



# **PRIVATE SECTOR HOUSING ENFORCEMENT POLICY 2021**

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## **St Albans City and District Council**

### **Private Sector Housing Enforcement Policy**

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## **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. The policy deals with Houses in Multiple Occupation both licensed and unlicensed as well as other private rented housing in disrepair.
- 1.2. Throughout this document the abbreviations HMO (House in Multiple Occupation), HHSRS (Housing Health and Safety Rating System) and RP (Registered Provider, also known as Housing Association) are used.
- 1.3. The policy outlines the extent to which the Council will intervene to make use of the powers held under Part 1 of the Housing Act 2004 as a result of the introduction of the HHSRS, the Council's approach to the licensing of HMOs and empty homes. The policy sets out what owners, landlords, their agents and tenants of private sector properties can expect from St Albans District Council.
- 1.4. St Albans District Council has adopted the central and local government Concordat on Good Enforcement Practice and its principles are fully incorporated into the Private Sector Housing Enforcement Policy.
- 1.5. The Council's enforcement policies are based on 5 guiding principles: transparency, fairness, proportionality, consistency and objectivity.
- 1.6. Enforcement, in the context of this policy, is not limited to formal enforcement action such as serving notices or prosecution. It includes a range of activities such as the inspection of premises to check for compliance with legislation and the provision of advice to landlords and tenants.
- 1.7. The 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 be occasions when there is a need to work with other agencies. For example, the Council may carry out joint inspections with the Fire Authority or the Health and Safety Executive (HSE).

Where a fire hazard is identified, the Council may consult the Fire Authority on works required before taking enforcement action. 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 agencies, 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 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 and its Codes of Practice.
  - The Criminal Procedures and Investigations Act 1996.
  - The Code for Crown Prosecutors.
  - St Albans City and District Council Corporate Prosecutions Policy.
  - 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 non-compliance in a number of ways. These can include following a complaint or request for enforcement action from a member of the public or following a request for financial assistance to improve the property. For example, where a landlord refuses a 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 will do so.
- 4.2. Where a concern is highlighted as full an inspection as is reasonably possible will be carried out to establish the nature and extent of non-compliance in the dwelling. Detailed records will be kept of the inspection identifying any issues or

concerns.

## **5. Staged Approach to Enforcement**

- 5.1. The following deals with accommodation in the Private Sector that is not an HMO. The specific procedure for dealing with HMOs is dealt with in section 15 of this policy.
- 5.2. The Private Sector Housing Team may become aware of a disrepair issue in a number of different ways. For example, the report may come in from a tenant living in the property, from the Council's Housing Options team or from another department.
- 5.3. Once the Private Sector Housing Team receives the information, the tenant will be contacted within 1 week. Depending on the nature of the complaint, the occupant will either be offered advice or an offer of a visit within 3 weeks if appropriate.
- 5.4. In cases of damp and mould the tenant will be sent a questionnaire to complete to establish the nature of the damp. Upon receipt of the completed questionnaire and assessment the occupant will be offered advice, or an inspection visit if appropriate. In cases where a visit is considered appropriate, the inspection of the property will not be a formal inspection under HHSRS. The visit will be an informal inspection in which any issues are noted.
- 5.5. Following the informal inspection the owner will receive a letter clearly explaining the issues that have been noted. The owner is asked in this letter to contact the Private Sector Housing Team within 28 days confirming what action they intend to take to resolve the issues.
- 5.6. If after 28 days the landlord has not responded they will receive a further letter. This letter gives a date for a formal inspection under the HHSRS if no contact has been made within 14 days. The inspection will be conducted will be within 3 weeks of the expiry of the 14-day notification.
- 5.7. Following the formal HHSRS inspection, the Private Sector Housing Team will carry out a formal HHSRS assessment. The Council will then decide whether enforcement action is appropriate. If it is necessary to serve an enforcement Notice this will be done within 4 weeks.
- 5.8. Whilst resolution through informal action is sought in the first instance, it may be necessary to undertake formal action against a Landlord to address failings within a property.
- 5.9. Formal enforcement includes the use of statutory (legal) notices, formal cautions, and prosecution. Service of Notices and making of Orders will generally occur

where there are significant failures of statutory requirements 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 or order within the specified time period or a 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.

