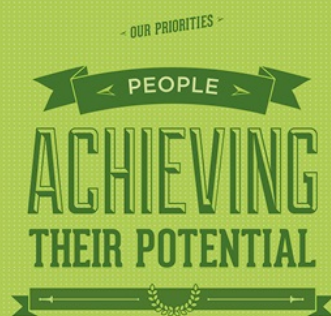


# Private Sector Housing Enforcement strategy 2017 - 2020

Version 1

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COUNCIL

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## Contents

	<b>Page</b>
Foreword	<b>3</b>
Introduction	<b>3</b>
1.0 Aims of the Policy	<b>3</b>
2.0 Enforcement & Legislation	<b>4</b>
3.0 Enforcement Procedure	<b>8</b>
4.0 Priorities	<b>13</b>
5.0 Decent Homes Standard	<b>14</b>
6.0 Level of remedial works required	<b>15</b>
7.0 Appeals and Notices/Orders	<b>15</b>
8.0 Offences	<b>16</b>
9.0 Prosecution	<b>17</b>
10.0 Work in Default	<b>17</b>
11.0 Enforced Sales Process	<b>18</b>
12.0 Community Purchase Orders	<b>18</b>
13.0 Action by Agreement	<b>18</b>
14.0 Overcrowding	<b>19</b>
15.0 Illegal Evictions & Harassment	<b>19</b>

## Foreword

This document sets out the Council's Private Sector Housing Enforcement Policy and needs to be read in conjunction with other policies that also include the Council's role in private sector housing. The Community Safety and Enforcement Service aims to maintain and improve the housing conditions in privately owned properties in Barnsley and improve neighbourhoods. Where an informal approach fails or it is necessary to protect the health, safety and welfare of people or the environment, the service will take the necessary enforcement action.

This policy aims to promote efficient and effective approaches to regulatory inspection and enforcement to improve regulatory outcomes without imposing unnecessary burdens on businesses. It takes into account the Council's approach to better enforcement as a result of the Government's Better Regulation Agenda and sets out the Community Safety and Enforcement Service's transparent approach to enforcement so that people understand how they will be dealt with by the Council.

## **Introduction**

The Council has a statutory duty to regulate and enforce the Housing Health and Safety Rating System (HHSRS) and to license certain Houses in Multiple Occupation (HMOs). Regulation consists of carrying out inspections, processing licences and undertaking any necessary enforcement action in relation to defective and unsafe properties.

### **1.0 Aim & Objectives of the Policy**

1.1 The aim of the policy is to set out the legal responsibilities, policies, principles and priorities that the Community Safety and Enforcement Service will follow when enforcing legislation.

1.2 The policy objectives include:

- Helping to provide safer and healthier private housing and communities.

- Increasing public confidence in the quality of accommodation leading to a vibrant private rented sector in Barnsley.
- Raising the profile and increase transparency of enforcement in the private rented sector.

1.3 This policy supports the Council's key priorities of creating stronger and resilient communities, people achieving their potential, and a thriving and vibrant economy, so that people can be proud of and enjoy a good quality of life in their neighbourhood.

## 2.0 Enforcement & Legislation

Enforcement is an action carried out in exercise of or against the background of statutory enforcement powers. This is not limited to formal enforcement action such as prosecution or service of legal notices. It includes inspections or investigations related to property or land and any relevant person where the purpose is checking compliance with legislation or to give advice to help comply with the law.

The principal piece of legislation is the Housing Act 2004. However, there are circumstances where other pieces of legislation may be more appropriate in dealing with an identified problem. Officers will be expected to use professional judgement to determine the most appropriate piece of legislation to use. In some cases it may be appropriate to use a variety of enforcement tools.

### 2.1 Housing Act 2004

The Act places a duty on the Council to take action where a category 1 hazard has been identified. There is a discretionary power to deal with category 2 hazards.

The Act also provides a range of enforcement tools:-

- **Improvement Notices** – section 11 can be used for category 1 hazards, section 12 is used for category 2 hazards. An improvement notice should be used where reasonable remedial works can be carried out to reduce the hazard sufficiently.

