

ST ALBANS DISTRICT COUNCIL PRIVATE SECTOR HOUSING ENFORCEMENT POLICY 2010

1. Introduction and Scope

- 1.1 The purpose of this policy is to outline the Council's approach to securing compliance with the law in relation to private sector housing while minimising the burden on private sector landlords. In particular, the policy outlines the extent to which the Council will intervene to make use of the powers in Part 1 of the Housing Act 2004 as a result of the introduction of the Housing Health and Safety Rating System (HHSRS), and its approach to the licensing of Houses in Multiple Occupation and to empty homes. It sets out what owners, landlords, their agents and tenants of private sector properties can expect from officers.
- 1.2 St Albans District Council has adopted the central and local government Concordat on Good Enforcement Practice: www.cabinetoffice.gov.uk/regulation/public_services/concordat/enforcecon.asp and its principles are fully incorporated into the Regulatory Services and Environmental Health Service Policies on Enforcement and this policy.
- 1.3 The Council's Enforcement policies are based on 5 guiding principles of transparency, fairness, proportionality, consistency and objectivity.
- 1.4 Enforcement in the context of this policy is not limited to formal enforcement action such as serving notices or prosecution, but includes for example, the inspection of premises to check for compliance with legislation and the provision of advice.
- 1.5 This policy seeks to support the Council's corporate aims, objectives and strategies with respect to private sector housing.

2. Shared Enforcement

- 2.1 The range of enforcement matters dealt with by the Council in this policy area is such that there may well be occasions when there is a need to work with other agencies, for example the Fire Authority or the Health and Safety Executive, by carrying out joint inspections. Where a fire hazard is identified, the Council will consult the Fire Authority on works required before taking enforcement action, although in the case of proposed emergency measures, that consultation will be so far as it is practicable to do so.
- 2.2 In determining the most appropriate form of investigation and enforcement action, officers will have regard, so far as they are aware, to any potential or existing action of other Council services or outside agencies.
- 2.3 Where matters are identified by, or reported to our officers that are the enforcement responsibility of another Council service or outside agency, persons involved will, so far as is reasonably practicable, be informed that the matter will be referred to the appropriate service or agency.
- 2.4 Where enforcement action is being taken by another Council service or outside

agency, we will provide all reasonable assistance including the production of witness statements and collection and sharing of evidence etc. subject to any legal constraints and the meeting of any reasonable expenses.

3. Enforcement Standards

- 3.1 All investigations into alleged breaches of legislation will follow best professional practice and the requirements of:
- The Human Rights Act 1998
 - The Regulation of Investigatory Powers Act 2000
 - The Police and Criminal Evidence Act 1984 – Codes of Practice
 - The Criminal Procedures and Investigations Act 1996
 - The Code for Crown Prosecution
 - Enforcement Guidance issued under section 9 of the Housing Act 2004

4. Identifying the Need for Action

- 4.1 The Council may identify the need to act to deal with hazards in a number of ways, including following a complaint or request for enforcement action, or following a request for financial assistance to improve the property. For example where a landlord refuses a Warm Front or other grant for insulation or heating, an inspection may be necessary to determine whether anything needs to be done to protect the occupant from excess cold or damp and mould affecting the property. Where the Council considers it appropriate to inspect premises to determine whether a hazard exists, it must do so.
- 4.2 As full an inspection as is reasonably possible will be carried out to establish the nature and extent of hazards in the dwelling, and an accurate record will be kept of the inspection.

5. Housing Health and Safety Rating System (HHSRS)

- 5.1 The Housing Act 2004, (“the Act”), together with Regulations made under it, prescribes the Housing Health and Safety Rating System 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. 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 a 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.
- 5.2 A ‘Category 1 hazard’ arises when a hazard reaches a score of 1000 or more under the Housing Health and Safety Rating System. A ‘Category 2 hazard’ arises when a hazard reaches a “significant” score of up to 999 under the Housing Health and Safety Rating System.
- 5.3 The score is based on the risk to the potential occupant who is most vulnerable to that hazard. However, in determining what action to take, the Council will not only take account of the score, but also whether the Council has a duty or discretion to act, the views of occupiers, the risk to the current and likely future occupiers and regular visitors, the presence of other significant hazards in the

property, and the risk of social exclusion of vulnerable groups of people from the private rented sector.