- 5.10. Works in default are carried out where the owner has failed to comply with enforcement notices.
- 5.11. Immediate action is taken in an emergency where there is an imminent risk of serious harm.
- 5.12. Where an owner or landlord agrees to undertake the required action the Council will work with them to monitor progress and ensure that the work is completed. Enforcement action will only be considered if the Landlord fails to start or complete the work within an agreed time frame.
- 5.13. In serious cases it may be appropriate to commence formal enforcement immediately. For example, where the offence involves a significant breach of the law such that the residents health, safety, environment or wellbeing has been put at risk, and there are concerns that the owner or landlord will not co-operate. This may include cases where the HHSRS assessment reveals Category 2 hazards and where the current occupants are vulnerable.
- 5.14. The Council has a duty to consider the most appropriate course of action to deal with Category 1 hazards. Where it becomes clear that informal approach is not proving effective for more serious hazards, formal action will quickly follow.
- 5.15. Where reasonably practicable, the Council will ensure that both the landlord and tenant(s) have the opportunity to discuss the Council's proposed action before enforcement action is taken.

## **6. Non-Compliance**

- 6.1. Where notices are not complied with, the Council will normally use its powers to initiate proceedings in the First-tier Tribunal, Magistrates Court or issue a civil penalty notice and/or to carry out the work in the owner's default, reclaiming the costs.
- 6.2. When deciding whether or not to prosecute, the alternatives to prosecution should be considered. A Simple Caution may be relevant depending on the circumstances of the case.

## **7. Cautions**

- 7.1. These should only be given if justified in the public interest and regard must be had to Ministry of Justice Simple Cautions for Adult Offenders Guidance from April 2015 on administering simple cautions. To issue a simple caution there must be sufficient evidence to justify criminal proceedings and the defendant's history of previous convictions must be taken in to account. The defendant must admit the offence, signing a document to demonstrate this and they must also agree to the caution.
- 7.2. The issuing of a simple caution is intended to discourage reoffending. A simple caution may not be offered if there has been a similar offence within the previous 2 years
- 7.3. The caution is not a criminal conviction but will be held on record for 5 years and may be cited (for sentencing purposes) as if it were a previous conviction in the event of a further offence.
- 7.4. Further information regarding simple cautions can be obtained from the Ministry of Justice document: Simple Cautions for Adult Offenders, which is available online from [www.cps.gov.uk](http://www.cps.gov.uk)

## **8. Prosecution**

- 8.1. 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 will be made in accordance with the Council's Corporate Prosecution Policy. 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.
- 8.2. 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.
- 8.3. The Council will ensure that decisions to prosecute and results of any legal proceedings are notified to all known interested bodies, including tenants, property managers, freeholders, leaseholders and mortgagees.

## **9. Civil Penalty Notices**

- 9.1. The Housing and Planning Act 2016 enabled the Council to issue Civil Penalty Notices of up to £30,000 per offence for breaches of the Housing Act 2004.



In particular, the relevant offences are:

- Section 30 of the Housing Act 2004 – Failing to comply with an Improvement Notice.
- Section 72 of the Housing Act 2004 – Offences in relation to the licensing of Houses in Multiple Occupation.
- Section 95 of the Housing Act 2004 – Offences in relation to the licensing of houses under Part 3 of the Housing Act 2004 (Selective Licensing of Residential Accommodation).
- Section 139 of the Housing Act 2004 – Offences in relation to the contravention of an overcrowding notice.
- Section 234 of the Housing Act 2004 – Failure to comply with Management Regulations in respect of Houses in Multiple Occupation.

