



# **Private Sector Housing Enforcement Policy**

**Version 1.5**

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<b>Council priority</b>	<b>Linked?</b>
Public Health and Wellbeing	Yes
Environment	Yes
Transforming our Community	Yes
Efficient and Effective Customer Focussed Services	Yes

- **Links to other strategies and policies:**

- Thames Gateway South Essex Sub Regional Housing Strategy

- **SMART action plan included?: No**

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- **Name of lead Member and Member body responsible for monitoring implementation of the action plan:**

- Cllr Mrs Egan Cabinet Member responsible for Homes and Communities

- **Equality Impact Assessment undertaken:**
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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 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, with regard to 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 The Housing Act 2004 allows for the regulation of housing of all types of tenure including the Social Rented Sector (i.e. Registered Social Landlords such as Housing Associations) to which this policy, where applicable, also applies.
- 1.3 All enforcement action will be carried out having regard to the 6 principles specified in the Department for Business Innovation and Skills "Regulators' Code" made under section 23 of the Legislative and Regulatory Reform Act 2006.

These are:

- Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
  - Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views
  - Regulators should base their regulatory activities on risk
  - Regulators should share information about compliance and risk
  - Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibility to comply
  - Regulators should ensure that their approach to regulatory activities is transparent
- 1.4 The Council's enforcement policies are based on the 5 guiding principles of the Concordat on Good Enforcement Practice of transparency, fairness, proportionality, consistency and objectivity previously adopted by the Council.
  - 1.5 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.
  - 1.6 This policy seeks to support the Council's corporate aims, objectives and strategies with respect to private sector housing. In particular it contributes to the corporate plan priority: Public Health and Wellbeing.

## **2 Service General Enforcement Principles**

### **2.1 Economic Progress**

Environmental Health Services will intervene when there is a significant risk to the health and safety of occupants, neighbours or visitors to a property. The supply of good quality, affordable privately rented accommodation is essential to meet local housing need and is closely linked to Castle Point's economic progress. Private landlords in the Borough range from those with larger portfolios to those with one or two properties. The Service aims to provide clear advice, guidance and information on meeting minimum standards and to give all landlords a reasonable opportunity to put problems right before taking formal enforcement action, unless we are required to take action by legislation. Fair and consistent regulation benefits service users, local businesses, landlords, agents and property owners, by helping to maintain a "level playing field". In accordance with the Regulators' Code, the Service will consider the impact that its regulatory interventions may have on economic progress, including a thorough consideration of the costs, effectiveness and perceptions of the fairness of regulation. The service will only adopt a particular approach if the benefits justify the costs and it entails the minimum burden compatible with achieving its objectives of ensuring homes are safe and warm.

### **2.2 Risk Assessment**

The Service will use risk assessment to concentrate resources in the areas that need them most and on the properties in the worst condition. For example, condition surveys may be used to identify areas or types of accommodation in Castle Point where housing conditions are worst and will target action accordingly. Following the receipt of a service request or complaint about poor housing conditions, an initial risk assessment will normally be carried out and any follow up advice or action will depend on the outcome of the initial assessment, which may not always involve a visit to the property. Complaints about registered social landlord (RSL) properties will be referred to the relevant Housing Association to investigate first. Suitably trained officers routinely use the Housing Health and Safety Rating System (HHSRS), which is a statutory, evidence-based, risk assessment method for assessing and dealing with poor housing conditions.

### **2.3 Advice and Guidance**

The Service will provide authoritative, accessible advice easily and affordably. Wherever possible, this will be provided free of charge. General information, advice and guidance to make it easier for landlords, agents, home owners and others to understand their regulatory obligations will be provided in clear, concise and accessible language, using a range of appropriate formats and media. When offering compliance advice the Service will distinguish between statutory requirements and advice or guidance aimed at improvements above minimum standards. Advice will be confirmed in writing, if requested. The Service welcomes enquiries from home owners and landlords about complying with minimum standards and ensuring homes are safe and warm and this will not directly trigger enforcement action. However, the Service will not act as a consultant for home owners or landlords and is not able to complete non statutory detailed assessments for specific properties (such as fire safety risk assessments; confirming in detail the work that would be required to let a property in multiple occupation; or in detail the work required to reduce the risk from significant hazards in a property to an acceptable level).

## **2.4 Inspections, Other Visits and Information Requirements**

No inspection will take place without a reason. Inspections and other visits will take place in response to a reasonable complaint or request for service, or where poor conditions have been brought to our attention; in accordance with risk-based and targeted programmes; in accordance with statutory inspection requirements (such as for mandatory licensing of houses in multiple occupation (HMOs)); or on receipt of relevant intelligence. Following an inspection, positive feedback will be given wherever possible to encourage and reinforce good practices. The Service will focus its greatest inspection effort on the worst properties and the landlords who regularly fail to comply with regulations or frequently have properties in poor condition. The Service will endeavour not to ask for unnecessary information or to ask for the same piece of information twice.

## **2.5 Compliance and Enforcement Actions**

The Service will seek to quickly identify the few landlords, agents, property owners or businesses that persistently break regulations and ensure that they face proportionate and meaningful sanctions. By facilitating compliance through a positive and proactive approach, the Service aims to achieve higher compliance rates and reduce the need for reactive enforcement actions, unless legislation requires us to do so. However, those that deliberately or persistently break the law will be targeted. When considering formal enforcement action the Service will, where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. This will not apply where immediate action is required to prevent or respond to a serious breach or to deal with an imminent risk to health or safety, or where to do so is likely to defeat the purpose of the proposed enforcement action. The Service will ensure that clear reasons for any enforcement action are given and complaints and appeals procedures are explained at the same time.