- **Prohibition Orders** – section 20 can be used for category 1 hazards and section 21 is used for category 2 hazards. An order may prohibit the use of part or all of a property for some or all purposes, or for occupation by a particular number or description of people. An Order may be appropriate where conditions present a risk but remedial action is unreasonable or impractical. It may also be used to limit the number of persons occupying a dwelling, or prohibit the use of the dwelling by specific groups.
- **Hazard Awareness Notices** – section 28 can be used for category 1 hazards and section 29 is used for category 2 hazards. This is used where a hazard has been identified but it is not necessarily serious enough to take formal action. It is a way of drawing attention to the need for remedial action. This notice should not be used if the situation is considered serious enough for follow-up inspections to be made. This notice is not registered as a land charge as with other notices and has no appeal procedure.
- **Emergency Remedial Action** – section 40 can be used when there is an imminent risk of serious harm and the hazard must rate as a category 1 hazard. The authority must enter the premises and undertake any necessary remedial works that are required to reduce the immediate risk. A warrant to enter the premises in order to carry out the work may be granted by a Magistrate where they are satisfied that the authority would not be granted admission to a premises.
- **Emergency Prohibition Order** – section 43 can be used where there is an imminent risk of serious harm, the hazard rates as a category 1 and where it is not practicable to carry out the remedial works as in section 40. It can prohibit the use of all or any part of the premises with immediate effect.
- **Demolition Order** – this can only be used in response to category 1 hazards, but not if the building is listed. It must take into account availability

of accommodation for re-housing, demand for accommodation, and the possible future use of the cleared site.

- **Clearance Area** – all residential buildings in the proposed area must have at least one category 1 hazard. It must take into account availability of accommodation for re-housing, demand for accommodation, and the possible future use of the cleared site.
- **Suspended Improvement Notices or Prohibition Orders** – these notices may be suspended where enforcement action can be safely postponed until a specified event or time. This can be a period of time or a change in occupancy. Current occupation and wishes must be taken into account. These may also be used where there is programmed maintenance. The suspensions must be reviewed at the very least every 12 months. The advantage of suspending a notice is that there is a record of the Council's involvement and the situation must then be reviewed. It is also recorded as a land charge.
- **Additional and Selective Licensing** – powers to designate an area or areas within their borough specifically to assist in addressing neighbourhood housing standards of low demand, moderating anti-social behaviour of tenants and those visiting the property, dealing with crime, deprivation, economic migration and poor property conditions. By introducing a scheme or schemes of Additional and Selective Licensing either in isolation to each other or combined as a tool, areas can be designated to specifically target these issues, subject to a robust consultation and data analysis exercise.

## **2.2 The Housing Health and Safety Rating System (England) Regulations 2005**

Where officers have reason to enter a dwelling they will inspect the whole property (including associated garden/yard areas) using the Housing Health and Safety Rating System (HHSRS). This system has been adopted by Regulations as the prescribed methodology for assessing housing conditions. The aim is to identify deficiencies within dwellings that may lead to a hazard. Each hazard is assessed and assigned a

band. These bands are translated into either a category 1 or category 2 hazard.

## 2.3 Supporting Legislation

- **Environmental Protection Act 1990 section 80**

Notices can be served if the Officer is of the opinion that there is a statutory nuisance at the premises. The premises must be deemed prejudicial to health or a nuisance.

- **Building Act 1984 section 59/60**

Used to deal with defective drainage issues in existing buildings.

- **Building Act 1984 section 64/65**

Used where sanitary conveniences are insufficient or in need of replacement and are considered prejudicial to health or a nuisance.

- **Building Act 1984 section 76**

Used where the property is so defective so as to be prejudicial to health. This notice notifies the person responsible of the local authority's intention to remedy the problem (similar to work in default).

- **Public Health Act 1936 section 45**

Used where there are defective sanitary conveniences due to their repair and/or cleansing ability. They must be in such a state as to be prejudicial to health or a nuisance.

- **Public Health Act 1961 section 17**

Where any drain, private sewer, water closet, waste pipe or soil pipe has not been maintained and can be repaired for less than £250.

- **Local Government (Miscellaneous Provisions) Act 1976 section 33**

Used where services such as the water supply are due to be, or have been, cut off to a domestic property.

