

## Private Sector Housing Enforcement Policy – Appendix A

### The Assessment Method – Housing Health and Safety Rating System (HHSRS) [Housing Act 2004]

The Housing Act 2004, (“the Act”), together with Regulations made under it, prescribes the HHSRS as the means by which Local Authorities assess housing conditions and decide on action to deal with poor housing. It is a risk based assessment system of the effect of housing conditions on the health of occupiers. Twenty nine (29) potential hazards are assessed and scored for their severity. The scores for each hazard are ranked in Bands. Hazards falling into Bands A to C are more serious, and are classed as Category 1. Less serious hazards fall into Bands D to J, and are classed as Category 2. The Council must take appropriate action in respect of a Category 1 hazard, and may do so in relation to Category 2 hazards.

A ‘Category 1 hazard’ arises when a hazard reaches a score of 1000 or more under the HHSRS. A ‘Category 2 hazard’ arises when a hazard reaches a “significant” score of up to 999 under the HHSRS.

The score is based on the risk to the potential occupant who is most vulnerable to that hazard. In determining what action to take, in addition to the score the Council will also consider the views of occupiers, the risk to both current and future occupiers (including visitors), the presence of other significant hazards in the property and whether it the Council has a duty or discretion to act.

#### Appropriate Action:

Under the Housing Act 2004 there are a number of courses of action available that the Council can take, the most common used of which are:

- Hazard Awareness Notice
- Improvement Notice
- Prohibition Orders
- Suspension of Improvement Notice
- Suspension of Prohibition Notice

A Hazard Awareness Notice gives formal notification that the hazard exists and do not require the recipient to carry out any works. Improvement Notices on the other hand do require that remedial work is undertaken. Prohibition Orders tend to prohibit use of all or part of a dwelling. Both Improvement and Prohibition Orders may be suspended until a specified time or event.

As far as Category 1 hazards are concerned in the majority of cases an Improvement Notice will provide the most appropriate action, repair or renewal is generally cost effective due to the high value of property in the Harrogate District. However, Prohibition Orders may also be used where individual circumstances dictate the use of this action.

#### Emergency Measures

Emergency Measures	When this action may be taken
Emergency Remedial Action. Section 40	When the Council is satisfied that a Category 1 hazard exists in any residential premises and is further satisfied that the hazard involves an imminent risk of serious harm to the health and safety of any occupiers of those or any other residential premises and no management order is in force under Chapter 1 or 2 of Part 4 of the Act.

	<p>Action may be in respect of one or more category 1 hazards on the same premises or in the same building containing one or more flats.</p> <p>Work required will be whatever remedial action the Council considers necessary to remove an imminent risk of serious harm.</p> <p>This action is likely where the Council considers it is immediately necessary to remove the imminent risk of serious harm, there is no confidence in the integrity of any offer made by the owner to quickly address the hazard, and the imminent risk of serious harm can be adequately addressed through remedial action to negate the need to use an emergency prohibition order.</p> <p>If this action is taken a notice will be served within 7 days of taking the emergency remedial action, detailing the premises, the hazard, the deficiency, the nature of the remedial action, the date action taken, and rights of appeal.</p>
<p>Emergency Prohibition Orders Section 43</p>	<p>When the Council is satisfied that a Category 1 hazard exists in any residential premises and is further satisfied that the hazard involves an imminent risk of serious harm to the health and safety of any occupiers of those or any other residential premises and no management order is in force under Chapter 1 or 2 of Part 4 of the Act.</p> <p>Action may be in respect of one or more category 1 hazards on the same premises or in the same building containing one or more flats.</p> <p>The order specifies prohibition(s) on the use of part or all of the premises with immediate effect.</p> <p>This is likely where the imminent risk of serious harm cannot be adequately addressed through the use of emergency remedial action for whatever reason.</p> <p>Where this action is taken the Council will, if necessary, take all reasonable steps to help the occupants find other accommodation when the tenants are not able to make their own arrangements.</p>

### Charges for certain types of notice

Under Section 49 of the Housing Act 2004 the Council is able to make a reasonable charge to recover certain administrative and other expenses incurred in:

- a) Serving an improvement notice under section 11 or 12
- b) Making a prohibition order under section 20 or 21
- c) Serving a hazard awareness notice under section 28 or 29
- d) Taking emergency remedial action under section 40
- e) Making an emergency prohibition order under section 43 or
- f) Making a demolition order under section 265 of the Housing Act 1985

The charge is to cover expenses incurred in determining whether to serve the notice, identifying any action to be specified in the notice and the administration of the service of the notice.