## **2.6 Accountability**

The Service will be accountable for the efficiency and effectiveness of its activities, while remaining independent in the decisions that it takes. Transparency will be maintained by routine reporting of performance information. Information and advice will be provided on how decisions are made and charges are set. Employees will provide a courteous, prompt and efficient service and will identify themselves by name. A contact point, telephone number and email address will be provided. Applications for licences etc. will be dealt with efficiently and promptly and services will be effectively coordinated to minimise unnecessary overlaps and time delays. Information about appeal mechanisms, such as to the First-tier Tribunal (Property Chamber) and the Council's corporate complaints procedure will be provided. The complaints procedure has two internal stages and a final stage involves the complainant taking the matter directly to the independent Local Government Ombudsman Service, which is external to the Council. The complaints procedure will be followed for any complaints received about the Service or the application of this enforcement policy.

## **3. Shared Enforcement**

- 3.1 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, where possible the Council will consult the Essex Fire and Rescue Service on the works required.

- 3.2 In determining the most appropriate form of investigation and enforcement action, officers will have regard to any potential or existing action of other Council services or outside agencies.
- 3.3 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.
- 3.4 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.

#### **4. Enforcement Standards**

- 4.1 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 Legislative and Regulatory Reform Act 2006, The Code for Crown Prosecutors Enforcement Guidance, issued under section 9 of the Housing Act 2004

#### **5. Identifying the Need for Action**

- 5.1 The Council may identify the need to deal with hazards under Part 1 of the Housing Act in a number of ways including proactive inspections of, for example, houses in multiple occupation or in response to a complaint or request from a tenant for enforcement action, or following a request for financial assistance to improve the property. For example where a landlord refuses a government 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.
- 5.2 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. In accordance with section 239 of the Housing Act 2004, at least 24 hours notice will normally be given to owners (if known) and occupiers (if any) unless the occupier has already requested an inspection in which case an appointment will be made.

#### **6. Part 1 Housing Act 2004 Housing Health and Safety Rating System (HHSRS)**

- 6.1 The Housing Act 2004, ("the Act"), together with Regulations made under it, prescribes the Housing Health and Safety Rating System (HHSRS) as the means by which Local Authorities assess housing conditions and decide on action to deal with poor housing. It is a risk assessment system of the effect of housing conditions on the health of occupiers. 29 potential hazards are assessed and scored for their severity. These are described at **appendix 1**. 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 is under a duty to take formal enforcement action in respect of a Category 1 hazard but has discretion to exercise power in relation to Category 2 hazards.

- 6.2 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.
- 6.3 The score is based on the risk to the potential occupants or visitors who are in the age group 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, track record of the owner, 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.
- 6.4 A formal notice may be served on the landlord requiring works to be carried out to reduce or eliminate hazards. Once the notice becomes operative failure to comply with the notice without reasonable excuse is an offence and the Authority can carry out works in default and/or prosecute.
- 6.5 A house in multiple occupation is a property rented out by at least 3 people who are not from 1 'household' (e.g. a family) but share facilities like the bathroom and kitchen. It's sometimes called a 'house share'.

An HMO must be licensed if all of the following apply:

- it's rented to 5 or more people who form more than 1 household
- it's at least 3 storey's high (or two stories above a commercial premises)
- tenants share toilet, bathroom or kitchen facilities

## 7. Staged Approach to Enforcement

- 7.1 Council officers will seek compliance with legislation through one or more of the following stages:-

**Stage 1: Informal Action.** Generally taken instead of or prior to formal action. 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.
- **Loans / Grants:** To complement formal enforcement powers the Council will bring to the attention of landlords the potential availability of grant funding or loans for housing improvements, where this is available.
- **Informal letters:** these will be used to reinforce advice and guidance where minor defects or 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 and are normally given prior to formal enforcement. Where warnings are issued, follow-up visits will normally be made to ensure the problem is being rectified. Warnings issued in respect of hazards and/or 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. Formal warnings may follow an informal letter where there remains some confidence that compliance may be achieved before resorting if necessary to formal enforcement.

**Stage 2: Formal Enforcement.** Where practicable, decisions to serve formal enforcement notices will be taken by the authorised officer under delegated powers, where necessary in consultation with the Environmental Health Team Leader or Operational Manager. If it is necessary to serve a formal notice under the Housing Act 2004 a reasonable charge (see paragraph 24) will be made to recover administrative and other expenses incurred.

- **Hazard Awareness Notices:** A notice advising the person on whom it is served of the existence of a category 1 or 2 hazard. This is the minimum level of action that may be taken by the Council, where a category 1 hazard has been identified.
- **Housing Improvement Notices:** Formal notices will be served where there are serious threats to the health and safety of occupants or there is a significant failure or a record of persistent breaches of statutory requirements or a lack of confidence that the recipient will respond to an informal approach or when informal action has failed to achieve a satisfactory resolution.
- **Emergency Remedial Action:** This includes the power to take emergency action by forced entry to premises if necessary and will be considered where there is a category 1 hazard under the Housing Act 2004 and there is imminent risk of serious harm. The reasonable costs incurred including an administrative charge are recoverable from the recipient of the notice.
- **Prohibition Order:** Action to prohibit by notice all or part of the premises will be taken where there is judged to be a risk of serious harm to occupants or visitors to the premises.
- **Emergency Prohibition Order:** As above, but includes the power to immediately prohibit by notice all or part of premises where there is imminent risk of serious harm.

