

Appendix 1

Private Sector Housing Enforcement Policy



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Appendix 1 Private Sector Housing Enforcement Policy

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Introduction

This Policy sets out how South Somerset District Council (the Council) intends to secure effective compliance with the Housing Act 2004 and other relevant legislation while minimising the burden to the Council, individuals, organisations and businesses.

It sets out what owners, landlords, their agents and tenants of residential properties can expect from the Council's officers when regulating standards.

This policy deals with housing enforcement in all residential dwellings including privately rented, socially rented, owner occupied properties and Houses in Multiple Occupation (HMOs).

Information on other aspects of our work with private sector housing can be found in our Private Sector Housing Strategy 2017-20 on our website. In addition the Council's general policy towards all housing tenures and all issues to do with housing across the County can be found in the Somerset Strategic Housing Framework 2018-2022.

Most of this work will be carried out by Environmental Health officers who specialise in private sector housing and will be referred to here as PSH (Private Sector Housing) officers.

1. Our approach

We will work with our professional colleagues and other service providers to ensure the full range of powers available to the Council are used in the most efficient way. We will also target our resources to ensure the most serious cases are tackled as a priority.

We will provide information in plain English and accessible formats where possible, and publicise the availability of our services. We will be open about our priorities, policies and procedures and we will ensure that officers explain the options available to property owners, landlords and tenants, and their reasoning for pursuing any given course of action.

Enforcement options referred to in this policy include the formal requirement to take action or carry out remedial work and penalties for offences under housing law (and associated legislation). Typically enforcement options could be:

- The service of notices/orders;
- A simple caution;
- A financial penalty;
- Prosecution in the Magistrate's Court; and
- Works in default with recovery of costs.

1.1 Principles of good enforcement

The Council is committed to the principles of good enforcement as set out in the Legislative and Regulatory Reform Act 2006 and when carrying out our regulatory activities we will do so in a way that is transparent, accountable, proportionate, consistent and targeted only at cases where action is needed.

Transparency: We will be open in our approach, explain our decisions and publish our policies and strategies.

Accountability: We will be accountable for the efficiency and effectiveness of our service and the decisions we make. We will be clear when we can help and when we cannot in line with the legislation available to us and where possible signpost customers to other agencies who may be able to assist them.

Proportionality: We will ensure that enforcement action is proportionate to the risk and any sanction applied is appropriate. In most cases, unless immediate action is necessary, for example to ensure the health and safety of tenants or occupiers, we will seek to achieve compliance through informal means and offer the opportunity to discuss the case before formal action is taken. If a landlord has a history of non-compliance, is not fully cooperative or the risk is serious, we may go straight to formal action.

Targeting: We will prioritise and direct our regulatory effort where it is needed most in line with local priorities and needs. As resources allow, PSH officers will prioritise the reduction and removal of significant health and safety hazards and assisting vulnerable people.

Fairness and consistency: We will treat all service users fairly and ensure that our enforcement practices are consistent. We will adopt a similar approach in similar circumstances to achieve similar outcomes. We will also have regard to national guidance, Codes of Practice and best practice to inform our decision making. We will provide details on how to appeal against decisions and be open and fair in this approach.

1.2 The Regulators' Code

The Legislative and Regulatory Reform Act 2006 requires that we have regard to the Regulators Code and we are committed to ensuring our enforcement activities comply with this Code. This includes the following;

Supporting economic progress: We aim to carry out our activities in a way that supports landlords and businesses to enable them comply with their legal responsibilities whilst being able to grow their business. We will always balance this with public protection at the forefront of our minds.

Engaging with service users: We are committed to engaging with our service users and provide a number of mechanisms to facilitate this including the Landlords Forum in conjunction with our partners. We will support local landlord and tenant

groups and provide the opportunity for dialogue, engagement and updating on existing, emerging and new local and national issues within the sector.