### **Property Tenure**

In deciding what action to take the Council will have regard to the extent of control that an occupier has over the works required to a dwelling. In most cases it is usually the owner's responsibility to carry out works. The majority of enforcement action will involve requiring private landlords or Registered Providers to carry out work.

In the case of owner occupiers in most instances they will not be required to carry out work to their own home and a Hazard Awareness Notice is likely to be the most appropriate action. The Council may, however, consider other forms of action, for example Emergency Prohibition Order or Emergency Remedial Action where there is an imminent risk of serious harm to the occupiers themselves or to others, or where the condition of the dwelling is such that it may adversely affect the health and safety of others outside the household. This may be because of a serious, dangerous deficiency at the property, or for example to carry out fire precaution works to a flat on a long leasehold in a block in multiple occupation.

There is the option to suspend an Improvement Notice or Prohibition Order until a specified time or event. This could be when a change of occupancy occurs or suspension could be at the wish of, say, an elderly occupier who does not want the disturbance of extensive works.

Where an Improvement Notice has been served the Council will require works to reduce the hazard to an acceptable level.

### **Content of Notices**

Generally a notice will state:

- what is wrong
- what is required to put things right
- the timescale in which to put things right
- what will happen if the notice is not complied with
- the reasons for choosing that particular course of action

### **Houses in Multiple Occupation (HMO) and HMO Licensing**

A HMO is a building or part of a building occupied by three or more people who do not form a single household as their only or main residence, and there is some sharing or lack of basic amenities. This includes houses containing bedsits and shared houses. (for definition see Sec.254 Housing Act 2004)

HMO's of three or more storeys, with five or more occupiers required a **Licence**. HMO's owned by Registered Providers (RP's), the Police, Health Authorities and certain other organisations are exempt, as are certain buildings properly converted into flats. The fees for licensing a HMO are fixed annually by the council.

Licences are granted where the house is reasonably suitable for occupation as a HMO, or it can be made so by the imposition of conditions. The management arrangements also have to be satisfactory and the licensee and manager have to be 'fit and proper' persons.

Licences will normally be valid for five (5) years and will specify the maximum number of occupiers or households. The occupancy number will depend on the number and size of rooms and the kitchen and bathroom facilities provided.

The Council may serve a Temporary Exemption Notice (TEN) where a landlord is, or shortly will be, taking steps to make a HMO non-licensable. A TEN will normally only be granted for a maximum period of three (3) months.

Where a landlord fails to license a licensable HMO, or knowingly permits another person to occupy a licensed HMO and this results in the house being occupied by more households or persons than is authorised by the license, or fails to comply with a license condition, the Council can decide to prosecute.

If the Council finds that there has been a change of circumstances in a HMO since it was licensed, it has the power to vary the licence. If there is a serious breach or there are repeated breaches of the licence conditions, or the licensee or manager are no longer fit and proper persons, the licence can be revoked. The licence can also be revoked if the property is no longer a licensable HMO.

### **Management Regulations**

The HMO Management Regulations apply to all HMO's, whether or not they require a licence. These regulations require HMO's to be kept in a reasonable state of repair, all installations and appliances (including those for fire safety) to be in good working order and the common parts to be kept clean and in a reasonable state of decoration. In addition the Housing Health and Safety Rating System applies to all dwellings.

Whilst local authorities are responsible for implementing mandatory licensing of HMO's and assessing the fire safety risks in all dwellings under the HHSRS, the North Yorkshire Fire and Rescue Authority also have responsibilities under the Fire Safety Order 2005 for the fire safety in common (shared) parts of HMOs. An agreement (protocol) has therefore been drawn up between the North Yorkshire Fire and Rescue Authority and the North Yorkshire local authorities for joint working to secure fire safety in HMOs.