**Stage 3: Formal action following non compliance.** Where there is a failure to comply with a formal notice without reasonable excuse or reasonable progress is not being made within the specified timescale or there is a significant breach of statutory requirements the following formal actions will be considered:

- **Formal Warnings:** are generally given with a timescale for compliance prior to prosecution or carrying out works in default.
- **Works in Default:** where specified work has not been carried out in

compliance with an enforcement notice, works in default will be considered. The reasonable costs incurred including an administrative charge are recoverable from the recipient of the notice. The decision to approve works in default will be taken by the Environmental Health Operational Manager or Head of Environment.

- **Simple Cautions:** may be considered for less serious breaches of formal notices and statutory requirements.
- **Prosecution:** may be considered where there is a failure to comply with a notice within the specified time period or reasonable progress is not being made within the specified timescale or there is a significant breach of statutory requirements.

The decision to prosecute or to offer a simple caution will be taken by the Environmental Health Operational Manager or Head of Environment in consultation with the Head of Legal Services.

- 7.2 Enforcement will normally progress from stage 1 advice and guidance to stage 2 formal enforcement or stage 3 except where immediate formal action is justified as in 7.4 below.
- 7.3 Where an owner or landlord agrees to take the required action within an agreed timescale, and there is confidence that the work will be undertaken, it may be appropriate to defer serving a notice unless the owner fails to start the work within a reasonable time.
- 7.4 In serious cases, for example where there is a significant breach of the law such that the occupiers health and safety is at risk and/or a category 1 hazard is found to be present and/or there are concerns that the owner or landlord will not co-operate, it will be appropriate to commence formal enforcement immediately.
- 7.5 This may include cases where the HHSRS assessment reveals either category 1 hazards or category 2 hazards where the current occupants are in the vulnerable age group.
- 7.6 The Council has a duty to consider the most appropriate course of action to deal with Category 1 hazards. As these generally involve a serious risk to health and safety it is more likely that formal action will be appropriate. However, each case will be considered on its merits and there may be occasions, for example when dealing with a reputable landlord or agent, when it is considered that an informal approach will achieve the desired result without recourse to formal action. However, formal action can be initiated at any point if reasonable progress is not being made.
- 7.7 Where reasonably practicable, the Council will ensure that the landlord and/or agent and tenant(s) have the opportunity to discuss the Council's proposed action before a Notice is served.
- 7.8 Time limits are given for completing works, which are set with consideration to the amount of work required, the risk to the occupants and the estimated time required to complete that work. The Council will consider applications to vary the time limits in accordance with the enforcement policy.

## 8. Housing Act 2004: Most Appropriate Course of Action

- 8.1 The Housing Act 2004 provides a range of enforcement options to address hazards. When considering the most appropriate course of action in relation to the hazard the Council will have regard to the Enforcement Guidance issued by the Secretary of State under section 9 of the Housing Act 2004. This may initially involve informal action in cases that warrant this approach but otherwise formal action will be taken. Where there is a **category 1** hazard the Council is under a statutory duty to take appropriate action but if a **category 2** hazard the Council has discretion whether to exercise this power.
- 8.2 When a formal enforcement option is taken the Act requires a formal statement of reasons to be given saying why that particular option was chosen. Where it is reasonable to do so, the Council may seek the views of the landlord or owner and current occupier before deciding on which enforcement option to take.

## 9. Enforcement Options under the Housing Act 2004 Category 1 and 2 Hazards

- 9.1 There are a number of different notices available which require a person, business or organisation to comply with specific requirements relating to Category 1 (Bands A-C) and Category 2 (Bands D-J) 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 Notice** gives formal notification that a hazard exists and draws attention to the desirability of remedial action. This may be used for either category 1 or 2 hazards. The notice does not have to be acted upon and consequently there is no provision for appeal. However, service of the notice does not prevent further formal action should an unacceptable hazard remain.

**Housing Improvement Notices** require remedial works within a specified time and must as a minimum remove the category 1 hazard but may extend beyond this. An appeal can be made to a residential property tribunal within 21 days from service of the notice.

**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. An appeal against a prohibition order must be made to a residential property tribunal within 28 days from service of the order.

**Suspended Improvement Notices and Prohibition Orders** may be suspended until a specified time or event.

Failure to comply with the requirements of an improvement notice or prohibition order is an offence for which the recipient of the notice can be prosecuted. The Council can also carry out the works themselves if reasonable progress is not made and recover their reasonable costs.

- 9.2
- 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 the Castle Point Borough. However, Prohibition Orders may be required on part or all of a dwelling, e.g. to reduce overcrowding, or where there is inadequate natural lighting or there is no protected means of escape in case of fire from the top floor.

10.    **Emergency Enforcement Action.**

- 10.1
- Emergency Measures, Demolition and Clearance Category 1 Hazards (Band A-C)** 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>May be taken when the Council is satisfied that a category 1 hazard exists on 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 notice will be given to the landlord and occupier prior to the action being taken and formal notice will be served on the owner 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 was taken, and rights of appeal.</p>
Emergency	When the Council is satisfied that a Category 1 hazard exists on

Emergency Measures	When this action may be taken
Prohibition Orders Section 43	<p>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 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>
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	A clearance area may be declared when the Council is satisfied that:

Emergency Measures	When this action may be taken
<p>Section 47 of the Housing Act 2004, and Part 9 of the Housing Act 1985</p>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul> <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>
<p><b>Category 2 Hazards</b></p>	<p>There are discretionary powers to deal with Category 2 (bands D-J) hazards, but resources will not allow all to be dealt with. Generally, these hazards will only be dealt with at the discretion of the service in accordance with the following guidelines:</p> <ul style="list-style-type: none"> <li>• where the hazard score exceeds the national average by more than 2 bands, or</li> <li>• where the hazard band is D or E (i.e. the higher Category 2 bands), or</li> <li>• where a number of hazards appear, when looked at together, to create a more serious situation, in</li> </ul>

Emergency Measures	When this action may be taken
	particular hazards relating to physiological requirements and protection against infection.