- 9.2. In deciding how to proceed, the Council must be satisfied that there is sufficient evidence to prove that an offence has been committed and this needs to be to the criminal burden, i.e. beyond reasonable doubt.
- 9.3. In deciding as to what, if any, enforcement action is appropriate, the council will refer to its own Enforcement Policy and must also have regard to the Code for Crown Prosecutors. Each case will be considered individually and will take into consideration factors including the seriousness of the offence; the culpability of the offender; the harm, or potential harm to tenants; and the impact on the wider community.
- 9.4. A defendant will be invited in for an interview under the Police and Criminal Evidence Act to give them an opportunity to give an explanation. This may be used as evidence if it discloses information relevant to the case. However, it will also be an important part of the decision making process.
- 9.5. A civil penalty may be appropriate where:
- The Council is satisfied that a relevant offence has been committed and that it is in the public interest to proceed formally.
  - No history of previous non-compliance with relevant legislation.
  - No previous convictions of relevant offences.
  - The offence was committed as a result of a genuine mistake or misunderstanding, but this must be balanced against the seriousness of the offence.
  - Prosecution is likely to have a serious adverse effect upon the offender's physical or mental wellbeing, but this must be balanced against the seriousness of the offence.

9.6. A prosecution may be appropriate where:

- The offence was serious, for example breach of a prohibition order or where there was imminent risk of injury or loss of life.
- The offender has been prosecuted for similar Housing Act offences.

9.7. In determining the amount of civil penalty, the Council will use a Financial Penalty Matrix which considers relevant matters including:

- The penalty should act as a deterrent to repeating the offence, and to others from committing similar offences;
- The penalty should remove any financial benefit obtained as a result of the commission of the offence;
- The severity and seriousness of the offence;
- The culpability and past history of the offender;
- The harm, or potential harm, caused to the tenant.

The Matrix may change from time to time;

<b>The Matrix Score Total</b>	
<b>Score</b>	<b>Penalty</b>
1 – 5	£250
6 – 10	£500
11 – 20	£750
21 – 30	£1,000
31 – 40	£2,500
41 – 55	£5,000
56 – 65	£10,000
66 – 75	£15,000
76 – 85	£20,000
86 – 95	£25,000
96 – 100	£30,000

9.8. In determining the 'level of harm', the Council will have regard to:

- The persons affected in terms of physical injury, negative impacts on their health, and any psychological distress;
- Any vulnerability of the persons affected.
- The number of persons affected.
- The community in terms of economic loss and the effects on public health, public complaints and the effects of poor housing condition on the neighbourhood.

The degree of harm will depend on the personal characteristics and circumstances of the person affected, normally the tenant. Where no actual harm has resulted

from the commission of the offence the Council will consider the relative danger and the potential of harm that could have occurred as a result of the offences.

9.9. In determining the 'level of culpability', the Council will have regard to the following:

- Whether there was the intention to commit the offence
- Whether the offence has resulted from reckless behaviour for example where the offender had some appreciation of the effects their actions would have but proceeded regardless.
- Whether the offender had knowledge of the risks of harm that their actions could cause.
- Whether the offender's actions are considered to be negligent.

9.10. The amount of penalty can be increased if there are any relevant aggravating factors. Furthermore, the amount of penalty can be reduced if any relevant mitigating factors are disclosed by the offender.

9.11. Where the Council are satisfied that more than one offence has been committed a multiple Civil Penalty Notice can be issued, for example, multiple breaches of the Management regulations in a House in Multiple Occupation.

For instance, the Council could decide that it is appropriate to issue a civil penalty for the most significant offences and warn the offender that continuation or repeating of the other offences may result in further formal enforcement action being taken.

