



Service Specific Enforcement Policy

Housing

To be read in conjunction with the Cheshire East Council Enforcement
Policy

July 2016

Housing Enforcement Protocol

Contents

Section		Page
	Summary	3
1	Introduction	3
2	General principles and matters to be taken into account when regulating housing conditions	4
	a) <i>Is advice and guidance sufficient to resolve matters?</i>	
	b) <i>What is the risk associated with the housing conditions?</i>	
	c) <i>Inspection of housing conditions</i>	
	d) <i>Compliance and enforcement actions</i>	
	e) <i>Information sharing</i>	
	f) <i>Partnership working</i>	
	g) <i>Consideration of tenure</i>	
	h) <i>Consideration of the occupier's actions and views</i>	
	i) <i>Consideration of whether it is reasonable and appropriate to intervene</i>	
3	Housing Enforcement Legislation	10
4	Houses in Multiple Occupation	12
5	Empty Homes	15
6	Harassment	16
7	Illegal Eviction	16
Appendix A	The Housing Act 2004 – Primary legislation used in regulating housing standards	17
Appendix B	Housing Health and Safety System - Hazard Profile descriptions	26
Appendix C	Statement of principles used in determining the amount of a penalty charge	28

This protocol should be read in conjunction with the Council's Enforcement Policy which sets out what those being regulated can expect from the Council, committing us to good enforcement practice, bringing benefits to businesses, enforcers and consumers alike.

Summary

The main function of local government enforcement is to protect the public and the environment and promote wellbeing and quality of life to all residents, workers and visitors within Cheshire East.

The Housing Enforcement Protocol provides a background to the legislation and guidance on which it is based and specifically relates to the duties and powers vested in the Council to deal with poor housing conditions, statutory nuisances and related public health issues, substandard management of multi-occupancy housing and the enforcement of various legal aspects of the relationship between neighbouring residents, letting agents, landlords and their tenants.

1. Introduction

The Strategic Housing service is part of the Council's Economic Growth & Prosperity directorate and aims to ensure that there is sufficient good quality housing available to meet people's housing needs across all tenures.

The Council has a statutory duty to keep housing conditions in its area under review, using a wide range of housing, building and public health related legislation, and to secure its efficient compliance, whilst minimising the burden on businesses, individuals, landlords and organisations, as well as the Council itself.

The Council's Enforcement Policy outlines the approach to enforcement across a wide range of activities and highlights that effective and well-targeted regulation is essential in promoting fairness and protection from harm.

This protocol provides details of the Council's specific approach to regulating housing standards in Cheshire East and confirms that:

- The Council will provide awareness, advice and assistance whenever possible to the public, businesses and organisations to help them meet their legal obligations before embarking on the enforcement process.
- The Council is committed to carrying out its duties in a fair and consistent manner and ensuring that enforcement action is proportional to the seriousness of failure to comply with statutory requirements.
- The decision to use enforcement action will depend on the severity of the non-compliance.

The aim of this protocol is to ensure that regulation and enforcement of housing standards is consistent, risk-based, targeted and proportionate and is carried out in line with the Council's Enforcement Policy and other relevant detailed guidance, such as the Housing Health and Safety Rating System (HHSRS) Enforcement Guidance and HHSRS Operating Guidance.

2. General principles and Matters to be taken into account when regulating housing conditions

a) Is advice and guidance sufficient to resolve matters?

General information, advice and guidance will be provided in clear, concise and accessible language, using a range of appropriate formats and media.

We will organise and provide events specifically for landlords and letting agents to provide updates and information on good practice and legislative changes.

When offering advice we will distinguish between statutory requirements and discretionary good practice.

Detailed advice such as fire safety risk assessments, floor plans or schedules detailing the work that would be required to let a property in multiple occupation are available as a chargeable service.

b) What is the risk associated with the housing conditions?

Suitably trained officers routinely use the Housing Health and Safety Rating System (HHSRS), which is a statutory, evidence-based, risk assessment method for assessing and dealing with poor housing conditions.

We will use risk assessment to concentrate resources in the areas that need them most and on the properties in the worst condition.

Following receipt of a service request or complaint about poor housing conditions, an initial risk assessment will normally be carried out and any follow up advice or action will depend on the outcome of this initial assessment.

c) Inspection of housing conditions

Inspections will take place in response to:

- A service request from a tenant or landlord;
- Where poor conditions have been brought to our attention by a third party;
- As a result of a risk based inspection programme; or
- In accordance with statutory inspection requirements.

Unless the visit is intended for advice purposes only, the landlord or their agent will be given the opportunity to accompany the investigating officer at the visit. Following an inspection, positive feedback will be given wherever possible to encourage and reinforce good practices.

d) Compliance and enforcement actions

By taking a stepped approach to enforcement and working with landlords and their agents to bring about improvements to rented housing, we aim to achieve a good, safe standard of housing and reducing the need for remedial enforcement actions. Resources will be targeted on those that deliberately or persistently flout housing legislation.

For clarity, our stepped approach to enforcement is set out below; where each step is not successful, further action in the stepped approach will be considered on each of their merits:

- i. General advice and information, available to all members of the public;
- ii. Tailored advice and information for the occupiers and owners and their agents;
- iii. Informal action to resolve the issues including information on what will be acceptable to remedy the issue; in the use of the Housing Act 2004 this will involve the service of a Hazard Awareness Notice;
- iv. Formal action through the service of a legal Notice;
- v. Prosecution and/or carrying out of the works in default, and charging the Owner for any costs.

This is a summary of our approach and will be tailored according to the powers set out in the applicable legislation and the merits of each case.

There will be occasions where the severity of the hazard or breach of legislation necessitates swifter action, such as an imminent risk to health and safety, and the stepped approach may commence at an advanced level. We will take all reasonable steps to discuss our actions with the landlord or their agent and seek to resolve this without our intervention.

We will ensure that clear reasons for, and any implications of, enforcement action are given and complaints and appeals procedures are explained at the same time.

