

**Chiltern District Council
and
South Bucks District Council**

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Housing Enforcement Policy

Adopted

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1.0 Introduction

1.1 Objectives

Chiltern District Council and South Bucks District Council are two sovereign authorities with separate budgets and separate decision making processes. The two authorities have operated a shared housing service since April 2014 and have implemented a joint Private Sector Housing Strategy.

This document sets out Chiltern District Council and South Bucks District Council policy in using enforcement action to address health and safety hazards in housing, and builds on the general guidance set out in the Councils Enforcement Policy for Health and Housing.

This policy is written in the context of Chiltern and South Bucks Private Sector Housing Strategy which aims to ensure that

- private sector housing meets basic standards of fitness and is maintained in good repair
- the private rented sector within the district provides good quality, well-managed, safe accommodation.

One of the tools identified to achieve these objectives is through the use of enforcement action.

Enforcement officers, by necessity, have considerable discretion in decision making and initiating enforcement action. This policy applies to all dealings, formal and informal, between officers and landlords and owners of residential property – all of which contribute to securing compliance with the law. It provides policy standards to aid professional judgements and decision making and ensure both consistent and effective enforcement.

References to 'the Council' shall mean Chiltern District Council or South Bucks District Council, depending upon the administrative area in which the property subject to enforcement action is located.

1.2 Background

The Council is granted extensive enforcement powers in several Acts of Parliament to secure improvements in houses in disrepair. The main powers are summarised in Appendix 1.

Where a breach of the legislation is identified, there are four main options open to the council to ensure that the law is complied with:

- **Informal action** – this includes verbal advice given by Officers and advisory letters.
- **Formal Action** – this includes a range of responses including the service of statutory notices, orders and carrying out of emergency works. Most notices served under Housing legislation require the recipient of the notice to carry out specified works within given time limits.
- **Formal caution** - A formal caution is where an offender is given written details of the offence and s/he signs to say that s/he admits the offence. It is not a form of sentence. A record of the caution is kept at the Council for a period of three years and it may subsequently influence a decision to instigate proceedings if the offender breaks the law in the future. It may also be cited if the Council takes legal action for a subsequent offence.
- **Prosecution** – In some cases, breaching the legislation is a criminal offence. The Council is the prosecuting authority for such offences and as they are criminal in nature, proceedings are taken in the Magistrates Court.

Paragraphs 3.2 to 3.5 set down the factors to be considered by officers in deciding which option to take.

1.3 Comments and Complaints

If you have any comments or questions in relation to this policy, please contact:

Senior Housing Standards Officer
Chiltern and South Bucks Housing
King George V Road
Amersham
Bucks
HP6 5AW
Telephone: 01494 732013
Email: housing@chiltern.gov.uk

The Council has a corporate complaints procedure in cases where disputes arising from this policy cannot be resolved.

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2.0 Enforcement Principles

This service has adopted the central and local government Enforcement Concordat. We will also follow the Hampton principles as the basis for good enforcement.

Openness

We will provide information and advice in plain language and as far as possible, avoid jargon.

We will be open about how we do our work and in particular how we set our charges for enforcement. We will always discuss general issues, specific failures or problems with anyone who has been enforced against.

We will seek to make sure that people understand what is expected from them as well as knowing what they can expect from us.

Where notices have been served and are on a Public Register, this will be available for viewing free of charge.

Helpfulness

Our staff will provide a courteous and efficient service. All staff who visit properties will identify themselves by name and carry identification cards.

We will always provide a contact point and telephone number for further dealings with Officers.

Interpretation services will be made available for both office and on-site visits where people do not have English as their first language.

Landlords and owners of residential property will be encouraged to seek advice/information; information will be freely available in the form of leaflets and pages on the council's website. When appropriate, training courses/seminars will be provided for landlords on specific issues.

Proportionality

All enforcement actions and advice must be proportional to the risks posed to the public and the seriousness of any breach of legislation.

When considering enforcement action, consideration will be given to the cost of measures required to reduce the risk weighed against the benefit to be gained by reducing the risk.

