

Housing Act 2004 - Housing Enforcement Policy

1.0 Summary

1.1 All local authorities are under a duty, following the enactment of the Legislative and Regulatory Reform Act 2006, to ensure that their regulatory activities are carried out in a way that is transparent, accountable, proportionate and consistent. Regulatory activities include the authority's enforcement powers to deal with poor housing conditions. This duty is further extended by the "Regulators' Compliance Code" issued under the Legislative and Regulatory Reform Act 2006. In particular the code requires that local authorities help and encourage regulated entities to understand and meet regulatory requirements more easily and respond appropriately to regulatory breaches.

1.2 The Housing Act 2004 places a duty on authorities to take appropriate enforcement action where serious hazards are identified in residential properties and a power to take action to deal with any less serious hazards. The private sector housing enforcement policy details how the appropriate enforcement action will be undertaken when the authority has a duty to act, and how enforcement action will be used where the authority has a power to take action on less serious hazards. By developing and communicating the Private Sector Housing Enforcement Policy, the authority aims to be consistent, transparent and promote greater understanding when exercising its responsibilities under the Housing Act 2004

1.3 This policy has also been written with due regard to the Enforcement Guidance issued by the Secretary of State under the Housing Act 2004 and is directly linked to the Council's overall Enforcement Policy and clarifies the approach to enforcement for private sector housing.

1.4 Separate policies have been developed for houses in multiple occupation and empty properties.

2.0 Introduction

2.1 The Housing Act 2004 (The Act) introduces a new regulatory regime to secure improvements in the housing stock based on the Housing Health and Safety Rating System (HHSRS), also introduced under The Act. The Secretary of State has issued guidance – "Housing Health and Safety Rating System Enforcement Guidance" to local authorities on the operation of the new regulatory regime. In particular the guidance states "The decision to take enforcement action will require a judgement as to the necessity for intervention, given the authority's priorities and wider renewal policies and, where appropriate, their knowledge of a landlord and his or her compliance history." The purpose of the Medway enforcement policy for private sector housing is to detail how such judgements will be made.

2.2 Housing Health and Safety Rating System

2.2.1 The HHSRS is a method to evaluate the potential risks to the health and safety of a vulnerable occupant from a range of hazards, which could arise as a result of defects or deficiencies existing within a dwelling (29 hazards identified in total). Vulnerability is defined for each of the 29 hazards. The HHSRS is a form of risk assessment, which uses the following steps to provide a means of evaluating and representing the severity of any dangers present in a dwelling:

1. Identification of defects and or deficiencies, which are a hazard.
2. A judgement on the likelihood of an occurrence, which could cause harm.
3. A judgement on the probable severity of outcome of such an occurrence.

2.2.2 from the above 3 steps a numerical score is derived which will allow all hazards identified to be compared. Hazards with a higher score are considered to be more of a risk than those with lower scores.

2.2.3 through research undertaken for development of the HHSRS, it was determined that those hazards with a score of 1,000 are the most serious risk. Hazards scored at 1,000 or more are designated category one hazards, and trigger mandatory enforcement action by a local housing authority.

2.2.4 The HHSRS is tenure neutral and therefore applies equally to owner occupied and council stock in addition to the private rented sector. However in the case of council stock the authority cannot take action against itself where hazards requiring mandatory action are found. In this instance a report will be collated detailing the hazards found, possible remedial action and appropriate timescale to complete the remedial action and forwarded to the Head of Landlord Services.

2.3 Stock Condition

2.3.1 The 2006 Medway house condition survey established that: -

- Fifteen percent of homes in Medway contain a category one hazard. This equates to over 15,000 homes.
- In the private rented stock 53% of all homes were determined as being non-decent¹ against a Medway average of 20%.
- 43% of properties in the private rented sector contained a Category one hazard against a Medway average of 15%.

¹Decent Homes Standard – further details available in the Medway Council Housing Assistance Policy.

- The majority of homes failing the HHSRS do so due to excess cold. This was followed at a much lower incidence by falls – either on the stairs or on the level.

2.3.2 In response a revised private sector housing strategy has been adopted to tackle the poor housing conditions found in Medway. The aims of the Private Sector Housing Strategy are: -

- Improving the health of private sector residents by ensuring they have access to decent, safe and warm homes in a sustainable community.
- Improving the overall standards and management of private sector accommodation and empowering private sector tenants.
- To make the best use of our existing private housing partnerships and resources in delivering our objectives.

2.3.4 The enforcement policy will support the aims of the Private Sector Housing Strategy.

2.4 Medway Corporate Enforcement Policy

2.4.1 The Council has agreed generally to apply and follow the government's Enforcement Concordat², which established a series of principles of good enforcement practice. The principles cover standards, openness, helpfulness, and complaints against the service, proportionality and consistency.

2.4.2 The Enforcement Concordat recognises that dialogue and contact between businesses, the local community and the Council's enforcing staff is essential to ensure that applicable legislation is understood by all, cost-effective for all parties, and is fulfilling its purpose to protect the community.

2.4.3 Local authorities are encouraged to adopt the Enforcement Concordat, which provides a basis for fair, practical and consistent enforcement. It is based on the principle that anyone likely to be subject to formal enforcement action should receive clear explanations of what they need to do to comply and have an opportunity to resolve difficulties before formal action is taken.

2.4.4 Increasingly, the government is encouraging greater engagement of the Council with landlords and managing agents, to allow more co-operative working in partnership, to improve local housing conditions. Medway is currently investigating how more emphasis can be placed on proactive co-operative working with such stakeholders, rather than applying enforcement alone e.g. landlord accreditation schemes. Medway has, in conjunction with other Kent local authorities, set up a landlord accreditation scheme and has developed its own regular landlord forums.

