



SHROPSHIRE COUNCIL

PRIVATE SECTOR HOUSING ENFORCEMENT POLICY

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Private Sector Housing

Community Services

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Introduction

This Policy provides the basis on which all enforcement action by Shropshire Council's Private Sector Housing Team will be undertaken.

Although the Policy lays down general principles applying to any enforcement by the Council's authorised Private Sector Housing Officers, it is primarily associated with the following legislation:-

Building Act 1984, Environmental Protection Act 1990, Housing Act 1985, Housing Act 2004, Local Government and Housing Act 1989, Housing Grants, Construction and Regeneration Act 1996, Local Government (Miscellaneous Provisions) Act 1976, Local Government (Miscellaneous Provisions) Act 1982, Public Health Act, 1936 Regulatory Reform (Housing Assistance)(England and Wales)Order 2002, Law of Property Act 1925, Planning and Compulsory Purchase Act 2004

Specific mention is made regarding the Housing Act 2004 which introduced a new system for assessing housing conditions, known as the Housing Health and Safety Rating System (HHSRS), which is used in the enforcement of housing standards in all types of residential accommodation. This new system replaced the fitness for human habitation standard as contained within section 604 of the Housing Act 1985.

The new system is structured around an evidence based risk assessment procedure, which considers any one of 29 hazards that may be present in a dwelling. The risk that any such hazard may impact on the most vulnerable potential occupant of that dwelling is then used to generate a comparative score. That score is, on the basis of its numerical value, then classified as a Category 1 hazard or a Category 2 hazard. Category 1 hazards can further be subdivided into those banded A-C and Category 2 hazards can be subdivided into those falling within bands D-J reflecting decreasing levels of risk.

Under the Housing Act 2004 the Council has a duty to take appropriate enforcement action where there is a Category 1 hazard, and a discretionary power to take appropriate enforcement action where there is a Category 2 hazard. Therefore, to ensure a consistent approach to housing standards enforcement by officers, this Enforcement Policy has been produced. This Policy complies with the principles of the Better Regulation Executive "Regulators' Compliance Code: Statutory Code of Practice (December 2007)".

The Housing Act 2004 also introduced licensing of HMOs and selective licensing of other properties.

1.0 General Statement of Intention

1.1 General Principles:

- To strive to ensure good quality, healthy housing for all residents of Shropshire and to prioritise action to those properties which present the greatest risks to health and safety.
- To review the housing conditions in the Shropshire Council area to maintain an awareness of the condition of the housing stock in Order to achieve evidence based judgements.
- To act on any duly made request, and where appropriate, by sending a suitably qualified officer to inspect the dwelling and to categorise each specified hazard.
- To support and act upon technical and enforcement guidance issued by the Department of Communities and Local Government (DCLG).
- To consult the Shropshire Fire and Rescue Service in respect of the terms of the Service Procedures Fire Safety Protocol before taking enforcement action in respect of a prescribed fire hazard in a House in Multiple Occupation (HMO) or in the common parts of a building containing flats.
- To ensure that inspectors abide by this Enforcement Policy when making enforcement decisions and that any departure from the Policy is justifiable in terms of the risk to health and safety and is taken after full consultation with the Private Sector Housing Renewal Manager.
- To ensure that all inspectors have received suitable training and are competent to carry out their duties.
- To ensure that all inspectors are kept up to date with the requirements of this Policy.
- To maintain a documented policy on enforcement. This policy will be reviewed at regular intervals and when there are relevant changes to the legislation or guidance. Any review will be considered in accordance with the Council's procedure for reviewing its policies.
- To make the Private Sector Housing Enforcement Policy or a summary of the Policy available to any interested parties.
- To produce procedures promoting consistency of enforcement amongst its officers.
- To produce procedures to enable people aggrieved by an officer's action to make representations to the Council.

1.2 Equalities Statement

Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as national origin or ethnicity, religious beliefs, gender, sexual orientation, political views of the victim, witness, suspect or offender. Such decisions will not be affected by improper or undue pressure from any source.

