

Private Sector Housing Enforcement Policy 2021 - 2026

This document contains the Private Sector Housing Enforcement Policy and explains when and how we will use our enforcement powers.



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Introduction

Local authorities are required by the Regulators' Code to publish a clear set of service standards, including their enforcement policy, explaining how they respond to non-compliance. This document contains the Council's Private Sector Housing Enforcement Policy, approved by Cabinet in December 2020 for a five year period. Our Service Standards can be found by following this link [private-sector-housing/service-standards](#)

The role of the Private Sector Housing team is to maintain and improve housing conditions in all property tenures and in particular the private rented sector. This is done by ensuring compliance with the legislative framework. Generally, we provide advice and support to those seeking to comply with legislation and standards, and various enforcement powers are available where businesses do not comply. The detail on what action we can take and when we will take it is set out in this policy.

This policy links into the West Kent Housing and Homelessness Strategy 2016 – 2021 in particular Ambition 3 Improving the Standard of Housing. To deliver this objective, we will:

- continue to work with businesses to improve the quality of rented housing in the private sector, delivering accreditation and licensing schemes;
- take enforcement action where necessary to respond to complaints, ensure mandatory standards are met and remove category 1 hazards in the private sector, where there is a serious and immediate risk to a person's health and safety.

Covid-19 and other outbreaks

Our duties and powers still exist during the Covid-19 outbreak and will do so in the event of other future outbreaks, as they are important to protect tenants. Inspections will take place in line with relevant government guidance on the enforcement of standards in rented properties (or similar) and in line with our risk assessments.

Objectives

The Private Sector Housing team is responsible for enforcing a wide range of statutory provisions relating to housing and environmental conditions affecting the health and safety of occupants. Enforcement action includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law.

Our objectives are to:

- assess local housing conditions and keep them under review;
- reduce the number of properties with serious risks to health and safety;
- reduce the number of vulnerable households living in non-decent homes;
- improve standards in private rented sector accommodation;

- improve standards in houses in multiple occupation (HMOs), including HMOs that require licensing;
- improve energy efficiency and help reduce fuel poverty;
- ensure caravan sites comply with the site licence conditions;
- provide an excellent service accessible to everyone.

Our enforcement activity will be:

- **targeted:** at properties and businesses* that pose the greatest risk, including businesses that evade regulation and those whose properties put people's health and safety at risk.
- **proportionate:** reflecting the nature, scale and seriousness of any breach or non-compliance.
- **fair and objective:** based on the individual circumstances of the case, taking all available facts into account.
- **consistent:** based on a transparent policy to ensure consistency in the interpretation and enforcement of legislation.
- **accountable:** undertaken in a responsible manner in accordance with legislation and Government guidance.

* the term "business" includes landlords, property agents, managing agents and letting agents unless otherwise specified.

Policy scope

We will adhere to all relevant legislation whilst carrying out all enforcement and investigation work, including:

- Police and Criminal Evidence Act 1984.
- Criminal Procedure and Investigation Act 1996.
- Human Rights Act 1998.
- Regulation of Investigatory Powers Act 2000.
- Criminal Justice and Police Act 2001.
- Criminal Justice Act 2003.
- Legislative and Regulatory Reform Act 2006.
- Regulatory Enforcement and Sanctions Act 2008.
- Equality Act 2010.
- Data Protection Act 2018.

In addition, we will consider the following guidance:

- European Convention on Human Rights.
- The Enforcement Concordat (1998).
- Housing, Health and Safety Rating System - Enforcement Guidance (2006).
- Local Better Regulation's Priority Regulatory Outcomes (2011).
- The Crown Prosecution Service Code for Crown Prosecutors (2018).

We will comply with any statutory requirement placed upon us and align our procedures with best practice.

Regulators' Code

The Regulators' Code was produced by the Government and sets out the requirements that regulators such as the Council must have regard to when developing policies and operational procedures that guide regulatory activities.

The key provisions of the Code are that regulators such as the Council should:

1. carry out activities in a way that supports those they regulate to comply and grow.
2. provide simple and straightforward ways to engage with those they regulate and hear their views.
3. base regulatory activities on risk.
4. share information about compliance and risk.
5. ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
6. ensure that their approach to regulatory activity is transparent.

