



Office of the  
Deputy Prime Minister

Creating sustainable communities

# Housing Health and Safety Rating System

## Enforcement Guidance

Housing Act 2004  
Part 1: Housing Conditions

# housing



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Part 1: Housing Conditions

February 2006

Office of the Deputy Prime Minister: London

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# PART 1

## Purpose of the Guidance

- 1.1 This guidance is given to local housing authorities in England by the Secretary of State under section 9 of the Housing Act 2004 (referred to in this guidance as “the Act”). They are required to have regard to it in exercising their duties and powers under Part 1 of the Act. The guidance is intended to help authorities decide which is the appropriate enforcement action under section 5 of the Act and how they should exercise their discretionary powers under section 7.
- 1.2 The guidance replaces that given in Annex B to DOE Circular 17/96<sup>1</sup> and DOE Circular 12/92<sup>2</sup>. It should also be read in conjunction with the Housing Health and Safety Rating System (England) Regulations 2005 (SI 2005 No. 3208) (“the Regulations”), and the Housing Health and Safety Rating System Operating Guidance, given under section 9(1)(a) of the Act (“the Operating Guidance”)<sup>3</sup>.
- 1.3 The housing fitness enforcement powers set out in the Housing Act 1985 (referred to in this guidance as “the 1985 Act”), including the separate provisions for Houses in Multiple Occupation (HMOs), have been replaced or (in the case of demolition and clearance) modified by the new system set out in Part 1 of the Act. The new system is structured around an evidence based risk assessment procedure, the Housing Health and Safety Rating System (HHSRS), on which local authorities must base their decisions on the action to take to deal with poor housing conditions, from 6th April 2006.
- 1.4 The new system, and the powers available to local authorities, apply to all types of residential premises, including HMOs, purpose built blocks of flats and buildings comprising converted flats. Although local authorities cannot take statutory enforcement action against themselves in respect of their own stock they will be expected to use HHSRS to assess the condition of their stock and to ensure their housing meets the Decent Home Standard.
- 1.5 Part 2 of the Act introduces the licensing of certain HMOs and the Management Regulations to which all HMOs will be subject. See Part 6 of this guidance.
- 1.6 Formal statutory action begun under the 1985 Act, from the service of a statutory notice, other than a “minded-to” notice, should continue under the provisions of that Act. Aside from such cases, authorities will be expected to deal with hazards to health or safety in all types of residential premises through the new system, and to follow its procedures through to a conclusion. Authorities will need to take a view on notices that have not been formally complied with but where no compliance proceedings have been initiated. Historical cases that have been lying dormant would best be dealt with under the new system should the premises once again give rise to concerns.

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1. Private Sector Renewal: a Strategic Approach, December 1996

2. Houses in Multiple Occupation; Guidance to Local Housing Authorities on Standards of Fitness under section 352 of the Housing Act 1985, May 1992

3. Housing Health and Safety Rating System Operating Guidance 2006

## **PART: 2**

### **Taking a strategic approach**

#### **Keeping housing conditions under review**

- 2.1 Section 3 of the Act requires local authorities to consider the housing conditions in their district with a view to determining what action to take under the Act, which includes their duties and powers to deal with hazards identified under HHSRS or provide financial assistance for home repair and improvement. This duty reflects the Government's approach to local housing strategies. The purpose of the review is to ensure that a local authority maintains a current awareness of the state of the housing stock in its area, so that it can come to well-informed judgements as to the action it needs to take. At present authorities are not required to produce reports at particular intervals, although the Secretary of State does have the power to require them to keep and supply records if necessary.
- 2.2 Authorities will need to take a view of the spread of hazards in the local housing stock that have come to their attention, and prioritise action on those with the most serious impact on health or safety. It might be an inappropriate diversion of resources and effort to deal with modest hazards when there is evidence of more serious hazards elsewhere. This does not mean that authorities should make only sparing use of their discretionary powers. On the contrary, they will be able to deal systematically with premises found to have less serious hazards, scheduling action to deal with the most serious problems first, and less serious ones over a longer time frame, as appropriate. Authorities should act consistently. The decision to take enforcement action will require a judgement as to the necessity for intervention, given the authority's priorities and wider renewal policies and, where appropriate, their knowledge of a landlord and his or her compliance history.
- 2.3 Where practicable, authorities should consult neighbouring authorities in respect of areas of housing or estates that straddle local authority boundaries. They should also consider what liaison is required with Registered Social Landlords (RSLs) who are improving their stock to make them decent, and whose stock crosses local authority boundaries. Informal working with RSLs is seen as preferable to resorting to formal enforcement measures where the landlord has a timetable for making the stock decent. However, occupiers should not be left for long periods in unsafe housing. (See also Part 5, "Decision to suspend an improvement notice or prohibition order".)