## 9.12. Final Penalty Matrix

Factors	Score = 1	Score = 5	Score = 10	Score = 15	Score = 20	18
<b>1. Culpability</b>	Low; Offence committed with little or no fault on the part of the responsible person	Low/Medium; An awareness of the legal framework and systems in place to ensure compliance but these were not implemented	Medium/High; despite an awareness of the legal responsibilities the responsible person failed to put in place suitable systems in place to ensure compliance	High; There was some awareness of the law but the responsible person still allowed/committed the offence.	Very High; intentional breach by responsible person. For example non compliance with a Formal Notice	
<b>2. Removal of Financial Incentive</b>	No Significant assets. No or very low financial profit made by offender.	Little asset value. Little profit made by offender.	Small portfolio landlord (between 2-3 properties). Low profit made by offender.	Medium portfolio landlord (between 4-5 properties) or a small Managing Agent. Medium asset value. Medium profit made by offender.	Large portfolio landlord (over 5 properties) or a medium to large Managing Agent. Large asset value. Large profit made by offender.	
<b>3. Offence &amp; History</b>	No previous enforcement history. Single low level offence.	Minor previous enforcement. Single offence.	Recent second time offender. Offence has moderate severity or small but frequent impact(s).	Multiple offender. Ongoing offences of moderate to large severity or a single instance of a very severe offence or multiple breaches.	Serial offender. Multiple enforcement over recent times. Continuing serious offence.	
<b>4. Harm ,or potential harm, to Tenant(s)</b>	Very little or no harm caused. No vulnerable occupants. Tenant provides no information on impact.	Likely some low level health/harm risk(s) to occupant. No vulnerable occupants. Tenant provides poor quality information on impact.	Likely moderate level health/harm risk(s) to occupant. Vulnerable occupants potentially exposed. Tenant provides some information on impact but with no primary or secondary.	High level of health/harm risk(s) to occupant. Tenant(s) will be affected frequently or by occasional high impact occurrences. Vulnerable occupants more than likely exposed. Small HMO (3-4 occupants), multiple occupants exposed. Tenant provides good information on impact with primary evidence (e.g. prescription drugs present, clear signs of poor health	Obvious high level health/harm risk(s) and evidence that tenant(s) are badly and/or continually affected. Multiple vulnerable occupants exposed. Large HMO (5+ occupants), multiple occupants exposed. Tenant provides excellent information on impact with primary and secondary evidence provided (e.g. medical, social services reports).	*Score is doubled on this section
					<b>Total Score</b>	<b>0</b>

9.13. Where it has been determined that a Civil Penalty Charge as opposed to prosecution is the appropriate course of action the council will follow the following process:

A 'Notice of Intent' will be served on the person(s) responsible for the commission of the offence(s). The recipient of the Notice is given 28 days to make representation to the Council regarding the proposal to impose a Civil Penalty.

Following the 28-day period the Council will decide; whether to impose the proposed financial penalty and the appropriate value. This could be varied taking into account any comments received from the recipients.

If the Council decides that a Civil Penalty is still appropriate it will issue a Final Notice which will specify certain information:

- The amount of the financial penalty
- The reasons for imposing the penalty
- Information on how and when to pay the penalty
- Information regarding the right of appeal against the imposition of a Civil penalty to the First-tier Tribunal (Property Chamber)
- The consequences of failure to comply with the Notice

9.14. If the penalty charge is not fully paid within the prescribed time, including after an appeal has been finally determined and the charge upheld, the Council will seek to recover the penalty by order from a County Court including the costs incurred in taking such action where deemed appropriate.

9.15. The Council may at any time withdraw any notices it has served or amend the amount of penalty specified.

9.16. Any money recovered through civil penalties will be used by this authority for its statutory duties and enforcement.

9.17. Where the Council has responsibility for enforcing legislation concerning Private Sector Housing and breaches of the legislation allow the issue of financial penalties by the Council the Private Sector Housing Team will enforce this legislation. The Private Sector Housing Team may serve a notice on the perpetrator requiring the payment of a monetary penalty of an amount determined by the Council in accordance with Government guidance.

9.18. Where a Notice is served requiring a monetary penalty, there is a right to appeal to the First-tier Tribunal, and the Notice will be suspended until the appeal is determined or withdrawn.

## **10. Debt Recovery**

10.1. The Council will seek to recover all debts owed as soon as possible. The Council's Housing Team will initiate recovery proceedings when the following debts have not been paid:

- Charges relating to the service of a statutory notice or order (section 49 of the Act);
- Expenses incurred with the taking of Emergency Remedial Action;
- Expenses incurred with the carrying out of works-in-default.

10.2. Where appropriate, the Council will use the enforced sale procedure under the Law of Property Act 1925 as a means of recovering any monies owed.