1.3 Enforcement Concordat

The Council is committed to good enforcement policies and procedures. Enforcement functions will be carried out in an equitable, practical and consistent manner to help promote a thriving national and local economy. The general principles outlined in paragraph 1.1 are in accordance with the Concordat.

1.4 Compliance Code

The Council has adopted the Principles of Good Enforcement as set out in the Better Regulation Executive “Regulators’ Compliance Code: Statutory Code of Practice (December 2007)”.

The Code sets out what business and others being regulated can expect from enforcement officers. In particular, the Code commits the Housing Renewal Team to the following principles:-

To undertake enforcement action that is:-

- targeted; and
- transparent in its application
- proportionate to the risk to health and safety;
- applied consistently by all authorised officers;

1.5 Human Rights Act

Shropshire Council is a public authority for the purposes of the Human Rights Act 1998. The principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms will therefore be applied. In particular, the following are applicable:-

- Article 1 of the First Protocol, which relates to the protection of property.
- Article 6 – the right to a fair trial.
- Article 8 – the right to respect for private and family life, home and correspondence

1.6 Data Protection

All information and evidence gathered during the course of carrying out duties will be treated confidentially. Confidential information will only be divulged if required by law or by some other significant reason, which is in the public interest.

In certain circumstances the Council will seek to raise awareness and increase compliance levels by publicising unlawful practices or criminal activity.

Where appropriate the results of specific court cases may also be published.

The Council may also share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including:-

- Police Forces
- Fire Authorities
- Government Agencies
- Statutory undertakers
- Other Local Authorities

2.0 Authority to Take Action

- 2.1 Shropshire Council has authorised those officers who are competent to carry out inspections of dwellings and Houses in Multiple Occupation (HMOs) using the Housing Health and Safety Rating System and have been assessed as competent to perform their duties in accordance with legislation and agreed internal procedures. All such officers may act on behalf of the Council where they consider housing conditions to be unacceptable, on the basis of the impact of hazards on the health and safety of occupants and/or visitors to dwellings. Designated Officers will be authorised to sign and serve Notice and Order in accordance with the scheme of delegation, which will be issued subject to paragraph 2.2 & 2.3.
- 2.2 Where reference is made in this document to enforcement action by the Council, the authority will act through its officers. All officers who are required to carry out inspections or visits to any premises will carry with them at all times a means of identification plus a written form of authority which specifies their powers of entry.
- 2.3 Before an officer serves any form of enforcement Notice or Order, the action shall be reviewed by the Housing Renewal Manager or Private Sector Housing Manager.

3.0 Enforcement Options

- 3.1 It is the policy of the Council to ensure that enforcement action is always taken in a fair and consistent manner proportionate to the risks to health and safety.
- 3.2 To help achieve this, the Council will make reference to guidance from the central Government and its agencies.
- 3.3 The Council shall define the categories of hazard as they are specified in Section 2 of the Act.
- 3.4 When deciding which level of enforcement action to take the Council will consider the following criteria:-
- a. The risk to health and safety.
 - b. The current occupant and their views.
 - c. The turnover rate of tenancies.

- d. The likelihood that the property will become occupied by a member of a 'vulnerable group' or a group who could be at particular risk.
- e. The relevant person's attitude towards the hazards identified.
- f. The consequences of non-compliance.
- g. The cost of compliance.
- h. The likely effectiveness of the enforcement options under consideration.
- i. The history of past compliance.

Note: For the purposes of this Enforcement Policy the 'relevant person' can be taken to refer to the individual or company who could be the subject of enforcement action. This would be determined by the nature of the residential premises in question.

3.5 The enforcement options available to the Council are:-

- a. Informal action
- b. To issue Hazard Awareness Notices
- c. To serve Improvement Notices
- d. To serve Prohibition Orders
- e. To serve Emergency Prohibition Orders (not available for Cat 2 hazards)
- f. To take Emergency Remedial Action (not available for Cat 2 hazards)
- g. To make a Demolition Order (not available for Cat 2 hazards)
- h. To declare a Clearance Area (not available for Cat 2 hazards)

The above actions are mutually exclusive when dealing with the same hazard in the same premises. However, the Council can take a different course of action or the same course of action again, if the initial action has not proved satisfactory. Emergency measures are the exception to the above rule. For example, where Emergency Remedial Action is followed by an Improvement Notice or a Prohibition Order, it is considered to be a single course of action.

