

Private Sector Housing Enforcement Policy 2012-2016

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Appendices

Appendix 1 - Options for Enforcement

1. The Council’s Objectives.

1.1 The Council’s objectives through its private housing enforcement policy are to improve the quality, choice and standards in housing, improving the quality of the street scene and improving residents’ satisfaction with their neighbourhood as a place to live.

It goes further in that the aim is to reduce the risks to health and safety of persons living in and visitors to their homes.

1.2 The Council will use all available legislation to ensure that the private housing stock within the city of Hull is safe, well managed, maintained in good repair, promotes good health and wellbeing, is not overcrowded and does not pose a statutory nuisance. This supports the priorities in the over arching Housing and Neighbourhood Renewal Strategy for Hull 2011-16 and the Private Sector Strategy. Particularly, the following key themes can be progressed through effective and appropriate private sector housing enforcement activity;

- **Theme 1 – Need** Increase the housing options available to meet housing need.
- **Theme 2 – Access** Improve access to housing for all.
- **Theme 3 – Housing Quality** Improve the quality of housing.
- **Theme 4 – Neighbourhood Quality** Improve neighbourhood quality throughout the city.
- **Theme 5 Neighbourhood Renewal and Growth** – To provide a greater range of quality housing, concentrating on the priority areas, making them great places to live whilst supporting economic growth.

2. Scope.

2.1 This policy covers the way in which the Council will deal with statutory nuisance from property, hazards and amenity standards in the home which affect the health, safety, comfort and convenience of occupiers, visitors and the public. In developing this policy the Council has had regard to the Regulators’ Compliance Code, which requires a risk-based approach and proportionality to regulatory enforcement.

2.2 The following issues are of particular importance as they present a significant threat to the health and safety of residents:-

- a) Cold and damp homes
- b) Security
- c) Fire safety
- d) Gas safety
- e) Electrical safety
- f) Structural safety
- g) Personal washing facilities and sanitary accommodation
- h) Cooking facilities
- i) Overcrowding
- j) Falls
- k) Flames and hot surfaces
- l) Glazing and door and window defects
- m) Poor domestic hygiene

This list is not in any particular order of priority

2.3 The Council supports responsible landlords who are prepared to commit themselves to managing and maintaining their properties in accordance with modern acceptable standards. It does this through supporting a range of schemes including the Hull Accredited Landlord Scheme (HALS), 'The Scheme' (for student accommodation) and the Landlord Self Regulation Scheme.

3. Purpose

- 3.1 The purpose of this policy is to set out the way in which the Council will respond to service requests in relation to enforcing housing standards and the actions that it will take to secure housing improvements. Appendix 1 of this policy details the range of proactive and statutory actions to improve housing standards that are available.
- 3.2 The extent of enforcement will be related to the risk posed by the condition or situation and the likely benefits achieved by compliance.

3.3 The Council will take a consistent approach in similar circumstances. Enforcement action will be taken in a consistent manner across tenure and different property types throughout the city.

3.4 Whilst dealing with statutory obligations across the city, the Council will target enforcement activity towards houses in multiple occupation and areas at risk of decline or neglect by owners.

3.5 The Council will help all members of the community to understand their rights and obligations.

3.6 The Council will initially act informally in most cases. Exceptions to this are where previous involvement with the person responsible has not resulted in work being carried out as agreed or within an agreed timescale, where informal action previously has usually resulted in formal action or when there is an imminent risk to the health or safety of any person affected by the housing conditions.

3.7 The Council hosts the landlords' forum, which is open to all landlords owning or managing properties in the city. The forum provides information on current housing related issues and an opportunity to raise and discuss topics of interest and concern.

3.8 Appendix 1 sets out in more detail the range of powers and actions available to the Council where enforcement becomes necessary. It also details the factors that will be considered when determining the most appropriate form of action.