10.3. It is the intention to consult with legal services and ensure that there is consistency in our approach.

## **11. Rent Repayment Orders**

11.1. The Housing Act 2004 introduced rent repayment orders to cover situations where the responsible person for a property had failed to obtain a licence for a property that was required to be licensed. Specifically, offences in relation to licensing of Houses in Multiple Occupation (section 72(1)) and offences in relation to licensing of houses under Part 3 of the Act (section 95(1)).

- Rent repayment orders have now been extended through the Housing and Planning Act 2016 to cover additional offences:
- Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004;
- Failure to comply with a Prohibition Order under 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 under section 6 of the Criminal Law Act 1977; and
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.

11.2. Either a local authority or tenant can apply to the First Tier Property Chamber for a rent repayment order. If the Council secures a prosecution for a relevant offence they must consider applying for a rent repayment order. However, a rent repayment order can be applied for when a relevant offence has been committed, whether or not the person responsible has been convicted. Providing there is

adequate evidence that a landlord has failed in his duty the First-tier tribunal can give a rent repayment order.

11.3. Nevertheless, where the Council makes an application for a rent repayment order and the responsible person has not been convicted it has to be satisfied that they have sufficient evidence to prove that an offence has been committed and this will need to be to the criminal burden i.e. beyond reasonable doubt.

11.4. It should be noted that the Council can impose a civil penalty and apply for a rent repayment order for certain offences.

11.5. The following factors will be taken into account when considering how much rent the Council will seek to recover:

- Rent repayment orders should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

11.6. Factors this authority may wish to consider include the conduct of the landlord and tenant, the financial circumstances of the responsible person and whether the landlord has previously been convicted of similar offences.

- Deter the offender from repeating the offence.
- The level of the penalty should be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- Dissuade others from committing similar offences.
- Rent repayment orders are imposed by the First-tier Tribunal and so the fact someone has received a rent repayment order will be in the public domain.
- Remove any financial benefit
- This is an important element of rent repayment orders. The responsible person is forced to repay rent, and thereby loses much, if not all, of the benefit that accrued to them by not complying with their responsibilities
- Up to a maximum of 12 months repayment order.

11.7. Local authorities have guidance from Government to use rent repayment orders to recover housing benefit or universal credit whenever possible. Where benefits are paid and topped up by the tenant, the guidance provides a formula to calculate how payment should be made. The Council may guide a tenant in how to make an application to the First-Tier Tribunal.

11.8. Any income gained from the rent repayment order will be kept by the local authority for use for its statutory functions in relation to their enforcement activities covering the private sector as specified in the regulations.

## **12. Housing Act 2004**

### **12.1. Housing Health and Safety Rating System (HHSRS)**

- 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.
- Hazards are scored based on the risk to the potential occupant who is most vulnerable to that specific hazard. In determining what action to take, the Council will take account the hazard assessment score; whether the Council has a duty or discretion to act; the views of the occupiers; the risk to the current and likely future occupiers and regular visitors; and the presence of other significant hazards in the property.

### **12.2. Most Appropriate Course of Action**

- The Housing Act 2004 provides a range of enforcement options to address hazards. The Council will take the most appropriate course of action in relation to the hazard in all circumstances.
- There are several different options available to the Council that require a person, business or organisation to comply with specific requirements relating to Category 1 and 2 hazards.
- Hazard Awareness Notices give formal notification that a hazard exists and do not require the recipient to carry out any works. Improvement Notices require remedial works.
- Prohibition Orders may prohibit the use of all or part of a dwelling, or use by a description of persons. 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.
- 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.

- Improvement Notices and Prohibition Orders may be suspended until a specified time or event.
- Where an Improvement Notice is served, the Council will require works to reduce the hazard to an acceptable level.

As an alternative to the notices and orders listed above, the Act also provides for further options to deal with Category 1 hazards. Please see Appendix 1.

### **13. Tenure**

- 13.1. 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 landlord's responsibility to carry out works.
- 13.2. 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.
- 13.3. The Council may in certain circumstances require works to be carried out, or to use Emergency Remedial Action, or make an Emergency Prohibition Order, in respect of an owner-occupied dwelling. This will be where there is an imminent risk of serious harm to the occupiers or to others, or where the conditions 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 deficiency at the property such as the requirement to carry out fire precaution works.
- 13.4. 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 or order might require an owner to notify the Council of a change of occupancy to ensure that the notice can be reviewed.