The Regulators' Code can be found by following this link [regulators-code](#)

General principles

We actively work with businesses and the public to advise on and assist with compliance. Where we consider that enforcement action is necessary, each case will be considered on its merits. However, general principles apply to the way that each case will be approached.

The Council's Responsibility for Functions and Scheme of Delegations can be found by following this link [Scheme of Delegations](#) and officers authorised to act under relevant legislation will do so in accordance with the Scheme and this policy. Only officers who are competent by training, qualification and/or experience will be authorised to undertake enforcement action.

Cases involving regulatory action can involve businesses or individuals and they will be treated in the same way.

General principles about proportionality of action will be followed, for example where appropriate providing advice and information before resorting to enforcement action.

Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender or gender identity, religion or belief, political views, disability, age or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source. Where applicable, we will consider the views of any injured party or relevant person to establish the nature and extent of any harm or loss and its significance, in making the decision whether to take enforcement action.

It is our expectation that businesses are aware of the statutory obligations placed upon them given that they provide and manage accommodation and so have responsibility for the health, safety, and welfare of occupants.

Tenure

In considering the most appropriate course of action, we will have regard to the extent of control that an occupier has over works required to the dwelling. In normal circumstances, this will mean taking the most appropriate course of action against a business (including a registered social landlord) and in most cases this will involve requiring works to be carried out.

With regard to owner occupiers, in most cases they will not be required to carry out works to their own home and the requirement to take the most appropriate course of action will be satisfied by the service of a hazard awareness notice. However, in certain circumstances we may require works to be carried out or use emergency remedial action or serve an emergency prohibition order (see Appendix 1). This is likely to be where there is an imminent risk of serious harm to the occupiers themselves or to others outside the household, 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 and/or dangerous deficiency at the property.

Risk based enforcement

We will ensure that our resources are targeted where they will be most effective and that intelligence and risk assessment inform all aspects of our approach to regulatory activity, including:

- data collection and other information requirements.
- inspection programmes.
- advice and support programmes.
- enforcement activity and sanctions.

We will focus our efforts on property where intelligence and risk assessment show a higher likelihood of non-compliance, or which pose a more serious risk.

Advice and guidance

We will provide general information, advice, and guidance to make it easier for businesses to understand and meet their obligations. This will be provided promptly, in clear and concise language, using a range of appropriate formats and media.

We will arrange translation and interpretation services if necessary where English is not the first language, to assist a person to access advice, guidance, information, and legislation.

When offering advice, we will clearly distinguish between statutory requirements and advice or guidance aimed at improvements above minimum legal standards.

Information requirements

We do not routinely require information and when determining any data we may require, we will consider the costs and benefits to businesses and:

- limit the data that we request to that which is either appropriate or required by statute for example HMO licensing applications and associated documentation.
- minimise the frequency of collection and seek the information from other sources where relevant and possible.

Liaison with other regulatory bodies and enforcement agencies

Where we and other regulators have a shared interest in a property, we will work together to co-ordinate our activities to minimise any burdens for the business, providing this is of benefit and does not harm the standard of enforcement for either regulator. This will be done in accordance with any joint protocols that may be in place.

We will place significant weight on advice provided by other regulators and enforcement agencies. Where a matter involves enforcement by one or more regulator and/or enforcement agency, where appropriate they will be informed as soon as possible.

Relevant intelligence relating to regulatory matters will be shared with other regulatory bodies and enforcement agencies, for example government agencies, the police, the fire authority, other statutory bodies, and local authorities.

Housing, Health and Safety Rating System

The Housing Health and Safety Rating System (HHSRS) is set out in Part 1 of the Housing Act 2004 and it assesses 29 housing hazards, the effect that each may have on the health and safety of current or future occupants and the best way of dealing with them. Enforcement decisions are made using a three-stage process:

- a. the hazard rating determined under HHSRS following government operating guidance and worked examples.
- b. whether the Council has a duty or power to act, determined by the presence of a hazard above or below certain thresholds. If a hazard is a serious and immediate risk to a person's health and safety, it is a category 1 hazard and if it is less serious or urgent, it is a category 2 hazard.
- c. the Council's judgement as to the most appropriate course of action to deal with the hazard, having regard to the options in statutory enforcement guidance.

Further detail about the HHSRS can be found in Appendix 1.

Powers of entry

In certain circumstances, powers of entry into a property are provided to authorised officers and in general these allow an officer at any reasonable time to:

- enter a property to carry out an inspection and gather evidence.
- take someone with them.
- take equipment or materials with them.
- take measurements, photographs or make recordings.
- take samples of articles or substances; and
- in some cases, to carry out works.