### **Summary of Legislative Powers in Relation to HMO's.**

Offences in relation to the Licensing of HMO's Section 72	Action may be taken for the offence of operating a HMO without a licence or for failing to satisfy the conditions of the licence without reasonable excuse. This may take the form of prosecution or revocation of a licence.
Offences in relation to the Selective Licensing of HMO's Section 95	Action is the same as above. Note: The need for Selective Licensing has not been identified within the District.
Rent Repayment Order Sections 73 & 96	Where a HMO is operating without a licence where one is required and notice has not been received to notify the local authority that particular steps are being taken to no longer require the house to be licensed, the Council may make an application to the First Tier –Property Chamber for a rent repayment order with respect to the repayment of housing benefit.
Interim Management Order (IMO) Section 102	Where an HMO requiring a licence is operating without a licence, or the licence has been revoked but the revocation is not yet in force or, on coming into force the revocation will mean that the health and safety

	<p>condition will be satisfied, the local authority has a duty to make an Interim Management Order.</p> <p>In the case of a HMO that does not need to be licenced, and the health and safety condition is met, the LA may make an order on application to the First Tier – Property Chamber.</p> <p>Note: the ‘health and safety condition’ is met where it is necessary to protect the health, safety or welfare of persons occupying the house.</p>
Special Interim Management Order Section 103	As these relate to areas of either low demand housing or areas experiencing significant and persistent anti-social behaviour problems their use within the District is not appropriate.
Final Management Order (FMO) Section 113	Must be made to replace an IMO (interim management order) on the date the house would be required to be licensed but the Council consider they are unable to licence it. If a house is not required to be licensed a FMO may be made on the date the IMO expired, for the purpose of protecting the health, safety and welfare of the occupying persons or others affected.
Overcrowding Notice Section 139	Where no IMO or FMO is in force, and the HMO does not require a licence, the local authority may serve an overcrowding notice on one or more relevant persons if, having regard to the rooms available, it considers that an excessive number of persons is being or is likely to be, accommodated in the HMO concerned.

### Empty Properties

Harrogate Borough Council recognises that empty homes represent a wasted resource. The Council is therefore committed to bringing back into use homes which have remained empty for 6 months or more and in particular those that are deemed to be long term empties.

### Summary of Legislative Powers in relation to Empty Homes. (Housing Act 2004)

Interim Empty Dwelling Management Order (EDMO) Section 133	Where a dwelling has been wholly unoccupied for a period of at least 2 years; there is no reasonable prospect that the dwelling will become occupied unless an interim EDMO is made; the Council has made reasonable efforts to notify the proprietor of the dwelling and to ascertain what steps are being taken to occupy that dwelling, then the Council may apply to the First Tier – Property Chamber for an interim EDMO.
Final Empty Dwelling Management Order (EDMO) Section 136	<p>The local authority may make a final EDMO to replace an interim EDMO, where:</p> <ul style="list-style-type: none"> <li>▪ the dwelling is likely to become or remain unoccupied; they have taken all such steps as were appropriate for securing the occupation of the dwelling; and</li> <li>▪ they have taken into account the interests of the community and the effect that the order will have on the rights of the relevant proprietor and the rights of third parties.</li> </ul>

In addition to the actions possible under the Housing Act 2004 (detailed above) there are other enforcement actions that the Council may choose to take to help bring empty homes back into use. The most commonly considered actions are:

- improvement works
- enforced sale
- compulsory purchase

Enforcement action aimed at bringing empty property back into use will only be used when attempts to encourage the owner of an empty property to bring it back into use voluntarily have failed. When considering enforcement options for empty homes, each case will be considered on its individual merits and there are clear benefits to taking the action for the neighbourhood or to address housing needs.

The following table shows the type of problems that can be encountered, legislation that may be used to require improvements and the action required of the owner. These powers are not restricted to empty homes, however, the powers under Part 1 of the Housing Act 2004 to remedy hazards may not be appropriate to empty homes, unless occupation seems likely. Note: not all the powers listed are ones enforceable by, or available to, the Private Sector Housing team.