² Available from www.berr.gov.uk/files/file10150.pdf

2.5 Consistency of Formal Action

2.5.1 Consistent enforcement action is desirable, but absolute uniformity would be unfair by failing to recognise individual circumstances, which may modify action to be taken. Consistency of approach whilst allowing a degree of discretion will be encouraged by:-

- Appropriate training and supervision of enforcement officers;
- Ensuring there is compliance with the standards set out in this policy by all Private Sector Housing Team members;
- Recognition of defences that would be available at law and exercising appropriate discretion where formal action is unwarranted;
- Recognition that the Council should not normally take formal enforcement action or prosecution in the case of minor infringements;
- Where any charges or fees are to be levied for a service, individuals and businesses will be informed of the cost or rate of charge prior to the service being provided;
- Taking into consideration guidance published by recognised bodies such as Local Authority Coordinators of Regulatory Services (LACORS) and the Health and Safety Commission.

3.0 Need for Action

3.1 There are a number of ways in which the local authority may identify the need to deal with hazards in residential accommodation including: -

- The Council's duty to review housing conditions in the Medway area.
- As a result of an official complaint under section 4 of the Act or other request for enforcement action.
- Under a fuel poverty or energy efficiency strategy
- As a result of a Neighbourhood Renewal Assessment
- Houses in Multiple Occupation licensed under part two of the Act
- A request for financial assistance by a property owner or tenant to repair or improve a property.

3.2 The Enforcement Guidance³, issued by the Secretary of State under the Housing Act 2004 advises that where the Council considers it appropriate to inspect premises to determine whether a Category 1 or 2 hazards exists, for example following a request for service, then the authority must arrange for an inspection of the premises.

3.3 The Council will consider a HHSRS inspection where a property is to be dealt with under its Fuel Poverty and Home Energy Conservation policy. Where an owner or landlord refuses assistance available under schemes

³ ODPM, Housing Health and Safety Rating System Enforcement Guidance, February 2006

developed under this policy, or a private landlord declines to co-operate with an approach from an energy supplier under a CERT⁴ scheme, the Council may treat such information from an energy supplier as an indication that an inspection may be necessary to establish whether anything needs to be done to protect the occupant(s) from excess cold. The HHSRS does not allow an authority to take action to reduce fuel poverty, only to alleviate a hazard relating to excess cold. However, the outcome of any action is likely to reduce fuel poverty.

3.4 The Council may prioritise inspections, but if it does so it must have regard to its wider housing strategies and in particular the aims of its private sector housing strategy and the individual circumstances of the case before them.

3.5 Whilst the local authority will continue to respond to residents' request for service regarding their housing conditions there is a need to develop a more proactive approach to tackle the identified high levels of non-decent housing.

3.6 The Council's response to requests for service will be within the established initial response period i.e. within 5 working days. However the nature of requests for service with some issues require a more urgent response e.g. a failure of the hot water system. A risk based response to dealing with requests for service has been developed on the following basis:

- Urgent casesone working day
- All other casesfive working days.

3.7 Having considered the many different defects that are referred to the Council the following will generally be regarded as urgent: -

- i. No hot water – particularly where young children or elderly persons reside at property
- ii. Breakdown in heating system – more likely to be an issue in cold weather
- iii. Burst pipes resulting in flooding
- iv. Gas leaks – will also be notified to Transco who from experience will cut-off gas supply potentially leaving households with no means for cooking, washing and heating.
- v. Dangerous electrics – confirmed by report from qualified person
- vi. Imminent structural collapse – e.g. collapse of internal floor.
- vii. Severe water ingress through roof
- viii. Inadequate fire precautions in property deemed to be high-risk House in Multiple Occupation (HMO).

However this list is not exclusive and a risk based approach will be taken on every referral made to determine whether or not it is urgent.

3.8 Letting property is a complex area, with many regulations to be complied with. A lack of knowledge by landlords of their responsibilities is frequently encountered by the Private Sector Housing Team. To engage and work more

⁴ Carbon Emissions Reduction Target.

effectively with landlords, partnerships will be developed with landlord organisations to help provide relevant and appropriate information to assist landlords with their responsibilities. The Council has also organised regular landlord forums to which the Private Sector Housing Team contribute and specific pages for landlords feature on the Medway Council website.

3.9 Unfortunately not all landlords are responsible, and some will fail to maintain their properties and ignore their obligations as a landlord. Although we will always endeavour to work with landlords for some taking enforcement action is the only means to ensure that their properties are improved.

3.10 A 'portfolio' system has been developed in response to this situation. This work involves drawing together the relevant information on a poor performing landlord to provide an evidence base. The landlord is then invited to a meeting to discuss his/her property portfolio, and the issues experienced in respect of the portfolio e.g. poor standards of repair. The aim of the meeting is to seek the agreement of the landlord to carry out a programme of proactive inspections and draw up schemes of work to improve dwellings. It is known that some of the worst housing conditions are to be found in the private rented sector, in properties, which are let to vulnerable households. This procedure will be used selectively with poorly performing landlords and it is envisaged that it will make a significant contribution to achieving Medway's Private Sector Housing Strategy.

4.0 Inspections of Premises

4.1 All premises will be inspected to identify any deficiencies under the HHSRS. A complete inspection of the premises will be required, as it is important for enforcement action to be supported by all the relevant evidence. The related Regulations require an accurate record to be prepared and kept of the inspection in written or electronic form. Initially, inspections will be undertaken using a written inspection form; the main purpose of such inspections will be to record deficiencies and those potential hazards associated with them.