2. Identifying the need for action

Part of the role of the Council's Housing Standards team is to carry out a planned HMO inspection programme as well as responding to complaints about poor housing conditions. If unsatisfactory conditions are found enforcement action may be taken and will be proportionate to the seriousness of the offence. Where we have discretion, we will consider whether other measures could lead to effective resolution. We will apply the enforcement policy in each and every case and make a decision about whether to proceed to formal enforcement action having considered the individual circumstances of the case. In making our decision we will consider relevant factors such as the harm caused or, potential for harm to be caused to individuals, the public and the environment.

3. Co-ordinated working

Often a single housing matter can trigger enforcement responsibility for several services and agencies such as for example, Devon and Somerset Fire Rescue Service, Yeovil One, Avon and Somerset Police, Immigration service, Somerset Social Services and SSDC's Environmental Protection Team. It is quite likely that the Housing Options Team could also be involved to assist with rehousing options. We will therefore take a comprehensive approach to enforcement wherever possible by:

- Co-ordinating action between all Council services and other agencies;
- Ensuring the most effective action is taken and led by the most appropriate agency;
- Sharing information with other agencies.

4. Powers of entry

Entry to a property is usually required to enable authorised PSH officers to carry out their statutory functions. PSH officers will normally make an appointment to visit in the first instance and will give at least 24 hours notice of their intention to enter properties to inspect them to both the occupants and owners. PSH officers will carry written authorisation to carry out inspections.

Powers of entry will allow an officer, at any reasonable time, to enter a property to carry out an inspection and gather evidence, take someone with them, take appropriate equipment or materials and take any measurements, photographs, recordings and samples as necessary. In some cases, powers of entry will be used to carry out works.

PSH Officers will exercise their statutory powers to gain entry without giving prior notice to investigate suspected non-compliance with housing related law or to carry

out a statutory duty where it is necessary to do so. Reasons for the use of these powers may include:

- To protect the health and safety of any person or to protect the environment without avoidable delay;
- To prevent the obstruction of officers where this is anticipated;
- To determine if a property is an unlicensed HMO or has breached management regulations;
- Joint working with other agencies such as the police, immigration enforcement or fire service.

Obstructing an authorised officer from entering a premises in accordance with their powers is an offence and could result in prosecution.

5. Requiring information

PSH officers have the power to require:

- documents to be provided under s235 of the Housing Act 2004 to enable them to carry out their powers and duties;
- electrical and gas safety certificates to be provided in relation to Houses in Multiple Occupation under s234 of the Housing Act 2004;
- any person with an interest in a property to provide details about its ownership or occupation under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976.

PSH officers will routinely use these powers and it is an offence not to produce the required information as requested. Where information is not provided formal action will be considered such as a simple caution, financial penalty or prosecution.

The Council also has the power to:

- obtain and use Housing Benefit and Council Tax information under Section 237 of the Housing Act 2004; and
- request and use tenancy deposit information under Section 212A of the Housing Act 2004.

This information will be used to assist the Council in carryout its functions under Part 1-4 of the Housing Act 2004.

6. Failure to comply

Non-compliance with housing law referred to in this policy is a criminal offence. Typical offences include:

- direct breaches of regulations such as the HMO management regulations and the smoke and carbon monoxide alarm regulations;
- a breach of a legal Notice or Order without reasonable excuse. For example, a Housing Act 2004 Improvement Notice or Environmental Protection Act 1990 Statutory Nuisance Notice;

- failure to licence an HMO under Part 2 of the Housing Act 2004;
- failure to comply with the conditions of a licence issued under Part 2 or 3 of the Housing Act 2004;

Several different enforcement options are available to the Council dependent upon the circumstances of the offence. The most suitable option will be decided on a case by case basis in line with this policy.

6.1 Enforcement options for non-compliance

Where there has been a breach of the law, the options available to the Council include offering a simple caution or issuing a financial penalty or prosecution. Before a decision is taken on which option to take if any, the alleged offence will be reviewed in line with The Code for Crown Prosecutors - The Full Code Test which contains two stages: (i) the evidential stage followed by (ii) the public interest stage.