- **Prevention of Damage by Pests Act 1949 section 4**

Used where there is evidence of, or harbourage of pests at a property.

- **Housing Act 1985 (as amended)**

Some provisions within the 1985 Act have not been revoked and may be appropriate to use in some circumstances. In particular the overcrowding provisions are still available for use where appropriate.

- **Local Government (Miscellaneous Provisions) Act 1976 section 16**

Used to formally request information about a premises or a person.

- **Police and Criminal Evidence Act 1984, Criminal Procedures and Investigation Act 1996, Regulation of Investigatory Powers Act 2000**

Used in relation to interviews under caution, prosecution and gathering evidence.

### **3.0 Enforcement Procedure**

#### **3.1 Enforcement Concordat & Regulators' Codes**

Officers will be expected to follow the principles of the Enforcement Concordat as well as the Regulators' Code in accordance with section 23 of the Legislative and Regulatory Reform Act 2006. In terms of private sector housing enforcement, the Service will apply the general principles of the code. The Code has been introduced to embed a risk-based, proportionate, targeted and flexible approach to regulatory inspection and enforcement, ensuring that regulators are efficient and effective in their work, without imposing unnecessary burdens on those they regulate.

The principles of the Enforcement Concordat will continue to be embraced in respect of openness, helpfulness, a balanced approach, consistency, suitable action, human rights and equalities. However this policy must take into account prescriptive obligations imposed by the Regulator's Code. The main changes introduced as a consequence of the statutory code concern obligations for staff carrying out enforcement duties to:



- Recognise that a key element of regulation will be to allow or encourage economic activity and only intervene when there is a case for protection.
  - Use comprehensive risk assessment to concentrate resources in the areas that need them most.
  - Provide authoritative, accessible advice easily and cheaply.
  - Not undertake inspection without reason.
  - Not require unnecessary information or give the same piece of information twice. This is existing good practice and promotes information sharing and good working practices between internal and external service providers.
  - Be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take. This is existing good practice based on openness and transparency, with decisions being subject to scrutiny.

### **3.2 Informal Action**

One of the aims of the Service is to improve the housing conditions in the private sector by use of advice and education. When using Housing Act 2004 powers, in most circumstances the Council will consider taking informal action prior to formal enforcement (although there are certain circumstances where officers will take formal action in the first instance). However, where alternative legislative powers are being used it may not be appropriate to consider taking informal action and a formal notice will be served e.g. where conditions prejudicial to health exist.

All remedial work that is required must be sufficient to remove any risks but not so excessive as to be burdensome. In order to satisfy these principles it is expected that officers in the first instance will make contact with the person responsible for the property containing the hazard with a view to taking informal action. Informal action may take a variety of forms including verbal requests, letters, e-mails and schedules of work. It is anticipated that in many cases an informal approach will achieve the desired outcomes.

Informal action cannot however be allowed to continue indefinitely and there must

be a limit attached to the informal action. Therefore, a response is required within 14 days of the date of the first informal letter. If a response is received and a timescale for completion of the works is agreed then it may not be necessary to serve a legal notice.

If remedial works have not been started or fully completed within the agreed time, the officer will revisit and then a notice will be served with reasonable timescales.

The delays incorporated within the informal approach are satisfactory where there is not a high risk posed or the agreed timescales for completion are short.

However, where there is a serious hazard or where there are conditions prejudicial to health or where the informal procedure would result in an unacceptable delay, a formal notice will be served as soon as possible.

### **3.3 Formal Enforcement Action**

Circumstances where it is appropriate to take formal action include where:

- A person refuses to carry out the work informally.
- There is an actionable risk to health and safety, for example:
  - no heating in cold weather,
  - no hot water to wash or prepare food safely,
  - exposure to damaged asbestos insulation board which means occupiers are likely to inhale or ingest asbestos fibres,
  - exposed live electrical wiring which people are likely to make contact with,
  - raw sewage surcharging into a neighbour's property.
- There is history of failure to meet requests to carry out legally required works.
- There is history of failure to manage a property in line with legal requirements.
- There is a record of criminal convictions for failure to comply with housing related offences (including offences that are likely to affect housing management) in the last five years or a Simple Caution has been issued in the last two years.