## Financial assistance

- 2.4 The Regulatory Reform (Housing Assistance) Order 2002 (SI 2002 No. 1860), which came into force on 18 July 2002, introduced a general power for local authorities to provide financial assistance. The Order provides authorities with a good degree of flexibility in devising a strategy to deal with poor condition private sector housing, both in terms of the policy tools available to them, and in terms of their ability to work in partnership with others. In exercising their powers under the Order, local authorities should have regard to their enforcement duties and powers under Part 1 of the Act in conjunction with the renewal guidance issued in the ODPM Housing Renewal Circular 05/2003 (June 2003).
- 2.5 Authorities should also consider the availability of other sources of funding and assistance, in particular to improve energy efficiency and tackle fuel poverty. Further information on working with local partnerships is contained in the renewal guidance.

## Identifying the need for action

- 2.6 Where, in the light of the review of housing conditions under section 3, or following a complaint or for any other reason, the authority considers it appropriate to inspect premises to determine whether a category 1 or 2 hazard exists, the authority must arrange for an inspection. While there is not an express duty on local authorities to inspect properties where they think there might be hazards, sections 3 and 4 of the Act, when taken together, imply that an authority should have good reason not to investigate further.
- 2.7 Inspections may also need to be carried out where official complaints about the condition of residential premises are made to the proper officer of the authority. Official complaints are those made by a justice of the peace or a parish or community council and when such a complaint is made the duty to inspect falls on the Proper Officer. Where, following an official complaint, the inspector concludes that there are hazards on the premises, or that an area should be dealt with as a clearance area, he must report to the authority without delay and the authority must consider his report as soon as possible.
- 2.8 Authorities will need to prioritise inspections and in doing so may have regard to their wider housing strategies and the individual circumstances of the case before them. Local authorities may feel that priority should be given to complaints or referrals from sources such as social services child protection teams, the police, the fire and rescue authority and Warm Front managers, and also from other occupiers, directly or indirectly through local councillors.
- 2.9 It is good practice for the authority to carry out as full an inspection of the premises as possible, as it is important for enforcement action to be supported by all the relevant evidence. The Regulations require an accurate record to be prepared and kept of the inspection in written or electronic form. The assessment of any hazard, following the inspection of the premises, must be carried out in accordance with the Regulations.

- 2.10 In summary, local authorities might identify the need to act to deal with hazards in a number of ways, including:
- as a result of a review under section 3 of the Act, which leads to an inspection under section 4 of the Act;
  - as a result of any other inspection under section 4 of the Act, ie as a result of an official complaint or other request for enforcement action;
  - under a fuel poverty or energy efficiency strategy;
  - as a result of a Neighbourhood Renewal Assessment;
  - in the light of a strategy for multiply occupied buildings established in conjunction with the fire and rescue authority;
  - in the light of a request for financial assistance by the owner or tenant to improve the property.

## Fuel poverty and energy efficiency strategies

- 2.11 There are a wide range of energy efficiency programmes, some of which are provided by energy suppliers and others through Government funding. The Warm Front scheme is the Government's main tool for tackling fuel poverty in private sector housing in England. Warm Front provides a grant of up to £2,700 (or £4,000 where oil central heating has been recommended) to install a range of heating and insulation measures (including central heating, loft and cavity wall insulation and draught proofing) to householders in receipt of certain benefits. In addition, the Energy Efficiency Commitment (EEC) is an obligation on energy suppliers to deliver improvements in energy efficiency in housing through the provision of energy efficiency measures and advice. Other grants or offers may be available through local authorities or utility companies. Information on where these grants are available can be obtained from the Energy Saving Trust ([www.est.org.uk](http://www.est.org.uk)).
- 2.12 Local authorities should consider an HHSRS inspection where the property is to be considered for improvements under any strategies to deal with fuel poverty, to improve energy efficiency or to increase the proportion of vulnerable people living in decent homes. Additionally, where an owner or landlord refuses a Warm Front grant or declines to reply to enquiries by scheme managers, or where a private landlord declines to co-operate with an approach from an energy supplier under EEC, the authority should treat such information from a scheme manager or energy supplier as an indication that an inspection may be necessary to establish whether anything needs to be done to protect the occupant from excess cold, or damp and mould affecting the property. Authorities should bear in mind that any action taken under the HHSRS must be in relation to a hazard. It will not be in relation, directly, to alleviating fuel poverty or improving energy efficiency, though this may be the outcome.

## Neighbourhood Renewal Assessment Process (NRA)

- 2.13 A revised Neighbourhood Renewal Assessment Guidance Manual was issued in September 2004. The NRA is a systematic approach to assessing local areas prior to regeneration or renewal. It comprises a series of steps which provide a thorough appraisal method for considering alternative courses of action. A summary of the NRA Guidance can be found on the ODPM website. The full NRA Guidance can be obtained from the ODPM publications sales centre (see address on inside cover).
- 2.14 The NRA process will continue to be recommended as a method for considering the most appropriate course of action, not only in large or small-scale assessments but also in the assessment of individual properties. Authorities should therefore ensure that their policy responses are adequate and appropriate for the range of outcomes that can arise from the NRA process. However, the introduction of IHRSR means that authorities will also need to build into their housing strategy a policy on the extent to which they will intervene to make use of their powers in Part 1 of the Act.