6. Staged Approach to Enforcement

6.1 Council officers will seek compliance with legislation by one or more of the following:-

Stage 1: Decisions to take these actions rest with the investigating officer.

- **Advice and guidance:** to assist individuals, existing and prospective businesses and other organisations to comply with their legal obligations. This will be achieved by providing both information leaflets and the opportunity for face-to-face contact to discuss and help resolve potential problems.
- **Informal letters:** these will be used to reinforce advice and guidance where minor breaches of the law may have been discovered but it was not thought appropriate to take formal action. This may be where the consequences of non-compliance will not impose a significant risk to health and safety, or where there is confidence that informal action will achieve compliance.
- **Formal letters and warnings:** These warnings will be written. Where warnings are issued, follow-up visits will normally be made to ensure the problem is being rectified. Warnings issued in respect of significant breaches of the law will include timescales within which the breaches should be remedied and will always result in follow-up visits to ensure compliance. This may follow an informal letter where there remains some confidence that compliance may be achieved before resorting to formal enforcement if necessary, without undue delay.

Stage 2: Where practicable, decisions to serve notice will be taken in consultation with the Principal Environmental Health Officer, and actions following failure to comply with statutory notices will be taken in consultation with the Principal Environmental Health Officer and Head of Environment and Regulatory Services. The decision to prosecute lies with the Head of Environment and Regulatory Services.

- **Formal enforcement:** this includes the use of statutory (legal) notices, formal cautions, and prosecution. Notices will generally be served where there are significant failures of statutory requirements, there is a lack of confidence that the recipient will respond to an informal approach, and will normally be served when informal action has failed to achieve a satisfactory resolution. Formal cautions or prosecution are likely where there is a failure to comply with a notice within the specified time period or a subsequent breach of the regulations, or where health, safety or wellbeing is put at risk such that prosecution is the most reasonable response in all respects.
- **Works in default or Immediate action:** this includes the power to take emergency action by entry to premises if necessary, and make safe

areas or articles which are a cause of imminent danger of serious harm.

- 6.2 Enforcement will normally progress from advice to formal enforcement.
- 6.3 Where an owner or landlord agrees to take the required action, it may be appropriate to wait before serving a notice unless the owner fails to start the work within a reasonable time.
- 6.4 In serious cases, for example where the offence involves a significant breach of the law such that the residents health, safety, environment or well being is or has been put at risk, and there are concerns that the owner or landlord will not co-operate, it may be appropriate to commence formal enforcement immediately.
- 6.5 This may include cases where the HHSRS assessment reveals category 2 hazards and where the current occupants are vulnerable.
- 6.6 The Council has a duty to consider the most appropriate course of action to deal with Category 1 hazards. Therefore, where it becomes clear that an informal approach is not proving effective for these more serious hazards, it is likely that formal action will quickly follow.
- 6.7 Where reasonably practicable, the Council will ensure that the landlord and tenant(s) have the opportunity to discuss the Council's proposed action before a Notice is served.

7. Housing Act 2004: Most Appropriate Course of Action

- 7.1 The Housing Act 2004 provides a range of enforcement options to address hazards. The action the Council takes will be what it considers to be the most appropriate course of action in relation to the hazard in all the circumstances.