4.2 Once the inspection is complete all identified hazards will be rated in compliance with the technical guidance issued by the Secretary of State on applying the HHSRS under The Act and recorded on the electronic based computer file. The rating will include a detailed consideration of risk, potential harm and associated statistical weightings using computer software to assist in the calculation of hazard scores.

4.3 The potential to take action to deal with identified hazards is based on a three-stage consideration: -

1. The hazard score(s) determined under HHSRS.
2. Whether the Council has a duty or power to act in the light of that score.
3. The Council's judgement as to the most appropriate means of dealing with the hazard considering the vulnerability of the current occupants (if

any) and potential occupants/visitors in relation to the specific hazard(s) identified.

4.4 All surveying staff have received appropriate training in the assessment of hazards and the application of hazard scores using the HHSRS. Regular practical benchmarking exercises will be undertaken to ensure the HHSRS is being applied fairly and consistently by all staff in the Private Sector Housing Team. Queries concerning the application of the HHSRS will arise as it is a complex process. Due regard will be had to further guidance issued by the Secretary of State, LACORS⁵ and case decisions from the Residential Property Tribunal.

5.0 Determining a Need for Enforcement

5.1 When the Council confirms the presence of a hazard(s), appropriate action will normally follow the procedure outlined in this section. As part of the decision making process in determining the need for enforcement it is required that the authority takes account of the circumstances and views of tenants, landlords and owners. Additionally, consultation will be made with social services, tenancy support, housing needs and housing management officers, where there are vulnerable occupants, for the purposes of agreeing a suitable approach to hazards.

5.2 It is the current occupancy that is the most relevant factor when considering the type of action to take in respect of any rated hazard. Whether or not the current occupier or anyone else likely to regularly visit the property is within the most vulnerable group is pertinent here. The Council can take account of the turnover of tenants as part of this aspect of a decision. In houses in multiple occupation occupancy factors will have a more significant influence in deciding an appropriate enforcement action.

5.3 Where a decision is taken that formal action is required, but where there is no imminent risk to the health and safety of the occupants, and where the property is privately rented the landlord does not have a history of non-compliance, the owner/person having control of the premises will be informed in writing that an inspection of the property has been undertaken that has revealed a number of defects at the property. A schedule of the defects will also be sent and the owner requested to confirm within fourteen days if: -

- The defects will be rectified, and
- The timescale for completion of the necessary remedial works

Such communication may include a Requisition for Information (section 16 notice) under the Local Government (Miscellaneous Provisions) Act 1976 as standard practice where ownership and other personal property details have not been otherwise satisfactorily confirmed. Additionally, notice may be served under Section 235 of the Act requiring documents to be produced to the Council e.g. a copy of the tenancy agreement.

⁵ Local Authority Coordinators of Regulatory Services.

The owner/person having control of the premises will also be offered an opportunity to arrange a meeting with a member of the private sector housing team either on site or at the Medway Council offices to discuss the contents of the letter and mutually agree any variations to the schedule of works and/or timescales.

5.5 A time limit of 14 days will normally be given both for the owner/person having control to return the section 16 notice and confirm whether the schedule of works will be undertaken within the timescales given in the letter or as mutually agreed. If agreement is reached the owner will be asked to confirm this in writing and the case will be monitored for compliance.

5.6 A further acknowledgement letter will be sent confirming the arrangements for monitoring the work, and the potential consequences of not honouring that commitment.

5.7 The experience of Private Sector Housing team is that landlords/agents respond stating that s/he will do works, but then take far longer than originally agreed. The tenant will have been informed that the owner/person in control has agreed to do works, the anticipated timescale for completion and asked to notify the Private Sector Housing team of the progress being made. It will be a judgement issue as to what is satisfactory progress. Contact will be maintained with the owner/person having control to ensure works are being undertaken. If no satisfactory explanation is given as to why there is a delay in works the owner/person having control will be informed that a further formal inspection of the property will be undertaken under section 239 Housing Act 2004 and formal notice served.

5.8 If there is unreasonable slippage in implementing the schedule of works a maximum time limit will be set for which the team will accept this situation. It is considered that four months will be the maximum. However each case will be considered individually and if it is considered that four months is too long or the owner/person having control has a history of regularly delaying works formal action will be instigated sooner. The owner/person having control will be given one final opportunity to provide timescale that will complete works in. If works still not completed then will instigate formal action in accordance with the Housing Act and this enforcement policy.

5.9 Where allegations are received from an owner/person having control that tenants are not allowing access contact will be made with the tenant to discuss and stress importance of cooperating to get works carried out. If the situation persists arrangements will be made with tenant and the contractors to be present at property to ensure that tenant allows access. This will also counteract any situations where an owner/person having control is alleging that a tenant is not allowing access in order to delay carrying out works.

5.10 If the tenant refuses to allow access the tenant will be advised that the case will be put on hold until such time as s/he vacates property. The owner/person having control will similarly be informed, but it will be made

clear that once there is vacant possession the owner/person having control should carry out works before any new tenant moves in.

5.11 Where properties become vacant before works are commenced or whilst in progress then under this enforcement policy the involvement of the Private Sector Housing team will not cease. If there are any category one hazards there is a duty under Housing Act 2004 to ensure that hazards made safe. Equally if there are serious category two hazards, then, in interest of future tenants, the Council has a right under the Housing Act 2004 to ensure that these are adequately dealt with. Contact will be maintained with the owner/person having control to ensure works are being carried out. If no works are being undertaken the Private Sector Housing team will make clear that it will serve the appropriate formal notice. However, if formal notice is required it will need to be considered if serving a suspended improvement notice would be a more appropriate course of action.