3.6 When taking enforcement action the Council will prepare and serve with any Notice or Order under Part 1 of the Act, or any copy of a Part 1 Notice or Order, a statement of reasons for the decision to take enforcement action. The statement will include an explanation as to why a particular course of action was taken in preference to the other forms of available action. Where the relevant enforcement action is the declaration of a clearance area, the statement of reasons must be published as soon as possible after the resolution declaring that the area be defined as a clearance area under section 289 of the Housing Act 1985, is passed.

3.7 Where reasonably practicable, any proposed enforcement action will be discussed with the relevant person prior to the service of any Notice or Order under Part 1 of the Act, and their representations sought.

4.0 Informal Action

4.1 In order to promote good working relationships with responsible landlords and in line with the Compliance Code, the Council will, other than in exceptional

cases*, always ensure that the landlord and tenant(s) have the opportunity to discuss the Council's proposals before a Notice is served. This will normally be by way of a telephone discussion, e-mail or informal letter to the landlord, providing an invitation to inspect the premises and carry out remedial works or to contact the Council to discuss the requirements. This action does not preclude the subsequent service of an enforcement Notice.

**exceptional cases would be where by following informal action an unacceptable delay may arise in alleviating a serious hazard e.g. where deemed 'an imminent risk of serious harm' to the occupants or where the previous history of the party or premises concerned shows persistent and repeated breaches of legal requirements.*

4.2 It is the Council's policy to initially adopt an informal approach to resolving Category 1 and Category 2 hazards, except in exceptional circumstances

5.0 Hazard Awareness Notices (Sections 28 and 29).

5.1 A Hazard Awareness Notice under section 29 (Notice relating to a Cat 2 hazard) may be a reasonable response to a less serious hazard, where the landlord has not responded to informal action and the Council wishes to more formally draw attention to the desirability of remedial action.

5.2 A Hazard Awareness Notice under section 28 (Notice relating to a Cat 1 hazard, where no Management Order is in place under Part 4) may be an appropriate course of action as a means of advising the relevant person that a Category 1 hazard exists on the residential premises. This would be appropriate in circumstances where remedial action or prohibition is unreasonable or impractical.

5.3 A Hazard Awareness Notice may be the preferred course of action, as opposed to issuing an Improvement Notice, where the relevant person has agreed to take remedial action and the Council is satisfied that the work will be done within a reasonable timescale. When taking informal action of any nature, inspectors will clearly differentiate to the alleged offender what is legally required and what is recommended as good practice.

5.4 It is the Council's policy that a Hazard Awareness Notice will be served in respect of residential premises where:-

- a. informal action has been unsuccessful
- b. the hazard(s) present are all of Category 2; or,
- c. in the case of Category 1 hazards the Council is fully satisfied that the relevant person will take suitable remedial action within a suitable timescale; or,
- d. the circumstances are such that improvement or prohibition is unreasonable or impractical.

5.5 The service of a Hazard Awareness Notice does not preclude further formal action, should an unacceptable hazard remain.

- 5.6 All formal documents will be served as soon as reasonably practicable.
- 5.7 Hazard Awareness Notices will be drafted in accordance with the relevant section of the Housing Act 2004, as determined by the category of hazard.