8. Actions under the Housing Act 2004

- 8.1 There are a number of different notices available to St Albans District Council which require a person, business or organisation to comply with specific requirements relating to **Category 1 and 2 hazards**:

- Hazard Awareness Notice relating to Category 1 Hazards; section 28
- Hazard Awareness Notice relating to Category 2 Hazards; section 29

- Improvement Notices relating to Category 1 Hazards; section 11
- Improvement Notices relating to Category 2 Hazards; section 12

- Prohibition Orders relating to Category 1 Hazards; section 20
- Prohibition Orders relating to Category 2 hazards; section 21

- Suspension of Improvement Notice; section 14
- Suspension of Prohibition Order; section 23

- Hazard Awareness Notices give formal notification that the hazard exists.
- Improvement Notices require remedial works.
- Prohibition Orders may prohibit use of all or part of a dwelling, or use by a description of persons, e.g., those aged under 5 or over 60.
- Improvement Notices and Prohibition Orders may be suspended until a specified time or event.

8.2 An Improvement Notice will provide the most appropriate action for most Category 1 hazards; repair or renewal is generally cost effective because of the high value of property in St Albans. However, Prohibition Orders may be required on part or all of a dwelling, e.g., where there is inadequate natural lighting or there is no protected means of escape in case of fire from the top floor.

9. Emergency Measures, Demolition and Clearance

9.1 As an alternative to the notices and orders listed above, the Act also provides for the following options to deal with **Category 1** hazards:

Emergency Measures	When this action may be taken
Emergency Remedial Action Section 40	<p>When the Council is satisfied that a Category 1 hazard exists on 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>May be taken by the authority 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 action will be whatever remedial action the Council considers necessary to remove an imminent risk of serious harm.</p> <p>This 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 immediately 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</p>

	remedial action, the date action taken, and rights of appeal.
Emergency Prohibition Orders Section 43	<p>When the Council is satisfied that a Category 1 hazard exists on 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>May be taken by the authority 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 prohibitions(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>
Other Measures	When this action may be taken
Demolition Orders Section 46 of the Housing Act 2004, and Part 9 of the Housing Act 1985	<p>When the Council is satisfied that a category 1 hazard exists in a dwelling or HMO which is not a flat, and a management order is not in force, or in the case of a building containing one or more flats where the Council is satisfied that a category 1 hazard exists in one or more or the flats contained in the building or in any common parts of the building.</p> <p>When the Council is satisfied that a category 2 hazard exists in a dwelling or HMO which is not a flat and a management order is not in force. In the case of a building containing one or more flats the Council is satisfied that a category 2 hazard exists in one or more or the flats contained in the building or in any common parts of the building, and the circumstances of the case are circumstances specified or described in an order made by the Secretary of State. At the time of writing this policy, no such order has been made.</p> <p>This course of action will only be taken where a</p>

	<p>Neighbourhood Renewal Assessment has been carried out and this determines that this is the most appropriate action. They are not appropriate for listed buildings, and the Council would take into account the availability of suitable accommodation for rehousing the occupants, the demand for and sustainability of the accommodation if the hazard was remedied, prospective use of the cleared site, and the impact on the neighbourhood.</p>
<p>Clearance Areas Section 47 of the Housing Act 2004, and Part 9 of the Housing Act 1985</p>	<p>May be declared when the Council is satisfied that each of the residential buildings in the area contains a category 1 hazard and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area.</p> <p>May be declared when the Council is satisfied that the residential buildings in an 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 street and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area.</p> <p>May be declared when the Council is satisfied that each of the residential buildings in the area contains a category 2 hazard and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area and the circumstances of the case are circumstances specified or described in an order made by the Secretary of State. At the time of writing this policy, no such order has been made.</p> <p>This course of action will only be taken where a Neighbourhood Renewal Assessment has been carried out and this determines that this is the most appropriate action, having regard to a range of considerations including the degree of concentration of dwellings containing serious and intractable hazards in the area, the proportion of sound premises which will also need to be cleared, and the presence of listed buildings.</p>

10. Tenure

- 10.1 In considering the most appropriate course of action, the Council will have regard to the extent of control that an occupier has over works required to the dwelling. It is usually the owner's responsibility to carry out works. Most enforcement action will involve requiring a private landlord or Registered Social Landlord (Housing Association) to carry out works.
- 10.2 Where we have identified hazards and the Registered Social Landlords have a programme of works to make their stock decent, the officer will liaise with the landlord over any works necessary to deal with category 1 and 2 hazards in

advance of the planned improvements.