In most cases prior notice must be given to owners and to occupiers, in accordance with the legislation being enforced, ranging from immediately to seven days. The notice will normally be in writing but in some circumstances can be given verbally, depending on the relevant statutory provision.

Powers of entry can be enforced with a warrant obtained from a Magistrates' Court, although this option is a last resort. The Police will accompany officers where that is appropriate. It is an offence to obstruct an officer in the course of their duty. Officers exercising their power of entry will carry identification which includes the details of their authorisation.

Enforcement action

In accordance with good practice, we will:

- consult businesses in relation to the policies and guidance that we produce to ensure that it meets their needs.
- publish our Enforcement Policy.
- follow up enforcement actions where appropriate.
- be transparent in the way in which we enforce requirements and apply and determine penalties (when such powers are available).

When considering what action should be taken, we will look to:

- be proportionate to the nature of the offence and the harm caused.
- change the behaviour of the offender.
- eliminate any financial gain or benefit from non-compliance.
- address the harm caused by regulatory non-compliance, where appropriate.
- deter future non-compliance.
- be responsive and consider what is appropriate for the offender and the regulatory issue.

When considering enforcement action, we will, when appropriate, discuss the circumstances with those suspected of a breach. We will take any comments made into account when

deciding on the best approach, unless immediate action is required to prevent or respond to a serious breach, or when to do so would be likely to defeat the purpose of the proposed enforcement action.

We will ensure that clear reasons for any enforcement action are given at the time the action is taken and confirmed in writing at the earliest opportunity. Complaints and relevant appeals procedures will be explained at the same time.

Deciding what enforcement action is appropriate

In assessing what enforcement action is necessary and proportionate, consideration will be given to:

- the seriousness of the failure to comply.
- past performance of the business and current practice for example the commission of similar offences.
- in the case of new businesses, an assessment of the willingness to undertake the work required.
- where evidence suggests there was premeditation in the committing of an offence.
- the risks that non-compliance poses to the safety, health, and welfare of the public or individuals.
- legal, official, or professional guidance.
- acting in the interests of public health.
- any other relevant matters.

There is a range of potential enforcement options, from no action through to proceedings in court. The main types of action that can be considered (provided they are specifically permitted by legislation) are listed below:

- a. no action.
- b. advice and information.
- c. civil penalty notices.
- d. variable monetary penalty (penalty charge).
- e. financial penalty.
- f. simple caution.
- g. statutory notices.
- h. works in default.
- i. prosecution.
- j. rent repayment orders.
- k. management and licensing of houses in multiple occupation.
- l. management orders.
- m. empty dwelling management orders.
- n. banning orders.
- o. caravan site licensing.
- p. injunctive actions.
- q. enforced sales.

a. No action

There will be circumstances where a contravention does not warrant action, or it may be inappropriate.

b. Advice and information

For certain minor breaches of the law we will give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable and will consider the seriousness of the contravention and the implications of the non-compliance.

This includes:

- providing advice.
- giving verbal and written warnings.
- negotiating agreements between complainants and businesses.
- negotiating specific conditions regarding licences.

It is generally considered appropriate to take this approach in one or more of the following circumstances:

- the act or omission is not serious enough to warrant enforcement action.
- from the past history of the business, it can be reasonably expected that this approach will achieve compliance with the law.
- the consequences of non-compliance will not pose a significant risk.

Failure to comply will usually result in an escalation of enforcement action.

c. Civil penalty notices

Civil penalty notices (CPNs) are used as an alternative to the prosecution of offences under section 249A of the Housing Act 2004 and section 23 of the Housing and Planning Act 2016 and allow financial penalties up to a maximum of £30,000. The offences are as follows:

- failure to comply with an improvement notice (section 30 of the Housing Act)
- offences in relation to the licensing of houses in multiple occupation (section 72 of the Housing Act)
- offences in relation to licensing of houses under Part 3 of the Act (section 95 of the Housing Act)
- offences in relation to contravening an overcrowding notice (section 139 of the Housing Act)
- failure to comply with Management Regulations in respect of houses in multiple occupation (section 234 of the Housing Act)
- breach of a banning order (section 21 of the Housing & Planning Act 2016)

The Council is required to have a policy in place to determine when to prosecute and issue a civil penalty. Our Civil Penalty Policy 2019 can be found by following link [civil-penalty-policy-for-landlords](#)

d. Variable monetary penalty

The Council has powers to issue a variable monetary penalty (also known as a penalty charge) for breaches of two specific areas of legislation. These are the Smoke and Carbon Monoxide Alarm (England) Regulations 2015, and the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014.