## **11. Action Outside these Guidelines**

- 11.1 Each case will be considered on its merits. Where appropriate, action outside these guidelines may be approved in consultation with the Environmental Health Team Leader or Operational Manager. In particular Section 79(1)(a) of the Environmental Protection Act may be used as an alternative or in addition to the Housing Act provisions regarding any premises found to be in such a state as to be prejudicial to health or a nuisance.

## **12. Tenure**

- 12.1 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. The HHSRS provisions of the Act apply to all housing whether in owner-occupation, privately rented or social housing and it is usually the owner's responsibility to carry out works to reduce or eliminate hazards. Action can be taken against an owner-occupier but as owner-occupiers have control over any hazards in the home and tenants in the main do not, most enforcement action will involve requiring a private landlord or more rarely a Registered Social Landlord (Housing Association) to carry out works.
- 12.2 Where we have identified hazards and the Registered Social Landlords (RSL) have a programme of works to make their stock decent, the officer will take into account the programme when determining the most appropriate course of action and will liaise with the RSL over any works necessary to deal with category 1 and 2 hazards in advance of the planned improvements. In particular, with the Space and Crowding hazard, account will be taken of the availability of suitable alternative accommodation and the priority given to the allocation of alternative accommodation for tenants living in overcrowded conditions which are the subject of a category 1 or high category 2 hazard.
- 12.3 With owner – occupiers, in most cases they will not be required to carry out works to their own home, and informal action or a Hazard Awareness Notice (which must be served where category 1 hazards have been identified) is likely to be the most appropriate action.
- 12.4 However, the Council may in certain rare 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.

- 12.5 An Improvement Notice or Prohibition Order may be suspended until a time or event specified, and in some cases 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.

### **13. Level to which hazards are to be improved**

- 13.1 Where an improvement notice is served, the Council will generally require works of a sufficient standard minimise the opportunity for a recurrence of the hazard, within a minimum of five years.
- 13.2 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 specify works which, whilst not necessarily achieving the ideal, will seek to achieve a significant reduction in the hazard level, if possible to the national average or below if the national average is D or above. 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.

### **14. Content of Notices**

- 14.1 Generally, the notice will explain:-

- What is wrong (the deficiencies).
- What is required to put things right.
- The timescale in which to put things right.
- What will happen if the notice is not complied with.
- The appeal period and the address of the relevant First-tier Tribunal (Property Chamber) that would hear the appeal.
- The reasons for choosing that course of action.

- 14.2 If the landlord fails to give any indication regarding his/her future proposals for the property or if it appears that the property is likely to remain vacant, then the Improvement Notice will continue to be enforced as the operation of an Improvement Notice does not depend on tenure.

- 14.3 Where a landlord gives an undertaking in writing that the required remedial work will be done prior to any new tenant moving in, then the improvement notice may be suspended until such time that the house is reoccupied or some other stated date. The situation will be reviewed at least every six months.

- 14.4 Where the property becomes vacant following the service of an Improvement Notice relating to category 2 hazards, the notice will normally be revoked and replaced by a Hazard Awareness Notice. Suspension of the notice as in the case for Category 1 hazards may however be appropriate where it appears that there is a high likelihood that the property will be re-let.

- 14.5 In all cases, the Service will seek to prevent retaliatory evictions (where a landlord takes action to gain possession of a property lawfully following a tenant



complaining about poor housing conditions). Where there is evidence of a retaliatory eviction, the Service will continue to require any necessary improvements to the property to be made and, if necessary, will take enforcement action under the provisions of the Retaliatory Eviction and the Deregulation Act 2015, in accordance with the principles contained in this Enforcement Policy.

- 14.6 Requests to extend notice timescales will be considered if they are received in writing at least 7 days before the expiry date on the existing notice, which the notice recipient wishes to change.

## **15. Owner Occupiers**

- 15.1 Occasions will arise whereby Category 1 hazards are identified in owner occupied properties where the owner is unable / unwilling to complete remedial work and is not eligible for financial assistance, is unwilling to use financial assistance, or where no financial assistance is available from the Council. The duty to take action, as required under Section 5 of the Housing Act 2004 still applies. However it would not generally be in the public interest to enforce compliance unless the hazard in question was adversely affecting an adjoining property or was endangering the health and safety of the public or visitors to the property.
- 15.2 Where it appears that there would otherwise be little prospect of such a hazard being remedied within the forthcoming 12 months (for example through a Grant to install central heating / insulation to remedy the hazard of excess cold) then the hazard will be brought to the attention of the owner by the service of a Hazard Awareness Notice. No charge would generally be made for the service of such a notice.
- 15.3 This fulfils the Council's duty under section 5 of the Housing Act 2004 but has no subsequent enforcement consequences.
- 15.4 In some exceptional cases, in line with the guidance given by the HHSRS Enforcement Guidance, it will be necessary to serve an Improvement Notice or Suspended Improvement Notice in respect of hazards in owner occupied properties. No charge would generally be made for the service of such a notice and the Service will work with the owner occupier and others (such as the Home Improvement Agency) to offer advice and assistance in complying with the requirements of the notice.

## **16. Non Compliance**

- 16.1 The enforcement options for non-compliance with formal notices or breach of licence conditions include the issuing of formal cautions, prosecution or where notices are not complied with the carrying out of works specified in the notice in default. The Council will normally use its powers to carry out the work in the owner's default, reclaiming the costs. Administration costs, on a time recorded basis will be added to the works cost. In some cases, for example where there has been a wilful failure to comply and it is in the public interest, prosecution may be the preferred initial option, unless it is considered that there is an urgent need for the works to be carried out to protect the health and safety of the tenant. In such cases a prosecution may be taken in addition to the carrying out of works in

default.