If a notice is complied with, no further action will be taken. However if the notice is not complied with and there is no reasonable excuse for non-compliance, the Council will consider the following options:

- Prosecution;
- Carrying out the works in default;
- Carrying out the works in default and prosecution;
- Whether a simple caution is appropriate;

Failure to comply with an Improvement Notice or a Prohibition Order is an offence punishable by an unlimited fine (previously up to £5,000). Following conviction, it is an offence to carry on using the premises in breach of the Prohibition Order, attracting a daily fine.

The Council will take action to recover its costs in connection with work in default. The Council will also take action to recover the costs incurred in carrying out works associated with Emergency Remedial Action.

e) Information sharing

Matters concerning non-compliance may be shared, where appropriate and in public interest, with other enforcement agencies. This could include situations where there is a shared or complementary enforcement role with other agencies such as the Police, Home Office, Fire & Rescue Service, Health & Safety Executive and other Council departments.

Requests for information will be administered having regard to the Freedom of Information Act 2001 and the Data Protection Act 1998.

f) Partnership working

Partnership working with like-minded agencies and departments will lead to a healthier housing stock and will ensure consistent and targeted enforcement. We will ensure that partnership links are developed and maintained and will co-ordinate guidance and act as the regulatory link with other enforcement authorities both locally and throughout Cheshire East.

External partners include Cheshire Fire and Rescue Service (CFRS), Cheshire Police, the Home Office, Health services in Cheshire East, Registered Providers of social housing and members of the Landlord Accreditation Scheme.

g) Consideration of tenure

All legislation set out in Section 3 below is available to the Council regardless of whether the premises in question are owner-occupied, privately rented or belong to a Registered Provider of Social Housing. However, the Council considers that owner-occupiers are usually in a position to take informed decisions concerning maintenance and improvement issues that might affect their welfare and are then able to set their financial priorities accordingly, whereas tenants do not have the legal responsibility to maintain their home and are in a contractual relationship with a landlord whose duty it is to provide a well maintained home that is free from hazards.

For this reason the Council judges that it is appropriate for its powers to be used differently according to tenure, as follows:

Owner-Occupiers

Other than in exceptional cases, the Council expects owner-occupiers, including long leaseholders, to take their own action to remedy problems of disrepair or nuisance.

In the event that intervention is needed, the Council anticipates that Hazard Awareness Notices served under the Housing Act 2004 will frequently be the appropriate course of action, together with assistance through our home improvement agency service. However, the use of legal Notices will be considered in cases involving:

- Vulnerable or elderly people who are judged not-capable of making informed decisions about their own welfare or the safety of others;

- Vulnerable individuals who require the intervention of the Council to ensure their welfare is best protected;
- Hazards that might reasonably affect persons other than the occupants; or
- Serious risk of life-threatening harm such as electrocution or fire.

Private Tenants

The Council's primary focus on regulation of housing standards, assessed on a risk based approach, is the private rented sector. There are many responsible private landlords that offer good management and accommodation standards. In some instances however, standards offered by landlords can fall below what is expected. As generally private landlords do not have access to in-house maintenance teams, they can have an ad-hoc approach to repairs and maintenance. Disappointingly, there is a small proportion of private landlords who either do not understand their legal responsibilities when providing housing, or deliberately ignore their duties. Whilst our risk based approach dictates that the private rented sector deserves more of our focus, we also apply that risk based approach further within the sector to target our resources to the worst conditions.

The Council will seek to ensure that the tenant has taken all necessary steps to inform the landlord of any disrepair before taking any action itself, and will provide guidance to the tenant on what is expected from them.

Following an inspection, if the Council considers that satisfactory proposals and timescales for the work to be carried out are received and agreed, and provided matters then proceed to a satisfactory conclusion, the Council will not normally need to take any further action to discharge its duties.

We will proceed with formal action to remedy housing conditions if:

- There is no response from the landlord/agent or;
- A response is judged inadequate or;
- Proposals that were judged acceptable but which are not then followed-through (for example if works fail to start when agreed, fail to make proper progress or are completed to an inadequate standard).

Formal action will be initiated immediately if:

- The housing conditions pose an imminent risk of serious harm to any person (whether or not immediate action is required, and whether the hazard(s) in question is likely to affect a tenant, an employee or a member of the public), or;
- The landlord in question is known to have failed, on a previous occasion, to take appropriate action in response to an informal approach;

Landlords are expected either to provide any agent acting for them with sufficient authority to act on their behalf in the event they are contacted by the Council, or to ensure that they maintain appropriate communication with their agent in order that appropriate decisions and responses can be provided to the Council. The failure of

an agent to respond to communication from the Council or any failure to take appropriate action may be treated as a failure by the landlord.

Social Housing Tenants

Registered Providers typically provide a high standard of accommodation for their tenants, and their management is subject to regulation by other bodies.

The Council will not normally take formal action against a Registered Provider unless:

- It is satisfied that the problem in question has been properly reported to the Registered Provider and;
- The Registered Provider has then failed to take appropriate action;

If the Council determines that it is appropriate to take action, it will then normally notify the Registered Provider that a complaint has been received and/or a hazard identified and seek the Registered Provider's comments and proposals. Only in cases where it judges that an unsatisfactory response has been received will the Council take further action in a stepped approach.

h) Consideration of the occupier's actions and views

Before we consider taking any action in respect of a tenanted property, we expect that normally the tenant should contact the landlord first, and give the landlord reasonable opportunity to remedy the housing conditions.

Legislation covering landlord and tenant issues require that tenants notify their landlords of any problems with the property. This is because it is more difficult for landlords to carry out their obligations under the legislation, unless they have been made aware of the problem.

Where the matter appears to present an imminent risk to the health and safety of the occupants, it is expected that tenants will still try to contact their landlord, even if this is after they have contacted the Council.