We are required to and we have published a [Statement-of-principles](#) for the Smoke and Carbon Monoxide Regulations. We can impose a penalty charge of up to £5,000 where we are satisfied that an offence has occurred. The Government's guidance is that a £5,000 fine should be considered the norm and that a lower fine should only be imposed if we are satisfied that there are extenuating circumstances.

Our [Redress-schemes-procedure](#) enables us to impose a fine of up to £5,000 where a letting agent or property manager who should have joined a scheme has not done so. Our approach to the amount of the fine is consistent with the Statement of Principles for the Smoke and Carbon Monoxide Regulations.

e. Financial penalty

We have the ability to impose financial penalties under certain Regulations. Currently these are:

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

These regulations require landlords to have the electrical installations in their properties inspected and tested by a qualified and competent person at least every five years, obtain reports, supply copies of the report to tenants and the local authority, and complete investigative and remedial work. For non-compliance, the Regulations provide powers for the imposition of a financial penalty of up to £30,000.

The Government's Guide for Landlords can be found by following this link [guide-for-landlords-electrical-safety-standards-in-the-private-rented-sector](#)

We are required to have our own policy to set out how we will determine the appropriate level of a financial penalty. The Government guidance is clear that local authorities may wish to consider the policy previously developed for civil penalties under the Housing and Planning Act 2016 and associated guidance. To ensure consistency of approach and clarity for landlords, the same principles and framework set out in our Civil Penalty Policy 2019 for determining the amount of a financial penalty have been incorporated into our Electrical Safety Standards Policy 2020 (*link to be inserted when Policy is on website*). The Policy also includes full details of the requirements placed on landlords and our powers and responsibilities.

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

There are four breaches under the Regulations where a financial penalty can be imposed, and these relate to letting or continuing to let properties with a low (F or G rating) on an Energy Performance Certificate, registering false information on the Exemptions Register or failing to provide information. Each of these breaches have statutory maximum amounts for financial penalties, ranging from £1,000 to £4,000. Our policy for imposing financial and publication penalties can be found here (*link to be inserted when Policy is on website*) and also includes full details of the requirements placed on landlords and our powers and responsibilities.

f. Simple caution

Where the public interest justifies it, we will consider offering a simple caution (also known as a formal caution), taking into account the Home Office guidelines in relation to the cautioning of offenders and the Code for Crown Prosecutors.

A caution requires an admission of guilt by the offender, however there is no sentence and there is no recorded conviction. A caution will remain on record and may be cited in court should a further offence be committed and prosecuted. Where a simple caution is offered and declined, we will consider prosecution or a civil penalty notice.

g. Statutory notices

Housing and relevant legislation contains provisions for the use of statutory notices. These may be served to require the execution of works, the removal of statutory nuisances or the protection of public health and/or safety.

Notices will normally be served where:

- providing advice and information has not achieved the desired effect.
- there is a reason to believe that the business will not respond to the provision of advice and information.
- there is a history of non-compliance.
- standards are generally poor with little management awareness of statutory requirements.
- the consequences of non-compliance could be potentially serious to the health and safety of the occupants or their neighbours.
- there is an imminent risk to health.

Realistic time limits will be attached to notices and wherever possible these will be agreed with the business in advance. In some circumstances, requests for extension of time can be made in writing to the officer issuing the notice, prior to the expiry date, explaining the reason for the request.

All notices issued will contain the details of any appeals process available to the recipient.

A charge will apply to the issue of a statutory notice where the law allows. Charges will be levied on the person upon whom the notice is served and will be made at a level fixed within our agreed charges, having regard to a written record assessing the costs reasonably incurred.

Where a notice is not complied with by the expiry date and no extension has been agreed, other enforcement options including prosecution will be considered.

Statutory notices may be served in conjunction with prosecutions and failure to comply with a statutory notice can be a criminal offence.

h. Works in default

In some circumstances, failure to comply with a notice may result in the Council arranging for the necessary works to comply with the notice to be carried out, known as works in default.