In addition, there will be a staged approach to enforcement action with increasing degrees of enforcement if landlords and owners of residential property fail to respond to previous requirements.

Consistency and Fairness

Officers will carry out their duties in a fair and consistent way. To this end, we have developed and put in place procedures for the range of enforcement activities we carry out and make sure that Officers follow such procedures.

Although Officers have to use judgement in individual cases, we will make sure that procedures wherever possible are the same and people are treated equitably.

3.0 Enforcement Decisions

In deciding whether to take action and if so, the most appropriate course of action, each case will be considered individually having regard to the circumstances of the case and a range of relevant factors. In making enforcement decisions, officers must have regard to the following guidelines.

- Housing Health and Safety Rating System Enforcement Guidance published by the ODPM in February 2006
- The Neighbourhood Renewal Assessment process and associated guidance published by the ODPM in 2004
- Guidance outlined in section 3.2 to 3.7 below.
- Any other subsequent national legislation and guidance

All enforcement decisions will be fully documented.

Before taking any action in respect of a tenanted property the tenant will normally be expected to contact their landlord about the problems first, though this will not be required in the following circumstances:

- Where the matter appears to present an imminent risk to the health and safety of the occupants.
- Where there is a history of harassment, threatened eviction or poor management practice.
- Where it is not considered reasonable, or the tenant is otherwise unable to contact his/her landlord

Where there is a shared or complimentary enforcement role, consultation will be carried out with the appropriate agency. Specifically, before serving a notice to address a Fire Hazard, consultation will be carried out with the Bucks Fire and Rescue Service. Where there is a problem with the gas installation in a property, the Health and Safety Executive (HSE) will be notified. Where dangerous conditions exist, the Building Control section will be notified. Contraventions of the furniture regulations will be notified to Trading Standards at Bucks County Council.

3.1 Authorisation and Delegation

Housing enforcement decisions are delegated to Head of Healthy Communities and in turn to authorised Officers of the Healthy Communities division, under the Council's Scheme of Delegation to Officers.

The decision to prosecute or administer a formal caution is determined, in consultation with the Legal Services Manager.

Demolition Orders, Clearance Areas and Compulsory Purchase Orders will normally only be served/declared following a decision by the Council's Cabinet.

The Council has developed procedures for the authorisation of officers undertaking housing work. 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 this enforcement policy in order to ensure a consistent approach to service delivery.

Officers who undertake criminal investigations will be conversant with and adhere to the provisions of the Police and Criminal Evidence Act, 1984 (PACE) and the Criminal Procedure and Investigations Act, 1996 (CPIA), Regulation of Investigatory Powers Act 2000 (RIPA).

3.2 Informal Action

Informal action, that is verbal advice, requests or warnings, or letters and inspection reports can be used when

- the breach is not of a serious nature
- past experience has shown that such action will be effective
- there is not a significant risk to the safety or health of the occupant (or the public)
- informal action will be more effective and/or quicker than formal action
- there is confidence in the Manager/owner

Informal action will in most cases be commenced first before serving statutory notices or orders, but the Council will consider immediate formal action where such action appears to be necessary. Such action may be warranted where:-

- an authority considers there is imminent risk to the health and safety of the occupants at the premises
- where an authority has followed informal procedures with the owner or landlord on previous occasions and considers that to repeat the informal procedure would amount to an unreasonable duplication of effort.

It is not always possible to adopt an informal approach especially where the legislation requires formal action to be taken straight away. (An example of this is the service of a notice under section 80 of the Environmental Protection Act 1990 where there is a statutory nuisance.)

The service of a Hazard Awareness Notice, while strictly a form of formal action, may also be considered appropriate in the above circumstances.

3.3 Formal Action

The most appropriate course of action will be determined having regard to the enforcement guidance and the NRA assessment. The range of formal action is that set out in section 5 of the Housing Act 2004. The service of a Hazard Awareness Notice may only be considered appropriate, however, in the circumstances described under 'Informal Action'.