5.12 Some owners/person having control will issue a s21 notice⁶ following inspection and the Council's contact with landlord – retaliatory eviction. To reduce the likelihood of this then under this enforcement policy it will be made clear to owners/persons having control that the Private Sector Housing involvement will not cease

5.13 Where there is a change of tenant before works are completed contact will be made with the new tenant to advise of the Council's previous involvement and the works expected to have been undertaken. However some tenants may be unwilling to cooperate e.g. not allow the Private Sector Housing team access to inspect the property or allow contractors access. If the tenant refuses to cooperate, then depending on potential hazards identified at the property or works outstanding, there may need to withdraw from the property until it becomes vacant again.

5.14 Some properties will change ownership whilst still going through the informal process. Where informal action has been commenced this will be recorded on local land charges so that if the property is sold the new owner will be informed that the Council has an involvement at the property. The new owner will be given reasonable time to undertake works and ideally Private Sector Housing will meet with the new owner to discuss and reach agreement on works. However, if the new owner is not willing to undertake works the Council will inform the owner that it will move forward to formal proceedings. Where the property is sold to a person who intends to be an owner-occupier a hazard awareness notice will be considered to confirm with the owner the works that need to be undertaken at the property.

5.15 If the owner/ person in control does not respond to the above letter or agreement cannot be secured with the owner/person having control formal statutory action will be commenced. Notice will be given under section 239 Housing Act 2004 that a formal inspection of the property will be undertaken at which the owner/person having control may attend. Formal statutory action

⁶ Housing Act 1988

will be commenced straight away where the hazards at the property are considered too serious for informal action or the owner/person having control has a history of non-compliance. Before immediate formal action is initiated this will be agreed by the Private Sector Housing Manager in consultation with the Assistant Director (Housing & Corporate Services).

5.16 The normal procedure for the Council will be to pursue formal action to rectify all Category 1 and Category 2 hazards falling within one or more of the following three criteria

1. There is still a significant risk to health and safety of the occupant (such hazards are likely to be those rated at band D and E).
2. The defects/disrepair contributing to the hazard are such that if not dealt with in a reasonable amount of time, are likely to deteriorate to an extent that the hazard rating will increase.
3. The individual hazards, though of a minor nature, have a cumulative effect of rendering the property a serious risk to the health and/or safety of any occupier or resident to the property.

5.17 To ensure consistency and a fair approach when considering the inclusion of category two hazards it will be standard procedure for team members to review their decision with colleagues. This will be recorded in the case file.

5.18 It is important to note that only hazards which are attributable to the design, construction and/or maintenance of the property will be considered for enforcement action i.e. those works which are the responsibility of the owner/person having control.

5.19 All formal action will be taken in accordance with the schedule of delegated authorities as set out in the Council's Constitution.

6.0 Formal Action

6.1 Category 1 hazards

6.1.1 The Housing Act 2004 places a duty on the Council to take action in relation to any Category 1 hazard(s). Where such a duty exists the most appropriate courses of action must be taken. This is will be one of the following actions:

- Serve an Improvement Notice (s.11 and 12)
- Make a Prohibition Order (s.20 and 21)
- Serve a Hazard Awareness Notice (s.28)
- Take Emergency Remedial Action (s.40)
- Make an Emergency Prohibition Order (s.43).

Some enforcement powers are also available under the Housing Act 1985, which are

- Make a Demolition Order (s.265)
- Declare a Clearance Area (s.289)

6.1.2 The Council is under a duty to give a statement of reasons for whichever enforcement option is chosen (see later for more detail).

Generally, only one course of enforcement action can be taken in respect of any hazard. Emergency measures are the exception e.g. emergency action followed by an Improvement Notice.

Further detail on each enforcement option listed above is given at Appendix one.

6.1.3 For Category 1 hazards (Bands A, B and C) an Improvement Notice will normally be an appropriate means of mitigating a hazard where works of mitigation are practicable and the occupants are vulnerable. Occupancy factors may influence an alternative form of action.

6.2 Category 2 Hazards

6.2.1 Category 2 hazards falling within one or more of the following criteria will be considered for formal action:

1. Still significant risk to health and safety of the occupant (such hazards are likely to be those rated at band D and E).
2. The defects/disrepair contributing to the hazard are such that if not dealt with in a reasonable amount of time, are likely to deteriorate to an extent that the hazard rating will increase.
3. The individual hazards, though of a minor nature, their cumulative effect is to render the property a serious risk to the health and/or safety of any occupier or resident to the property.

6.2.2 Emergency action is not available for Category 2 hazards. Whilst Prohibition Orders can be served in respect of such hazards the need for such action is likely to be less common, and such action can only be taken with the approval of the Private Sector Housing Manager in consultation with the Assistant Director.

6.3 Enforcement Options

6.3.1 The table below summarises the enforcement options available and the circumstances in which the options may be used.