- 16.2 When considering the enforcement options for non-compliance regard will be had to the Environmental Health Enforcement Policy.

## **17. Works in Default**

- 17.1 The Council will consider completing work in default in all appropriate cases and seek to recover the costs from the owner or occupier, together with an administrative charge.

## **18. Simple Cautions**

- 18.1 Under certain circumstances, a simple caution may be used as an alternative to prosecution and will usually be considered before making a decision to prosecute. The procedure adopted and the form of content of the caution will be in accordance with relevant Home Office Circular.

- 18.2 A caution is a serious matter. 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. Simple cautions remain on record for a period of 3 years. The decision whether to offer a formal caution will be made by the Environmental Health Operational Manager or Head of Environment in consultation with the Head of Legal Services.

- 18.3 Cautions are intended to:-

- Deal quickly and simply with certain, less serious offences;
- Avoid unnecessary appearance in criminal courts; and
- Reduce the chance of offenders re-offending.

- 18.4 Before issuing a caution the following matters will be taken into account when deciding whether a caution is appropriate:-

- 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.
- The seriousness of the offence, as a caution is not suitable for serious offences.

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

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

- 18.7 Decisions to issue a caution will be notified to all known interested bodies, including tenants, managers, freeholders, leaseholders and mortgagees.

## **19. Prosecution**

- 19.1 The Council will use discretion in deciding whether to bring a prosecution and generally will only commence proceedings when it is considered to be in the public interest. The decision to prosecute lies with the Environmental Health Operational Manager or the Head of Environment in consultation with Head of Legal Services.
- 19.2 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.
- 19.3 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](http://www.cps.gov.uk))
- 19.4 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.

## **20. Enforced Sale**

- 20.1 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 a home in the owners default.

## **21. House in Multiple Occupation (HMO)**

- 21.1 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. This is a simplified description, a full definition is given under S254 and Schedule 14 of the Housing Act 2004.
- 21.2 HMOs of three or more storeys (or two storeys or more above a commercial premises,) with five or more occupiers require a licence. HMOs owned by Registered Social Landlords (RSLs), the Police, Health Authorities and certain other organisations are exempt, as are certain compliant buildings properly converted into flats.
- 21.3 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.
- 21.4 Fees relating to the licensing of HMOs will be reviewed on an annual basis and published at [www.castlepoint.gov.uk](http://www.castlepoint.gov.uk) A written copy is available on request by telephoning 01268 882200. The charges may be reviewed at any time, at the discretion of the Head of Environment.

- 21.5 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. If not assessed prior to the application an authorised officer from Environmental Health Services will normally visit within 12 months of the granting of an HMO licence to carry out an HHSRS assessment of the sleeping accommodation and check for compliance with the licensing conditions and management standards.
- 21.6 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.
- 21.7 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.

- 21.8 Licences will normally be valid for five years and will specify the maximum number of occupiers and households. The occupancy number will depend on the number and size of rooms and the kitchen and bathroom facilities. When assessing the number of households and occupiers regard will be had to the "Houses in Multiple Occupation Essex Approved Code of Practice Amenity Standards" developed jointly with members of the Essex HMO Officers Sub-Group.
- 21.9 We will aim to issue draft licences within twelve weeks of a full application. However, at peak times delays may occur, but every effort will be made to keep these to a minimum.
- 21.10 A draft licence must be served on all interested parties, allowing at least fourteen days for representations before granting the actual licence.

- 21.11 HMOs will be prioritised for assessment under the Housing Health and Safety Rating System within five years of the licence being granted. However, subject to available resources, we aim to carry out all such assessments within 12 months of the licence being granted, and if necessary will do so before granting the licence.
- 21.12 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.
- 21.13 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 First-tier Tribunal (Property Chamber.) On conviction for failure to license, the Tribunal 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 Tribunal against refusal to license, licensing conditions and the maximum number of occupiers or households specified on the licence.
- 21.14 Where a landlord is convicted for failure to license and the rent is paid as Housing Benefit, the Council will apply to the Tribunal 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 Council will consider any exceptional circumstances where the Council should not seek an RRO.
- 21.15 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 reserves the option to appoint a preferred partner to manage HMOs subject to management orders.
- 21.16 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.
- 21.17 The HMO Management Regulations 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 and to the sleeping accommodation within an HMO.
- 21.18 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. The standards contained in the “Houses in Multiple Occupation Essex Approved Code of Practice Amenity Standards” developed jointly with members of the Essex HMO Officers Sub-Group will be taken in to account when assessing suitability.

#### 21.19. Summary of Actions in relation to HMOs:

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	Smaller HMOs will require licensing if a selective licensing scheme is adopted by the Council. These schemes are available to help improve standards in poorly managed HMOs and if a need is demonstrated must be approved by the Government. If adopted 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.
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 (Property Chamber) for a rent repayment order with respect to the repayment of housing benefit.
Interim Management Order Section 102	Where an HMO requiring a licence is operating without a licence, or the licence has been revoked but the revocation is not yet in force or, on coming into force the revocation will mean that the health and safety condition will be satisfied, the local authority has a duty to make an Interim Management Order. 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 (Property Chamber), 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.
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 <i>and</i> the health, safety and welfare of the occupiers or visitors is at risk, the local authority may apply to the First-tier Tribunal (Property Chamber) for a special interim management order.

Final Management Order (FMO) Section 113	<p>An FMO 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> <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.</p>
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 First-tier Tribunal (Property Chamber) 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.
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.