In exceptional circumstances we will not insist on tenants contacting their landlord first, for example:

- Where there is a history of harassment/threatened eviction/poor management practice;
- Where the tenant appears to be vulnerable or where there are vulnerable members of the household;
- Where the tenant could not for some other reason be expected to contact their landlord/managing agent;
- Where the property is a House in Multiple Occupation which appears to fall within HMO licensing;

Tenants are responsible for keeping officers informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.), which may affect the action the Council is taking or considering taking. Tenants should also consider seeking independent legal advice about their own individual powers to resolve any dispute with their landlord.

i) Consideration of whether it is reasonable and appropriate to intervene

Where any of the following situations arise, consideration will be given to whether it is reasonable and/or appropriate to intervene in the regulation of housing standards:

- Where the tenant unreasonably refuses access to the landlord, managing agent or landlord's contractor, to arrange or carry out works;
- Where the tenant has, in the opinion of the Council, caused the damage to the property, and there are no other items of disrepair;
- Where the tenant repeatedly fails to keep an appointment and/or not responded to any follow up contact;
- Where the tenant has been aggressive, threatening, verbally or physically abusive towards officers;
- Where there is found to be no justification for the complaint regarding housing conditions; or
- Where the tenant unreasonably refuses to provide the Council with relevant documentation that is necessary for the Council to be able to carry out its duties.

3. Housing Enforcement Legislation

Following is a list and brief description of the more frequently used legislation to regulate housing standards (this is not an exhaustive list):

Housing Act 2004 – Chapter 34

The Housing Health and Safety Rating System (HHSRS) is the method for assessing, rating and categorising hazards (category 1 or category 2) found in dwellings, the service of statutory notices and the undertaking of emergency remedial action.

Mandatory HMO Licensing is detailed in Part 2 of the Act, and places an obligation for all local authorities to set up a scheme to licence those properties that are 3 or more stories, with 5 or more tenants, making up 2 or more households, and who share amenities.

The Housing Act 2004 is the primary piece of legislation used in regulating housing standards and is explored in greater detail in Appendix A.

Housing Act 1985 (as amended)

Where Category 1 Hazards exist as rated using the HHSRS, the Housing Act 1985 may be used to declare Clearance Areas or Demolition Orders;

Part 10 of this Act makes provision for determining whether a dwelling is overcrowded.

Local Government (Miscellaneous Provisions) Act 1976

Section 16 provides provision for the authority to serve a Requisition for Information Notice, requiring the recipient to disclose their interest in a particular property or land and that of any other person who they believe may have an interest.

Local Government (Miscellaneous Provisions) Act 1982

Section 29 provides the authority with the power to secure a property that is not effectively secure against unauthorised entry.

Environmental Protection Act 1990

Section 80 enables authorities to deal with properties that are injurious or prejudicial to health or causing a statutory nuisance.

Town and Country Planning Act 1990

Section 215 enables authorities to deal with poor and unsightly condition of properties and/or land that are judged to be detrimental to the local amenity.

Prevention of Damage by Pest Act 1949

Enables authorities to remove article(s) that are considered putrescible or offering harborage to pests, either within a premise or on the land around.

Public Health Act 1961

Section 17 provides emergency powers for authorities to deal with blocked drains.

Public Health Act 1936

Section 45 provides for the service of a Notice to repair and/ or cleanse a defective water closet that is in such condition as to be prejudicial to health or a nuisance;

Section 50 provides authorities with a power to deal with overflowing/leaking cesspools.

Building Act 1984

Section 59 provides powers to deal with defective drainage including gutters and down pipes;

Section 64 provides a duty to serve a Notice requiring the provision of water closets in a dwelling where insufficient facilities exist;

Section 63 covers water closets, drains and soil pipes improperly constructed or repaired and in such a state as to be prejudicial to health or a nuisance;

Section 76 affords a quicker response to dealing with premises that are prejudicial to health or a nuisance than is afforded through the use of Section 80 of the Environmental Protection Act 1990;

Section 79 covers ruinous or dilapidated buildings and neglected sites.

Protection from Eviction Act 1977

Section 1 provides powers to deal with landlords and/or their agent who unlawfully evict or harassment a tenant or a member of their household.

Landlord and Tenant Act 1985

Section 11 implies a covenant into all leases of a dwelling house for less than seven years. Landlords must keep in repair the structure and exterior of the dwelling (including drains, gutters and external pipes) and keep in repair and in proper working order the installations in the house for the provision of water, heating, electricity, gas and sanitation (including basins, sinks, baths and sanitary conveniences).

4. Houses in Multiple Occupation

The Housing Act 2004 introduced a mandatory licensing for certain types of Houses in Multiple Occupation (HMO). The aim of licensing is to ensure the larger type, higher risk HMOs are properly managed and provide greater protection for the health, safety and welfare for the occupants and visitors.

The responsibility as to who must apply to the Council for a licence rests with the person having control of, or the person managing the property.

Fees for Licences

The Council will charge a differentiated fee structure depending on the size of the HMO. Licence fee charges reflect the level of work Council officers undertake in processing an application for a licence.

Licensing Offences

The Housing Act 2004 lays down a number of licensing related offences including:

- Operating a licensable HMO without a licence or allowing it to be occupied by more persons than a licence allows: unlimited fine (previously up to £20,000);
- Breach of any licence conditions: unlimited fine (previously up to £5,000);
- Supplying incorrect information in a licence application: unlimited fine (previously up to £5,000);

In addition to the above, a landlord who operates a licensable HMO without a licence:

- May be subject to Rent Repayment Order (RRO) requiring repayment in respect of all Housing Benefit received by the landlord over the previous 12 months;
- Loses the right to automatic possession under an assured shorthold agreement;
- May be subject to a Management Order where the Council will take control of the HMO (see Interim and Final Management Orders on page 21 within Appendix A).

Where an unlicensed HMO has been identified without good reason for it not being so licensed, the Council will take formal proceedings with a view to prosecution in the courts.

If a landlord of an unlicensed HMO approaches the Council for a licence of their own volition and subsequently co-operates fully with the Council, including addressing any identified management, safety or amenity issue within an agreed timescale, the Council would not normally pursue formal enforcement action.

Any breach of licence condition will initially be dealt with informally. However, if this breach is not remedied within an agreed timeframe or is considered to be a serious nature putting the health, safety or welfare of any occupier or other persons living or owning property in the vicinity at risk, the Council will pursue formal enforcement action.

Interim and Final Management Orders

See Interim and Final Management Orders on page 21 within Appendix A

Temporary Exemption Notices

A Local Housing Authority has a discretionary power to serve a Temporary Exemption Notice (TEN) on managers or owners of HMOs which are capable of being licensed, who notify the local housing authority of their intention to take particular steps to ensure that their HMO no longer requires a licence. TENs last for 3 months but are renewable for another 3 months in exceptional circumstances.