Works in default or emergency remedial action may be carried out if:

- there is no prospect of the business carrying out the work for example the person responsible is absent or obstructive.
- there is an imminent risk to the health, safety or welfare of the occupants or neighbours.
- a prosecution is not appropriate.
- a prosecution has been brought and works have still not been carried out.

The cost to the business will usually be more than if the business carries out the works, because we will seek to recover all costs incurred, including the cost of the works, officer time, and our administrative costs. Until cleared the debt will be registered on the local land charges register as a financial charge and once registered, the charge will accrue compound interest.

i. Prosecution

Where the law has not been complied with, there is a range of enforcement options available to seek compliance. In normal circumstances, a process of escalation will be used until either compliance is reached or there is no option other than to commence proceedings. However, prosecution may be considered for more serious offences, with the aim being to provide a sanction for the offence to avoid a recurrence, and act as a deterrent to others.

The following factors will be considered in deciding whether to prosecute:

- the social, physical, economic, environmental, or personal health and safety impact of the offence.
- failure to comply with the requirements of an improvement, enforcement, or prohibition notice.
- failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information.
- excessive or persistent breaches of regulatory requirements.

- foreseeability of the offence and the circumstances leading to it.
- intent of the offender, individually and/or of a corporate body.
- history of offending.
- attitude of the offender.
- deterrent effect of a prosecution on the offender and others.
- culpability of the offender.
- a history of similar offences.
- carrying out operations without a relevant licence.
- failure to comply or to comply adequately with remedial requirements.
- obstruction of an authorised officer.

The factors are not exhaustive and those that apply will depend on the circumstances of each case.

Once an officer has completed his/her enquiries, the next step will be to submit a case report to the Head of Housing, Health and Environment. This officer is independent of the investigation and will approve the commencement of legal proceedings, subject to advice from the Council's Legal Services.

Legal Services will then take into consideration the requirements of the Code for Crown Prosecutors 2018 and other relevant codes, before deciding whether to authorise the commencement of legal proceedings. The full code test must be applied which has two stages, the evidential stage, and the public interest stage.

Evidential stage

There must be sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge and consideration must be given to the defence case and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

When deciding whether there is sufficient evidence to prosecute, prosecutors should ask themselves the following:

- can the evidence be used in court?
- is the evidence reliable?
- is the evidence credible?
- is there any other material that might affect the sufficiency of evidence?

If the evidential test has been satisfied, the public interest test will be considered.

Public interest stage

In every case where there is sufficient evidence to justify a prosecution, the officer will then consider whether a prosecution is required in the public interest. It has never been the rule that a prosecution will automatically take place once the evidential stage is met, but it will usually take place unless the prosecutor is satisfied that there are public interest factors against prosecution which outweigh those in favour.

When deciding the public interest, prosecutors should consider each of the questions set out below:

- how serious is the offence committed? (the more serious, the more likely that prosecution is required)
- what is the level of culpability of the suspect? (the greater the level, the more likely that a prosecution is required)
- what are the circumstances of, and the harm caused to the victim?
- what was the suspect's age and maturity at the time of the offence?
- what is the impact on the community?
- is prosecution a proportionate response?
- do sources of information require protecting?

The questions are not exhaustive and not all may be relevant in every case. The weight attached to each of the questions and the factors identified will vary according to the facts and merits of each case.

j. Rent repayment orders

A rent repayment order is made by the First-tier Tribunal to require a business to repay a specified amount of rent. The Housing Act 2004 introduced rent repayment orders and they have been extended through the Housing and Planning Act 2016 to cover a wider range of offences, which are listed below:

- failure to obtain an HMO licence for a property that is required to be licensed (section of the Housing Act 2004)
- failure to comply with an improvement notice (section 30 of the Housing Act 2004)
- failure to comply with a prohibition order (section 32 of the Housing Act 2004)
- breach of a banning order (made under section 21 of the Housing and Planning Act 2016)
- using violence to secure entry to a property (section 6 of the Criminal Law Act 1977)
- illegal eviction or harassment of the occupiers of a property (section 1 of the Protection from Eviction Act 1977).

Rent repayment orders can be granted to either the tenant or the Council. If the tenant pays rent, then the rent must be repaid to them. If rent was paid through housing benefit or through the housing element of universal credit, then the rent must be repaid to the Council. If the rent was paid partially by the tenant with the remainder paid through housing benefit or universal credit, then the rent should be repaid on an equivalent basis.