## 22. Empty Homes

22.1 Non-statutory interventions with regard to bringing empty properties back into use will only be taken **strictly subject to available resource** and any such decisions are entirely at the discretion of the Council.

22.2 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 (where a notice has not been complied with or money is owed)
- Compulsory purchase

22.3 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.

## 22.4 Improvement Works for Empty Homes

22.5 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. The table in paragraph 19 describes some of the options available to the Council:

## 22.6 Summary of Interventions for Empty Homes:

Problem	Legislation (Service, where not Environmental Health)	Action required
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 emergency action to abate the nuisance
Unsecured property posing a risk of unauthorised entry or likely to suffer vandalism, arson or similar	Local Government (Miscellaneous Provisions) 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	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
Blocked or defective drains	Building Act 1984, section 59	Requires the owner to address blocked or defective drains



or private sewers (continued)		
	Public Health Act 1961, section 17	Requires the owner to address defective drains or private sewers
Vermin either present or a 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 (Planning)	Requires the owner to address unightly land or external appearance of the property
	Building Act 1984, section 79	Requires the owner to address the property adversely affecting the amenity of the area through its disrepair

## 22.7 Compulsory Purchase of Empty Homes

22.8 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.

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

## 23 Authorisation of Officers

23.1 Only officers who are competent by training, qualification and/or experience will be authorised to undertake enforcement action. Authorised officers will also have sufficient training and understanding of quality systems to ensure a consistent approach to service delivery. The Officer Scheme of Delegation sets out the delegated powers given to officers. The Division also holds a list of authorisations that have been given to individual officers.

23.2 Officers who undertake criminal investigations will be conversant with the provisions of the Police and Criminal Evidence Act 1984 (PACE), the Criminal Procedure and Investigations Act 1996 (CPIA) as amended, the Criminal Justice Act 2003, the Data Protection Act 1998, the Human Rights Act 1998, the Disability Discrimination Act 2005, the Regulation of Investigatory Powers Act 2000 and other related legislation, regulations, orders etc.

## **24. Powers of Entry**

- 24.1 The Council will follow the national legislation and guidance when exercising powers of entry and will give consideration to other guidance and decisions of the First-tier Tribunal (Property Chamber.) Access to properties is normally achieved by appointment with the occupier and/or owner and Officers will ensure that at least 24 hours notice is given. However, in certain specified circumstances, there is no requirement for notice to be given prior to entry. Therefore, in these cases, no notice of entry will be provided. Each entry will be individually authorised by the appropriate officer in writing and will state the particular purpose for which the entry is authorised.
- 24.2 In appropriate circumstances, the Council will consider the service of a Notice of Intended Entry and/or to apply to the Magistrates' Court for a warrant to enter the property, as legislative powers allow. Human rights legislation and the Protection of Freedoms Act will always be considered prior to entering premises when executing a warrant.
- 24.3 If, during an inspection, officers suspect that an offence has been committed, or if the inspection is specifically to identify an offence, officers will comply with the relevant PACE Code of Practice.

## **25. Vacation of a Property Following Statutory Action**

- 25.1 If a landlord confirms in writing that he/she intends to use the house for their own or own family's use, then at the discretion of the Service, any Improvement Notice served may be revoked and replaced by a Hazard Awareness Notice.

## **26. What is Expected of Tenants?**

- 26.1 Before considering taking any action in respect of a tenanted property the tenant(s) will normally be required to contact their landlord about the problems first. Legislation covering landlord and tenant issues requires that tenants notify their landlords of any problems with the property. This is because it is more difficult for landlords to carry out their obligations under the legislation, unless they have been made aware of the problem and the tenant will not receive protection from retaliatory eviction unless the landlord is approached in the first instance. Where the matter appears to present an imminent risk to the health and safety of the occupants, it is expected that tenants will still try to contact their landlord, even if this is after they have contacted the service. Copies of correspondence between the landlord and tenant should be provided for officers.
- 26.2 In certain situations tenants will not be required to write to their landlord first, for example:
- Where there is a history of harassment/threatened eviction/poor management practice;
  - Where the tenant appears to be vulnerable or where there are vulnerable members of the household;
  - Where the tenant could not for some other reason be expected to contact their landlord/managing agent;
  - Where the property is a House in Multiple Occupation which appears to fall

within HMO licensing.

- 26.3 Tenants are responsible for keeping officers informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.), which may affect the action the Council is taking or considering taking. Tenants should also consider seeking independent legal advice about their own individual powers to resolve any dispute with their landlord.
- 26.4 Housing Association tenants have standard procedures to follow if their landlord does not carry out repairs in a satisfactory manner, and also a final right of appeal to the Housing Ombudsman Service. The Association will be given the opportunity to resolve the problem first, before an investigation is carried out by the service.

## **27. Situations Where a Service May Not Be Provided**

- 27.1 Where any of the following situations arise consideration will be given to either not providing a service or ceasing to provide a service:
- Where the tenant(s) are, of their own free will, shortly to move out of the property
  - Where the tenant(s) unreasonably refuse access to the landlord, managing agent or landlord's builder, to arrange or carry out works
  - Where the tenant(s) have, in the opinion of the Council, clearly caused the damage to the property they are complaining about, and there are no other items of disrepair
  - Where the tenant's only reason for contacting Environmental Health Services, in the opinion of the Council, is in order to get re-housed. If a tenant does not want their present accommodation to be brought up to standard that service will not be provided
  - Where the tenant(s) have requested a service and then failed to keep an appointment and not responded to a follow up letter or appointment card
  - Where the tenant(s) have been aggressive, threatening, verbally or physically abusive towards officers
  - Where there is found to be no justification for the complaint, on visiting the property
  - Where the service has determined, through council procedures, that the complainant is 'vexatious'
  - Where the tenant unreasonably refuses to provide the Council with relevant documentation

## **28. Harassment and Illegal Eviction**

- 28.1 The Council does not have a statutory duty to investigate complaints of this nature and the Service does not currently have the resource to do so. The Service will signpost enquirers to the local Citizens Advice Bureau who can advise further on the legal options available.