- 10.3 With owner – occupiers, in most cases they will not be required to carry out works to their own home, and a Hazard Awareness Notice is likely to be the most appropriate action.
- 10.4 However, the Council may in certain circumstances require works to be carried out, or to use Emergency Remedial Action, or serve an Emergency Prohibition Order, in respect of an owner – occupied dwelling. This is likely to be 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.
- 10.5 An Improvement Notice or Prohibition Order may be suspended until a time or event specified, and in some cases, of any tenure, may be more appropriate than a Hazard Awareness Notice. Typically the event will be a change of occupancy. For example, an Improvement Notice may be suspended at the wishes of an elderly occupier who does not want the disturbance of extensive works, or where the vulnerable age group is not present. The notice might require an owner to notify the Council of a change of occupancy to ensure that the notice can be reviewed.

11. Category 2 hazards

- 11.1 There are discretionary powers to deal with Category 2 hazards, but resources will not allow all to be dealt with. Generally, these hazards will only be dealt with
- where the hazard score exceeds the national average by more than 2 bands, or
 - where the hazard band is D or E (i.e. the higher Category 2 bands), or
 - where a number of hazards at Band D or below appear, when looked at together, to create a more serious situation, and
 - with regard to the Council's priorities to protect health and well being, particularly of the vulnerable. In particular, hazards relating to physiological requirements and protection against infection are more likely to be dealt with in this way.
- 11.2 Each case will be considered on its merits. Where appropriate, action outside these guidelines may be authorised by the Principal Environmental Health Officer.

12. Level to which Hazards are to be Improved

- 12.1 Where an improvement notice is served, the Council will generally require works to prevent a recurrence within five years.
- 12.2 Section 11 of the Housing Act 2004 requires only that where there is a Category 1 hazard, the works specified must reduce the hazard to a Category 2. However, the Council will generally seek to specify works which, whilst not necessarily achieving the ideal, will achieve a significant reduction in the hazard

level. The Council will try to ensure that any works required to mitigate a hazard are carried out to a standard that prevents building elements deteriorating.

13. Content of Notices

13.1 Generally, the notice will explain:-

- 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

All notices and orders will be accompanied by a statement of the reasons for choosing that course of action.

14. House in Multiple Occupation (HMO) Licensing

14.1 An HMO is a building or part of a building occupied by more than one household as their only or main residence, and there is some sharing or lack of basic amenities, and includes houses containing bedsits, hostels, and shared houses. The definition of an HMO is contained in the Housing Act 2004 – 5254.

14.2 HMOs of three or more storeys, with five or more occupiers require a licence. HMOs owned by RSLs, the Police, Health Authorities and certain other organisations are exempt, as are certain buildings properly converted into flats.

14.3 The Council will require the licence application to be accompanied by a fee fixed by the Council. The fee takes into account all costs incurred by the Council in carrying out their HMO licensing functions, and the Act permits certain costs incurred in carrying out functions in relation to Interim and Final Management Orders to also be taken into account.

14.4 Licences will be granted where the house is reasonably suitable for occupation as an HMO, or it can be made so suitable by the imposition of conditions, the management arrangements are satisfactory, and the licensee and manager are fit and proper persons. The applicant must be the most appropriate person to hold the licence. A member of Environment and Regulatory Services will normally visit before licensing an HMO, to assess compliance with the licensing requirements and the number of people the HMO should be licensed for.

14.5 The Council is required to assess whether the applicant and any manager and any person associated with them or formerly associated with them are fit and proper people to own or manage an HMO.