### **14. Category 1 and 2 Hazards**

- 14.1. For hazards assessed as being a Category 1 hazard it is mandatory to take enforcement action. The type of action will be determined by reference to the Enforcement Guidance

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7853/safetyratingsystem.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7853/safetyratingsystem.pdf) and the Council's priorities to protect health and wellbeing, particularly of the vulnerable. In particular, hazards relating to physiological requirements and protection against infection are more likely to be addressed in this way.

14.2. There are discretionary powers to deal with Category 2 hazards. 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;
- due regard to the Council's priorities to protect health and wellbeing, particularly of the vulnerable. Hazards relating to physiological requirements and protection against infection are more likely to be addressed in this way.

14.3. Each case will be considered on its merits. Where appropriate, action outside these guidelines may be authorised by the Principal Strategic Housing Officer or Strategic Housing Manager.

## **15. Houses in Multiple Occupation (HMO)**

15.1. An 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, hotels, and shared houses.

15.2. The definition of an HMO is contained in the Section 254 of the Housing Act 2004. HMOs containing five or more occupants require licensing. HMOs that do not fall within this definition do not require licensing and are referred to as unlicensed HMOs.

15.3. The Council requires all HMO landlords to supply copies of gas, electricity and fire safety certificates. Gas and fire safety certificates are requested annually and electrical certificates every 5 years. In cases where a landlord fails to supply a gas safety certificate the Council will report this to the HSE. In cases where a landlord fails to supply an electrical or fire certificate the Council will take enforcement action under HMO Management Regulations.

15.4. All HMOs are inspected on a routine basis. The frequency of inspections is determined by compliance with the Management Regulations, repair, and adequate fire precautions and amenities.

- 15.5. The first inspection of an HMO will be carried out within 1 calendar month of the Private Sector Housing Team becoming aware that a property is potentially an HMO.
- 15.6. After the first inspection a risk assessment is completed. This will generate an interval for the next routine inspection. This will be at an interval of between 3 months and 24 months depending on the calculation of risk.
- 15.7. The Private Sector Housing Team will also carry out additional inspections in cases where a landlord has been asked to rectify a particular safety issue. In this instance the Private Sector Housing Team will write to the landlord giving a date within the next 3 months when a further inspection will be carried out to establish whether the issue has been resolved. In cases of a risk of imminent harm to occupants the Council will use emergency procedures to carry out work to reduce and remove the imminent risk.
- 15.8. The HMO Management Regulations will apply to all HMOs. 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.
- 15.9. The Council has adopted its own standards relating to facilities such as bathrooms and cooking facilities. An agreement has 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 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. This guide is available on our website at [www.stalbans.gov.uk](http://www.stalbans.gov.uk).
- 15.10. The Council will however carry out an HHSRS assessment when determining actual legal requirements for each specific dwelling. Therefore the requirements may vary from the guide depending on the circumstances.

## **16. HMO Licensing**

- 16.1. The Private Sector Housing Team will visit before licensing an HMO, to assess compliance with the licensing requirements and the number of people the HMO should be licensed for.
- 16.2. The Council will require the licence application to be accompanied by a fee as determined by the Council. The fee will take into account all costs incurred by the Council in carrying out their HMO licensing functions. The current fees are detailed on the Council's website [www.stalbans.gov.uk](http://www.stalbans.gov.uk).