- It is necessary to safeguard and protect health and safety in the future.

The above is not intended to be an exhaustive list. Each case will be considered on its individual merits.

An internal and external inspection of an entire property must be carried out and the deficiencies noted. As the principal piece of legislation, the Housing Act 2004 will be considered to assess whether there are category 1 or category 2 hazards within the property. Having made this assessment and dependent on the problems within the property, consideration will be given to the most appropriate course of action to reduce the hazards to an acceptable level.

The most appropriate legislation must be identified for dealing with the hazard. Officers will have regard to all available guidance. Consideration must also be given to whether consultation is required with other enforcing agencies or other services in the Council.

The Council may charge and recover the reasonable costs incurred in taking formal enforcement action. The person upon whom the notice is served will be responsible for the expenses incurred by the Council in serving the notice. All outstanding charges will be actively pursued and will also remain as land charges and accrue interest until paid in full.

The Housing Act 2004 requires that officers give 24 hours written notice to those with an interest in a property when exercising their formal enforcement powers. When using other legislation however the Council has the power to gain entry to a building without giving the relevant notice. This will be dependant on the piece of legislation being utilised.

Although formal action can be taken against owner occupiers, the Council considers that owner occupiers are usually in a position to take informed decisions concerning maintenance or safety issues to properties that they own or reside in. The Council will therefore rarely take formal action against home owners for

hazards identified in their homes. We aim to provide owner occupiers with appropriate advice and recommendations of how they can mitigate any hazards identified.

The Council however will always consider enforcement action against owner occupiers where there is an imminent risk to the health and safety of occupants or the wider public.

Tenants within rented accommodation do not have the same level of control that owner occupiers benefit from and are reliant on landlords to adequately maintain their homes. The Council will therefore take enforcement action where necessary against landlords who are putting the health and safety of their tenants at risk.

Registered Providers exist to provide social housing and their performance is scrutinised by the Homes and Communities Agency and the Housing Ombudsman. The Council will not normally take formal enforcement action against a Registered Provider without informal contact unless it is satisfied that the problem in question has been properly reported to the Registered Provider and they have failed to take appropriate action. The Council will always however consider formal enforcement action against Registered Providers where there is an imminent risk to the health and safety of tenants and/or the wider public.

### **3.4 Section 8 Statement of reasons**

Under section 8 of the Housing Act 2004, a statement must be prepared detailing which notice provisions are being considered. The statement must also include why the other options have been discounted at this stage. In making these decisions regard must be had to:

- the seriousness of the situation and the imminent risk to health and safety,
- the type of hazard,
- the current occupation and the impact the decision may have on the social exclusion of certain groups of people,
- the turnover of tenants or occupants to the property,

- the management of the property,
- the occupants' views,
- the owners' views,
- the number of hazards within the property and whether they are category 1 or category 2,
- the enforcement policy and procedures and the Housing Strategy.
- the decent homes standard.

Where there are only category 2 hazards consideration must be given to the overall effect of the multiple hazards and whether they are indicative of a run-down property.

Once a decision has been made the appropriate notice procedure must be followed. When taking any form of action a covering letter and the statement of reasons under section 8 must also accompany the notice and the schedule of work.

#### **4.0 Priorities**

The Housing Act 2004 and HHSRS Regulations 2005 have identified a number of hazard categories that have been found within the home. There are 29 hazards that arise from disrepair, lack of maintenance or poor design. The health effect from these hazards range from death to mental stress and the HHSRS provides the opportunity to compare unrelated hazards such as fire with other hazards such as damp and mould growth. This is done through the calculation of a hazard score. The higher the score the greater the risk posed by the hazard.

When a complaint is received the officer will prioritise the complaint based on the information provided by the complainant.

Using professional judgement and knowledge of the HHSRS the Officer will further prioritise the complaint. Where it appears to the Officer that serious hazards are

present the officer would aim to visit within 3 working days. For any other complaints the officer will visit within 5 working days.

In times of high service demand it may not be possible to adhere to these timescales. The complainant should be kept informed as to the potential delay.