6.0 Improvement Notices (Sections 11 and 12).

- 6.1 An Improvement Notice under section 11 will be an appropriate course of action where a Category 1 hazard exists on residential premises, where no Management Order is in place under Part 4 of the Act. An Improvement Notice served under this section must, as a minimum, remove the Category 1 hazard; however, it may also extend beyond this. For example, this may be appropriate where a remaining Category 2 hazard would still present an unacceptable risk to health and safety or where the duty on the authority may arise again should conditions deteriorate.
- 6.2 An Improvement Notice under section 12 may be an appropriate course of action where a Category 2 hazard exists on residential premises, where no Management Order is in place under Part 4 of the Act. A Notice served under section 12 would require the relevant person to take suitable remedial action in respect of the hazard(s) concerned.
- 6.3 Section 11 – It is the Council’s policy that an Improvement Notice will be served in respect of residential premises where:-
 - a. there is a Category 1 hazard(s) present, and
 - b. there is limited confidence that the relevant person will respond to a Hazard Awareness Notice within a reasonable time.
 - c. only Category 1 hazards may be put on the Notice
- 6.4 Section 12 – It is the Council’s policy that an Improvement Notice may be served in respect of residential premises where:-
 - a. there is a Category 2 hazard(s) present, and that hazard(s) would present an unacceptable risk if allowed to remain and
 - b. the relevant person will not confirm in writing their intention to undertake the necessary remedial action.
 - c. Category 1 and 2 hazards may be put on the same Notice.
- 6.5 When the Notice becomes operative it will be a local land charge on the premises to which it relates. This means that it will be recorded in the register of local land charges kept by the Council. This register is public and anyone may search for entries in it upon payment of a fee. Purchasers will normally search this register.
- 6.6 Inspectors will not issue Improvement Notices unless they are confident that they have sufficient evidence to defend an appeal against the Notice.
- 6.7 All Notices will be drafted in accordance with section 13 of the Housing Act 2004 and will be accompanied by information on the appeal procedure and the time limits for such an appeal.

6.8 Suspension of Improvement Notices (Section 14).

An Improvement Notice may, for the operation of the Notice, be suspended until a time or the occurrence of an event specified in the Notice. The purpose of suspension will normally be to allow the Council to prioritise action.

- 6.9 It is the Council's policy that an Improvement Notice will be suspended where:-
- a. it is appropriate to wait until a person of a particular description begins, or ceases to occupy the premises: or,
 - b. the person, upon whom a Notice was served, has given an undertaking to the Council.

6.10 Revocation and Variation of Improvement Notices (Section 16).

Where the Council is satisfied that an Improvement Notice has been complied with any such Notice will be revoked. The Council may also, at its discretion, revoke an Improvement Notice where it is deemed that there are special circumstances (in respect of a Category 1 hazard), or where (in the case of a Category 2 hazard) it is considered appropriate.

- 6.11 In the case of a Notice that applies to more than one hazard, the requirement of the preceding paragraph will apply to each of the hazards individually.

- 6.12 The Council may also vary Improvement Notices in the following circumstances:-
- a. Where part of a Notice, which relates to more than one hazard, has been revoked the remainder of the Notice may also be varied as considered appropriate; or,
 - b. with the agreement of the person on whom the Notice was served; or,
 - c. in the case of a suspended Improvement Notice, so as to alter the time or event specified that triggers the end of suspension.

6.13 Review of Suspended Improvement Notices (Section 17).

Suspended Improvement Notices will be reviewed in accordance with section 17 of the Housing Act 2004.

7.0 Prohibition Orders (Sections 21 and 22).

- 7.1 A Prohibition Order made under section 21 may be an appropriate course of action where a Category 1 hazard exists on residential premises, where no Management Order is in place under Part 4 of the Act. An Order made under this section may prohibit use of part or all of the premises for some or all purposes, or occupation by particular numbers or descriptions of people.

- 7.2 Section 22 makes an equivalent provision for a Prohibition Order to be made where a Category 2 hazard exists on residential premises, where no Management Order is in place under Part 4 of the Act.

- 7.3 It is the Council's policy that a Prohibition Order will be served in respect of a residential premises where:-

- a. there may be a serious threat to health and safety and remedial action is considered unreasonable or impractical for cost or other reasons i.e. where the work cannot be carried out with the tenant in residence; or,
- b. a dwelling is overcrowded as regards space and/or amenities for the numbers in occupation; or,
- c. where a dwelling presents a serious threat to the health and safety to a specific group of persons, but is relatively safe for occupation by any others; or
- d. there is little confidence in an unprompted offer by the relevant person to prohibit an activity associated with that risk (Category 2 hazards only); or the relevant person will not confirm in writing their unprompted offer of voluntary prohibition (Category 2 hazards only).