Notices and other formal action will normally only be taken when

- there is a duty to take formal action (ie there are Category 1 hazards), or
- there is a significant contravention of legislation, or
- there is a lack of confidence in the manager/owner to respond to an informal approach, or
- non compliance could be potentially serious to public health, safety or well being of individuals, or
- there is a history of non-compliance, or
- standards are poor (for example there are multiple Category 2 hazards) and the manager/owner has little awareness of statutory requirements, or

- although it is possible to prosecute, effective action also needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating.

3.4 Works In Default

The decision whether to undertake Works in Default will include consideration of:

- The risk to public health, safety or wellbeing of individuals.
- Whether reasonable progress has been made by the owner with regard to the works.
- The ability of the owner to arrange for the works to be done.
- The time which has elapsed for compliance with the notice.
- The history of the owner with regard to compliance with notices.
- Whether default work may afford greater benefit than prosecution, ie the defects will be remedied.

In exceptional circumstances, the Council will consider carrying out works in default in addition to prosecution.

3.5 Formal Caution and Prosecution

The decision to either offer a formal caution or take a prosecution is one that is not taken lightly. Officers recognise that their decision is significant and could have far reaching consequences upon the alleged offender and others.

The decision to prosecute will be taken only in respect of one or more of the following:

- Where the alleged offence involves a flagrant breach of the law such that public health, safety or the wellbeing of individuals is or has been put at risk.
- Where the alleged offence involves a failure to correct an identified serious potential risk and the person responsible has been given a reasonable opportunity to comply with the lawful requirements of an authorised officer.
- Where the offence involves a failure to comply in full or in part with the requirements of a statutory notice.
- Where there is no alternative remedy such as serving notices or carrying out works in default
- Where there is a history of similar offences relating to risk of public health, safety or the wellbeing of individuals.

Where such circumstances have been identified, all relevant evidence and information must be considered to enable a consistent, fair and objective decision to be made.

It is necessary to establish that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company. There must be a realistic prospect of a conviction: a bare prima facie case is not enough. There must also be a positive decision that it is in the public's interest to prosecute. The Code for Crown Prosecutors, issued by the Crown Prosecution Service, provides guidance which should be considered, including relevant public interest criteria. The factors to consider may include:

- a. The seriousness of the alleged offence;
- b. The previous history of the party concerned;
- c. The ability of any important witnesses and their willingness to co-operate;
- d. The willingness of the party to prevent a recurrence of the problem;
- e. The probable public benefit of a prosecution and the importance of the case, ie whether it might establish legal precedent;
- e. Whether other action might be appropriate;
- g. Any explanation offered by the individual or company.

In addition to the above considerations, there are certain conditions that must exist before a caution can be administered, namely

- there must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction;
- the offender must admit the offence;
- the offender must understand the significance of the caution and give his informed consent to accepting the caution.

If any of the above criteria are not met, the Council will not consider the issuing of a formal caution. Above all, a caution will not be used as a substitute for a prosecution that would otherwise be unsustainable.

3.6 Demolition, Compulsory Purchase and Clearance

A Neighbourhood Renewal Assessment would be required in accordance with guidance contained in Government Circulars. Detailed consideration of many factors would have to be undertaken in association with other Directorates to ensure that it was the most satisfactory method of dealing with a property or an area, with ultimately the decision being made by the Council's Cabinet.. Any of these courses of action would be regarded as a last resort.

3.7 Enforcement against owner-occupiers

Enforcement decisions will be made in full consultation with the owner and having regard to owner's eligibility for a Housing Assistance grant or loan.

Formal action will not be limited to the service of Hazard Awareness Notices. The service of statutory notices and orders and the carrying out of emergency works will be considered where the condition of an owner-occupied property is such that:-

- It is a danger or a serious health risk to the occupier or members of the public,
or
- It is having a deleterious effect on adjoining properties

4.0 Enforcement Procedures

4.1 Inspections

Inspections and enforcement action will be targeted primarily on those activities giving rise to the most serious risks or where hazards are least controlled.