## **5.0 Decent Homes Standard**

The Government has identified a minimum standard that homes must achieve in order to be considered decent. As part of the standard a home must not contain category 1 hazards, must be in a reasonable state of repair, must have reasonably modern facilities and services and must provide a reasonable degree of thermal comfort. Each of these aspects can be covered by hazard categories within the HHSRS and therefore it is expected that Officers will have regard to this standard when considering any action.

Free from category 1 hazards – following an assessment under the HHSRS the property is only decent where there are no category 1 hazards.

Reasonable state of repair - where one or more key building components (structural elements) are old and in such a condition they need replacement or repair then the property is not decent. Alternatively, if two or more components (not key components) are old and in such a condition as to need replacement or repair and together are indicative of disrepair then the property is not decent. [A key component is defined in: A Decent Home: Definition and Guidance for Implementation June 2006].

Reasonably modern facilities – to be considered non-decent the property must lack at least three of the following amenities: a kitchen which is less than 20 years old, a kitchen with adequate space and layout, a bathroom which is less than 30 years old, a suitably located bathroom and toilet, adequate external noise insulation, adequate size and layout of the entrance to blocks of flats.

Reasonable degree of thermal comfort – the property must have an efficient heating system such as gas or oil, electric storage heaters where other options are not possible, under floor/warm air systems and effective insulation in order to be considered decent.

## **6.0 Level of remedial works required**

As a minimum, category 1 hazards must be reduced to a category 2.

Where this is not possible all reasonable steps must be taken to reduce the hazards as far as reasonably practicable. In some cases, such as listed buildings, category 1 hazards may remain.

When deciding on the remedial works, regard must be had to the seriousness of the hazard, the ideal that the property should achieve, and the level of work required that is reasonable to reduce the hazard significantly without incurring excessive cost.

Where any works for either a category 1 or 2 hazard are needed, the Council will require works to a standard that will prevent patch and mend repairs.

For the hazard of fire, the Council will consider current LACORS Housing Fire Safety guidance.

## **7.0 Appeals against Notices/Orders**

Once the Officer has made the decision to serve a notice and has followed the correct procedure the notice will be served with a copy of the section 8 statement of reasons. All correspondence will detail the appeal procedure against the action being taken.

The person served with the notice/order has the right to appeal against the notice/order on any grounds. The main reasons for appeal are likely to be the contents of the notice/order and the schedule of work. Appeals can also be made on the grounds that the notice/order was not served on the correct person, or that a different course of action would be more appropriate.

Appeals regarding Housing Act 2004 enforcement action are made to the relevant Residential Property Tribunal (RPT). The intention is that the Tribunal will be able to make a decision based on paperwork and statements supplied by both parties. On occasion a hearing will be held where both parties must present their cases. The RPT may request to visit the property in question. An RPT decision can be appealed following consent from

the RPT. All other appeals regarding enforcement taken under other pieces of legislation should be directed to the Magistrates Court or as directed on the notice/order served.

## **8.0 Offences**

### **8.1 Housing Act 2004**

Failure to comply with an Improvement Notice without reasonable excuse – the notice recipient commits an offence and is liable to prosecution. On summary conviction they can be fined up to level 5 on the standard scale. The obligation to carry out the remedial works continues despite the fact that the period for completion has expired.

Failure to comply with a Prohibition Order – an offence is committed if the premises is used in contravention to the order, or permission is given for the premises to be used in contravention to the order. On summary conviction fines up to level 5 on the standard scale may be levied. In addition there is a further fine of up to £20 per day for every day or part day after conviction that the property is used in contravention.

### **8.2 Environmental Protection Act 1990**

Failure to comply with a notice – the notice recipient commits an offence and is liable to prosecution. On summary conviction the fine can be up to level 5.

### **8.3 Building Act 1984**

Failure to comply with any notice - the notice recipient commits an offence and is liable to prosecution. On summary conviction fine can be up to level 4 with a daily charge of £2 until works are complete.

### **8.4 Public Health Act 1936**

Failure to comply with any notice - the notice recipient commits an offence and is liable to prosecution. On summary conviction fine can be up to level 4.

### **8.5 Public Health Act 1961**

No prosecution procedure – the Council carries out works and the person responsible is charged and costs recovered.