7.4 Where a Prohibition Order has been served the Council will consider, in the context of the Private Sector Housing Assistance Policy, whether it is appropriate to offer financial assistance or advice to the owner, landlord or tenant.

7.5 Prohibition Orders will be drafted in accordance with section 22 of the Housing Act 2004.

7.6 When the Notice becomes operative it will be a local land charge on the premises to which it relates. This means that it will be recorded in the register or local land charges kept by the Council. This register is public and anyone may search for entries in it upon payment of a fee. Purchasers will normally search this register.

7.7 Inspectors will not issue Prohibition Orders unless they are confident that they have sufficient evidence to defend an appeal against the Notice

7.8 Suspension of Prohibition Orders (Section 23).

A Prohibition Order may, for the operation of the Order, be suspended until a time or the occurrence of an event specified in the Order.

- 7.9 It is the Council's policy that a Prohibition Order will be suspended when:
- a. it is appropriate to wait until a particular description begins or ceases to occupy the premises: or,
 - b. in case of an event, where a person, upon whom a Notice was served, has not complied with an undertaking given to the Council.

7.10 Revocation and Variation of Prohibition Orders (Section 25).

Where the Council is satisfied that a hazard, in respect of which a Prohibition Order was made, no longer exists, then any such Order will be revoked. The Council may also, at its discretion, revoke a Prohibition Order where it is deemed that there are special circumstances (in respect of a Category 1 hazard), or where (in the case of a Category 2 hazard) it is considered appropriate.

7.11 In the case of an Order that applies to more than one hazard, the requirement of the preceding paragraph will apply to each of the hazards individually.

- 7.12 It is the Council's policy to vary Prohibition Orders in the following circumstances:
- a. where part of an Order, which relates to more than one hazard, has been revoked the remainder of the Order may also be varied as considered appropriate; or,
 - b. with the agreement of every person on whom the Order, or copies of the Order, were required to be served; or,
 - c. in the case of a suspended Prohibition Order, so as to alter the time or event specified that triggers the end of suspension

7.13 Review of Suspended Prohibition Orders (Section 26).

Suspended Prohibition Orders will be reviewed in accordance with section 26 of the Housing Act 2004.

8.0 Emergency Remedial Action (Section 40).

- 8.1 Emergency Remedial Action taken under section 40 may be an appropriate course of action where a Category 1 hazard exists on residential premises, where no Management Order is in place under Part 4 of the Act. Action taken under this section is that action which the Council considers necessary to remove an imminent risk of serious harm to the occupiers of any residential premises. Emergency Remedial Action taken under this section may be taken in relation to one or more Category 1 hazards in the same premises.
- 8.2 It is the Council's policy that Emergency Remedial Action will be taken in respect of residential premises where:-
- a. a Category 1 hazard exists and,
 - b. there is an imminent risk of serious harm to the health and safety of any occupiers and,
 - c. where remedial action, by way of an Improvement Notice made under section 11, could potentially be taken.
- 8.3 The Council will serve an Emergency Remedial Action Notice upon the relevant person within 7 days, beginning on the day the remedial action starts.
- 8.4 Emergency Remedial Action Notices will be drafted in accordance with section 41 of the Housing Act 2004.
- 8.5 Inspectors will not take Emergency Remedial Action unless they are confident that they have sufficient evidence to defend an appeal against the Notice.

9.0 Emergency Prohibition Orders (Section 43).

- 9.1 An Emergency Prohibition Order made under section 43 may be an appropriate course of action where a Category 1 hazard exists on residential premises,

where no Management Order is in place under Part 4 of the Act and where a hazard involves an imminent risk of serious harm to the health or safety of any occupiers of residential premises. An Order made under this section may prohibit use of part or all of the premises as is necessary and, unlike a Prohibition Order, is effective immediately. An Emergency Prohibition Order made under this section may relate to one or more Category 1 hazards in the same premises.