Raising Standards in HMOs

Traditionally, housing conditions in HMO type properties are viewed as being the worst in the rented sector for safety, facilities, repairs, harassment of occupiers and management standards, and are often occupied by people living on low income who are often from vulnerable or disadvantaged groups.

Many of these HMO type properties will not require a licence to operate as such and the Council will look to regulate these HMOs through the enforcement of the HMO Management Regulations and by the use of the Housing Health and Safety Rating system.

Currently, these non-licensable HMOs will only be inspected when the Council receives a complaint or enquiry about the property. These HMO properties will then be subjected to risk assessment by the Council, scoring the HMO in five areas; Confidence in Management; Amenities; Standard of Fire Safety Management; Structure and Fire Provisions. Where landlords can demonstrate a good standard of compliance within these five areas, they will benefit from a lower frequency for re-inspection, which could be in 5 years.

Fire Safety in HMOs

Statistically, HMO type properties have one of the highest incidents of deaths caused by fire in any type of housing. It is therefore essential that any HMO possesses an adequate means of escape in the event that a fire should occur and also adequate fire detection and alarm measures in place to provide early warning of such.

This area of law is covered by both the Housing Act 2004 and the Regulatory Reform (Fire Safety) Order 2005, the latter of which is enforced by Cheshire Fire and Rescue Service.

The LACORS, Housing - Fire Safety guidance helps to manage the relationship between the Housing Act 2004 and the Fire Safety Order by offering advice and assistance to enforcers, landlords, managing agents and tenants, amongst others, on ways to make residential buildings safe from fire and compliant with legislation.

The Local Housing Authority will generally be the lead enforcing authority for fire safety in HMO type properties, however, where an HMO contains communal areas, the Regulatory Reform (Fire Safety) Order 2005 requires the responsible person for an HMO to carry out and provide a Fire Risk Assessment.

The actual level of fire protection and detection that will be required to be provided within any HMO will be risk assessed, taking into account the property characteristics, the management practices in place, the written fire risk assessment and the recommendations contained within the LACORS, Housing - Fire Safety guidance

General Management of HMOs

The Management of Houses in Multiple Occupation (England) Regulations 2006 and The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007, require the person having control of any HMO to ensure that:-

- The name, address and contact telephone number for the manager of the HMO is provided to each occupier and also displayed within a prominent position in the HMO;
- All means of escape from fire are kept free from obstruction and maintained in good order and repair and ensure any fire fighting equipment and fire alarms are maintained in good working order;
- Ensure the water supply and drainage system is maintained in good, clean and working condition and protected from frost damage where appropriate;
- Ensure that any gas appliance and fixed electrical installation is inspected and tested by a recognised engineer and certification provided specifying the results of the test;
- All common parts are maintained in good and clean decorative repair, maintained in a safe and working condition and kept clear from obstruction;
- The external structure, outbuildings, yards, forecourts, gardens and boundary walls, fences and railings are maintained in good, safe repair and clean condition;
- That each unit of living accommodation and any furniture supplied with it are in clean condition at the beginning of a person's occupation;
- The internal structure, any fixtures, fitting or appliances and every window and other means of ventilation are kept in good repair and in clean working order;
- Ensure sufficient bins or other receptacles are provided for the storage and disposal of refuse and litter from the HMO;
- All Tenants should fulfil their tenancy obligations and conduct themselves in a manner that will not hinder or frustrate the manager in the performance of his duties;

5. Empty Homes

Empty homes are a recognised wasted housing resource and deprive people of a much needed home. Empty homes can cause blight in our local communities, prevent investment and regeneration, devalue surrounding properties and also attract anti-social behaviour. Cheshire East Council is committed to identify long term empty nuisance properties and will strive to take steps to bring them back into use through formal or informal action.

Thousands of properties will become empty at some point as part of the normal operation of the housing market, usually during the rental or buying process. It is only when properties stay empty longer than six months without any obvious signs of renovation or rental that they become 'true' empty homes. The scale of the problem dictates that with the level of resources available to the Council, we cannot tackle every empty home in Cheshire East.

Our approach is to work with the owners of empty homes, to support and encourage voluntary action to bring these homes back into use. Where co-operation fails, we will use a scoring matrix to determine the extent the empty home impacts on its neighbours and the wider community, which shall in turn inform our decision whether to prioritise the property for enforcement intervention.

Some of the criteria used in this scoring matrix includes: the condition of the property and state of the garden, any anti-social behaviour evident, any fly tipping evident, the number of complaints received, the owner's response to our contact, is the property open to access and length of time the property has been empty.

The Council will use its enforcement powers in line with the most appropriate of the following legislation:

- Town and Country Planning Act 1990 (untidy land notice)
- Environmental Protection Act 1990
- The Housing Act 2004
- Prevention of Damage by Pests Act 1949
- The Building Act 1984
- Local Government (Miscellaneous Provisions) Act 1982
- The Housing Act 1985
- Law of Property Act 1925

The Council's approach to dealing with empty homes is articulated in the Strategic Housing Delivery Framework.

6. Harassment

Harassment is a criminal offence and occurs when landlords deliberately interfere with a tenant's quiet enjoyment of their residential home. Harassment can also be committed by the landlord's managing/letting agent, friend or family member.

The law protects tenants living in residential property against harassment and illegal eviction, making it an offence for the landlord or an agent of the landlord to;

- a) interfere with the peace or comfort of an occupier or members of their household; or
- b) persistently withdraw or withhold services for which the tenant has a reasonable need to live in the premises as a home;

and in either case has reasonable cause to believe this conduct is likely to cause the occupier to give up the occupation of either the whole or part of the premises.

Harassment will ultimately be interpreted by the courts but may include such things as: frequent visits by the landlord to demand rent or to inspect the condition of the property, verbal abuse, entering the property without the tenant's consent, failing to carry out essential repairs or disconnection or disruption of the electricity, gas or water supply without good cause.

7. Illegal Eviction

It's a criminal offence for a landlord or their managing/letting agent to evict a tenant without following the correct legal steps for eviction.