Option	Cat. 1	Cat. 2	Notes
Improvement Notice	Yes	Yes	Notice requiring remedial action to mitigate one or more hazards. Where a notice is served under section 11 (improvement notice relating to category one hazards) action must at a minimum remove the category one hazard, but may extend beyond this, and specify time scales for completion. Served on person having control (house/HMO), owner (flat, flat in multiple occupation or common part) or manager/licence holder (HMO). 28day commencement period minimum. Applies where no imminent risk of serious harm, works practicable and vulnerable occupier present.
Hazard Awareness Notice	Yes	Yes	Not a notice actually requiring works, but formally recording one or more hazards exists. No time period applies and are not recorded on local land charges.
Emergency Remedial Action Notice	Yes	No	Must be an imminent risk of serious harm involving a Category 1 hazard. Limited to works immediately necessary to minimise the imminent risk. Notices to be first served on the occupier(s) or fixed to the building and within 7 days the person having control (house/HMO), owner (flat, FMO or common part) or manager/licence holder (HMO).
Emergency Prohibition Order	Yes	No	Must be an imminent risk of serious harm involving a Category 1 hazard. Prohibits the use of all or part of the premises. With immediate effect. Copies of the order must be served within 7 days on all owners, occupiers, agents etc. Likely to be used where emergency remedial action is not practicable.
Prohibition Order	Yes	Yes	Prohibits the use of all or part of the premises, may allow agreed use, and may specify occupancy numbers. Operative 28

			days after making.
Demolition Order	Yes	No	Likely to be extremely rare as only appropriate where works impracticable and/or excessive cost involved and demolition would not have an adverse effect on neighbouring properties
Clearance Area	Yes	No	Unlikely to be applied to single dwellings locally.

6.4 Statement of Reasons

6.4.1 The Council has a duty to provide a statement of reasons for their decision to take a particular course of enforcement action. This statement will accompany every statutory notice or order served under Part 1 of the Act and relevant provisions of the 1985 Act. The statement of reasons will cover the following points in summarising why a particular course of statutory action has been decided upon:

- Views of the current tenant, landlord and/or managing agent.
- Estimated costs of the work required.
- Practicability
- Hazard score(s) for each relevant hazard
- Timeliness of the works in relation to the hazards identified.
- Occupancy factors and risk; effect on the current occupier(s) in relation to the most vulnerable group for each hazard.
- Anything else relevant to the decision.

6.4.2 Standard of works – Any works required on a notice will be reasonable in relation to the hazard i.e. works will not be specified that go considerably beyond what is required to remove the hazard(s).

6.5 Multiple Hazards

6.5.1 Where a decision has been taken to take formal action for a number of hazards these will normally be incorporated into a single notice. In accordance with the Act the notice will specify timescales for completion of the individual items of repair/renewal i.e. it is expected that a shorter timescale will be given for those items requiring immediate attention as against major works which it would be appropriate to give a longer timescale for completion.

6.6 Empty Property

6.6.1 The HHSRS is still applicable to empty properties as the rating of hazards is undertaken for the most vulnerable potential occupant. However if there is no occupier, and if there is no reasonable prospect that the property is likely to be re-occupied, action will only be taken proportionate to its vacant state e.g. structural collapse, which may be a hazard to any visitors to the

property. Long-term empty properties will usually be dealt with under the Council's Empty Property Strategy. Where a property is temporarily vacant e.g. between tenancies and it is reasonable to expect re-occupation any action commenced, including informal action will be continued until any hazards considered appropriate for formal action have been removed.

6.7 Space and crowding

6.7.1 Space and overcrowding may be dealt with either under the HHSRS or for single dwellings Part 10 of the 1985 Housing Act. In HMO's, space and overcrowding is also dealt with under sections 139-144 Housing Act 2004. If the property is a licensable HMO any overcrowding issues will be dealt with in accordance with Medway Council's Houses in Multiple Occupation policy approved by Cabinet on 5th August 2008.

6.7.2 An important consideration under HHSRS when dealing with overcrowding is that only the risk to the current occupiers is to be considered. The standard under HHSRS is higher than that under Part 10 of the Housing Act 1985 and more in line with modern living standards and therefore it is expected that any action will be undertaken using the HHSRS and the 2004 Housing Act.

6.8 Owner-Occupied Property

6.8.1 Part 1 of the Act also applies to hazards identified in owner-occupied property. In such cases the responsibility for mitigating or removing the hazard will rest with the owner of the property. Most property owners are likely to tackle such hazards and arrange works without the involvement or intervention of the Council. For households who are unable to arrange works themselves e.g. vulnerable households, the Council will have a role in giving advice and assistance to enable such works through other means. These other routes of help include the award of housing assistance/loans by the Council where eligible, and referral to other agencies such as the local Home Improvement Agency.

6.8.2 Because of this, the circumstances in which the Council might need to consider formal enforcement action to deal with an identified hazard in an owner-occupied property are likely to be infrequent. Such action would be most appropriate where there is an imminent risk of serious harm, and where emergency action needs to be considered. The Council will only consider taking formal action for Category 1 hazards where other means of dealing with the hazard are unavailable and the Council has a duty to take action. All such cases shall be referred to the Private Sector Housing Manager for approval. The most appropriate action in such cases will depend on the particular circumstances of each case, but notices requiring works will only be considered where such direct intervention is wholly justified taking account the nature of the hazard, the degree of risk to any occupier, and the owner's views. The Act allows works required by notices to be carried out by mutual agreement with the owner. Consideration of that option will be expected to be

routine in such cases, and consideration for prosecution will be reserved as a last resort and only where absolutely necessary.

6.9 Rights of Appeal

6.9.1 All recipients of notices and orders made by the Council will be informed of their right to appeal to the Residential Property Tribunal (RPT) if they believe the notice or order has been served in error or if the recipient believes the proposed course of action is unjustified.

7.0 Exceptions to Policy

7.1 Occasionally, circumstances might present themselves at a property where there is indicated a *prima facie* case for following a different course of action than as directed by this enforcement policy.