- 16.3. The Council offers a discretionary 75% discount on HMO licensing fees for properties that are managed by registered charities, whose core purpose is the provision of supported accommodation. Any charity seeking to secure such a discount will need to provide documentary proof of their charitable status at the time of applying for an HMO Licence.
- 16.4. Licences will be granted where the property 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.
- 16.5. 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.
- 16.6. Licences will normally be valid for 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 number and location of kitchen, toilet and bathroom facilities.
- 16.7. The Council will aim to issue draft licences within 12 weeks of receipt of a complete application and licence fee. An application will be deemed to be complete once all the required information and documentation is in the possession of the Council.
- 16.8. A draft licence must be served on all interested parties, allowing at least 14 days for representations before granting the licence.
- 16.9. 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 3 month TEN can be served in exceptional circumstances.
- 16.10. 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 may pursue a prosecution or alternatively issue a Civil Penalty Notice of up to £30,000. On conviction for failure to license, the First Tier Tribunal (FTT) has the power to make a Rent Repayment Order requiring that up to 12 months' rent is repaid to the tenant or to the Council where a tenant is in receipt of Housing Benefit or Universal Credit.

- 16.11. The licensee has a right of appeal to the FTT against refusal to license, licensing conditions and the maximum number of occupiers or households specified on the licence.
- 16.12. Where there is no prospect of an HMO being licensed, the Act requires that the Council uses its Interim Management Powers. These enable the Council to take over the management of an HMO and become responsible for running the property and collecting rent for up to 1 year. This may be followed by a Final Management Order for a further 5 years.
- 16.13. The Council has the power to vary the licence if it finds that there has been a change of circumstances in an HMO since it was licensed. 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 that point in time.
- 16.14. It is the landlord's responsibility to ensure that they keep a record of when a licence for their property expires and make an application for a new licence in good time to allow for this to be in place before the expiry of the existing licence or advise that the property is no longer to be used as an HMO.

## **17. Empty Homes**

- 17.1. SADC recognises that empty homes represent not only a wasted resource but also, at times, a nuisance. It is recognised that a property may be empty for a short period of time for reasons such as probate or development. The Council is committed to bringing homes back into use which have remained empty or are causing a nuisance to neighbours.
- 17.2. There are cases where the owner is unwilling or unable to cooperate with the aim of bringing the property back in to use. In these cases action to address this should consider the individual circumstances of the owner.
- 17.3. Failure to engage with the Council may result in enforcement action being considered. This is detailed in Appendix 3. Enforcement action will be based on whether the property is having a negative impact on houses in the area, the reason for the property being vacant and how long the property has been empty.
- 17.4. In certain circumstances empty properties may be referred to an external organisation to work with the owner. These cases will be monitored and agreed

by the Council.

17.5. There are many benefits to the Council of bringing an empty property back into use. Some examples of these are:

- It can remove blight in an area where a property is causing a nuisance. Empty properties can attract vermin and squatters and can cause damage to adjoining properties.
- There are a number of people in the district who are in desperate need of housing. When properties are brought back into use this provides more housing for those who are currently without adequate housing.

17.6. There are also many benefits to owners of bringing their empty home back into use. Some examples of these are:

- Empty properties generate no income and can even require a higher rate of Council Tax to be paid. Owners will receive an income from either selling the property or letting it.
- Empty properties can create issues for owners including vermin, damp, and squatters. Bringing these properties back into use can prevent issues like these for owners.
- Owners that voluntarily bring their properties back into use within a reasonable time frame will not be subject to any enforcement measures that the Council has available.

17.7. 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 owner's default.

17.8. The Housing Act 1985, Section 17, allows the Local Authority to acquire underused or ineffectively used property for residential purposes if there is a general housing need in the area. The Town and Country Planning Act 1990 allows Local Authorities to acquire land or buildings if acquisition will allow improvements or redevelopment to take place.

## **18. Letting Agent and Property Management Redress Scheme**

18.1. Letting agents and property management companies must register with one of three Government approved redress schemes. These schemes will ensure private rented sector tenants or landlords have a straightforward route to complain about their agents. Where they do not register on a scheme the Council can by notice require the person or agent to pay a fine up to a maximum of £5,000. Appeals can be made to the First-tier Tribunal (Property Chamber).

18.2. The Council considers this breach to be serious and will proceed with the required remedy to comply with relevant legislation.

## **19. Smoke and Carbon Monoxide Alarm Regulations**

19.1. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduces a duty for the authority act in cases where smoke detectors and carbon monoxide detectors are not fitted to certain properties being rented out to tenants. This is an important piece of safety regulation intended to reduce the numbers of unnecessary deaths caused by fires and carbon monoxide poisoning. The penalty charge of £5,000 was agreed by this Council as it was considered a very serious matter. It is proposed to charge the full amount with a 50% reduction if paid within 14 days.