6.1.1 Simple Caution

A Simple Caution is an alternative to prosecution. It may typically be used where it is appropriate to the offence and likely to be effective in preventing further non-compliance with the law. A simple caution may be appropriate for minor offences or where there is a practical expression of regret by the offender. However, a caution will only be given where the offender admits the offence, understands the significance of the caution and gives their informed consent to the caution. A simple caution will be recorded and be used to inform future decisions on prosecution and may be cited in any subsequent court proceedings.

6.1.2 Civil Penalties

The Housing and Planning Act 2016 introduced the option of a financial (Civil) penalty for some Housing Act Offences as an alternative to prosecution. (see Appendix 1.2)

6.1.3 Prosecution in the Magistrates or Crown Court

Offences will be considered for prosecution in accordance with the legal, evidential and public interest tests within The Code for Crown Prosecutors.

Prosecution of the offender will be considered in similar circumstances to financial penalties under the Housing Act 2004 above, and are likely to be appropriate for repeat offenders or where the seriousness of the offence is such that it is necessary to draw attention to the need for compliance with the law.

6.1.4 Other financial penalties

The Council may also apply a financial penalty for other relevant offences. These include:

- Failure to comply with the Smoke and Carbon Monoxide Alarm (England) Regulations 2015;
- Failure to comply with the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014;

In these cases the Council has to show on the balance of probabilities that an offence has been committed. (see Appendix 1.3)

6.2 Legal Interventions

There are a range of legal interventions available to the Council to enable them to ensure that enforcement is effective.

6.2.1 Works in default

The Council will consider carrying out works in default or remedial action where the legislation allows. It will typically be appropriate for:

- Emergency Remedial action under the Housing Act 2004
- Where actions have been required by a Notice under any legislation and have not been completed within the agreed timescale, or, reasonable progress has not been made towards their completion.

In these cases, The Council may organise and carry out the work itself or appoint an agent to complete the work on its behalf and recover the cost of works plus all additional costs including agency and administration fees. These costs will be charged to the property owner but can also be placed as a land charge on the property for payment when the property is sold or if money is raised against it.

The Council may also consider prosecution or a financial penalty in addition to carrying out works in default. Following the carrying out of works in default the Council may pursue enforced sale of a property where the legislation allows to recover it's costs.

6.2.2 Interim and Final Management Orders

These powers will only be used as a last resort where other attempts to ensure the health safety or welfare of occupiers has failed. Interim Management Orders (IMOs) can be made where there is no realistic prospect of a licence being granted. In making an IMO the management and rental income from a property is taken away from the current landlord for up to a year. The money is used to carry out necessary works to reduce any significant hazards in the property, to maintain the property and to pay any relevant management expenses. Following an IMO the Council can apply for a Final Management Order (FMO) to be approved that can last for up to five years. The Council may allocate a private company to manage the property.

In exceptional circumstances and where the health, safety and welfare of occupiers needs to be protected, the council may apply to the First-tier Tribunal (Property Chamber) for authority to make an IMO for privately rented accommodation that is not covered by a current licensing scheme.

6.2.3 Banning Orders and Database of rogue landlords and agents

The Housing & Planning Act 2016 introduced a range of measures to crack down on rogue landlords that have been introduced over recent months including:

- Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences
- Extension of rent repayment orders to cover illegal eviction, breach of a banning order and certain other specified offences
- A database of rogue landlords and property agents convicted of certain offences
- Banning orders for the most serious and prolific offenders

The Council will use these provisions as appropriate to tackle rogue landlords and will share information as permitted with other partners to ensure targeted action. The Home Office has already indicated that it will allow the Council access to its rogue landlords database to assess information on Civil Penalties awarded for offences under Right to Rent legislation.