7.2 In such cases, a report will be made in writing to the Assistant Director (Housing & Corporate Services) for an exception to policy to be considered outlining the reasons for such special consideration. Such cases are expected to be rare, and will be treated on an ad hoc basis in all the prevailing circumstances so that the most appropriate course of action can be followed, taking account of this policy and the statutory guidance relevant to enforcement.

8.0 Charges for notices

8.1 The Council is empowered under the Act to make a reasonable charge as a means of covering certain expenses incurred in serving an improvement notice, making a prohibition order, taking emergency remedial action, making an emergency prohibition order or making a demolition order. The expenses are in connection with inspection of the premises, the subsequent consideration of action and service of notice. If emergency remedial action is taken a charge may also be made in connection with the service of any subsequent notices.

8.2 If, after pursuing informal action as described previously, or immediate statutory action is required, Medway Council will make a reasonable charge for service of any of the formal notices listed above. The charge will be based on the actual officer time involved in inspecting the premises, the subsequent consideration of action and service of the notice, and additionally, when relevant, will include any costs incurred by the Council in obtaining specialist reports, any costs involved in gaining access to the property including obtaining a warrant and costs associated with forced entry and making the premises secure afterwards.

8.3 The charges for notices will not include any costs incurred by the Council in undertaking work in default. These charges will be dealt with separately under the Private Sector Housing Policy for works in default.

8.4 This policy decision has been made to ensure that the Council recovers its costs from those landlords who are not complying with their responsibilities to maintain their properties and take up more officer time by their failure to comply.

9.0 Works in Default and Prosecution

9.1 Where property owners knowingly fail to comply with the requirements of a statutory notice, the Council will always consider further legal action to secure compliance. In considering what course of action is most appropriate the Council will have regard to the seriousness of the offence and any immediate risk posed to the occupiers. Works in default will be the presumed course of action where there has been a failure, or inadequate action, to comply with an improvement notice. Prosecution of the person responsible for non-compliance may also be pursued where this is believed to be in the public's interest. Account will be taken of the seriousness of the offence, any mitigating circumstances, past history and the Council's corporate enforcement policy. Certain offences, such as the intentional breach of a prohibition notice or persistent negligence in management will always be prosecuted.

10.0 Background documents

Housing Act 2004.

Housing HHSRS (England) Regulations 2006.

HHSRS Enforcement Guidance, ODPM, April 2006.

HHSRS Operating Guidance, ODPM, February 2006.

Enforcement Actions under the Housing Act 2004

Improvement Notices

Service of an improvement notice is likely to be the most frequent course of action taken to deal with hazards found in private residential properties. Improvement notices will be served to deal with category 1 and/or 2 hazards in accordance with the policy outlined above

An improvement notice must contain the information set out in section 13 of the Act:

- Whether served under s.11 or s.12 or both.
- The nature of the hazard
- The premises on which it exists
- The deficiency giving rise to the hazard
- The premises in relation to which remedial action is to be taken.
- The remedial action required.
- The date when the action is to start
- The period in which the action is to be completed.

A notice becomes operative from the 22nd day after the date of service.

All hazards can be put on the same notice, but the notice schedule must distinguish between the category 1 and 2 hazards.

Any hazard included on an improvement notice cannot also be subject to alternative statutory action.

An improvement notice cannot require works to commence until 28 days following the date of service of the notice.

The notice can specify different timescales for completion of the required actions to remove the hazards. This will allow shorter timescales to be given for more serious hazards.

Where action is required at a property for a serious hazard, which requires more urgent action and a number of lesser hazards, consideration will be given to serving two separate notices – one for the serious hazard(s) and the second for the lesser hazard(s).

The Secretary of State's Enforcement guidance states that the level of works required must at a minimum require any category 1 hazards to be reduced to a category 2, but may extend beyond this. Any works specified on the notice must be reasonable in relation to the hazard.

Under this policy Medway will normally require works to be carried out to a standard that will prevent further deterioration of the building elements. For example where a roof is affected by extensive “nail sickness” the appropriate level of works would be to require renewal of the roof as opposed to a patch and mend to re-fix loose slates.

Where appropriate works will be required to a level stipulated under the current Building Regulations.

Regard will be had to decisions taken by the Residential Property Tribunal when setting the level of works required on an improvement notice.

An improvement notice must be revoked when the notice has been complied with, which will require service of a notice of revocation. The improvement notice may also be revoked or varied in other circumstances– again formal notification is necessary. This may be appropriate where a notice deals with more than one hazard, the notice may be revoked in relation to one hazard and varied in relation to the rest. However for practical considerations the use of this provision concerning variation is likely to be kept to a minimum.

Suspended Improvement Notices

In certain circumstances the authority may consider the suspension of an improvement notice to be the most appropriate course of action. Normally an improvement notice becomes operative 21 days after service of the notice. However the Council may suspend the action required by an improvement notice. The notice will normally specify the event that will trigger the end of the suspension e.g. non-compliance with an undertaking given to the authority or a change of occupancy. The circumstances most likely to warrant this course of action are: -

- Where a hazard exists at a property the current occupiers are not within the most vulnerable group.
- A request by a tenant to suspend action.
- A property is only occupied on a part-time basis and it is considered reasonable to delay commencement of works to an anticipated period of vacancy.

Whenever suspension of a notice is being considered the Council will consider the likely turnover of occupiers. Where a quick turnover is expected, suspension is not likely to be considered appropriate. In the case of category 1 hazards, the authority will need to consider very carefully whether a suspended notice is an appropriate response i.e. its use is likely to be rare for category 1 hazards.