The prioritisation of inspections will be based on the risk assessment for Houses in Multiple Occupation, or following a complaint.

We will, wherever possible, seek to arrange routine visits and inspections at times to suit those concerned.

We will arrange routine inspections through landlords and their agents, but in the case of complaints will typically visit the complainant in the first instance to assess the facts of the case.

4.2 Actions

We will confirm our advice, findings and conclusions (as the case may be) at the earliest opportunity, will do so in a clear and simple manner and will accommodate at least one meeting to discuss these matters if requested, other than in urgent cases.

If we require remedial action this will be put in writing and we will explain why it is necessary and when it must be done.

We will make sure that legal requirements are clearly distinguished from best practice advice.

We will confirm any decision to undertake formal action, work-in-default or prosecution in writing.

Officers serving statutory notices will be prepared to discuss the specified works with individuals/company representatives and will consider the availability and suitability of any alternative solutions.

Where a formal notice is served, the method of appealing against the notice (ie if the recipient felt that the notice is excessive in its requirements) will be provided in writing at the same time.

4.3 Timescales for Completion of Works

We will take account of relevant factors when determining what deadlines to set for the commencement and completion of work. Relevant factors may include: the nature of the works; any ill effects that are likely to result if the work is delayed; the duration of the problem and the point at which it has been reported to us; any prior knowledge on the landlord or agent's part; and the nature of any attempts to remedy the problem. We will also seek to be sympathetic to financial and other practical constraints that may affect landlords' and agents' ability to act, whilst recognising that these do not limit obligations or legal duties to achieve appropriate standards.

We will consider properly made requests for the extension of deadlines where unforeseen problems have delayed works, but not simply to accommodate lack of sufficiently early action.

4.4 Charges for Enforcement Action

A charge will be made for the cost of administrative and other expenses involved in serving Improvement Notices and Prohibition Orders.

The charge is £100 for the first notice/order and £50 for additional notices where served concurrently, with a maximum charge of £300 per property. Where more than one person is served with a notice/order the charge will be recovered from the main recipient, usually the person who is primarily responsible for the management of the property.

The charge will be waived where the notice is complied with within the timescales set out on the notice or where the notice is served and works arranged by the Council with the agreement of the property owner (eg as an alternative to a grant or loan).

Where there is an appeal against the Notice, or the notice is suspended, the charge is also suspended, until the appeal is resolved or the suspension is ended. There is no separate right of appeal against the demand. In cases of hardship the Head of Healthy Communities has discretion to reduce charges for enforcement action.

Where works are Emergency Remedial Works or works arranged by the local authority in default of a statutory notice served under the Housing Acts or other public health legislation, the expenses to be recovered are as follows:

- The actual cost to the local authority of undertaking the works in default
- The costs of serving the relevant notices at the rate set out above
- All other administrative costs reasonably incurred in relation to arranging the works. These costs will be calculated having regard to actual time spent and the hourly rate (including overheads) of the Healthy Communities department.
- Interest at base rate plus 2%.

5.0 Monitoring and Review

Actions taken under this policy will be monitored annually as part of the overall monitoring of the Private Sector Housing Strategy outcomes.

This policy, including the charges, will be reviewed on an annual basis.

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Summary of Housing Legislation