6.2.4 Rent Repayment Orders (RRO)

A RRO can require a landlord to repay up to 12 months' rent. The offences for which an application for an RRO can be made are:

- Using violence to secure entry contrary to section 6(1) of the Criminal Law Act 1977
- Unlawful eviction or harassment of occupiers contrary to sections 1(2), 1(3) or 1(3A) of the Protection from Eviction Act 1977
- Failure to comply with an Improvement Notice issued under the Housing Act 2004.
- Failure to comply with a Prohibition Order issued under the Housing Act 2004.
- Operating a licensable House in Multiple Occupation (HMO) under the Housing Act 2004 without a licence
- Breaching a Banning Order issued under the Housing and Planning Act 2016

Although a landlord does not have to be convicted of an offence, the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence.

When considering whether to apply to the First-tier Tribunal for a RRO, the following factors will be taken into account:

- The conduct of the landlord;
- The financial circumstances of the landlord;
- Whether the landlord has been convicted of one of the offences stated above;

- Whether the tenant is in receipt of Local Housing Allowance;
- Any other factors relevant to the case.

The Council will consider assisting tenants in applying for a RRO. A decision on how and if to provide support will be made on a case by case basis in accordance with the above factors.

6.2.5 Cost Recovery

Proceeds of Crime Act 2002

Where appropriate to the case, the Council, will consider taking proceedings under the Proceeds of Crime Act 2002 following a successful prosecution.

Unpaid invoices

Where a charge remains unpaid following the issue of an invoice or financial penalty, The Council may seek to recover the money owed in the relevant Court, including the County Court.

7. Legislation

The PSH officers enforce a number of different pieces of legislation associated with residential dwellings. When taking action using regulatory powers, the officer will consider which course of action is the most appropriate to deal with the circumstances of the case.

7.1 Housing Act 2004

The Housing Act 2004 is the main piece of legislation enforced by PSH officers and it includes the following matters;

7.1.1 Housing Health and Safety Rating System (HHSRS)

Part 1 of The Housing Act 2004 is concerned with assessing housing conditions and reducing health and safety hazards using the HHSRS. The HHSRS covers 29 potential hazards in the home. It is a risk assessment approach which looks firstly at the likelihood of someone becoming ill or injured and secondly, how badly harmed a person could be as a result. It is always considered based on the people most vulnerable to the hazard.

The HHSRS applies to all residential premises regardless of tenure and the Council has a duty to inspect premises where there is a suspected hazard.

The Council is under a duty to take enforcement action in relation to the most dangerous health and safety hazards referred to as Category 1 Hazards (those which have a hazard rating within bands A, B or C). When a Category 1 hazard is identified, the Council will decide which of the available enforcement options is most appropriate to use.

The Council has the power to deal with less dangerous Category 2 Hazards (bands D to J). The Council may take enforcement action in relation to Category 2 hazards where it makes the judgement that it would be appropriate to the particular circumstances of the case.

The options for formal action to remedy a hazard under Part 1 of the Housing Act 2004 are:

- Improvement Notice (including Suspended Notice);
- Prohibition Order (including Suspended Order);
- Emergency Remedial Action;
- Emergency Prohibition Order;
- Hazard Awareness Notice;
- Demolition Order and slum clearance declaration.

There is a right of appeal to the First-tier Tribunal against formal Notices or Orders. Details on how to appeal will always be included when formal Notices or Orders are served.

7.1.2 Houses in Multiple Occupation (HMOs)

There are a suite of HMO regulations under the Housing Act 2004, including management regulations. The management regulations can be applied to all HMOs and place specific requirements on property managers in relation to management and safety of HMOs. Enforcement action for non-compliance with HMO regulations, in particular the HMO Management regulations will be considered in each case in accordance with this policy. For further details on the standards required in HMOs see our HMO Strategy on the website

7.1.3 Licensing of Houses in Multiple Occupation (HMOs)

Part 2 of the Housing Act 2004 requires certain HMOs to have a licence to operate.

