

**THE LONDON BOROUGH OF
WALTHAM FOREST**

The Housing Act 2004

**Housing Health and Safety Rating System
and Enforcement Policy**

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1. Introduction

- 1.1 The Housing Health and Safety Rating System (HHSRS) is a new tool for assessing the living conditions of a property. The system is based on 29 possible hazards to the most vulnerable occupier.
- 1.2 The system moves away from prescribed standards such as reasons for unfitness in the old Housing Act 1985 and has been replaced by a new framework set out in Part 1 of the Housing Act 2004. The new process is structured around an evidence-based risk assessment process (the HHSRS). Local authorities have a duty to act on Category 1 hazards and they also have the power to take action in the case of Category 2 hazards.
- 1.3 HHSRS is a technical assessment. It is a two-stage process, addressing first the likelihood of an occurrence and then the range of probable harm outcomes. The assessment will be based on the potential occupant who is the most vulnerable to that risk. The two stages are combined to give a rating in respect to each hazard, which is a numerical score. Hazards are then banded from A – J, A being the most severe. HHSRS does not provide a single score for the dwelling as a whole.
- 1.4 A Category 1 hazard means a hazard of prescribed description that, after a numerical calculation using national statistical information, is banded A, B or C. Category 2 hazards are those banded D or lower.

2. Enforcement Policy

- 2.1 All enforcement will follow the principals of the Enforcement Concordat adopted by Waltham Forest Council and Guidance from the Office of the Deputy Prime Minister (ODPM). This can be found at www.odpm.gov.uk. It may be necessary to amend this Policy due to changes in ODPM guidance and also in the light of experience.
- 2.2 A full survey of a premise is good practice to determine all the hazards. However, when urgent action is necessary and there is no cooperation from a landlord or owner, action will be taken based on the evidence available rather than pursuing a warrant.
- 2.3 When the Council becomes aware of a hazard or defect we will normally follow the procedure below:
 - 2.3.1 Informal stage: we will write to the owner or landlord, within 10 days, outlining the nature of the problem and ask what remedial action will be taken to remedy the hazard or defect. A time scale of 14 days is given for the landlord to outline their intentions. Where an owner or landlord indicates their intention to take action we will have regard to this and the timescales involved. If the

action is considered to be reasonable with regard to the nature of the hazard, we will monitor this work to ensure works are carried out to the tenant's satisfaction. However, if no response is given or works are not progressing satisfactorily the case will be passed to an Enforcement Officer.

2.3.2 Prioritisation stage: we will risk assess the property and prioritise our work according to:

- the number of Category 1 and Category 2 hazards;
- the vulnerability of the current occupiers;
- the hazard scores;
- in the case of HMOs, whether they are licensable or not and the number of storeys.

This stage will be monitored on a monthly basis.

2.3.3 Formal stage: Enforcement Officers will visit the property within 14 days of receiving the case. A schedule of works will be drawn up and formal notice served. We aim to take formal action within 28 days of the start of the formal stage.

2.4 There may be a time when the Council considers that the risk to the occupant is high enough to consider formal action without the informal stage. Factors include the cost of repair, whether the current tenants are vulnerable tenants and whether the property exercises any imminent risk to the occupiers.

3. Enforcement Options

3.1 Before considering enforcement action consideration will be given to the Enforcement Concordat. This can be found at:
<http://www.walthamforest.gov.uk/envpl-enfprotocol.doc>

It is for Waltham Forest Council to decide on the most appropriate cause of action in relation to the hazard in all circumstances.

3.2 The following are available to the Council when considering the most appropriate action:

- serve an improvement notice
- make a prohibition order
- serve a hazard awareness notice
- take emergency remedial action
- make an emergency prohibition order
- make a demolition order
- declare a clearance area

- 3.3 The Council cannot take more than one of these actions (unless it is an emergency action) at any one time but can vary the action required if one of the actions taken has proved unsuccessful. Emergency procedures cannot be used for Category 2 hazards.
- 3.4 All Notices and Orders should have a statement of reason attached to them. The statement should include why one type of enforcement action was taken over another. A copy of the statement must accompany the notice or order.
- 3.5 Consideration needs to be given to the views of owners, landlords, and tenants before formal action is taken.
- 3.6 Examples of these considerations include:
- when an owner-occupier brings it to the attention of the Council that they do not wish formal action to be taken because they could not cope with the upheaval. In this situation the Council may need to consider whether the disruption of carrying out the works outweigh the health benefits once the work is complete. If the hazard was one that might cause harm to a visitor then this would override this consideration;
 - if the landlord is a large Registered Social Landlord (RSL) the Council will have to consider whether the repair may be dealt with in a large programme of work to be carried out in a group repair scheme. The Council would have to be convinced that a programme of work existed;
 - tenants can sometimes worry that the landlord may increase the rent as a result of the improvements we are asking the landlord to carry out. The Council will need to consider the type of tenancy agreement, i.e. what rights the tenants have, the types of risks associated with the hazards, whether the actual tenants are vulnerable*, whether children reside in the premises, etc. HHSRS is based on the potential risk to the most vulnerable group specified in the HHSRS guidance. However, if the Council decides to take action we will be taking into consideration the current occupiers and, where properties have a turnover of tenancies, any potential occupants
- * Note: Vulnerable groups exclude those who could be registered as chronically sick or disabled. Registered disabled people would have the potential need for specialist adaptations to make dwellings suitable. The vulnerable groups in HHSRS are based on age and this can be found in the technical guidance.
- 3.7 When enforcement action is taken and there is a change in ownership of the property, the notice can be enforced on the new owner or recipient. However any outstanding liabilities such as fines will remain with the original owner or recipient of the notice.