A rent repayment order can be made against a business which has received a civil penalty notice in respect of an offence, but only at a time when there is no prospect of the business appealing against that penalty.

If a landlord has been convicted of any of the offences set out above and the offence was committed in the Tunbridge Wells Borough Council area, we must consider applying for a rent repayment order.

k. Management and licensing of houses in multiple occupation

We have powers to ensure that adequate standards in houses in multiple occupation (HMOs) are met and maintained. The Housing Act 2004 introduced a mandatory scheme to licence HMOs, and this was extended in 2018 to include an HMO occupied by five or more people, comprising two or more households. The requirement for there to be three storeys no longer exists.

HMO licensing covers:

- procedures to assess the fitness of a person to be a licence holder.
- the potential management arrangements for the property.
- the suitability of the property for the number of occupants, including the provision of relevant and adequate facilities.

It is a criminal offence for a person controlling or managing an HMO not to have the required licence. Breaking any condition of a licence is also an offence. The Housing Act 2004 addresses the management of unlicensed or problem HMOs, with a view to protecting occupiers and those in the vicinity, and having properties licensed and properly managed.

Management Regulations made under the Housing Act 2004 impose duties on landlords and managers of HMOs, whether or not they are subject to licensing (occupiers also have duties). There are no notice serving provisions where there are contraventions, enabling the Council to prosecute straight away for a breach, or to issue a civil penalty notice.

In a licensed HMO, overcrowding is dealt with by enforcing the licence conditions, as the licence states the number of occupants for the HMO. For HMOs that are not required to be licensed, an overcrowding notice can be served (see statutory notices) which will prohibit new residents or limit the number of people sleeping in the HMO.

l. Management orders

The Housing Act 2004 enables the Council to take over the management of an HMO, where there is no fit and proper person available to manage it. Management orders are used where an HMO must be licensed but where a licence cannot be issued because the property does not meet the right criteria. The Council takes on all responsibility for the property such as management, repairs and collecting rents, but the business retains ownership.

Management orders must be made where:

- there is no reasonable prospect of an HMO being licensed in the near future; and
- it is necessary to protect the health and safety or welfare of persons occupying it or having an estate or interest in any premises in the vicinity.

An interim management order (IMO) that lasts for 12 months can be made to ensure that:

- immediate steps are taken to protect the health, safety and welfare of occupiers and adjoining occupiers/owners; and
- any other steps are taken to ensure the proper management of the house pending further action.

On expiry of the IMO and where the HMO is required to be licensed but officers consider that they are unable to grant a licence, a final management order (FMO) will be made, which would be in place for up to five years.

m. Empty dwelling management orders

Empty dwelling management orders (EDMOs) enable councils to take control of and manage an empty residential property. The key points are:

- the dwelling has been unoccupied for at least two years.
- there is no prospect of the dwelling becoming occupied in the near future.
- all attempts to contact the owner or negotiations to bring the property back into use have failed.

There are two stages, an interim EDMO, and a final EDMO.

Further information can be found by following this link to the Government's website [empty-dwelling-management-orders-guidance](#)

n. Banning orders

Under the Housing and Planning Act 2016, the Council may apply to a First-tier Tribunal to request that a landlord or property agent (letting agents and property managers) are banned from one or more of the following:

- letting housing in England.
- engaging in letting agency work in England.
- engaging in property management work in England.

Breach of a banning order is a criminal offence.

o. Caravan site licensing

The use of land as a caravan site usually requires a licence under the Caravan Sites and Control of Development Act 1960 and the Mobile Homes Act 2013. We may impose site licence conditions and take enforcement action should a site be operating without a licence or where site licence conditions are not being met.

p. Injunctive actions

In some circumstances we may seek a direction from the court (an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

q. Enforced sales

If a charge has been recorded in the local land charges register, we may opt to recover the charged debt by way of an enforced sale of the property. The criteria for this course of action are:

- the total debt on the property should normally exceed £500.
- the property is vacant and has been empty for more than one year.
- the necessary enforcement notices and documents have been served.

If the first two criteria are not met, then a compulsory purchase order or an empty dwelling management order may be considered. However, if an empty property is derelict and causing a major problem but does not meet the above criteria, the owner is missing or refusing to co-operate, the use of an enforced sale would still be considered providing there was justification for doing so.