## **9.0 Prosecution**

Where there is a breach of a notice or an order the officer must investigate the offence and may prepare the case for prosecution. This may involve interviewing relevant people under caution, following the relevant parts of the Police and Criminal Evidence Act 1984.

It is not essential to carry out an interview, however, it is considered good practice to establish 'reasonable excuse' under caution before prosecution is pursued further.

The case will be presented to the Council's Legal Services who will decide if the prosecution should be pursued. In making this decision Legal Services will have regard to the Code for Crown Prosecutors (Prosecutors employed by the Crown Prosecution Service). This is to ensure that fair and consistent decisions about prosecutions are made. Officers must also refer to this code when considering the merits of pursuing a prosecution.

## **10.0 Works in Default**

Where the Council has legally required someone to do works but they have failed to do so, powers are available to carry out works in their default. The powers are provided within the specific legislation being used in relation to the case. In most circumstances a person will be given notice of the Council's intention to carry out works in their default. Once the Council has started works it is an offence for that person to obstruct Council officers or any of the contractors that have been employed to carry out the works.

The complete cost of the works and all other associated relevant costs will be recovered in accordance with the relevant statutory provisions. The Council may consider enforced sale procedures or sequestering rents with a view to recovering charges owed where appropriate. Until cleared, all outstanding debts will be registered as a local land charge against the property and will accrue interest.

Carrying out works in default is a discretionary power and can be carried out either

instead of a prosecution or in addition to a prosecution.

With regard to the Housing Act 2004, any remedial works must be extensive enough to remove the hazard and leave the property in a safe condition.

### **11.0 Enforced Sales Process**

The Enforced Sales Process is a tool which can be used on specific pieces of land or property where the owner owes a debt to the Council for services. It is enforced under the Law and Property Act 1925, section 103 against a land chargeable debt.

The cost of carrying out that work is levied against the title of the property as a primary charge. It offers the Council the ability to recover charges owed by the property by putting the house up for sale or auction to recover the best price and repay monies outstanding.

This course of action does not allow the Local authority autonomy over how this property is disposed of. Nevertheless the Council must show that it has achieved the best price possible.

### **12.0 Compulsory Purchase Orders**

Compulsory Purchase Orders action can be used to acquire a building, dwelling house or piece/ plot of land. This legislation can be used as a tool to offer housing within the realm of the Council's housing portfolio or can be sold directly to the public. This tool allows the authority to use its discretion regarding how the property is disposed of as the property is vested to the local Authority via a General Vesting Declaration, subject to a statement of reason to the planning inspectorate.

### **13.0 Action by Agreement**

The Act also makes provision for remedial works to be carried out by agreement. This is where the local authority arranges for the works to be carried out at the request of the

person responsible and they are then charged for the full cost. When it is carried out in default without agreement the local authority will recover expenses reasonably incurred plus interest.

In order to use this provision the officer must be confident that the cost of the works will be repaid in full once the work is complete and the owner provides written assurances that they will pay.

The Council will actively pursue monies owed and an invoice will be raised. If the costs incurred are not paid they will be placed as a charge against the property. The Council may also then consider whether enforced sale of the property is appropriate and reasonable in the circumstances with a view to recovering monies owed.

#### **14.0 Overcrowding**

The Council will investigate complaints from private rented sector tenants about overcrowded living conditions where there is concern about children or vulnerable adults living in overcrowded conditions or where overcrowded conditions are legitimately impacting on a neighbour's health, safety or welfare.

We will liaise with the Council's Housing Options Service where Officers are taking enforcement action that is likely to lead to a family moving out of their accommodation.

When deciding on the most appropriate course of action each case will be judged on its own merits.

#### **15.0 Illegal Eviction and Harassment**

We aim to ensure a fast, clear and co-ordinated response of intervention in cases of harassment and illegal eviction in private rented accommodation. We will work in partnership with the Police and other agencies to ensure that the practice of illegal eviction and harassment is eradicated within the borough.

The Council is committed to taking a proactive approach in these circumstances both through the provision of advice and assistance to landlords and tenants and through the use of informal warnings and mediation where appropriate. The overriding aim is to maintain the occupants' residence in the property in peace and comfort through facilitating negotiation and conciliation between the occupant and the landlord.