

ENFORCEMENT POLICY APPENDIX 1

Summary of the Housing Health and Safety Rating System (HHSRS) plus the Enforcement Powers Available Under Part 1 Of the Housing Act 2004 to deal with Category 1 and Category 2 Hazards.

1. THE HHSRS

The HHSRS lists 29 different types of hazard that may be found in residential property. It prescribes a 'risk assessment' methodology for local housing authorities to carry out in order to determine the degree of severity of the prescribed hazards.

The basic theory behind the system is that all dwellings should provide a safe and healthy environment for all occupiers, potential occupiers or their visitors. The system relies upon an assessment of the whole dwelling to identify any deficiencies which could pose a risk to health and safety (health in this context includes both physical and mental well being) and then relating any identified deficiencies to a prescribed hazard.

In undertaking the assessment, the effect of certain hazards is considered against the most vulnerable age group who may occupy the property i.e. an age range of people for whom the risk arising from the hazard is greater than for any other age group. Some hazards, e.g. excess cold will affect the elderly (over 60) in particular whereas other hazards e.g. structural collapse will affect all age groups equally.

The assessment is made disregarding the current occupiers (if any) but is based upon the potential effect of any hazards on a member of any relevant vulnerable age group. The assessment will therefore not be affected by a change of occupier and a vacant property can also be assessed.

To score a hazard, the assessor must determine the likelihood of harm occurring during the forthcoming twelve months taking in to account average likelihoods for that type and age of property and then assess the range of harm outcomes taking in to account averages based upon national accident ill health and accident statistics. These average likelihoods and harm outcomes are defined in the Operating Guidance document issued by the Government (DCLG) under Section 9 of the Housing Act 2004.

By application of a prescribed formula contained in the HHSRS (England) Regulations 2005, hazards are given a numerical score. The scores have been divided in to bands ranging from A to J for ease of comparison.

Hazards which have a score in the top three bands (A, B and C) are prescribed by these regulations as Category 1 Hazards. Those which fall within the lower bands (D to J) are prescribed as Category 2 Hazards.

Under Section 5 of the Housing Act 2004, local authorities are under a duty to take appropriate enforcement action with respect to Category 1 Hazards. Under Section 7 of the Housing Act 2004, local authorities have a power to take particular kinds of enforcement action with respect to Category 2 hazards

2. RANGE OF ENFORCEMENT OPTIONS

(i). Improvement Notices to deal with premises affected by category 1 and category 2 hazards

An improvement notice under section 11 or 12 Housing Act 2004 may be served in response to a category 1 or category 2 hazard respectively. Under section 11, action must, as a minimum remove the category 1 hazard but may extend beyond this.

An improvement notice must specify the nature of the hazard, the deficiency giving rise to the hazard the nature of the remedial action, and a time in which to do the necessary work. The notice must also contain information about the right to appeal.

In certain circumstances, the Council may suspend the action specified in the notice and can specify an event or period that triggers the end of the suspension.

Failure to comply with the requirements of an improvement notice without reasonable excuse is an offence punishable by a fine up to level 5 on the standard scale (currently £5000.00).

(ii). Prohibition Order to deal with premises affected by category 1 and category 2 hazards.

A prohibition order under section 20 or 21 Housing Act 2004 may be served in response to category 1 or category 2 hazards respectively. It may prohibit the use of part or all of the premises for some or all purposes, or occupation by particular numbers or descriptions of people. The housing needs of the occupier(s) will always be assessed and suitable alternative accommodation secured before they are displaced by the making of a prohibition order.

A prohibition order must specify the nature of the hazard, the deficiency giving rise to the hazard, the premises or part of the premises to which prohibitions are imposed and any remedial action that would result in the order being revoked. The order must also contain information about the right to appeal.

In certain circumstances, the Council may suspend the action specified in the order and can specify an event or situation that causes the order to be fully operative some time after it is served.

Failure to comply with the requirements of a prohibition order (including an emergency prohibition order) without reasonable excuse is an offence punishable by a fine up to level 5 on the standard scale (currently £5000.00).

An additional penalty of up to £20 per day may be imposed for every day or part of a day where a premises is permitted to be occupied in contravention of a prohibition order.

(iii) Emergency Remedial Action to deal with premises affected by category 1 hazards

The Council has the discretion to take emergency remedial action against category 1 hazards which present an imminent risk of serious harm to the occupier. The action will consist of whatever remedial action the Council considers necessary to remove an imminent risk or serious harm. Attempts will always be made to contact the responsible person prior to carrying out any such emergency works, but the risk to the health and safety of the affected person or persons will be the overriding concern of the council in such a case

The Council must serve a notice of emergency remedial action within seven days of taking action. The notice must specify the nature of the hazard, the deficiency giving rise to the hazard and the date when the action was or is to be started. The notice must also contain information about the right to appeal.

(iv) Emergency Prohibition Order to deal with premises affected by category 1 hazards

The Council has the discretion to make an emergency prohibition order in relation to category 1 hazards that present an imminent risk of serious harm to the occupiers. The order may prohibit the use of all or any part of a premises with immediate effect.

Attempts will always be made to contact the responsible person prior prohibiting the use of any dwellings in this way, but the risk to the health and safety of the affected person or persons will be the overriding concern of the Council in such a case. Occupiers of premises that become subject to an emergency prohibition order may have to vacate the premises at short notice. The housing needs of the occupier(s) will always be assessed and appropriate advice given on where to seek assistance in securing suitable alternative accommodation.

The Order must specify the nature of the hazard and any remedial action that would result in the order being revoked. The order must also contain information about the right to appeal

(v) Hazard Awareness Notice to deal with premises affected by category 1 and category 2 hazards

A hazard awareness notice must specify the nature of the hazard, the deficiency giving rise to the hazard and details of any remedial action which the Council considers would be practicable and appropriate to take.

This procedure does not require further action by the person served with the notice and therefore there is no appeal provision.

A Hazard Awareness Notice is not declared on Local Land Charges so a new purchaser may be unaware of the hazard.

Although a Hazard Awareness Notice has no provision for subsequent enforcement, it is still a formal response and can be replaced by one of the other forms of action if circumstances should change.

(vi) Demolition Orders to deal with premises affected by category 1 hazards

Demolition orders are available under part 9 of the Housing Act 1985 (as amended by the Housing Act 2004) as a possible response to a category 1 hazard. A demolition order requires the property to be vacated within a specified time and subsequently demolished. It is a criminal offence to allow a premise to be occupied after a demolition order has come into effect. Should the building not be demolished the Council may demolish it and recharge the person upon whom the notice was served. This power cannot be used for listed buildings.

(vii) Clearance Areas to deal with premises affected by category 1 hazards

A clearance area is an area to be cleared of all buildings. A clearance area under Part 9 of the Housing Act 1985(as amended by the Housing Act 2004) can be declared if the Council is satisfied that each of the residential buildings in the area contains one or more category 1 hazards (or that the buildings are dangerous or harmful to the health or safety of the occupiers as a result of their bad arrangement or the narrowness or bad arrangement of the streets) and any other buildings in the area are dangerous or harmful to the inhabitants. The Council is required to consult on the declaration of a clearance area and publish its intentions. Account must be taken of the availability of accommodation for rehousing, the local demand for accommodation and the possible future use of the cleared site.