Following the introduction of new legislation, from October 2018 the scope of mandatory HMO licensing has been extended along with other changes.

National mandatory licensing currently only applies to HMOs that have 3 or more storeys and occupied by 5 or more people. It is being extended to cover one/two storey HMOs which are occupied by 5 or more people. This could affect a lot of property locally.

Councils will also be able to set minimum bedroom size standards and also introduce limits on how many people can live in each bedroom of a licensed HMO. Councils will be able to use national minimum standards or apply even tougher requirements in order to address specific local needs.

This move will help ensure tenants have the space they need and deserve as well as reduce health and safety risks they face by sharing cooking and washing facilities with too many people.

The new standards will apply to all landlords seeking new licenses. Landlords of existing properties will be given up to 18 months to make necessary changes when re-applying for a license when it expires.

In a move to stop rubbish piling up outside some shared rented homes, often presenting health risks and blighting neighbourhoods, landlords will also be required to provide adequate waste storage facilities in line with their local authority's rules. If they fail to do so they could face a fine.

The Council also has the power to designate additional licensing areas for up to five years and require certain HMOs in a specified area to apply for a licence in order to operate legally. A charge is made for licensing HMOs (see Appendix 1.2).

7.2 Other legislation

Other legislation enforced by PSH officers in accordance with this policy includes:

- Housing and Planning Act 2016
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, enacted under the Energy Act 2013
- The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014, enacted under the Enterprise and Regulatory Reform Act 2013
- Environmental Protection Act 1990
- Housing Act 1985
- Public Health Act 1936 and 1961
- Prevention of Damage by Pests Act 1949
- Building Act 1984
- Local Government (Miscellaneous Provisions) Act 1976
- Local Government (Miscellaneous Provisions) Act 1985
- Local Government and Housing Act 1989
- Anti-Social Behaviour, Crime and Policing Act 2014
- Caravan Sites and Control of Development Act 1960
- Mobile Homes Act 2013

8. Owner occupiers

Enforcement action on owner occupiers and long leaseholders will be based on the health and safety risk to the occupants or other affected persons. The Council will generally not take action where a more appropriate contractual remedy exists.

Where a HHSRS inspection identifies a significant hazard, the Council anticipates that a Hazard Awareness Notice may be the most appropriate course of action.

However, all Housing Act 2004 Part 1 enforcement options (see section 7) are available to the Council and will be considered.

Enforcement options requiring action to be taken such as an Improvement Notice or Prohibition Order will be considered in cases involving:

- Vulnerable people who are not capable of making informed decisions about their own welfare or who require the intervention of the Council to ensure their welfare is best protected;
- Hazards that might reasonably affect other people e.g. other occupants, visitors, neighbours;
- Serious risk of life-threatening harm e.g. electrical hazards.

Where the condition of one property is affecting the occupant of another property or the general public, such as a health and safety hazard or statutory nuisance, appropriate enforcement action will be considered regardless of property tenure. We will always consider the most appropriate option dependent on the circumstances of the case and will make the owner aware of any suitable financial assistance available from the Council.

9. Landlords and managing agents

We will work with landlords and managing and letting agents to help them comply with their legal obligations, advise them of the legislation that applies and how to comply with it.

Where we are aware of other requirements outside of our remit or best practice in the sector, we will advise landlords where to seek further assistance. If there are serious hazards identified in a rented property we will undertake enforcement action requiring relevant defects to be repaired or improvements made. If a landlord proposes reasonable alternative works or solutions, we will consider these along with the required outcome.

We will consider each case on its own merits and only take enforcement action when it is considered appropriate. If enforcement action is taken we will explain why such action was necessary. Where we need to take enforcement action we will usually charge for this action as the legislation allows. Where a landlord has shown a history of non-compliance, is not fully cooperative or the risk is serious, we may go straight to formal action.

In making a decision to prosecute or issue a financial penalty, we will have regard to the seriousness of the offence, the benefit of the sanction and whether some other action would be appropriate. Where we prosecute we will look to recover all of our costs.