3.8 There is a right of appeal against any notice, order or decision made by the Council. All appeals are made to the Residential Property Tribunal (RPT). The RPT may confirm, quash or vary the notice, order or decision.

A) Improvement Notice

An improvement notice can be served on all Category 1 and 2 hazards. It must, as a minimum, remove all Category 1 hazards and the hazard should not recur within 12 months of the notice. A notice can contain more than one hazard and it is our policy to deal with all Category 1 and moderate Category 2 hazards at the same time.

Timescales for remedial works must be 28 days or more from the date of service of a notice. Different deadlines can be set for different hazards.

Once the work has been complied, with the notice must be revoked formally in writing.

Improvement notices are registered as local land charges and any appeal must be made within 21 days of the service of a notice.

B) Prohibition Order

A prohibition order can be served for both Category 1 and Category 2 hazards. It would become effective after 28 days. It may prohibit the use of part or all of the premises for some or all purposes or occupation by particular numbers. For example;

- where remedial action is unreasonable or impractical and conditions present a high risk;
- to specify the maximum number of persons that should occupy a dwelling;
- to specify the maximum number of person who should occupy the dwelling where there are insufficient facilities;
- to prohibit the use of a dwelling to a specific group of people.

Regard will be given to the risk of social exclusion, whether the premises are listed or in a conservation area, the owner proposes to consider alternative uses, the effects on the community and the effect on the availability of local accommodation for re-housing any displaced occupants.

Prohibition orders will be registered as local land charges and any appeal must be made within 28 days

C) Suspending a Notice

A local authority may suspend the action specified in an Improvement Notice or Prohibition Order. The notice to suspend may specify certain trigger points such as non-compliance of an undertaking given to the Authority or a change in occupancy. The trigger points will be clearly stated in the notice.

Waltham Forest Council needs to consider the likely tenants who, in the next 12 months, could potentially occupy a premise, before deciding to suspend a notice.

D) Emergency Measures

Where the Council is satisfied that a hazard presents an imminent risk to the occupants of a premises emergency measures can be taken. It is for the Council to determine what constitutes an imminent risk.

Emergency measures include emergency remedial action or an emergency prohibition order.

Any appeal must be made within 28 days. An appeal will not prevent emergency action from being taken.

E) Emergency Remedial Action

Where a Category 1 hazard exists and there is an imminent risk of harm to the occupier, the Council may enter a premise (with a warrant) to take remedial action to remove the imminent risk of serious harm. The Council will serve a notice within 7 days of remedial action.

F) Emergency Prohibition Orders

If in the view of the Council the hazard involves a serious risk of harm to the occupant, the Council may enter a premise to prohibit its use. The order will take effect immediately. It is for the Council to consider whether the action carried out gives grounds to revoke or vary the order.

G) Hazard Awareness Notice

The Hazard Awareness Notice is discretionary and may be used as a response to a minor hazard. There is no appeal and the notice is not registered as a local land charge. It may be considered where the landlord has agreed to carry out repairs informally.

It may also be considered for Category 1 hazards where the Council wishes to inform an owner-occupier of a particular hazard. In consideration of this the Council must take account of the likelihood of harm to people who may visit the property and the vulnerability of the occupants. The Council must be able to justify why it took a more lenient

approach. It may not be appropriate to serve a Hazard Awareness Notice where there are risks of falling objects such as slates from a roof. This is because it would be a clear risk to those visiting the premise as well as the owner-occupier.

H) Demolition Orders

This is a possible response to a Category 1 hazard. In deciding, the Council should:

- take into account the availability for re-housing occupants;
- take into account the demand for and sustainability of the accommodation if the hazard was remedied:
- consider the prospective use of the cleared site;
- consider the local environment and the impact of a cleared site on the appearance and character of the neighbourhood.

I) Clearance Area

The Council can declare an area a Clearance Area if it is satisfied that each of the residential buildings in the area contains one or more Category 1 hazards (or these buildings are dangerous/harmful to the health and safety of the occupants as a result of bad arrangements), and any other buildings in the area that are dangerous or harmful to the health of the inhabitants.

J) Powers of Entry

The Council has the power of entry to properties to carry out its duties under the Housing Act provided that:

- the officer has written authority stating the purpose for which entry is authorised.
- the officer has given 24 hours notice to the owner or occupier of the premises they intend to enter.