4. Accreditation and Self Regulation for landlords in the private rented sector

4.1 Whilst this policy is fundamentally about enforcement, this is normally a last resort and the Council is committed to working in partnership with responsible landlords who engage with the Council. The Council will offer information, advice and training to support landlords to provide safe, well managed accommodation.

4.2 One of the benefits for accredited landlords under HALS is that the Private Housing (Environmental Health) team will not, on receipt of a service request, immediately carry out a full inspection of the dwelling.

The team will refer the request directly to the accredited landlord so that they can respond in the first instance (unless the tenant requests that the Council visits). Only if the tenant is not satisfied with the landlord's response will the Council then visit the dwelling. In the first instance the Private Housing (Environmental Health) team will always respond informally to accredited landlords unless there is an imminent risk of serious harm to the health and safety of any person affected by the defect.

- 4.3 The policy at 4.2 will also apply to service requests received in relation to properties owned by landlords who are members of an approved landlords association, who have undergone defect and hazard identification training facilitated by the Council and who have completed and signed an application form to join the Landlord Self Regulation Scheme.

5. Purpose of inspections

- 5.1 The underlying purpose of inspection is to ensure that occupants and others affected by the property or its use are not at risk from hazards to their health and safety and to determine whether the accommodation meets the decent homes standard (DHS). Information collected in relation to the DHS is for statistical and comparative purposes and not for enforcement.
- 5.2 Inspections are to determine whether a statutory nuisance exists, whether any hazards exist as defined by the Housing Health and Safety Rating System (HHSRS), whether properties should be subject to licensing (or if licensing conditions are being breached) and in general to ensure properties comply with housing legislation.

6. Prosecution and formal caution

- 6.1 Prosecution is an enforcement power that will only be used in respect of serious breaches of law, or where the consequences could be very serious, or where the person or organisation obstructs or frustrates the Council in its lawful duties. Appendix 1 sets out in detail the factors that will be considered in determining the most appropriate form of action.

6.2 The circumstances where a prosecution is likely to be taken include

- a) Failure to licence a property when the person required to apply for a licence is aware, or should have been aware of the requirements to licence.
 - b) Where there is wilful failure to comply with statutory notices or orders.
 - c) Where financial benefit is gained by those breaking the law.
 - d) Where there is a serious disregard for the health and safety of persons affected.
 - e) Where there are repeated breaches of legal requirements in a particular premise or in a number of premises owned or managed by the same person or organisation.
 - f) There has been a serious incident resulting from a legal contravention.
 - g) Where there is a risk of serious harm to the public resulting from a legal contravention.
 - h) Where it is in the public interest to test the interpretation of a particular piece of legislation.
 - i) Where officers have been intentionally obstructed in the lawful course of their duties.
 - j) Where officers are assaulted the Council will seek prosecution of offenders.
 - k) Where false information has been supplied, or where there has been an intention to deceive.
 - l) Exceptionally where, having considered all the circumstances, it is considered reasonable to do so because there are other particular circumstances not covered by any of the above.
- 6.3 Any decision taken to prosecute will have regard to the guidance contained in the Code for Crown Prosecutors.

6.4 The factors affecting when a prosecution will be carried out are:-

- a) The seriousness of the alleged offence.
- b) The history of the business or individual.
- c) The willingness of the business or individual to prevent a recurrence of the problem and co-operate with officers.
- d) Whether it is in the public interest to prosecute.
- e) The likelihood of the prosecution succeeding.
- f) Whether any other action (including a formal caution) would be more appropriate or effective.

These factors are not listed in any order of priority or significance and their rating will vary with each situation under consideration. However, in all cases the Council will consider whether it is in the public interest to prosecute and the likelihood of securing a conviction if a prosecution was to take place.

6.5 The final decision to prosecute rests with the Council's senior legal officer following a recommendation by the Assistant Head of Service (Housing and Wellbeing) who will consider the policies and procedures before giving his/her authorisation to proceed with formal action.

6.6 Formal cautions will be used when the conditions for prosecution are fulfilled but a prosecution is not in the public interest, and the person admits the offence and is prepared to accept a formal caution. A typical example may be where there was an inadvertent breach, perhaps with serious consequences, but where adverse publicity would spoil an otherwise good track record by the person or company.