Actions that would typically be considered to constitute an illegal eviction by a landlord are:

- if a landlord forces a tenant to leave by threatening or harassing;
- a landlord physically throws a tenant out;
- a landlord prevents a tenant from using certain parts of their home;
- a landlord changes the locks whilst the tenant is out, if the correct procedure for eviction has not been followed.

If a private tenant has an assured shorthold tenancy or a pre-1989 'fair rent' or regulated tenancy, only a bailiff can lawfully evict them from their home.

Before the bailiffs can come, a landlord must first:

1. give the tenant notice to leave;
2. go to a court for a possession order;
3. apply to a court for bailiffs to evict the tenant.

It's illegal eviction if a landlord forces their tenant to leave before bailiffs arrive, even if the landlord has obtained a court order requiring the tenant to leave or has given the tenant written notice to leave.

The Housing Act 2004 – Primary legislation used in regulating housing standards

Following is a list and brief description of some of the duties and functions provided by the local housing authority under this Act in relation to regulating housing standards (this is not an exhaustive list):

Further information on the Housing Act 2004 is available at the following website:-

<http://www.legislation.gov.uk/ukpga/2004/34/contents>

The Housing Act 2004 introduced the Housing Health & Safety Rating System (HHSRS), described “as a means of identifying faults in dwellings and of evaluating the potential effect of any faults on the health and safety of the occupants or visitors”. Faults contribute to and are categorised into 29 possible hazard profiles (see Appendix B for further information on hazard profiles) for which the legislation provides a range of actions for addressing identified hazards. It is a two stage calculation combining the likelihood of an occurrence taking place and then the range of probable harm outcomes that might arise from that occurrence to give a numerical rating. This is repeated for each of the hazards present. The assessment is not based upon the risk to the actual occupant but upon the group most vulnerable to that particular risk. Once scored, any action that is then considered will take into account the effect of that risk upon the actual occupant.

The scores for each hazard present are then banded from A to J. Bands A to C (ratings of 1,000 points and over) are the most severe, and are known as Category 1 hazards when considering action. Bands D to J, are less severe (rating less than 1,000 points) and are known as Category 2 hazards.

HHSRS provides a combined score for each hazard identified and does not provide a single score for the dwelling as a whole. It is applied to all residential premises, whether owner-occupied or rented.

When a Category 1 hazard is identified, the Council has a duty to take appropriate action and must decide which of the available enforcement options is most appropriate to use (these are explained in more detail below).

When a Category 2 hazard is identified, the Council has a discretionary power to take action and will consider individual cases and circumstances when deciding whether any action should be taken.

This Protocol takes account of guidance provided by the Government and sets out how the Council will use its powers and reach its decisions in relation to the Housing Health & Safety Rating System (Part 1 of the Housing Act 2004).

Authority to investigate

The Housing Act 2004 and associated secondary legislation sets out the duties and powers that the Council has in relation to regulating housing standards in its capacity as Local Housing Authority.

The Act requires the local housing authority to consider the housing conditions within their area. The Act also provides that the local housing authority must arrange for an inspection to be carried out, where it has become aware that it would be appropriate for a residential premises to be inspected.

Choice of appropriate enforcement action

When determining the most appropriate action we will have regard to the Housing Act 2004 Enforcement Guidance. Unless there is an imminent risk to the health and safety of the occupant or visitors to the property, the Council will attempt to secure the required improvements informally and within a reasonable amount of time.

Since informal action is not a legislative option for the Council under the Housing Act 2004, where hazards are found and assessed to represent either a category 1 or significant category 2 hazard, a Hazard Awareness Notice may initially be served, to draw a landlord's or owner-occupier's attention to the desirability of remedial action.

Where an informal approach fails the Council will determine which of the specific enforcement options it will use, taking into account the facts and circumstances in each individual case.

Reasons for the Council's decision to serve a notice or order

A statement of reasons will be provided with any notice or order served, explaining why the Council decided to take a particular course of action, rather than any other kind of enforcement action.

The notice or order will also include details on the right to appeal against the decision and the period in which an appeal may be made. Since there is no actual requirement to comply with a Hazard Awareness Notice there is no appeal process against this type of notice.

When a Category 1 hazard is identified, the Council will take the most appropriate of the following courses of action:

- Serve an Improvement Notice (including a Suspended Improvement Notice);
- Make a Prohibition Order (including a Suspended Prohibition Order);
- Serve a Hazard Awareness Notice;
- Take Emergency Remedial Action;
- Make an Emergency Prohibition Order;
- Make a Demolition Order;
- Declare a Clearance Area.

When a Category 2 hazard is identified, the Council may take the most appropriate of the following courses of action:

- Serve an Improvement Notice (including a Suspended Improvement Notice);
- Make a Prohibition Order (including a Suspended Prohibition Order);
- Serve a Hazard Awareness Notice;
- In prescribed circumstances – make a Demolition Order;
- In prescribed circumstances – declare a Clearance Area.

Improvement Notices

It is anticipated that Improvement Notices will be an appropriate and practical remedy for most hazards.

Where the Council determines that an Improvement Notice should be served in respect of a Category 1 Hazard, it will require works that will either remove the hazard entirely or will reduce its effect so that it ceases to be a Category 1 hazard.

If the Council determines the hazard can only be reduced to a Category 2 hazard rather than removed altogether, it will require works to be carried out as far as is reasonably practical to reduce the likelihood of harm.

Where the Council determines that an Improvement Notice should be served in respect of a Category 2 Hazard, it will require works it judges sufficient either to remove the hazard or reduce the likelihood of harm to an appropriate degree, and will make these decisions having considered the circumstances of the case.

Suspended Improvement Notice

The Council has the power to suspend the operation of an Improvement Notice, if considered reasonable to do so, until the occurrence of a specified time or event, which will be specified within the notice. The following are situations in which it may be appropriate to suspend an Improvement Notice:

- The need to obtain planning permission (or other appropriate consent) that is required before repairs and/or improvements can be undertaken;
- Works which cannot properly be undertaken whilst the premises are occupied and which can be deferred until such time as the premises falls vacant or temporary alternative accommodation can be provided;
- Personal circumstances of occupants, for example, temporary ill-health, which suggests that works, ought to be deferred;

When deciding whether it is appropriate to suspend an Improvement Notice the Council will have regard to:

- The level of risk presented by the hazard(s);
- The turnover of tenants at the property;
- The response or otherwise of the landlord or owner;
- Any other relevant circumstances (e.g. whether the vulnerable age group is present);

Suspended Improvement Notices will be reviewed after a maximum of 12 months and then at intervals of not more than 12 months, but suspension will not normally exceed 6 months.