Problem	Legislation	Action Required
Dangerous or dilapidated buildings	Building Act 1984, section 77 and 78.	Requires the owner to make the property safe and/or enables the Local Authority to take emergency action to make the property safe.
Property in such a state as to be a nuisance (e.g. causing dampness in adjoining property) or prejudicial to health	Environmental Protection Act 1990, Sec 79	Requires the owner to take steps to abate the nuisance.
	Building Act 1984, sec 76	Enables the Local Authority to take action to abate the nuisance.
Unsecured property posing a risk of unauthorised entry or likely to suffer vandalism, arson or similar.	Local Government (Misc. Prov.) Act 1982, section 29.	Allows the Local Authority to secure a property after 48 hours.
	Building Act 1984, section 78	Allows the Local Authority to fence off the property.
Blocked or defective drains or private sewers	Local Government (Miscellaneous Provisions) Act 1976, section 35	Requires the owner to address obstructed private sewers
	Building Act 1984, section 59	Requires the owner to address blocked or defective drains, gutters etc.
	Public Health Act 1961, sec 17	Requires the owner to take steps to clear the land of vermin and/or requires the owner to remove waste likely to attract vermin.
Vermin either present or risk of attracting vermin that may detrimentally affect people's health	Prevention of Damage by Pests Act 1949, sec 4.	Requires the owner to take steps to clear the land of vermin and/or requires the owner to remove waste likely to attract vermin.
	Environmental Protection Act 1990, section 79	
	Public Health Act 1936, section 83	
Unightly land or property affecting the amenity of the area	Public Health Act 1961, section 34	Requires the owner to remove waste from the property
	Town and Country Planning Act 1990, section 215	Requires the owner to address unsightly land or external appearance of the property
	Building Act 1984, section 79	Requires the owner to address the

	(Building Control)	property adversely affecting the amenity of the area through its disrepair
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**Enforced Sale.** The Law of Property Act 1925 gives Local Authorities the power to sell properties in order to recover a debt secured against that property. This power can be used where a debt has been incurred, for example, following works undertaken to an empty home in the owners default.

**Compulsory Purchase.** The Housing Act 1985, section 17 allows the Local authority to acquire underused or ineffectively use property for residential purposes if there is a general housing need in the area. In addition section 226 of the Town and Country Planning Act 1990.

### Further Legislation

#### **The Redress Schemes for Letting Agency work and Property Management work (requirement to Belong to a Scheme etc.) Order 2014**

The Order, which came into force on 1<sup>st</sup> October 2014, makes it a legal requirement for all letting agents and property managers in England to join a Government approved redress scheme, of which there are currently three.

The scheme was brought into effect as part of the Government's response to the Communities and Local Government Select Committee inquiry into the private rented sector published in 2013. The requirement to join a redress scheme was identified as one of the recommendations to improve standards in the sector.

The enforcement authority (the Council) can impose a fine up to £5000 where it is satisfied, on balance of probability,

that someone is engaged in letting or management work and is required to be a member of a redress scheme, but has not joined. The three government approved schemes are:

- Ombudsman Services Property
- Property Redress Scheme
- The Property Ombudsman

#### **The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

These Regulations impose duties on certain landlords of residential premises in respect of smoke and carbon monoxide alarms where a specified tenancy is in operation. The regulations require a landlord ensures that a smoke alarm is equipped on every storey and a carbon monoxide alarm is equipped in any room which contains a solid fuel-burning combustion appliance. Where there is a breach of this requirement the local housing authority must serve a remedial notice on the landlord. There is also the ability to arrange remedial action and well as requiring a landlord to pay a penalty charge of up to £5,000.

#### **The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015**

These Regulations introduce measures to improve the energy efficiency of certain private rented property in England and Wales.

Tenants' energy efficiency improvements (Part 2) came into force on the 1<sup>st</sup> April 2016, and enables the tenant of a domestic private rented property to make a request to their landlord for the landlord's consent to the tenant making prescribed energy efficiency improvements to the property. The landlord (and any superior landlord) must not unreasonably refuse consent to the improvements specified in a tenant's request, unless exemptions set out in the Regulations apply, or the landlord proposes alternative energy efficiency measures.