7. Works in Default

7.1 When there is a failure to fully comply with the requirements of a statutory notice that requires works to be carried out then the Council will normally arrange for those works to be completed in the owner's default. The costs in carrying out the works will be recovered from the owner.

8. Charging for notices

- 8.1 A financial charge will be made for the service of all Housing Act notices and the making of Prohibition Orders other than hazard awareness notices and the renewal of suspended notices. Charges are based on the full cost to the Council of taking the action including inspection, preparation and service of the notices. Any action to recover costs and expenses will be in accordance with the requirements of the relevant Acts.
- 8.2 Charges for licensing will also be made and the fee scales are available from the Private Housing Environmental Health offices at 9th Floor, Kingston House, Bond Street, Hull HU1 3EN. Information can be accessed through the council's website at www.hullcc.gov.uk or by email to housing.standards@hullcc.gov.uk. Where the ownership, licence holder or management details change, a new application or variation must be made for which there will be a charge. These charges will reflect the time to process the application, make enquiries and enter details on computer systems. Charges will be reviewed periodically.

9. Review

- 9.1 This policy will be reviewed annually or when there are any significant changes in national legislation, local or national circumstances that would necessitate a review.
- 9.2 Any changes will be discussed with service users, other Council services and partner organisations.

10. Links to other policies, strategies and Council Documents

- a) Housing and Neighbourhood Renewal Strategy 2011-16.
- b) Private Housing Strategy.
- c) Empty Property Policy.
- d) Private Housing Renewal Policy.

Appendix 1 - Options for Enforcement

1. Powers and Action

- 1.1 Authorised officers can inspect and survey the entire premises, take samples and use equipment to take measurements and photographs where appropriate.
- 1.2 There are a number of actions officers may take and these will depend on the circumstances of the case:
- **Take no action** – Where premises are found to be satisfactory. Where appropriate this will be confirmed in writing.
 - **Take informal action** - Informal action will normally be the first course of action following the inspection unless one or more of the factors referred to in the below paragraph apply.
 - **Take formal enforcement action** – This action will normally be taken where there is an imminent risk of serious harm, the conditions are injurious to health (where statutory nuisance is involved), when the informal approach has failed or when the property is required to be licensed but is not and the landlord has not responded to a request to licence the property or has other licensed properties. It may also be taken when an informal approach to an owner has previously regularly failed to result in a successful response. Where an officer identifies an imminent risk of serious harm the officer will make every effort to contact the owner in order to give them the opportunity to remedy the situation.
- 1.3 There are a number of options. Factors which may affect the choice of enforcement action include:
- The statutory obligations of the Council.
 - The seriousness of the offence or the degree of risk to health and safety.
 - The record of the responsible person in relation to managing property or in the case of licensing whether the person is regarded as fit and proper.
 - Public interest and concern.
 - The views of occupiers and owners.
 - Whether the landlord is accredited with HALS or 'The Scheme' or is a landlord signed up to the Landlord Self Regulation Scheme.

- The likely effectiveness of various enforcement options.
- The views of other agencies such as the Fire Authority, the Police and Social Services.
- The frequency of any breach.
- Whether the property is subject to licensing.
- The consequences of non compliance.

2. Informal Action

- 2.1 This may include:
- Offering advice.
 - Making recommendations verbally or by letter.
 - Making written requests for action. These will include a letter, schedule and pro-forma requesting timescales for the start and completion of any works.
 - Discussing options with owners.
 - Removing accreditation or self regulation status.
- 2.2 The situations where informal action may be appropriate include:-
- Where previous informal action has resulted in compliance.
 - Where landlords are accredited or signed up to the landlord Self Regulation Scheme.
 - Where the hazard is not serious and non compliance will not pose a significant risk to occupiers, visitors or the public or the violation is of a minor technical nature.
 - Where informal action is likely to be more effective than formal action.
- 2.3 In any written communication it will be made explicit which actions or works may be required by law and which are recommendations of good practice. The legislation contravened or applicable to the issue will be referred to in the communication and will make it clear what action is required and why it is necessary. Details of hazard assessments will be sent on request.
- 2.4 The legislation contravened or applicable to the issue will be referred to in the communication and will make it clear what action is required and why it is necessary. Details of hazard assessments will be sent on request. Where informal action is not successful formal action will be taken.