Prohibition Orders

Prohibition Orders can be used where either a Category 1 and/or Category 2 hazard exists on a residential dwelling or HMO, or part of, where repair and/or improvement appears to

be inappropriate on grounds of practicality or excessive cost (i.e. the cost is unrealistic in terms of the benefit to be derived). An example might include:

- The use of a dwelling or part of a dwelling where adequate natural lighting or adequate fire escape cannot realistically be provided (cellar or attic);
- The use of specified dwelling units or of common parts within an HMO if the means-of-escape is unsatisfactory;
- To specify the maximum number of persons who can occupy a dwelling where it is too small for the household's needs, in particular, in relation to the number of bedrooms;
- Where a premise is lacking an appropriate number of washing, bathing or toileting facilities but of which are nonetheless suitable for a reduced number of occupants;

In addition to prohibiting all uses in relation to the whole or part of the premises in question (other than uses specifically approved by the Council), Prohibition Orders can prohibit specific uses (section 22 (4)(b) Housing Act 2004). This option may be employed to prevent occupation by particular descriptions of persons. Use of this power may be appropriate in situations such as the following:

- Premises with steep staircases or uneven floors which make them particularly hazardous to elderly occupants;
- Premises with open staircase risers or widely spaced balustrades that make them particularly unsuitable for infants;

Suspended Prohibition Order

The Council has the power to suspend a Prohibition Order once served and will consider this course of action where it is reasonable to do so if the facts of a particular case appear to justify it.

Suspended Prohibition Orders will be reviewed after a maximum of 12 months and then at intervals of not more than 12 months, but suspension will not normally exceed 6 months.

The Council will consider any written requests made for alternative uses of premises or part-premises which are subject to a Prohibition Order, and will not withhold its consent unreasonably. Any such consent will be confirmed in writing.

Hazard Awareness Notice

Hazard Awareness Notice is a notice advising the person on whom it is served of the existence of a category 1 or 2 hazard on their residential premises. The use of such a notice allows for a warning to be heeded and voluntary action taken or representations to be made, before alternative stricter enforcement action may be used.

It might be applicable to use a Hazard Awareness Notice:

- To notify owner-occupiers of the existence of hazards (for example where the risk from the hazard is mitigated by the longstanding nature of the occupancy);
- It is judged appropriate to draw a landlord's attention to the desirability of remedial action;
- To notify a landlord about a hazard as part of a measured enforcement response;

Emergency Remedial Action & Emergency Prohibition Order

The situations in which Emergency Remedial Action and Emergency Prohibition Orders may be used are specified by sections 40 to 45 of the Housing Act 2004. Specifically, the Council must be satisfied that:

- A Category 1 hazard exists on the residential premises, and;
- The hazard involves an imminent risk of serious harm to any occupier; and;
- That no management order is in force in respect of the premises;

If these conditions are met the Council will take appropriate emergency action to remove or reduce any imminent risk of serious harm and will seek to recover its expenses incurred in having to do so.

Situations in which emergency action may be appropriate include:

- Residential accommodation located above commercial premises and lacking a safe means of escape in the event of fire because there is no independent access;
- Risk of electrocution, fire, gassing, explosion or building collapse;

Demolition Orders

The provisions within Section 265 of the Housing Act 1985 have been amended to align that legislation with the new method of hazard assessment and the enforcement provisions in Part 1 of the Housing Act 2004.

Where a category 1 hazard exists on any residential premises, the making of a demolition order, when considered to be the most appropriate enforcement action to take, is an option available to the Council. Where a category 2 hazard exists on any residential premises, only under prescribed circumstances will a demolition order be considered. In either event, in determining whether to issue a Demolition Order the Council will take account of Government guidance and will consider all the circumstances of the case.

Clearance Areas

The Council can declare an area to be a Clearance Area if it is satisfied that each of the premises in the area is affected by one or more Category 1 hazards (or that they are dangerous or harmful to the health & safety of inhabitants as a result of bad arrangement or narrowness of streets). In determining whether to declare a Clearance Area the Council will act only in accordance with section 289 of the Housing Act 1985 (as amended) and having had regard to relevant Government guidance on Clearance Areas and all the circumstances of the case.

Discretionary Powers

Alongside the abovementioned main enforcement powers, the Housing Act 2004 introduced a range of discretionary measures relating to both individual residential premises and geographically defined areas within the local authority.

These are listed below with a brief explanation of their relevance. We will only introduce such powers when the evidence to do so is compelling.

Designation of Additional Licensing Areas

In addition to the mandatory licensing for specified types of HMOs, local housing authorities are permitted to extend these licensing requirements to also include other types of HMOs as well, either within a specific part of its area or across all of its area. Certain criteria will need to be met prior to introducing additional licensing, which includes an overall determination to be assessed on the level and adequacy of the management of the specified HMOs, the level and extent of anti-social behaviour being caused and whether other courses of action, other than licensing, may be used to deal with the identified problem such as a voluntary accreditation scheme. Prior to the introduction of any additional licensing areas, the local authority are required to consult with those who are likely to be affected by any such scheme.

Designation of Areas subject to Selective Licensing

This allows for all privately rented properties within either part or the entire local authority area to be subject to licensing criteria. Selective licensing is designed to be able to focus on more localised problems, such as low housing demand and to run in parallel and to compliment HMO licensing. As for Additional Licensing Areas, the local authority is required to consult with those who are likely to be affected by any such scheme prior to its introduction, and specific housing problems need to be evident, such as low housing demand or anti-social behaviour. The Council will keep the need for selective licensing under review.