Legislation	Summary of Powers
Protection from Eviction Act 1977	
Section 1	<p>This section creates the offences of unlawful eviction and harassment of a residential occupier. Chiltern District Council is a prosecuting authority for the purposes of this section and it is Housing Officers who investigate claims of unlawful eviction and harassment. The Council can prosecute landlords, agents or others who contravene this section.</p>
Environmental Protection Act 1990	
Section 80	<p>Section 79 of this Act lists what are statutory nuisances. As far as the legislation enforced by the Housing Section is concerned, a statutory nuisance is any house in such a state as to be prejudicial to health or a nuisance.</p> <p>Prejudicial to health is defined as injurious or likely to cause injury to health. This typically includes properties that are damp or have mould growth, as dampness and mould growth can have an affect on people's health.</p> <p>A nuisance is taken to be anything that interferes with the use and enjoyment of a neighbouring property or which materially affects the comfort and quality of life of the public at large. Examples of nuisances include a hole in the roof of one property allowing rain to penetrate through and affect the neighbouring property or slates falling off a roof onto the footpath and thus endangering passers by.</p> <p>Once the Council is satisfied that a statutory nuisance exists or is likely to occur, it is under a duty to take action to deal with it. This means that Officers have to serve a notice requiring the abatement of the statutory nuisance within certain time limits or preventing the occurrence of a statutory nuisance. In the case where a house is let, this is generally served on the landlord of the property.</p> <p>If such a notice is served and not complied with, the Council is able to carry out the necessary work in default and recharge the person upon whom the notice was served. Not keeping to a notice is a criminal offence and the Council is able to prosecute the person who received the notice if he does not have a reasonable excuse for not keeping to it.</p>
Housing Act 1985	
Section 17	<p>Power to make a Compulsory Purchase Order</p> <p>The legal powers are contained in s17 Housing Act 1985 and s93 Local Government and Housing Act 1989.</p> <p>A compulsory purchase order may be served upon the owner of land or property by Chiltern District Council (or in certain circumstances, by the Housing Corporation) to acquire the land for the public good, usually at a valuation set by the district valuer.</p>
Section 265	<p>Power to make a Demolition Order</p> <p>Where a Council finds a property that has Category 1 hazards (under the Housing Health and Safety Rating System), it is under a duty to take the most suitable course of action. The service of a Demolition Order is one of the actions that can be taken.</p> <p>A demolition order requires the property to be vacated within a specific time and subsequently demolished. It is a criminal offence to allow the property to be occupied after the demolition order has come into effect. If the person upon whom the order has been served does not demolish the building, the Council can demolish it instead and recharge the person accordingly.</p>

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Section 289	<p>Declaration of clearance area</p> <p>A clearance area is an area that is to be cleared of all buildings. The Council shall declare an area to be a clearance area if each of the residential building contains a Category 1 hazard and the other buildings in the area are dangerous or harmful to health and safety. The Council is required to consult on the declaration of a clearance area and publish its intentions. Owners and in certain cases occupiers of properties are compensated accordingly.</p>
<p>Housing Act 2004</p>	
Sections 11 and 12	<p>Power to serve an Improvement Notice</p> <p>Where a Council finds a property that has Category 1 hazards (under the Housing Health and Safety Rating System), it is under a duty to take the most suitable course of action. The service of an Improvement Notice is one of the actions that can be taken. This course of action is also available where Category 2 hazards exist.</p> <p>An Improvement Notice under this section requires the recipient of the notice (usually the owner but not in all cases) to carry out certain works within a specified time scale. If the notice is not complied with, the Council can carry out the work in default and recharge the person upon whom the notice was served. Not keeping to a notice is a criminal offence and the Council is able to prosecute the person who received the notice, if he has intentionally failed to keep to it.</p> <p>An Improvement Notice can be suspended, varied or revoked.</p>
Sections 20 and 21	<p>Power to Serve a Prohibition Order</p> <p>Where a Council finds a property that has Category 1 hazards (under the Housing Health and Safety Rating System), it is under a duty to take the most suitable course of action. The service of a Prohibition Order is one of the actions that can be taken. This course of action is also available where Category 2 hazards exist.</p> <p>A Prohibition Order under this section requires the recipient of the notice (usually the owner but not in all cases) to cease or limit the use of a property or part of the property for residential purposes. Prohibition Orders may also relate to the use of the premises by a specified number of people. Not keeping to an Order is a criminal offence and the Council is able to prosecute the person who received the notice, if he has intentionally failed to keep to it.</p> <p>An Prohibition Order can be suspended, varied or revoked</p>
Sections 28 and 29	<p>Power to Serve a Hazard Awareness Notice</p> <p>Where a Council finds a property that has Category 1 hazards (under the Housing Health and Safety Rating System), it is under a duty to take the most suitable course of action. The service of a Hazard Awareness Notice is one of the actions that can be taken. This course of action is also available where Category 2 hazards exist.</p> <p>A Hazard Awareness Notice advises the person on whom it is served (usually the owner, but not in all cases) of the existence and the nature of the hazards identified, and the works considered to be required to address the hazard. The notice is advisory only - it does not require the recipient to take any action.</p>
Section 40	<p>Power to take Emergency Remedial Action</p> <p>Where a Council finds a property that has Category 1 hazards (under the Housing Health and Safety Rating System), it is under a duty to take the most suitable course of action. Where they are satisfied that the hazard presents an imminent risk of serious harm to the occupiers of the property or other residential</p>