14.6 A person will generally be considered fit and proper if the Council is satisfied that:

- they have no unspent convictions relating to offences involving fraud, dishonesty, violence or drugs, or sexual offences
- they have no unspent convictions relating to unlawful discrimination on grounds of sex, race, or disability
- they have no unspent convictions relating to housing or landlord and tenant law

- they have no unspent convictions for breaches of planning, compulsory purchase, environmental protection or other legislation enforced by local authorities
- they have not been refused an HMO licence, been convicted of breaching the conditions of a licence, or have acted otherwise than in accordance with the approved code of practice under section 233 of the Act within the last five years
- they have not been in control of a property subject to an HMO Control Order, an Interim Management Order (IMO) or Final Management Order (FMO) or had work in default carried out by a local authority.

*If a person associated or formerly associated with the applicant or any manager, has done any of the things stated above, the Council will only take these issues into account if they are relevant to the applicant or manager being a fit and proper person to manage the house.

A conviction where the penalty is a fine is spent after five years.

- 14.7 Licences will normally be valid for five 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.
- 14.8 We will aim to issue draft licences within twelve weeks of a full application.
- 14.9 A draft licence must be served on all interested parties, allowing at least fourteen days for representations before granting the actual licence.
- 14.10 HMOs will be prioritised for assessment under the Housing Health and Safety Rating System. Subject to available resources, we aim to carry out all such assessments within two years of the licence being granted, and in most cases will do so before granting the licence. When the licence is issued information will be made available to applicants to help them identify and deal with Category 1 hazards.
- 14.11 The Council may serve a Temporary Exemption Notice (TEN) where a landlord is, or shortly will be, taking steps to make an HMO non-licensable. A TEN can only be granted for a maximum period of three months. A second three-month TEN can be served in exceptional circumstances. Where a licensable HMO is not licensed, and no application for a licence has been made, the landlord cannot serve notice to quit until the HMO is licensed.
- 14.12 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 licence, or fails to comply with a licence condition, the Council can take a prosecution case to the Residential Property Tribunal (RPT). On conviction for failure to licence, the RPT has the power to make a Rent Repayment Order requiring that up to twelve months' rent is repaid to the tenant, or to the Council where a tenant is on housing benefit. The licensee has a right of appeal to the RPT against refusal to license, licensing conditions and the maximum number of occupiers or households specified on the licence.

- 14.13 Where a landlord is convicted for failure to license and the rent is paid as Housing Benefit, the Council will apply to the RPT for a Rent Repayment Order (RRO) for twelve months' Housing Benefit or for the period since the landlord was required to license the HMO. We will provide tenants not on housing benefits with information on how to apply. The Principal Environmental Health Officer will consider any exceptional circumstances where the Council should not seek an RRO.
- 14.14 Where there is no prospect of an HMO being licensed, the Act requires that the Council use its Interim Management powers. This enables the Council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. This may be followed by a Final Management Order for a further five years. The Council intends to appoint a preferred partner to manage HMOs subject to management orders.
- 14.15 If the Council finds that there has been a change of circumstances in an 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 or if the condition of the property means it would not be licensable were an application made at the later time.

15. Tests as to Suitability for Multiple Occupation

- 15.1 The HMO Management Regulations will apply to all HMOs, whether or not they require a licence. These require HMOs 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. The Housing Health and Safety Rating System applies to all dwellings.
- 15.2 There are nationally prescribed standards (relating to facilities such as bathrooms, cooking facilities etc) by which the Council will judge whether an HMO requiring a licence is reasonably suitable for occupation by a particular maximum number of households or persons. Section 65 of the Act allows authorities to decide that an HMO is not reasonably suitable even if it does meet those minimum standards. Councils can adopt their own standards in addition to the nationally prescribed standards.
- 15.3 Whilst local authorities are responsible for implementing mandatory licensing of HMOs and assessing the fire safety risks in all dwellings under the Housing Health and Safety Rating System, the Hertfordshire Fire and Rescue Service also have responsibilities under the Fire Safety Order 2005 for fire safety in common (shared) parts of HMOs. An agreement has therefore been drawn up between the Hertfordshire Fire and Rescue Service and the Hertfordshire local authorities for joint working to secure fire safety in HMOs. A guide has also been produced, to help landlords meet the standards of fire precautions normally required in various types of HMO, without the need for intervention by the local authority. The Council will however carry out an HHSRS assessment when determining actual legal requirements for each specific dwelling, and the requirements may therefore vary from the guide depending on the circumstances.