## **29. Charges for Formal Action**

- 29.1 Section 49 Housing Act 2004 gives local authorities the power to make a charge as a means of recovering certain reasonable expenses incurred in serving formal notices. A charge will normally be made where it has been necessary to take one of the enforcement actions listed from i) to ix) below:
- i. serving an improvement notice under section 11 or 12
  - ii. making a prohibition order under section 20 or 21
  - iii. serving a hazard awareness notice under section 28 or 29
  - iv. taking emergency remedial action under section 40
  - v. making an emergency prohibition order under section 43
  - vi. making a demolition order under section 46
  - vii. declaring a slum clearance area under section 47
  - viii. reviewing a suspended improvement notice under section 17
  - ix. reviewing a suspended prohibition order under section 26
- 29.2 The service will invoke these allowable charges, on a routine basis, on service of an applicable notice.
- 29.3 The expenses are in connection with the inspection of the premises, the subsequent consideration of any action to be taken, and the service of notices or orders. When considering the most appropriate course of action to deal with hazards, if it is considered necessary to have to take formal action a standard charge will be made.
- 29.4 The charge is based on the average time and cost spent on the chargeable elements but in certain cases it may be increased or reduced where there is a significant difference between the cost of the enforcement action and the average charge. In addition to the standard charge reasonable expenses may include specialist support, such as testing of electrical or gas installations. However no charge will be made if informal action results in hazards being addressed to the satisfaction of the Council. The Environmental Health Operational Manager has discretion to waive or reduce the charge if there are exceptional or extenuating circumstances.
- 29.5 The charges will be reviewed on an annual basis and published at [www.castlepoint.gov.uk](http://www.castlepoint.gov.uk) A written copy is available on request by telephoning 01268 882200. The charges may be reviewed at any time, at the discretion of the Head of Environment.

## **30. Provision of Grants for Housing Improvements**

- 30.1 From time to time, the Council may have access to financial support to enable the award of various types of Housing Improvement Grants, which may include those aimed at or available to landlords. This would usually be the result of central government capital funding, often as part of a national or regional project.

- 30.2 Following the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 it is a requirement for any updates or revisions of the Council's policies in respect of the allocation of housing grants to be formally adopted.
- 30.3 Where available, the details of Housing Improvement Grants will be published on [www.castlepoint.gov.uk](http://www.castlepoint.gov.uk) and will contain information as to the criteria, eligibility and details of how to apply.

## **31. Provision of Grants for Disabled Facilities**

- 31.1 Disabled Facilities Grants (DFGs) were introduced in 1990 but the principle legal provisions are now contained in the Housing Grants, Construction and Regeneration Act 1996 (HGCRA) and regulations made there under.
- 31.2 DFGs are mandatory grants available to disabled people when works to adapt their home are judged necessary and appropriate to meet their needs and when it is reasonable and practicable to carry them out having regard to the age and condition of the dwelling or building. The Occupational Therapists at Essex County Council assess whether any works are necessary, and discuss the best available options with the Environmental Health Service at Castle Point Borough Council.
- 31.3 The Council's Policy with respect to Disabled Facilities Grants, including eligibility for application can be found in a separate document available at [www.castlepoint.gov.uk](http://www.castlepoint.gov.uk) or on request from the council offices.

## **32. Inclusion and Diversity**

- 32.1 The Council is committed to equality of access to its services and aims to treat all people with dignity and respect. The Council's Inclusion and Diversity Policy Statement refers in more detail to this commitment and is available on the Council's website [www.castlepoint.gov.uk](http://www.castlepoint.gov.uk) and on request by contacting 01268 882200.
- 32.2 Where possible, all documents will be produced in plain language and are also available on request in a range of alternative formats on request. Provision may also be made for the use of interpreters where appropriate.

## **33. Monitoring and Review**

- 33.1 In accordance with the Regulators' Compliance Code, the Service will keep its regulatory activities and interventions under review, with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose.
- 33.2 The Service will set up a monitoring system to examine a sample of enforcement cases. The quality system will aim to promote consistency in the enforcement procedures. Feedback and the results from the monitoring will be discussed as part of regular one to one and team meetings.

33.3 This document will be subject to an annual review with additional reviews as and when required. Changes will be introduced to accommodate new legislation, guidance and local needs.

**34. Contact**

34.1 Environmental Health Services, Castle Point Borough Council, Council Offices, Kiln Road, Benfleet. SS7 2LA.

34.2 Telephone: 01268 882200.

34.3 Email: [environmentalhealth@castlepoint.gov.uk](mailto:environmentalhealth@castlepoint.gov.uk)

# Housing Health and Safety Rating System: The 29 Hazards

The Housing Health and Safety Rating System (HHSRS) assesses 29 housing hazards and the effect that each may have on the health and safety of current or future occupants of the property. The HHSRS provides a way that hazards can be assessed and the best way of dealing with them identified. If a hazard is a serious and immediate risk to a person's health and safety, this is known as a Category 1 hazard. If a hazard is less serious or less urgent, this is known as a Category 2 hazard.