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	<p>premises, it can take Emergency Remedial Action.</p> <p>This means that the Council can arrange for works to be undertaken to remove the risk of harm. Within 7 days of starting the work, they must serve a notice under section 41 of the Act on the person having control of the house explaining the action taken. The Council have powers to recover expenses incurred in taking emergency remedial action.</p>
Section 43	<p>Powers to make an Emergency Prohibition Order</p> <p>Where a Council finds a property that has Category 1 hazards (under the Housing Health and Safety Rating System), it is under a duty to take the most suitable course of action. Where they are satisfied that the hazard presents an imminent risk of serious harm to the occupiers of the property or other residential premises, it can take Emergency Prohibition Order.</p> <p>This prohibits the use of the premises or part of the premises for residential use, with immediate effect. The Council must serve a notice on the person having control of the property on the day (or as soon as possible) that the Emergency Prohibition Order is made.</p>
Section 73	<p>Power to apply to the RPT for a Rent Repayment Order</p> <p>Where a licensable HMO is not licensed, the Council can apply to the residential property tribunal for an order requiring the landlord of the HMO to repay any housing benefit paid in respect of the HMO.</p>
Section 102	<p>Interim Management Orders</p> <p>Where an HMO which is required to be licensed is not licensed and there is no reasonable prospect of it becoming licensed or action is considered necessary to protect the health, safety or welfare of occupants of a HMO or persons living or owning property in the vicinity, the local authority may make an Interim Management Order (IMO).</p> <p>An IMO can last for up to 12 months and enables the local authority to take steps to secure the proper management of an HMO, or to protect the health, safety or welfare of occupants of a HMO or persons living or owning property in the vicinity.</p> <p>An IMO gives the council rights to collect rents and carry out works to the property.</p> <p>An IMO may also be made in respect of any other dwelling, but only with the authority of the Residential Property Tribunal.</p>
Section 113	<p>Final Management Orders</p> <p>A local authority can serve a Final Management Order following an Interim Management Order, where, on expiry of the IMO, the HMO is required to be licensed and there is still no reasonable prospect of it becoming licensed or the Order is considered necessary to protect the health, safety or welfare of occupants of a HMO or persons living or owning property in the vicinity, on a long term basis.</p> <p>A Final Management order can last for up to five years.</p>
Section 139	<p>Overcrowding Notices</p> <p>Where the Council considers that excessive numbers of people are (or are likely to be) accommodated in a non-licensable HMO, they may serve an Overcrowding Notice on the owner or a person having control of the house.</p>

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The Smoke and Carbon Monoxide Alarm Regulations 2015	
Regulation 5	Remedial Notice Where the Council has reasonable grounds to believe that a landlord is in breach of his/her duties under these regulations, they must serve a Remedial Notice on the landlord giving him/her 28 days in which to carry out the actions specified in the notice.
Regulation. 7	Duty to arrange remedial action Where a local authority is satisfied, on the balance of probabilities, that a landlord has failed to comply with a Remedial Notice, it must arrange to undertake the actions in the Notice.
Regulation 8	Power to issue Penalty Charge Notice Where a local authority is satisfied, on the balance of probabilities, that a landlord has failed to comply with a Remedial Notice, they may require the landlord to pay a penalty charge.

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