3. Formal action

3.1 The factors influencing the decision to take formal action include the following but not exclusively. The Council will take into account any other issues that it considers are relevant in determining whether to take formal action.

- Any history of non compliance by the owner.
- Where conditions are prejudicial to health.
- Where there is an imminent risk of serious harm.
- Where a licence condition has been breached.
- Where informal action has not been successful.
- The views of other agencies such as the Fire Authority.
- The occupier and/or owners opinion.

3.2 In the case of hazards determined under the Housing Health and Safety Rating System (HHSRS)

The Council have a statutory duty to act in the case of Category 1 hazards and a power to act in the case of Category 2 hazards.

The following options are available under the Housing Act 2004:-

- **Serve a Hazard Awareness Notice (HAN) under section 28/29.**
This type of notice may be used for minor low scoring hazards. It may also be used to notify owners about more serious hazards.
- **Serve an Improvement Notice under section 11 or 12.**
This action will be the normal action taken in most cases where repair or improvement is the most appropriate course of action and there are category 1 hazards and significant category 2 hazards. Careful consideration will be taken of the occupier's views and an owners previous history in maintaining properties. Where action in relation to the fire hazard involves an HMO or the common parts of flats the council will consult with the Fire Authority.
- **Serve a Suspended Improvement Notice under section 14**
Before suspending an improvement notice careful consideration will be given to all the circumstances including the occupiers views. Improvement notices will not normally be suspended unless the occupiers do not want the upheaval of certain works or there are other special circumstances.

- **Make a Prohibition Order under sections 20 and 21.**

This action will be taken to prohibit the occupation of all or part of a building. This action will be taken when the cost of remedying the defect is excessive or it is not reasonably practicable without compromising the use of other parts of the building to carry out works. Prohibition orders will be used where the continued use of the building or part of the building would be likely to result in an injury or illness in the following 12 months or where such injury or illness is likely to be serious. This course of action may be taken were there is serious overcrowding.

- **Make a Suspended Prohibition Order under section 23**

Where a person who is not particularly vulnerable to a hazard is in occupation the order may be suspended until such time as a vulnerable person occupies the property. However in most cases notices will not be suspended as the turn over of rented properties means that in many cases there could be a change in tenancy within 12 months. Where the order is in relation to overcrowding the notice may be suspended until the current occupation changes.
(See notes on overcrowding)

- **Take Emergency Remedial Action under section 40**

This action will only be taken where there is an imminent risk of serious harm. The Council will arrange for the hazard to be mitigated at the earliest opportunity. The officer will attempt to contact the owner first before taking such action but if they are unable to act immediately or cannot be contacted, action will be taken.

- **Make an Emergency Prohibition Order under section 43**

Where there is an imminent risk of serious harm and it is not practicable or too costly to carry out urgent works this action may be taken which will have the effect of preventing the use of part or all of the premises. This is a serious step and careful consideration will be given to it because it requires immediate vacation of the property by the occupiers.

- **Making a Demolition Order under section 265(Housing Act 1985 as amended by section 46 Housing Act 2004)**

This action will be taken when it is considered to be the most appropriate course of action, usually when there are one or more serious category 1 hazards, the property is usually detached or there is a building line separating it from other properties, the adjacent properties will be stable and weatherproof or can readily be made so, it is in a potentially unsustainable area or it is causing severe problems to the amenity of the neighbourhood and repair would be very costly, it is not listed or of other historical interest.