	Hazard	Health Effects
1	<b>Damp and mould growth</b> Health threats due to dust mites, mould or fungal including mental and social wellbeing health threats associated with damp, humid and mouldy conditions	Allergies, asthma, effects of toxins from mould and fungal infections
2	<b>Excess cold</b> Threats to health from cold indoor temperatures. A healthy indoor temperature is 18°C to 21°C	Respiratory conditions: flu, pneumonia and bronchitis Cardiovascular conditions: heart attacks and strokes
3	<b>Excess heat</b> Threats due to high indoor temperatures	Dehydration, trauma, stroke, cardiovascular and respiratory
4	<b>Asbestos and MMF</b> Exposure to asbestos fibres and Manufactured Mineral Fibres (MMF)	Asbestos: Damage to lungs MMF: Damage to skin, eyes and lungs
5	<b>Biocides</b> Threats to health from chemicals used to treat timber and mould growth	Risk from breathing in, skin contact and swallowing of the chemical
6	<b>Carbon Monoxide and fuel combustion products</b> Excess levels of carbon monoxide, nitrogen dioxide, sulphur dioxide and smoke	Dizziness, nausea, headaches, disorientation, unconsciousness and breathing problems
7	<b>Lead</b> Threats to health from lead ingestion from paint, water pipes, soil and fumes from leaded petrol	Lead poisoning causing nervous disorders, mental health and blood production issues
8	<b>Radiation</b> Health threats from radon gas and its daughters, primarily airborne but also radon dissolved in water	Lung cancer caused by exposure, which increases amount and length of exposure
9	<b>Uncombusted fuel gas</b> Threat from fuel gas escaping into the atmosphere within a property	Suffocation

10	<b>Volatile organic compounds</b> Threat to health from a diverse group of organic chemicals including formaldehyde that are gaseous at room temperature and can be found in a wide variety of materials in the home	Allergies, irritation to the eyes, nose and skin, headaches, nausea, dizziness and drowsiness
11	<b>Crowding and space</b> Hazards associated with lack of space for living, sleeping and normal household or family life	Psychological distress and mental disorders, increased risk of hygiene issues, accidents and personal space and privacy compromised
12	<b>Entry by intruders</b> Problems keeping a property secure against unauthorised entry and maintaining defensible space	Fear of burglary occurring, stress and anguish caused by burglary and injuries caused by the intruder
13	<b>Lighting</b> Threats to physical and mental health associated with inadequate natural or artificial light, including the psychological effects associated with the view from the property through glazing	Depression and psychological effects due to lack of natural light. Eyestrain from glare and inadequate light
14	<b>Noise</b> Threats to physical and mental health due to exposure to noise within the property or within its curtilage	Psychological and physiological changes resulting from lack of sleep, poor concentration, headaches and anxiety
15	<b>Domestic hygiene, pests and refuse</b> Health hazards due to poor design, layout and construction making it hard to keep clean and hygienic, attracting pests and inadequate and unhygienic provision for storing household waste	Stomach and intestinal disease, infection, asthma, allergies, disease from rats and physical hazards
16	<b>Food safety</b> Threats of infection from poor provision and facilities to store, prepare and cook food	Stomach and intestinal disease, diarrhoea, vomiting, stomach upset and dehydration
17	<b>Personal hygiene, sanitation and drainage</b> Threats of infections and threat to mental health associated with personal hygiene, including personal and clothes washing facilities, sanitation and drainage	Stomach and intestinal disease, skin infections and depression
18	<b>Water supply</b> Threats to health from contamination by bacteria, parasites, viruses and chemical pollutants due to the quality of water supply for drinking household use such as cooking, washing and sanitation	Dehydration, fatigue, headaches, dry skin, bladder infections and legionnaires disease



19	<b>Falls associated with baths</b> Falls associated with a bath, shower or similar facility	Physical injuries: cuts, lacerations, swellings and bruising.
20	<b>Falls on the level surfaces</b> Falls on any level surface such as floor, yards and paths, including falls associated with trip steps, thresholds or ramps where the change in level is less than 300mm	Physical injuries: bruising, fractures, head, brain and spinal injuries
21	<b>Falls associated with stairs and steps</b> Falls associated with stairs and ramps where the change in level is greater than 300mm. It includes internal stairs or ramps within a property, external steps or ramps associated with the property, access to the property and to shared facilities or means of escape from fire and falls over stairs, ramp or step guarding	Physical injuries: bruising, fractures, head, brain and spinal injuries
22	<b>Falls between levels</b> Falls from one level to another, inside or outside a dwelling where the difference is more than 300mm. Including falls from balconies, landings or out of windows	Physical injuries
23	<b>Electrical hazards</b> Hazards from electric shock and electricity burns	Electric shock and burns
24	<b>Fire</b> Threats to health from exposure to uncontrolled fire and associated smoke. It includes injuries from clothing catching fire, a common injuring when trying to put a fire out.	Burns, being overcome by smoke or death
25	<b>Flames, hot surfaces and materials</b> Burns or injuries caused by contact with a hot flame or fire, hot objects and non-water based liquids. Scalds caused by contact with hot liquids and vapours.	Burns, scalds, permanent scarring and death.
26	<b>Collision and entrapment</b> Risks of physical injuries from trapping body parts in architectural features such as trapping fingers in doors and windows and colliding with objects such as windows, doors and low ceilings	Physical injuries such as cuts and bruising to the body
27	<b>Explosions</b> Threats from the blast of an explosion, from debris generated by the blast and from partial or total collapse of a building as a result of the explosion	Physical injuries, crushing, bruising, puncture, fractures, head, brain and spinal injuries.
28	<b>Ergonomics</b> Threats of physical strain associated with functional space and other features at the dwelling	Strain and sprain injuries

29	<b>Structural collapse and falling elements</b> The threat of the dwelling collapsing or part of the fabric being displaced or falling due to inadequate fixing or disrepair or as a result of adverse weather conditions.	Physical injuries
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