Upon disposal of the property we will recover all debts and costs from the sale proceeds. The balance will be held by the Council until it is claimed by the owner.

Review of Policy

This policy will be reviewed annually and updated if necessary, to take into account any legislative and policy changes.

Please contact us if you have any queries:

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Appendix 1 - Housing Health and Safety Rating System Hazards and Enforcement Framework

Hazards

The Housing Health and Safety Rating System (HHSRS) assesses 29 housing hazards and the effect they may have on the health and safety of current or future occupants. The 29 hazards are as follows:

1. damp and mould growth
2. excess cold
3. excess heat
4. asbestos and MMF
5. biocides
6. carbon monoxide and fuel combustion products
7. lead
8. radiation
9. un-combusted fuel gas
10. volatile organic compounds
11. crowding and space
12. entry by intruders
13. lighting
14. noise
15. domestic hygiene, pests, and refuse
16. food safety
17. personal hygiene, sanitation, and drainage
18. water supply
19. falls associated with baths
20. falls on level surfaces
21. falls associated with steps and stairs
22. falls between levels
23. electrical hazards
24. fire
25. flames, hot surfaces, and materials
26. collision and entrapment
27. explosions
28. ergonomics
29. structural collapse and falling elements

Enforcement framework

We have a duty to act when category 1 hazards (Band A, B and C) are found where there is a serious and immediate risk to a person's health and safety. We have a discretionary power to act in respect of a category 2 hazards (Band D onwards) where the hazard is less serious or urgent.

The types of action available for category 1 and category 2 hazards are:

- an improvement notice requiring remedial works.
- a prohibition order, which prohibits the use of the whole or part of a dwelling, or restricts the number or class of permitted occupants, or restricts its use.
- suspension of either of the above, until a date or time specified.
- a hazard awareness notice.

The following actions can also be taken only where there is a category 1 hazard:

- emergency remedial action.
- an emergency prohibition order.
- a demolition order.
- declaring a clearance area.

The action we take will be the most appropriate course of action in relation to the hazard. Each of the notices and orders are declared on local land charges with the exception of a hazard awareness notice, and notices that have not been complied with may affect the sale or value of a property.

Most appropriate course of action

The "Housing, Health and Safety Rating System: Enforcement Guidance" is statutory guidance which provides advice on how councils decide on the appropriate enforcement action, as well as how they should use their discretionary powers. In deciding the most appropriate course of action, the guidance states that there should be regard to a number of factors. We must give a formal statement of reasons for the action we intend to take.

For the purposes of assessing the hazard, it is assumed that the dwelling is occupied by the most vulnerable household (irrespective of what household is in occupation or if it is empty). However, for the purposes of deciding the most appropriate course of action, the actual household in occupation is considered.

We have to take account of several factors including:

- extent, severity, and location of hazard.
- proportionality – cost and practicability of remedial works.
- multiple hazards.
- the extent of control an occupier has over works to the dwelling.
- vulnerability of current occupiers.

- if there are any social exclusion issues to consider.
- the views of the current occupiers.
- the history of compliance.

In some cases, we are required to consult with other bodies when taking enforcement action, for example where we take action to improve fire safety and consult with the Kent Fire and Rescue.

Category 2 Hazards

In addition to the duty to take action where a category 1 hazard exists, we will generally exercise discretion to take the most appropriate course of action where a category 2 hazard exists in the following situations:

- Band D hazards - there will be a general presumption that where a Band D hazard exists, officers will consider action under the Housing Act 2004 unless that would not be the most appropriate course of action (with regard to high scoring Band D & E damp and mould hazards, we will also consider action under the Housing Act 2004).
- multiple hazards - where a number of hazards at Band D or below considered together appear to create a more serious situation, or where a property appears to be in a dilapidated condition, the officer will decide upon the most appropriate course of action to be taken.
- exceptional circumstances - in exceptional circumstances where the above two points are not applicable, the Private Sector Housing Manager may authorise the most appropriate course of action to be taken.

Level to which hazards are to be improved

The Housing Act 2004 requires that the works specified reduce a category 1 hazard (Bands A, B and C) to a category 2 hazard. We will generally seek to specify works which, whilst not necessarily achieving the ideal, will achieve a significant reduction in the hazard level and in particular will be to a standard that should ensure that no further intervention should be required for a minimum period of 12 months given normal levels of maintenance and repair.