16. Summary of Legislative Powers in Relation to HMO's.

<p>Offences in relation to the Licensing of HMO's Section 72</p>	<p>Action may be taken for the offence of operating an HMO without a licence or for failing to satisfy the conditions of the licence without reasonable excuse. This may take the form of revocation of a licence and/or prosecution.</p>
<p>Offences in relation to the Selective Licensing of HMO's Section 95</p>	<p>Action may be taken for the offence of operating an HMO without a selective licence where required or for failing to satisfy the conditions of the licence without reasonable excuse. This may take the form of revocation of a licence and/or prosecution. However, the Council has not currently identified a need for the introduction of Selective Licensing.</p>
<p>Rent Repayment Order Sections 73 & 96</p>	<p>Where an HMO is operating without a licence or a selective 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 Residential Property Tribunal for a rent repayment order with respect to the repayment of housing benefit.</p>
<p>Interim Management Order (IMO) Section 102</p>	<p>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 condition will be satisfied, the local authority has a duty to make an Interim Management Order.</p> <p>Where the health and safety condition is satisfied within a property that is not required to be licensed, on application to the Residential Property Tribunal, the Council may make an Interim Management Order (IMO). The health and safety condition is met where it is necessary to make an IMO to protect the health, safety or welfare of residents or others.</p>
<p>Special Interim Management Order Section 103</p>	<p>Where a house, occupied under a single tenancy or licence, is in an area experiencing a significant and persistent problem of anti-social behaviour and the landlords, who have let the premises, are failing to take action to combat the problem <i>and</i> the health, safety and welfare of the occupiers or visitors is at risk, the local authority may apply to the Residential Property Tribunal for a special interim management order.</p>
<p>Final Management Order (FMO) Section 113</p>	<p>Must be made to replace an interim management order on the date the house would be required to be licensed but the Council consider they are unable to license it.</p>

	If not required to be licensed, may be made on the date the interim management order 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.

17. Empty homes

SADC recognises that empty homes represents a wasted resource. The Local Authority is therefore committed to bringing back into use homes which have remained empty for 6 months or more.

17.1 Summary of Legislative Powers in relation to Empty Homes

Interim Empty Dwelling Management Order (EDMO) Section 133	Where a dwelling has been wholly unoccupied for a period of at least 6 months, 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, the Council may apply to the Residential Property Tribunal for an interim EDMO.
Final Empty Dwelling Management Order (EDMO) Section 136	The local authority may make a final EDMO to replace an interim EDMO, where: 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 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.

17.2 Other Enforcement Actions for Empty Homes

17.3 In addition to the actions under the Housing Act 2004 there are other enforcement actions the Council may choose to take to help bring empty homes back into use. There are three enforcement routes that may be used (in addition to the Empty Dwelling Management Orders listed above). These are:

- improvement works
- enforced sale, and
- compulsory purchase

Any enforcement action aimed at bringing empty property back into use will only be used when repeated 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 assessed on its merits and will only be recommended for enforcement action where there are clear benefits to the neighbourhood or it could address a housing need.

17.4 Improvement Works for Empty Homes

17.5 In many cases the powers that can be used to require improvements to an empty home rest with other services within the Council and will be covered by the appropriate services enforcement policies. Any action taken under powers available to this service will be taken in accordance with the staged approach to enforcement above. The following table shows the problem identified, main 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 Act to remedy hazards will often not be appropriate for empty homes, unless occupation seems likely.