- **Declaring a Clearance Area under section 289 (Housing Act 1985 as amended by section 47 Housing Act 2004)**

This action will be considered where similar circumstances to those for determining if a demolition order exist but where it is necessary for the Council to acquire the land either for its own purposes or to sell on for either new build or other purposes favoured by the majority of persons affected. Area committee views will be relevant to any decision to declare a clearance area. This action will be followed by seeking a compulsory purchase order or voluntary acquisition.

In determining which of the above courses of action to take the council may consider:-

- the current occupiers, if any, and their views as to what should happen
- likely regular visitors.
- the turn over of tenancies.
- the risk of excluding vulnerable groups of people from the private rented sector.
- the size type and location of the property.
- the sustainability of an area – if it has been identified for potential demolition within an Area Action Plan.
- The views of the owner(s).
- In the case of demolition or clearance the views of local residents, businesses and Councillors will also be considered.
- Suspended notices will be reviewed at least annually.
- The Council will consider requests to vary or revoke an improvement notice or a prohibition order and in doing so will take into account the following factors but not exclusively.

- the views of the recipients of the notice or order.
- the views of the Fire Authority, where appropriate.
- the risk presented by the hazard and the potential effect of any variation.
- the level of confidence in the recipient to respond and their past history of compliance or otherwise.
- the progress made with any other work specified in the Notice or Order.
- the costs of any works in relation to the benefit to be derived from them.
- any additional unforeseen works which become apparent during the course of remedial works.
- If the Council consider that there are special circumstances in relation to a Prohibition Order or an Improvement Notice it may revoke the order or notice.

3.3 If a property has been identified for potential demolition as part of an Area Action Plan. The following considerations will be made:

- That works required to reduce a hazard may be of a less extensive or temporary nature. The quality of work should not in itself present additional hazards or be likely to cause a failure which could cause harm to health. The visual quality of the work will be less important than the functional nature of the works.
- Occupiers should not be left with significant hazards which are likely to result in harm if they stay in the property for the likely remainder of the property's life.
- The length of time before the anticipated date of acquisition for demolition will be considered.
- The cost of works should not be excessive in relation to the length of time before the likely date of acquisition. Officers will discuss the alternative options such as leaving the property empty or carrying out temporary repairs before requiring work to be undertaken. An alternative when the cost will be excessive is to make a prohibition order.
- It is expected that significant hazards will continue to be addressed throughout a properties life but consideration will be had to the likelihood of harm occurring during the remainder of the properties life and the vulnerability of the occupiers.
- Consideration will be given to pursuing voluntary acquisition or if the property is empty this will be pursued where the anticipated date of acquisition is within 12 months.

4. Other actions under the Housing Act 2004

4.1 Making Management Orders

4.1.1 There are a number of types of management orders which fall under the Housing Act 2004. Their use is prescribed in the Act.

The result of a Management Order (MO) is that the Council will take over the management of the property either directly itself or through an agent such as a registered social landlord or an accredited landlord or agent. Decisions regarding the making of a Management Order will be by officer authorisation at the level of the Private Housing Manager in consultation with the Area Team Director. Where there is discretion to use a Management Order their use will be as a last resort when other options are unlikely to be effective.

4.1.2 Where a property is subject to licensing but there are no reasonable prospects of it being licensed in the near future or a management order is necessary to protect the health, safety and welfare of persons affected by the condition the Council must make a Management Order. A threat to evict persons occupying a house to avoid licensing may be regarded as a threat to the welfare of those persons. There are other prescribed circumstances which require the Council to make a MO.

4.1.3 The Council may apply to a residential property tribunal for a MO for an HMO not subject to licensing where it is considered necessary to protect the health, safety and welfare of persons affected by the condition.

4.1.4 The Council may apply to a residential property tribunal for a Special Management Order where an area is affected by anti social behaviour that is partly or wholly the result of actions by the occupiers or visitors to the property and the landlord has failed to take action that it would be appropriate for him to take to reduce the problem.

4.1.5 In a similar way the Council may apply to a residential property tribunal for an Empty Dwelling Management Order in respect of a vacant property.