Interim and Final Management Orders (IMO and FMO)

These provisions are designed to be used to safeguard the health, safety or welfare of any occupier or other persons living or owning property in the vicinity of a poorly managed rental property. Management Orders allow local housing authorities to intervene in particular circumstances and step into the shoes of a failing landlord and provide mechanisms to ensure necessary improvements in the physical conditions, the management of the rented accommodation and the behaviour of the occupiers are in place. IMOs are temporary measures designed to last for 12 months, whereas FMOs can last for up to 5 years.

In certain circumstances, such as in the case of a licensable HMO which is not and is not likely to become licensed in the near future the provision to make a management order is mandatory. In other circumstances relating to non-licensable HMOs and other rented properties, management orders are discretionary and need to be ratified by a Residential Property Tribunal (RPT).

Empty Dwelling Management Orders (EDMO)

These are orders that allow local housing authorities where certain conditions are met to step into the shoes of the owner of an unoccupied privately owned house or flat to secure its occupation and to provide proper management of the property on a day to day basis. Initially the local housing authority will need to apply to the Residential Property Tribunal for authorisation to make an Interim EDMO. Interim EDMOs can last for up to 12 months and can be replaced with a Final EDMO, which may then last for an additional 7 seven

years (or longer if a subsequent EDMO has been applied for) and allows the authority to create new assured short-hold tenancies, collect rent, and carry out any repairs and to maintain the property throughout this period.

Overcrowding Notices

These provisions are designed to prevent overcrowding in non-licensable HMOs. The local authority may serve an overcrowding notice on the relevant person(s) if, having regard to the rooms available, it considers that too many persons are being, or are likely to be accommodated in the HMO concerned. The notice will state the maximum number of persons that will be allowed to occupy a room as sleeping accommodation, and will specify which rooms will not be allowed to be used for sleeping accommodation.

Additionally, under the Housing Health and Safety Rating System, residential premises can be assessed against the hazard of Crowding and Space. In the event of a single dwelling being significantly over occupied, an Order may be served specifying the maximum number of persons who may be allowed to occupy it.

Works in Default

Works in Default will be considered when all other methods to try to remedy any identified deficiencies have proved unsuccessful.

Where an Improvement Notice under the Housing Act 2004 is served, the council will require sufficient works to be carried out to abate the hazard for five years. The law prescribes that only the minimum works to abate the hazard should be carried out in default. The Council will require works of a reasonable duration to prevent a recurrence of the hazard and the Council considers five years to be a reasonable duration.

In determining if work in default is appropriate, we will consider:

- The effects of not carrying out the work on the health and safety of the occupant of the property concerned;
- The wishes of the tenant where the Notice has been served in respect of a rented property;
- The reason for the work not being carried out in the first place;
- Any other factors that are specific to individual properties;
- The Council will normally seek to recover all of the costs associated with undertaking of work in default (including time spent by its officers, administrative costs, contractors costs, the cost of any specialist reports, supervisory costs etc.)
- In the case of Officer time, the Council will calculate costs as follows:
 - ⊕ The actual time spent by Council Officers on the chargeable activities and recorded using file notes and database;
 - ⊕ Time spent will be converted into a monetary figure using the appropriate hourly rate set for the Officer(s) concerned;

The expenses are to be recovered from the person(s) on whom the Notice or Order is/are served ("the relevant person"). Where the relevant person receives the rent on behalf of another, the expenses are also to be recovered from that other person.

Where applicable, expenses will carry interest, applied on a daily basis from the date the demand becomes operative until all sums due under the demand are recovered. The Law Societies interest rate will be used for the purpose of calculating any due interest.

The recoverable expenses, together with interest accrued on them are a charge on the premises and will be recorded in the Local Land Charges Register.

In addition, as a means of recovering the costs, the Council may also serve Recovery Notices to recover, receive and give a discharge for any rent or sums in the nature of rent.

See Appendix C for further information regarding charging for enforcement activity.

Power of Entry

The Council has the power of entry to properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004 provided that:

- The Officer has written authority from an appropriate officer stating the particular purpose for which entry is authorised;
- The Officer has given 24 hours notice to the owner (if known) and the occupier (if any) of the premises they intend to enter;

No notice is required where entry is to ascertain whether an offence has been committed under sections 72 (offences in relation to licensing of HMOs), 95 (offences in relation to licensing of houses) or 234(3) (offences in relation to HMO management regulations).

If admission is refused, premises are unoccupied or prior warning of entry is likely to defeat the purpose of the entry then a warrant may be granted by a Justice of the Peace on written application. A warrant under this section includes power to enter by force, if necessary.

Power to Require Information

The Council also has power under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with:

- Any purpose connected with the exercise of its functions under Parts 1-4 of the Housing Act 2004;
- Investigating whether any offence has been committed under Parts 1-4 of the Housing Act 2004;

The Council also has powers under Section 237 of the Housing Act 2004 to use information obtained by the authority for Housing Benefit and Council Tax purposes to carry out its functions in relation to Parts 1-4 of the Act.

Power to Charge for Enforcement Action

The Local Authority has the power under Section 49 of the Housing Act 2004 to make a reasonable charge as a means of recovering certain administrative and other expenses incurred in serving an Improvement Notice, Hazard Awareness Notice, making a Prohibition, Emergency Prohibition or Demolition Order or taking Emergency Remedial Action.

Where a charge is made, the Council can recover a reasonable amount for expenses incurred in connection with time spent gaining entry, visiting and inspecting the premises to determine appropriate action and the administration costs for the production of a Notice, Order or Remedial Action.

Costs incurred carrying out Work in Default or Remedial Action will be charged separately.

When the charge demand becomes operative, the sum recoverable will be a local land charge. As a charge on the property, the costs give the Authority the same powers and remedies as a Mortgagee under the Law of Property Act 1925 (Enforced Sale).

See Appendix C for further information regarding charging for enforcement activity.

Revocation and Variation of Notices

Once an improvement notice has either been fully or partially complied with, the local housing authority will decide whether to revoke or vary the original improvement notice and will serve either a notice of revocation or variation to reflect the circumstances. Similarly, if the local housing authority decides not to revoke or vary an improvement notice then a notice of refusal to revoke or vary must be served. Either of these notices can be appealed against to the Residential Property Tribunal.