If this proves unsuccessful the Council will obtain a warrant from a Justice of the Peace to include the power of entry by force if necessary. If prior warning of entry is likely to defeat the purpose of the entry then a warrant can be obtained.

The Council also has the power to require documentation to be produced in connection with its enforcement (Parts 1–4 of the Housing Act 2004) by a notice. The notice will specify the consequences of not complying. Copies of documents can be obtained and kept by the Council.

4. Non-Compliance

4.1 If a notice is complied with no further action will be necessary. However if the notice is not complied with an Officer will consider the following options:

- Prosecution
- Carry out the works in default
- Carry out the works in default and prosecute
- Consider whether a formal caution is appropriate

Our target is to ensure that instructions to commence legal proceedings are with the Legal Section within 6 weeks of the expiry of the time period for complying with a formal Notice.

5. Power to Charge for Enforcement Action

5.1 Local authorities have the power to make a reasonable charge as a means of recovering expenses incurred in serving an Improvement Notice or making a Prohibition or Demolition order.

5.2 In deciding whether to make a charge officers will need to have considered the personal circumstances of the persons concerned.

5.3 It is our policy to charge for the time spent by officers where an Improvement Notice or Prohibition or Demolition Order is to be served. The charge will be £300 per Notice or Order and it will cover:

- Time spent visiting the premise
- Time spent drafting a notice
- Administration costs in serving the notice and payments.

5.4 The charge will be reviewed on an annual basis. An invoice for the charge will be sent out with the formal notice. Officers will need to request that the Finance Support Officer raise an invoice. Officers will need to supply full details of the person or Company to be invoiced, including:

- Full name and address, including the full postcode (registered address in the case of a Company)
- A contact telephone number

The time spent carrying out work in default or remedial action will be covered separately to the above.

5.5 Officers will not charge for their time in circumstances that are beyond the control of the owner or landlord, such as a tenant or builder not making themselves available.

6. Work in Default

- 6.1 Work in default or remedial actions are covered separately to this charging policy. Cost of carrying out this work and administration may also be applied in line with the above.

7. Category 1 and Category 2 Hazards – Risk Assessment

- 7.1 Clearly where a Category 1 hazard exists the Council has a duty to take action. However the Council does have discretion on how to prioritise action – the greater the hazard the higher the risk to the most vulnerable occupant. It may be necessary for the Council or it's officers to prioritise their cases with the highest risk first. Regard will also be given as to the number of individual Category 2 hazards.

- 7.2 The Council does not have the resources to enforce all Category 2 hazards (i.e. those where it has discretion) therefore regard will be made to:

1. The local housing stock condition survey, which highlights the problems with excessive cold, damp and mould.
2. Whether the Council is already taking action to deal with Category 1 hazards in which case moderate Category 2 (D and E) hazards should be enforced at the same time.
3. The potential for the hazard to become a Category 1 hazard within a short duration (under 2 years)

8. HMOs and HHSRS

- 8.1 The Council does not need to consider HHSRS before a HMO licence is issued. However, if during the licensing process we have reason to be concerned about the health and safety of the occupants and the likelihood of Category 1 hazards we will take action as above. We also have to ensure that no licensed property has any Category 1 hazards within five years of the licence being granted. In practice we will prioritise our work in considering which premise will be visited first by risk assessment during the license process. The Council cannot attach conditions to the licence on the expectation of the works being carried out.
- 8.2 In HMOs the assessment of hazards is made for each unit of accommodation, and each assessment will reflect the contribution of conditions in the common parts.

- 8.3 If an enforcement notice is served on an HMO and it reverts to a single occupation, the Council will consider whether the impact of the hazard has diminished and take appropriate action.

9. Scheme of Delegation

- 9.1 The scheme of delegation for enforcement is set out below. For the purposes of enforcement under the Housing Act 2004 the Local Housing Authority will authorise the following scheme of delegation:

Housing Act 2004	Most junior officer with delegated power
Section 11 – Improvement Notice	Environmental Health Enforcement Officer S02 or above
Section 20 – Prohibition Order	Environmental Health Officer P03
Section 28 – Hazard Awareness Notice	Any Environmental Health Enforcement Officer
Section 32 – Emergency Prohibition Order	Environmental Health Officer P03
Section 40 – Emergency Remedial Action	Environmental Health Enforcement Officer S02 or above
Section 46 – Demolition Orders	Section Manager
Section 47 – Clearance area	Group Manager
Section 64 – Refusal or granting a licence	Group Manager
Section 102 – Interim Management Orders	Environmental Health Enforcement Officers S02 or above
Section 113 – Final Management Orders	Environmental Health Enforcement Officers SO2 or above
Section 133 and 136 – Empty Dwellings Management Orders	Environmental Health Enforcement Officer S02 or above
Section 139 – Overcrowding Notices	Environmental Health Enforcement Officer S02 or above
Section 243 – ‘Authorised Person’ for power of entry, power of entry to carry out works and power to require documents to be produced	Head of Community Protection