4.2 Enforcement of overcrowding provisions

4.2.1 In dealing with overcrowding the Council may use the provisions of Part 1 of the Act in relation to the hazard of crowding and space. In the case of HMOs there is an option to use either the HHSRS provisions or licence conditions or in the case of HMOs which are not required to be licensed overcrowding notices as described in sections 139 and 140 of the Housing Act 2004. Actions in relation to overcrowding will reflect the levels of overcrowding across all tenures in the City and the availability of suitable alternative accommodation. Actions will try to avoid the need for residents to be accommodated in bed and breakfast accommodation but where there is serious overcrowding action will be taken to protect the health and safety of residents.

4.3 Management Regulations

4.3.1 These regulations impose duties on managers in relation to HMOs. There is no notice procedure to enforce these regulations and it is an offence to contravene these regulations. In most circumstances the Council will, following an inspection, send an informal schedule to the manager detailing any contraventions with a timescale for completion. If the contraventions are not dealt with effectively the Council will consider prosecution. Action under the management regulations will normally only be considered if the deficiencies are not capable of being rectified using HHSRS.

4.4 Licensing

4.4.1 Issuing, refusing, revoking or varying a licence for an HMO or for any dwelling subject to selective licensing.

4.4.2 Decisions in relation to licensing applications will be based on the information supplied with the application, the known past record of the proposed licence holder and manager, and any further information gathered from enquiries made to check the validity of the information submitted with the application.

4.4.3 In most cases licences will be granted with standard conditions together with a list of any works required to ensure the property

meets them minimum standards adopted by the Council. Where the Council have concerns about the ability of a licence holder or manager to discharge their duties under licensing further enquiries may be made, such as Criminal Record Bureau checks. Licences will normally be issued for a 5 year period. Where the Council have concerns about the ability of a manager or licence holder to effectively manage the property they may issue a licence for a shorter period and then renew if the property remains well managed. Licences may be revoked if the licence scheme is terminated or the licence holder informs the Council that the property is no longer licensable. In some cases licences will be refused if the Council consider that the applicant is not able to effectively manage the property or if there is little prospect of the property being brought up to a reasonable standard. In such cases an Interim Management Order will be made.

4.4.4 Applicants have the right of appeal to the residential property tribunal against any refusal to grant a licence.

4.4.5 Any decision to revoke a licence will be based on all relevant matters which were taken into account in granting the licence in the first place and any changes that have occurred since the licence was granted.

4.4.6 The Private Housing Environmental Health Team enforce the statutory requirements relating to mandatory HMO licensing.

5. Environmental Protection Act 1990

5.1 Where conditions are prejudicial to health or causing a nuisance, a notice under section 80 will be served. This action will be taken where defects or conditions in one property affect another property or the general public. Where conditions are prejudicial to health of either the occupiers or others affected by the conditions of residential premises this power may be used in preference to the Housing Act 2004. This is a statutory duty. Typical situations where this legislation is likely to be used are where there is not an imminent risk of serious harm but where a 28 day delay is considered too long (such as boiler breakdowns or nuisance to neighbouring properties).

6. Other statutory provisions

6.1 There are a number of other statutes which give powers to local housing authorities for a range of different issues and these will be used where appropriate.

7. Prosecution and formal caution

7.1 Prosecution is an enforcement power that will only be used in respect of serious breaches of law, or where the consequences are very serious, or where the person or organisation obstructs or frustrates the Council in its lawful duties.

7.2 The circumstances where a prosecution is likely to be taken include:

- Failure to licence a property when the person required to apply for a licence is aware or should have been aware of the requirements to licence.
- Where there is wilful failure to comply with statutory notices or orders.
- Where financial benefit is gained by those breaking the law.
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7.4 The factors affecting when a prosecution will be carried out are:-

- The seriousness of the alleged offence.
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- Whether it is in the public interest to prosecute.
- The likelihood of the prosecution succeeding.
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