Housing Health & Safety Rating System – Hazard profile descriptions

	Hazard	Description
1	Damp and Mould Growth	Exposure to house dust mites, mould or fungal growths resulting from dampness or high humidity
2	Excess Cold	A temperature, which is less than 18 degrees centigrade
3	Excess Heat	A temperature, which is more than 25 degrees centigrade
4	Asbestos and MMF	Exposure to asbestos fibres or manufactured mineral fibres
5	Biocides	Exposure to chemicals used to treat timber and mould growth
6	Carbon Monoxide and Fuel Combustion Products	Exposure to carbon monoxide, nitrogen dioxide, sulphur dioxide and smoke
7	Lead	The ingestion of lead
8	Radiation	Exposure to radon gas
9	Uncombusted Fuel Gas	Exposure to uncombusted fuel gas
10	Volatile Organic Compounds	Exposure to volatile organic compounds that are gaseous at room temperature
11	Crowding and Space	A lack of adequate space for living and sleeping
12	Entry by Intruders	Difficulties in keeping the dwelling or HMO secure against unauthorised entry
13	Lighting	A lack of adequate lighting
14	Noise	Exposure to noise
15	Domestic Hygiene, Pests and Refuge	a) Poor design, layout or construction such that the dwelling or HMO cannot readily be kept clean b) Exposure to pests c) An adequate provision for the hygienic storage and disposal of household waste
16	Food Safety	An inadequate provision of facilities for the storage, preparation and cooking of food
17	Personal Hygiene, Sanitation and Drainage	a) Facilities for maintaining good personal hygiene; b) Sanitation and drainage
18	Water Supply	An inadequate supply of water for drinking and other domestic purposes

19	Falls Associated with Baths	Falls associated with baths, showers or other washing facilities
20	Falls on Level Surfaces etc	Falls on any level surface or falls between surfaces where the change in level is not more than 300 millimetres
21	Falls Associated with Stairs etc	Falls on stairs, steps or ramps where the change in level is more than 300 millimetres
22	Falls between Levels	Falls between levels where the difference in levels is more than 300 millimetres
23	Electrical Hazards	Exposure to electricity
24	Fire	Exposure to uncontrolled fire
25	Flames, Hot Surfaces etc	Contact with: a) Controlled fire or flames; b) Hot objects, liquid or vapours
26	Collision and Entrapment	Collision with or entrapment of body parts in doors, windows or other architectural features
27	Explosions	An explosion at, or near, the dwelling or HMO
28	Position of amenities etc	The position and location of amenities, fittings and equipment
29	Structural Collapse and Falling Elements	The collapse of the whole or part of the dwelling or HMO

Statement of Principles used in determining the amount of a penalty charge.

The Council has a statutory duty to keep housing conditions in its area under review, which may result in the need to address sub-standard housing conditions, utilising a wide range of powers and service of statutory notices under housing, building and public health related legislation.

Whilst Council officers will look to secure compliance chiefly through negotiation and co-operation, it will however occasionally be necessary to undertake formal enforcement proceedings. Where formal enforcement is considered necessary, the Council will act fairly, lawfully and without discrimination, in-line with legislation, the Council's Enforcement Policy and this protocol.

Various legislative acts allow the Council to make a reasonable charge as a means of recovering expenses that have been directly incurred when undertaking enforcement activity. Certain legislation also allows for the expenses to then be recoverable through a charge on the property, and until these expenses are repaid, the Council may also levy interest on any outstanding sum.

Where a demand for payment becomes operative and interest becomes payable, interest will be applied on a daily basis from the date the demand becomes operative until all sums due under the demand are recovered. The Law Societies interest rate will be used for the purpose of calculating any due interest.

Interest payments where applicable will be applied to prevent those persons responsible for carrying out repairs to their property from benefiting from what would otherwise be an interest free loan from the Council, and profiteering from their poor management of the property.

Where legislation allows, the Council will seek full recovery of its administrative costs incurred in the service of any formal enforcement notice and also for any expenses properly incurred in carrying out any remedial works, when required in default of the person responsible.

The aim of levying a charge is to hopefully avoid the need to serve a notice in the first place. The levying of charges and interest is not simply a matter of recovering costs incurred by the Council, but will importantly also discourage bad management practice.

Any charge will be assessed by time recording the various activities involved, as appropriate to the Act's provisions. The relevant officer salaries will be used with an apportionment for on costs.

When determining the costs to be levied having taken enforcement action, the council will have consideration of some or all of the following and will not be limited to time spent:

- Travel and time involved in inspecting the premises;
- Collation of documentation and information;
- Analysis of the issues and decision to serve a notice;
- Obtaining specialist advice and reports;

- Drafting a notice and requisite schedules;
- Administration costs in serving the notice and securing payment;
- Preparation of schedules of work and organising contractor quotations;
- Inspecting completion of works carried out in default;

Generally, charges will be levied where the responsible person for taking action fails to co-operate with the Council, resulting in the service of a statutory enforcement notice. Additionally, charges will generally be levied where there is a continued lack of co-operation and results in the need to review a notice.

Under certain circumstances it may be necessary to serve a statutory notice on an owner occupier. This notice would normally be Hazard Awareness Notice that would not incur a charge, but occasionally it may be necessary to serve another type of statutory notice for which a charge will be levied. In these cases, consideration of their financial position will be considered when deciding whether to charge.

Officers will not charge for their time in circumstances that were not in the owner or landlord's control, such as when a tenant or builder does not turn up or make themselves available.

In all cases the action to be taken must be appropriate to the nature of the problem. It would be contrary to the principles of enforcement to use specific powers solely because a fee can be charged. Other powers may be appropriate, and all options should be considered on their merits.

The most appropriate notice will be used in all cases. In some situations it may be necessary to serve more than one notice on a property; however, there will be good reason for this, either because of statutory requirements or due to the specific circumstances of the case.

There will be discretion to waive a charge when it is not reasonable to expect a person to pay for the enforcement action taken i.e. where the reason for the charge was outside of the control of the person charged or persons acting on their behalf. There may also be circumstances where it is considered inappropriate to charge or appropriate to delay, waive or demand a lesser charge in certain situations. The discretion to waive, delay, reduce or cancel a demand for payment will sit with the Team Leader for Housing Standards and/or Private Sector Housing Manager.