A suspended notice will require an owner/landlord to notify the Council of the event that will end the period of suspension e.g. a change of occupancy, to ensure that the notice can be reviewed. Owners/landlords will be informed of

the consequences of failure to notify the Council when the specified event has occurred. Whilst no offence is committed if the Council is not notified that the specified event has occurred, immediate enforcement action will be considered.

Suspended notices must be reviewed by the Council not later than 12 months after the notice was served, and it may do so earlier. Such reviews shall include either a re-inspection of the property, or an assessment of reliable information from a current occupier. If the compliance with the notice is in any doubt then an inspection should take place to confirm the exact true position.

Prohibition and Demolition Orders

Where a property is inspected and serious hazards are identified for which remedial work is considered unreasonable due to costs or other reasons an alternative to an improvement notice would be to serve a prohibition notice. A prohibition notice may also be considered the most appropriate course of action in the following circumstances: -

- Where a dwelling is currently overcrowded having regard to the number of bedrooms existing at the property.
- To restrict the number of persons occupying a dwelling where there are insufficient facilities for any of the following - personal washing, sanitary accommodation, food preparation or cooking.
- To prohibit the occupation of a dwelling by a specific group where hazards exist for that specific group e.g. elderly persons, until such time appropriate improvement works have been undertaken to render the property suitable for that specified group.
- In a house in multiple occupation – to prohibit the use of specified dwelling units or of common parts where there is a serious risk to the occupiers' health and safety. For example a HMO located above a commercial unit where there is insufficient fire separation between the two occupancies and the means of escape is inadequate.

The service of a prohibition notice will require any occupiers in the dwelling to be re-housed. Landlords are not legally obliged to re-house any displaced tenants although as an initial step landlords will be asked if they are able to provide alternative accommodation. Where this is not available the Council will assess what duty it has to re-house the displaced tenants and accommodation available and act accordingly.

In addition to the need for re-housing, the following will also be considered as part of any decision to serve a prohibition notice: -

1. The effect of excluding vulnerable persons from the accommodation.
2. Whether service of the prohibition order would have a detrimental effect on neighbouring property e.g. whether the property being left empty for a period of time would have a negative impact on the local neighbourhood.
3. Whether a demolition order would be a more appropriate course of action.
4. The potential alternative uses for the dwelling.

5. Whether the dwelling is located in a conservation or renewal area.

The prohibition order will include the following information: -

- Whether the order is made under section 20 or 21 of the Act
- The nature of the hazard and residential premises on which it exists.
- The deficiency giving rise to the hazard.
- The premises in relation to which prohibitions are imposed.
- Any remedial action that would result in the order being revoked.
- All relevant information regarding the right to appeal.

Any owner served with a prohibition order has the right to ask for a use to be approved for the dwelling or part of the dwelling subject to the prohibition e.g. that the dwelling or part of dwelling may be used for storage, and this will not be unreasonably withheld. Where any use is refused the owner will be notified within 7 days of making the decision to refuse the use.

Once the Council has received sufficient information that the hazard(s) which gave rise to the need for a prohibition order have been appropriately dealt with the prohibition order will be revoked.

Suspended Prohibition Orders

As with improvement notices, the Council may take a decision to suspend its intended action. A decision to suspend a prohibition order is most likely to be taken to prevent the future occupancy of a dwelling that would result in a prohibition order being served. For example a listed building may contain a steep winding staircase, which is rated as a category one hazard for falls on the stairs. However due to the dwelling being listed the staircase cannot be altered. The most vulnerable group to this hazard is persons over 60. In this situation the most appropriate course of action is to serve a prohibition order, but as the dwelling is occupied by persons under 60 it may be more appropriate to suspend the prohibition order. The effect of this would be to allow occupation of the property to continue, but prevent it being let to persons over 60 who are most vulnerable to this hazard – falls on the stairs.

Whenever suspension of an order is being considered the Council will consider the likely turnover of occupiers. Where a quick turnover is expected, suspension is not likely to be considered appropriate. In the case of category 1 hazards, the authority will need to consider very carefully whether a suspended notice is an appropriate response i.e. its use is likely to be rare for category 1 hazards.

A suspended order will require an owner/landlord to notify the Council of the event that will end the period of suspension e.g. a change of occupancy, to ensure that the notice can be reviewed. Owners/landlords will be informed of the consequences of failure to notify the Council when the specified event has occurred. Whilst no offence is committed if the Council is not notified that the specified event has occurred, immediate formal action will be considered.

Suspended notices will be reviewed by the Council not later than 12 months after the order was served, and it may do so earlier.

Emergency Measures

Emergency measures are available at the Council's discretion for category 1 hazards, which present an imminent risk of serious harm to occupiers. Emergency measures cannot be used in respect of category 2 hazards

The purpose of emergency action is for the Council itself to take remedial action to remove a hazard and recover reasonable expenses, or to prohibit the use of all or part of premises.

Emergency measures are of two types emergency remedial action or an emergency prohibition order.

Emergency Remedial Action

Emergency remedial action involves direct proactive intervention by the Council to remove or mitigate a category 1 hazard(s) at a property. The hazard must present an imminent risk of serious harm to an occupier(s). This will require the Council to arrange for a private contractor to carry out whatever work is relevant and appropriate to deal with the hazard(s).

Before taking emergency action the owner, landlord or managing agent will be contacted to report the hazard(s) and establish if any commitment can be obtained for urgent action within an appropriate time-scale that would negate emergency action by the Council. This would normally mean remedial works being undertaken the same day as the property inspection.

Where contact cannot be made with the owner, landlord or managing agent or no commitment is received from the owner, landlord or managing agent to undertake emergency remedial action then the Council will consider taking such action itself.