- 9.2 It is the Council's policy that an Emergency Prohibition Notice will be served in respect of residential premises where:
- a. a Category 1 hazard exists, and
 - b. no Management Order is in place under Part 4, and
 - c. where a hazard involves an imminent risk of serious harm to the health and safety of any occupiers.
- 9.3 The aforementioned provisions of Section 25, which relate to revocation and variation of a Prohibition Order, also apply to Emergency Prohibition Orders.
- 9.4 Emergency Prohibition Orders will be drafted in accordance with section 43 of the Housing Act 2004.
- 9.5 Inspectors will not make Emergency Prohibition Orders unless they are confident that they have sufficient evidence to defend an appeal against the Order.

10.0 Demolition Orders (Section 46).

- 10.1 A Demolition Order made under section 46 may be an appropriate course of action where a Category 1 hazard exists on residential premises, where no Management Order is in place under Part 4 of the Act and the property in question is not a listed building.
- 10.2 In determining whether to make a Demolition Order the Council will;
- a. take into account the availability of local accommodation for re-housing the occupants,
 - b. take into account the demand for, and sustainability of, the accommodation if the hazard(s) were remedied.
 - c. consider the prospective use of the cleared site,
 - d. consider the local environment, the suitability of the area for continued residential occupation and the impact of the cleared site on the appearance and character of the neighbourhood.

11.0 Clearance Areas (Section 47).

- 11.1 The Council may decide to declare a Clearance Area where it is satisfied that:
- a. each of the residential buildings in the area contains a Category 1 hazard, and
 - b. the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area, or
 - c. the residential buildings in the area are dangerous or harmful to the health or safety of the inhabitants of the area as a result of their bad arrangement or the narrowness or bad arrangement of the streets; and

- d. the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area.
- 11.2 The Council may decide to declare a Clearance Area where it is satisfied that:
- a. each of the residential buildings in the area contains a Category 2 hazard,
 - b. the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area, and
 - c. the circumstances of the case are circumstances specified or described in an Order made by the Secretary of State.

12.0 Interim or Final Empty Dwelling Management Orders and Compulsory Purchase.

- 12.1 Subject to the prescribed exceptions, the Council may seek authority from a Residential Property Tribunal to make interim or final Empty Dwelling Management Orders (EDMO). This will only be the case where:
- a. The dwelling has been wholly unoccupied for at least 6 months or such a longer period as may be prescribed.
 - b. There is no reasonable prospect of it becoming occupied in the near future.
 - c. If an interim EDMO is made, there is a reasonable prospect that the dwelling will become occupied.
 - d. The Council has made reasonable efforts to notify the relevant proprietor that they are considering making an Order and to ascertain from him what steps (if any) he is taking, or is intending to take to ensure that the dwelling is occupied.
 - e. That any prescribed requirements have been complied with.
- 12.2 The Council reserves the right to consider the option of compulsory purchase in any instance where it is appropriate to do so.

13.0 Mandatory Licensing of Houses in Multiple Occupation (HMOs)

- 13.1 Section 61 of the Housing Act 2004 places a duty on the Local Housing Authority to licence certain types of HMO and to take all reasonable steps to ensure applications are made.
- 13.2 Section 63(3) provides that the Local Housing Authority may require an application for a licence to be accompanied by a fee.
- 13.3 The Council will make a charge for the issue of such licences. This will be fixed by the Council and reviewed on an annual basis.
- 13.3 The Council's approach to HMO licensing will be in accordance with the general principles outlined in this Policy.
- 13.4 The Council will further detail its approach to dealing with this category of premises in any adopted HMO strategy document.

14.0 Simple Caution.

- 14.1 A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

For a simple caution to be issued there must be sufficient evidence available to prove the case, the offender must admit the offence, it must be in the public interest to use a Simple Caution and the offender must be 18 years or over. The offender should not have received a Simple Caution for a similar offence within the last 2 years.

A record of the Caution will be sent to the Office of Fair Trading and the Local Authority Coordinating Body for Regulatory Services (LACORS) if appropriate and will be kept on file for 2 years. If the offender commits a further offence, the Caution may influence our decision to take a prosecution. If during the time the Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Caution may be cited in court, and this may influence the severity of the sentence that the Court imposes. Simple Cautions are an alternative to prosecutions in appropriate cases. Simple Cautions can only be issued if the defendant admits to the offence, and the circumstances are such the interests of the public and justice would be better served without resource to legal proceedings in the first instance.

