc can be fixed through a speedier and more robust process in licensable HMO's.
 - For single household dwellings, landlords are not required to provide information on tenancy rights as part of the tenancy agreement. This can lead to tenant harassment or illegal evictions.
 - The licensing process allows the council access to otherwise inaccessible information which may identify criminal activity or poor fire safety standards that fall outside the scope of housing services. This provides a gateway for the council to consult with other enforcement agencies.
 - Outside of licensed properties, private landlords are not required to complete a "fit and proper test". These make vulnerable tenants open to exploitation – for example, offering rooms on basis of sexual services.
 - Councils cannot apply for a Management Order if a landlord cannot be easily identified. Licensing makes it necessary for the landlord to provide their contacts details or details of the person acting on their behalf.
 - Where rent receipts are not provided to tenants, the establishment of a legal relationship between tenant and landlord is difficult to prove. This in turn makes any enforcement action not implementable.
 - Currently legislation makes it difficult for councils to require landlords to install smoke and carbon monoxide alarms in HMOs that are not currently licensable.
 - Currently the council only identifies Category 1 and 2 hazards when we receive complaints. This is at times too late as tenants may have already come to harm.
 - Language barriers currently prevent some tenants reporting issues.

Rationale for the new schemes

- 1.3. A borough-wide licensing scheme in Lewisham would bring all properties in the PRS under the purview of the council. This would make licensable properties easier to identify and there would be significantly less scope for landlords to persuade and/or force tenants to leave tenancies to bring homes under licensing thresholds. It also means that the Council would have more influence over standards and practices for all properties under the PRS, as outlined in **Error! Reference source not found.** and **Error! Reference source not found.**. The proposed licensing conditions under the new schemes will:
- empower PRS tenants with knowledge of their rights and responsibilities,
 - bring a wider range of conditions outside of HHSRS within scope,
 - ensure all PRS landlords complete a fit and proper test, and,
 - require all landlords to provide tenants with information on tenancy rights as

part of the tenancy agreement

- 1.4. Licensing will provide forums for landlords to work with the council in improving property standards across the borough and in driving rogue landlords out of the borough.
- 1.5. Licensing will provide forums for tenants to raise their concerns, improve their understanding of the rights and responsibilities, and can support a PRS Union, when one is established.
- 1.6. Currently landlords with properties in Lewisham who provide temporary accommodation to local authorities prefer to work with other local authorities (not Lewisham!). Licensing will standardise all accommodation within the borough irrespective of who procures it, and this is likely to mean landlords with properties in Lewisham may be more willing to work with us. This would lead to an increase in the number of homes available to Lewisham to meet our housing needs.