18. Miscellaneous Legislation which may be applicable to Empty Homes

18.1

Problem	Legislation <i>(Service, where not Environmental and Regulatory Services)</i>	Action required
Dangerous or dilapidated buildings	Building Act 1984, section 77 and 78 <i>(Building Control)</i>	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, section 79	Requires the owner to take steps to abate the nuisance
	Building Act 1984, section 76	Enables the Local Authority to take emergency 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	Requires the owner to take steps to secure the property or allows the Local Authority to board it up in an emergency
	Building Act 1984, section 78 <i>(Building Control)</i>	Allows the Local Authority to fence off the property
Blocked or defective drains or private sewers Blocked or defective drains or private sewers (continued)	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
	Public Health Act	Requires the owner to address

	1961, section 17	defective drains or private sewers
Vermin either present or a risk of attracting vermin that may detrimentally affect peoples health	Prevention of Damage by Pests Act 1949, section 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 <i>(Building Control)</i>	Requires the owner to address the property adversely affecting the amenity of the area through its disrepair

19. Enforced Sale

- 19.1 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.

20. Compulsory Purchase

- 20.1 The Housing Act 1985, section 17 allows the Local Authority to acquire under-used or ineffectively used 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 (as amended by section 99 of the Planning and Compulsory Purchase Act 2004) allows Local Authorities to acquire land or buildings if acquisition will allow improvements or redevelopment to take place.

- 20.2 Compulsory purchase will be used only as the enforcement route of last resort for returning empty homes to use.

21. Non - Compliance

21.1 Where notices are not complied with, the Council will normally use its powers to prosecute or to carry out the work in the owner's default, reclaiming the costs.

22. Formal Cautions

22.1 Under certain circumstances, a formal caution may be used as an alternative to prosecution and will usually be considered before making a decision to prosecute.

22.2 A formal caution is a serious matter. It is recorded as a conviction on the Central Register of Convictions held by the Office of Fair Trading. It may be used to influence any decision whether or not to prosecute should the individual, organisation or business offend again and it may be referred to in any subsequent court proceedings. Formal cautions remain on record for a period of 3 years. The decision whether to offer a formal caution will be made by the Head of Environmental and Regulatory Services in consultation with the Head of Legal.

22.3 Formal cautions are intended to:-

- deal quickly and simply with certain, less serious offences;
- avoid unnecessary appearance in criminal courts;
- reduce the chance of offenders re-offending.

22.4 Before issuing a caution the following conditions must be satisfied:-

- there must be evidence of guilt sufficient to give a realistic prospect of conviction;
- the offender must understand the significance of the formal caution and admit the offence by signing a declaration.

22.5 Where an individual chooses not to accept a formal caution the Council will normally prosecute.

22.6 In instances where a formal caution is accepted the risk assessment for the premises will be reviewed and the inspection frequency may be increased as a result of this.

22.7 The officer shall ensure that decisions to issue a formal caution are notified to all known interested bodies, including tenants, managers, freeholders, leaseholders and mortgagees.

23. Prosecution

23.1 The Council will use discretion in deciding whether to bring a prosecution and generally will only commence proceedings when to do so is considered to be in the public interest. The decision to pursue prosecution lies with the Head of Environment and Regulatory Services in consultation with the Head of Legal. This decision will be made in accordance with the Council's Corporate Prosecution Policy April 2010.

- 24.2 Before deciding to prosecute there must be sufficient evidence for a realistic prospect of conviction, taking account of any defence that may be available. In certain circumstances prosecution without prior warning may take place.
- 25.3 The decision to prosecute will always take into account the criteria laid down in the Code for Crown Prosecutors issued by the Crown Prosecution Service. (www.cps.gov.uk)
- 25.4 The officer will ensure that decisions to prosecute and results of any legal proceedings are notified to all known interested bodies, including tenants, managers, freeholders, leaseholders and mortgagees.

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