If the Caution is not administered, because the suspect refuses to accept it, the facts of the case will be reviewed again, without the option of a Simple Caution, and a prosecution may result.

The Home Office guidance (Circular 016/2008) is available through the following hyperlink:- www.homeoffice.gov.uk

15.0 Prosecution

- 15.1 Prosecution will be considered as a course of action where there has been a failure to comply, 'without reasonable excuse', with the requirements of any formal Notice, Order or Licence. In addition, the decision to prosecute may also be influenced by the presence of one or more of the following criteria;
- a. where there is a history of similar offences;
 - b. where, as a result of a failure to comply, there has been, or there is, a risk of an accident or a case of ill health;
 - c. where there appears to have been a reckless disregard for the health and safety of occupants and/or others;
 - d. where false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to serious risk;
 - e. where inspectors have been intentionally obstructed in the lawful course of their duties
- 15.2 All evidence will be gathered in accordance with the Police and Criminal Evidence Act 1984 (PACE) and associated codes of practice.

15.3 Before a decision to prosecute is taken the officer, together with the Housing Renewal Manager or Private Sector Housing Manager and where necessary the Solicitor and Monitoring Officer, must be satisfied that both the 'Evidential Test' and the 'Public Interest Test', as contained within the Code for Crown Prosecutors, is in general terms satisfied. The code is available in English, Bengali, Chinese, Gujarati, Hindi, Punjabi, Urdu and Welsh through the following hyperlink:- www.cps.gov.uk/victims_witnesses/code.html

15.4 When a prosecution is proposed the case file will be submitted to the Solicitor and where necessary the Monitoring Officer as soon as possible for consideration.

16.0 Works in Default

16.1 The Council may, in certain circumstances, carry out works detailed in any formal enforcement document. Such action may be taken with or without the agreement of the responsible person.

16.2 When taking action with the agreement of the person concerned, the Council may take any action, which that person is required to take in relation to the Notice. However taking action by agreement will only generally be considered where it is felt that the relevant person is for whatever reason incapable of organising, executing and overseeing the necessary works. Any such work undertaken will be at the expense of the person concerned.

16.3 Taking action without the agreement of the person concerned, will be considered as a course of action in any of the following circumstances;

- a. where a person has failed without 'reasonable excuse' to comply with the requirements of an Improvement Notice,
- b. where reasonable progress, in relation to the requirements of the Notice, is not being made.

17.0 Charges for Enforcement Action (Section 49).

17.1 It is the policy of the Council to make a reasonable charge for taking enforcement action in the following circumstances:

- serving an Improvement Notice under section 11 or 12
- making a Prohibition Order under section 20 or 21
- taking Emergency Remedial Action under section 40
- making an Emergency Prohibition Order under section 43 or
- making a Demolition Order under section 265 of the Housing Act 1985
- carrying out a review under section 17 (review of suspended Improvement Notices) or section 26 (review of suspended Prohibition Orders) or
- serving copies of the Council's decision on such a review

17.2 Where expenses are to be charged they will be made relating to all stages of enforcement as detailed in Section 49 of the Housing Act 2004 and will be charged at the current (with on-costs) hourly officer rate. An administration cost equal to 15% of the officer cost will be added in all cases.

17.3 Charges in each individual case will be subject to a maximum of £350.

17.4 Expenses will be recovered in accordance with Section 50 of the Housing Act 2004, via a demand for payment of the charge. As from the time that the demand becomes operative, the sum recoverable, until recovered will be registered as a local land charge on the premises concerned.

18.0 Recovery of Expenses (Schedule 3).

18.1 Where the Council undertakes works in default, or exercises its power to take Emergency Remedial Action, it will seek to recover the expenses reasonably incurred in so doing from the relevant person. It should be noted that such charges are in addition to charges for enforcement.

18.2 Expenses will be recovered via a demand for payment of the charge. As from the time that the demand becomes operative, the sum recoverable together with interest accrued on them, until recovered, is a local land charge on the premises concerned.