10. Tenants

If tenants are unhappy about their housing conditions, they are expected to give their landlord the opportunity to resolve any problems before the Council become involved.

Unless there are exceptional circumstances, the PSH Team will generally not visit a property at the request of a tenant unless the tenant has first been in contact with their landlord or agent to try and resolve the matter. This does not preclude the Council from making unannounced visits to properties where it feels it appropriate to do so.

Example of exceptional circumstances include, but not exclusively:

- an imminent risk to health and safety;
- a history of harassment/threatened eviction/poor management practice;
- where the tenant could not reasonably be expected to contact their landlord/managing agent due to the special circumstances of the case e.g. vulnerability.

Where the matter appears to present an imminent risk and the Council become involved to try and quickly resolve the matter, it is still expected that tenants will make every effort to contact their landlord. Where landlords are taking action in a reasonable time frame then the Council will not seek to interfere with this process.

Tenants need to allow reasonable access to their landlord, managing agent or contractor to arrange or carry out works; keep prearranged appointments or give sufficient notice of cancellation; be courteous and non-threatening to our officers; provide information in a timely manner when requested; keep officers informed of any contact they have had with their landlord (agent or builder etc.) which may affect the action the Council take. The Council will consider withdrawing its service if the above conditions are not followed.

11. Empty homes

The Empty Homes Strategy sets out how the Council will work to bring empty properties back into use, including the use of enforcement action. This Strategy is available on our website.

PSH officers will work with owners of empty homes to help them bring them back into use and encourage access to financial assistance where it is available.

The Council will consider the full range of enforcement options including Compulsory Purchase Orders, Empty Dwelling Management Orders (EDMOs) and enforced sale where an owner does not co-operate and the empty property has not been brought back into use within a reasonable period.

Where an empty property presents a serious or imminent risk to health and safety or is causing a statutory nuisance, appropriate enforcement action will be considered depending on the circumstances of each case.

12. Mobile homes

PSH officer's main involvement with mobile home (including caravan and park home) sites is the duty to licence applicable sites (holiday, touring and residential), under the Caravan Sites and Control of Development Act 1960. Licences are issued with conditions which concern maintaining adequate health and safety on sites.

The Caravan Sites and Control of Development Act 1960 makes it an offence to operate certain types of caravan site without a licence. Complaints of unlicensed sites will be investigated in conjunction with the Council's Planning Department.

Breaches of licence conditions will be investigated in line with current enforcement objectives and priorities. Appropriate enforcement action may be taken in relation to any breaches of the licence conditions, based on the risk of the breach in relation to occupiers' health, safety or welfare. The Mobile Homes Act 2013 introduced the power to serve a compliance notice to ensure that conditions on relevant protected sites are complied with.

The Mobile Homes Act 2013 also introduced the power to require a fee to accompany licensing applications for certain sites, as well as an annual fee for those protected sites that are already licensed. (see Appendix 1.1 Charging Policy for Private Sector Housing Enforcement Services for further details).

13. Charging for services

The Council has the power under the Housing Act 2004 to recover costs for certain action such as serving notices or carrying out the licensing function. The charges to be made are listed in Appendix 1.1; Charging Policy for Private Sector Housing Enforcement Services.

Where charges for enforcement action are levied they will be registered as a local land charge. This means that when the property is sold the debt has to be repaid including any interest accrued on the initial charge.

We will pursue all debts owed as a result of enforcement charges or charges for carrying out works (as well as any other charges) and may consider enforcing the sale of the property to recover costs.

Appendices

Appendix 1.1: Charging Policy for Private Sector Housing Enforcement Services

Appendix 1.2: Civil Penalty policy for Private Sector Housing Related Offences

Appendix 1.3 Statement of Principles for determining a penalty charge under the Smoke & Carbon Monoxide Alarm regulations 2015 and related legislation.