Minimum level of energy efficiency (Part 3) came into force on the 1<sup>st</sup> October 2016, and applies to domestic private rented property. It prescribes a minimum level of energy efficiency for private rented properties: that is an energy performance indicator (evidenced on the energy performance certificate for the property) of band E.

It provides that, subject to prescribed exceptions, a landlord of a domestic private rented property must not grant a new tenancy of the property after 1<sup>st</sup> April 2018, and must not continue to let the property after 1<sup>st</sup> April 2020, where the energy performance of the property is below the minimum level. Landlords seeking to rely on a prescribed exemption when letting a private rented property which falls below the minimum level of energy efficiency must register that exemption on a register maintained by the Secretary of State.

Where the local authority considers that a landlord may be in breach of this section at present, this would not be enforced by Harrogate Borough Council; Officers would make referrals to Trading Standards to follow up.

Trading Standards may serve a compliance notice requiring the landlord to provide evidence to the local authority.

### **Retaliatory Eviction**

Tenants in the private rented sector will be protected from being evicted by their landlord simply because they have made a legitimate complaint about the condition of the property. Where a tenant has made a complaint to their landlord, and a local authority has confirmed that a repair needs to be carried out to prevent a potential risk to health and safety, the landlord will not be able to evict the tenant for 6 months.

A landlord will also be prevented from evicting a tenant where they have not complied with certain legal obligations such as supplying Gas Safety Certificates and Energy Performance Certificates. This restriction would be lifted as soon as these documents are provided. It will no longer be possible to serve a section 21 eviction notice at the start of a tenancy and landlords will have to wait a minimum of four months before they can serve an eviction notice.

In parallel the Government are making it easier for landlords to evict where it would be legitimate to do so, by introducing a prescribed form notice which will reduce errors and remove the need for a landlord to specify the exact date a tenancy comes to an end, while retaining the requirement to give two months' notice.

### **Prevention of Damage by Pests Act**

#### **1949, Public Health Act 1936**

Private Sector Housing are now dealing with these Regulations regarding properties where the removal of stuff that is likely to attract or provide harbourage for rats and mice and where there is any accumulation on a property that is seen to be noxious, harmful or unwholesome.



## **Housing and Planning Act 2016**

The Housing and Planning Act 2016 introduces new tools to enable Local Housing Authorities to tackle rogue landlords and property agents.

The tools are:

- Civil penalties of up to £30,000 as an alternative to prosecution
- Extension of Rent Repayment Orders
- Database of rogue landlords and property agents
- Banning orders
- Obtaining and using Tenancy Deposit information

### **Civil Penalties**

Local Authorities can impose a financial penalty of up to £30,000 on an individual or organisation as an alternative to prosecution for certain housing offences under the Housing Act 2004. The offences are as follows:

- Section 30 – failure to comply with an improvement notice
- Section 72 – mandatory licensing of HMO
- Section 95 – licensing under Part 3 of the Housing Act 2004
- Section 139 – failure to comply with an overcrowding notice
- Section 234 – breach of management regulations in respect of HMO
- Section 21 - breach of a banning order

### **Rent Repayment Orders**

These can be issued to penalise landlords managing or letting unlicensed properties. The order is being extended to cover the following offences:

- Illegal eviction or harassment of the occupiers of a property
- Using violence to secure entry to a property
- Failure to comply with an Improvement Notice
- Failure to comply with a Prohibition Order
- Breach of a Banning Order

### **Database of Rogue Landlords and Property Agents**

Local Authorities will maintain a database; this information can be shared with HM Revenue and Customs.

### **Banning Orders**

Landlords and Letting Agents can be banned from renting out properties if serious offences are committed against tenants. For a comprehensive list of Banning Order Offences please see the following link; <http://www.legislation.gov.uk/uksi/2018/216/schedule/made>

### **Obtaining and using Tenancy Deposit information**

Local Authorities can access tenancy deposit protection data which will help identify rental properties in the area, and tackle rogue landlords.