## **20. Database for Rogue Landlords and Letting Agents**

20.1. This Council will make use of the Database for Rogue Landlords and Letting Agents provided by the Housing and Planning Act 2016 to record convictions and to search for any suspects or offenders convicted by this or other local authorities.

## **21. Mobile Home and Caravan Site Enforcement**

21.1. Under the Mobile Homes Act 2013, if it appears to this local authority that the occupier of the land concerned is failing or has failed to comply with a condition attached to the site licence, we may serve a compliance notice on the occupier. An occupier of land who has been served with a compliance notice may appeal to a First-Tier Tribunal against that notice. We may revoke or vary the compliance notice. Where this local authority has revoked or varied a compliance notice, we must notify the occupier of the land to which the notice relates of the decision as soon as is reasonably practicable.

21.2. An occupier of land who has been served with a compliance notice which has become operative commits an offence if the occupier fails to take the steps specified in the notice.

21.3. It is an offence to breach a licence condition and on summary conviction the offender can currently be fined up to £2,500.

21.4. Where a condition requires works to the site to be carried out and these are not done either within the time specified or to satisfaction of the local authority, the authority will consider prosecution and may carry out the works itself and recover from the licence holder any expenses it has reasonably incurred in doing so.

21.5. The local authority may apply to the court to have a licence revoked if the licence holder has been convicted on two or more occasions of breaches of licence conditions.



## Appendix 1

### Emergency Measures, Demolition and Clearance

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 in any residential premises <b>and</b> 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 <b>and</b> 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 remedial action, the date action taken, and rights of appeal.</p>
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>
<b>Other Measures</b>	<b>When this action may be taken</b>
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 of 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 of 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 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>
Clearance Areas Section 47 of the Housing Act 2004, and Part 9 of the Housing Act 1985	<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 and 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 and 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 more 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 and 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.</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>
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In some cases where a statutory nuisance is found to exist it may be more appropriate to serve a Notice under Section 80 of the Environmental Protection Act 1990. This Notice allows the use of shorter time frames than Improvement Notices.

## Appendix 2

### 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 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.
Offences in relation to the Selective Licensing of HMO's Section 95	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.
Rent Repayment Order Sections 73 & 96	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 First-tier Tribunal for a rent payment order with respect to the repayment of housing benefit.
Interim Management Order (IMO) Section 102	<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 IMO.</p> <p>Where the health and safety condition is satisfied within a property that is not required to be licensed, on application to the First-tier Tribunal, the Council may make an 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>
Special Interim Management Order Section 103	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 and the health, safety and welfare of the occupiers or visitors is at risk, the local authority may apply to the First-tier Tribunal for a special interim management order.
Final Management Order (FMO) Section 113	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. 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.
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## 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 3 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, the Council may apply to the First-tier Tribunal 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>the interests of the community have been taken into account 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 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, there are 3 enforcement routes that may be used. These are:

- Improvement works.
- Enforced sale.
- Compulsory Purchase.

Any enforcement action aimed at bringing an empty property back into use will only be used when repeated attempts to encourage the owner 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 considered for enforcement action where there are clear benefits to the neighbourhood or it could address a housing need.

In many cases the powers that can be used to require improvements to an empty property rest with other services within the Council and will be covered by their enforcement policies. Any action taken under powers available to the Private Sector Housing Team will be taken in accordance with the staged approach to enforcement. 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 hazard will often not be appropriate for empty homes, unless occupation seems likely

<b>Problem</b>	<b>Legislation (Service, where not Private Sector Housing)</b>	<b>Action required</b>
Dangerous or dilapidated buildings	Building Act 1984, Section 77 and 78 (Building Control)	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 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 (Building Control)	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, Section 17	Requires the owner to address defective drains or private sewers
Vermin either present or risk of attracting vermin that may detrimentally affect people's 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 (Building Control)	Requires the owner to address the property adversely affecting the amenity of the area through its disrepair