The first step in commencing the Emergency Remedial Action process following the identification of a category 1 hazard(s) to which this power might apply, will be to seek specific written approval from the Private Sector Housing Manager.

The report seeking such approval must include a schedule of works and estimate of the relevant costs for the remedial works. As with other formal enforcement, the intended action must be reasonable, proportionate and practical. If it is agreed that emergency remedial action is appropriate a site meeting will be undertaken with a contractor to agree the type, extent, and anticipated costs of the works. Following the site meeting a written estimate will be required; faxed estimates will be acceptable.

The Council's Financial Regulations will apply in respect of the letting of a contract to a builder to undertake any necessary emergency remedial work.

Whilst Financial Regulations allow a verbal estimate to be used where costs do not exceed £500 and the works are urgent in nature, verbal estimates will only be considered when the costs are below this sum, and the works are relatively simple in nature. The Private Sector Housing Manager will have discretion on this aspect of approval.

The Council is not required to serve a formal notice before it takes emergency action but will serve an Emergency Remedial Action notice within 7 days of taking that action.

This notice will specify the following: -

- The nature of the hazard and residential premises on which it exists.
- The deficiency giving rise to the hazard.
- The premises in relation to which emergency remedial action has been or is to be taken, and the nature of the action.
- The power under which the remedial action was or is to be taken.
- The date when the action was or is to be started
- All relevant information regarding the right to appeal.

A person served with an Emergency Remedial Action notice may appeal within 28 days of the above formal notice being served.

Emergency Prohibition Order

Where the conditions of section 43(1) of the Act are fulfilled the authority may enter the premises at any time to make an Emergency Prohibition Order, prohibiting the use of all or any part of the premises with immediate effect. The conditions at section 43(1) are: -

- That a category one hazard exists at the residential premises
- The hazard involves a serious imminent risk of serious harm to the health or safety of any of the occupiers of those or any other residential premises
- No management order is in force under Chapter 1 or 2 of Part 4 of the Act in relation to the residential premises.

Before such action can be taken, approval will be needed by the Assistant Director (Housing & Corporate Services).

The Emergency Prohibition Order prohibits the use of all or any part of the premises with immediate effect and will be served on the same day it is made.

The Order will specify:

1. The nature of the hazard(s) and the residential property on which it exists;
2. The premises in relation to which prohibitions are imposed;

3. Any remedial action, which would result in the order being revoked.

Prohibition Orders are more likely to be relevant and appropriate where remedial emergency action (work) is impractical or otherwise unreasonable in all the circumstances.

Hazard Awareness Notices

The Enforcement Guidance indicates that a Hazard Awareness notice may be a reasonable response to a less serious hazard, where an authority wishes to draw attention to the desirability of remedial action. Hazard awareness notices do not actually require any work; they are merely informative on the managing agent, manager, landlord or property owner. Such notices cannot be registered as a local land charge.

Hazard awareness notices will only be considered in exceptional circumstances where hazards warrant service of an improvement notice, but service of an improvement notice is not considered an appropriate response. One example of the type of situation where a hazard awareness notice is considered appropriate is a dwelling occupied by an elderly owner-occupier who, due to illness, could not cope with the upheaval associated with having works done in the dwelling.

Service of a hazard awareness notice will not preclude further formal action being taken should an unacceptable hazard remain at the dwelling.

Service Standards for Enforcement by the Private Sector Housing Team

Service Standards

The Private Sector Housing Team will always endeavour to meet the highest standards of service in undertaking its regulatory and enforcement function. The following specific level of service standards will be applied:-

- Matters relating to enforcement and regulation will be dealt with promptly with enquiries and complaints receiving a response or acknowledgement within ten working days.
- Except in the case of necessary and approved covert investigations, officers will announce themselves on arrival at premises and show identification unless they are already well known to the person.
- Officers will provide their name and contact details to those persons or businesses with whom they are in contact concerning a regulatory or enforcement matter.
- Complaints relating to enforcement or regulatory matters will normally only be dealt with if the name and address of the complainant is given. Any such identification will be treated in confidence, but may need to be disclosed (with prior consent) should formal legal proceedings be taken against the person or business to which the complaint relates. Anonymous complaints may however be investigated if they relate to vulnerable groups, or matters relating to serious health, safety or environmental issues etc.
- Officers will not be able to act as consultants or legal advisors to individuals or businesses, but will be available (by appointment if necessary) to discuss general issues or matters of specific enforcement with the aim of assisting or guiding compliance.
- Officers will be professional, impartial, courteous and helpful in their conduct of regulatory or enforcement matters, and wherever possible will seek to work with individuals and businesses towards compliance.
- Officers will endeavour to provide advice in a clear and simple manner and where any corrective or remedial work is necessary, an explanation will be given as to why it is necessary, and over what time scale it is required. Where noncompliance may result in further enforcement action or prosecution the matter will normally be confirmed in writing within ten working days, and any legal requirements will be identified separately from best practice advice.
- Officers will generally seek an informal resolution to cases of non-compliance except where immediate formal enforcement action is required, (e.g. serious issues relating to health and safety).
- Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken, (e.g. when the enforcement notice is served);

- Where any charges or fees are to be levied for a service, individuals and businesses will be informed of the cost or rate of charge prior to the service being provided.
- Any complaint regarding the service provided will be dealt with under the Medway Council's Complaints Procedure, copies of which are available from offices of the Council through any of the following methods



Email : customer.first@medway.gov.uk



Telephone : 01634 333333



Write to :
Customer Services
Gun Wharf
Dock Road
Chatham
Kent ME4 4TR



Minicom : 01634 333111