## Formal and informal enforcement action

- 2.15 The Housing Renewal circular emphasises the importance of private sector strategies which encourage co-operation between the local authority and the community to help keep homes in good repair. Over time, successful housing strategies should lead to a reduced need for formal enforcement action to deal with properties that fall below acceptable standards. Nonetheless, enforcement is a legitimate element of a housing renewal strategy.
- 2.16 Authorities are likely to find formal enforcement particularly important in the case of rented properties and HMOs in the private sector, where some of the worst housing conditions are to be found (though poor conditions in any part of the housing stock should not go unaddressed). Enforcement policies should take account of the circumstances and views of tenants, landlords and owners. Policies should also provide for consultation social services, tenancy support, housing needs and housing management officers, where there are vulnerable occupants, for the purposes of agreeing a suitable approach to hazards.
- 2.17 Local authorities are encouraged to adopt the Enforcement Concordat, which provides a basis for fair, practical and consistent enforcement. It is based on the principle that anyone likely to be subject to formal enforcement action should receive clear explanations of what they need to do to comply and have an opportunity to resolve difficulties before formal action is taken. The current Concordat can be found on the Cabinet Office website.

- 2.18 Where an owner or landlord agrees to take the action required by the authority it might be appropriate to wait before serving a notice unless the owner fails to start the work within a reasonable time. The authority will need to take its own view of what is reasonable in the circumstances. Where RSLs have a programme of works to make their stock decent, it would also be appropriate to liaise with the landlord over any works necessary to deal with category 1 and 2 hazards in advance of the planned improvements. An alternative approach where a landlord agrees to take remedial action quickly and the authority is confident that this will be done, would be for authorities to use the hazard awareness notice procedure. This would provide a way of recording the action, and would provide evidence should the landlord fail to carry out remedial works or carry them out inadequately. (See Part 5, "Hazard awareness notices".)
- 2.19 However, there may be circumstances in which authorities do not wish to delay in beginning formal enforcement action. This is likely to arise where the authority considers that there is a high risk to the health or safety of the occupant, and there are concerns that the owner or landlord will not co-operate. This may include cases where the HHSRS assessment reveals category 2 hazards and where the current occupants are vulnerable, or where occupancy factors (for example in hostels for special groups) appear to the authority to increase the risk.
- 2.20 Accreditation schemes or housing forums are a useful means of working informally with private sector landlords. A number of local authorities have already begun to develop closer working relationships with individual private landlords through such arrangements. They enable authorities to provide support to landlords and to raise the standards of management and property condition. Landlords will also benefit from better access to information on their obligations in relation to tenants and can receive help in dealing with problems which arise with tenants and properties.

## Decent Homes

- 2.21 The Government is committed to ensuring that every social sector tenant will be living in a decent home by 2010. It is also committed to increasing the proportion of vulnerable households living in decent homes in the private sector. The decent homes standard is a minimum standard that triggers action, not one to which dwellings are improved. The detailed definition and implementation guidance can be found on the ODPM website. A decent home is one which:
- does not contain a category 1 hazard;
  - is in a reasonable state of repair;
  - has reasonably modern facilities and services;
  - provides a reasonable degree of thermal comfort.

- 2.22 The decent home standard is not an enforcement standard, and authorities do not have powers to require owners to comply. They should however have regard to it in giving advice to owners or in considering financial assistance. As RSLs are included in the commitment to make all social housing decent by 2010, authorities should have regard to the compliance of a particular property, or the timetable within which compliance is planned, in considering the action to take. However, significant hazards should not be ignored, and occupiers should not be left for long periods in unhealthy or unsafe housing. (See also Part 5, "Decision to suspend an improvement notice or prohibition order".)

## PART 3

### Assessing Hazards

#### Housing Health and Safety Rating System (HHSRS)

- 3.1 The new hazard based rating system introduces a more flexible enforcement framework which means that authorities can now take action against a much broader range of housing conditions, from very severe to relatively minor hazards.
- 3.2 Local authorities must inspect properties to determine whether there are category 1 or 2 hazards, using the method prescribed by the Regulations. Separate guidance to authorities on the use of HHSRS to assess and rate the severity of hazards has been given by the Secretary of State under section 9(1)(a) of the Act and is referred to in this guidance as the “operating guidance”. Following the method prescribed by the Regulations and having regard to the operating guidance, local authority environmental health practitioners may assess the severity of the risks associated with any hazards in or at the premises.
- 3.3 Authorities will be expected to ensure that their officers and other surveyors contracted by them are familiar with HHSRS, the Regulations and guidance. It is for authorities themselves to ensure that their officers and agents have the skills to perform their functions efficiently on behalf of the authority. Most environmental health practitioners will have experience in risk assessment procedures. They will also be familiar with surveying techniques, will be able to identify deficiencies and appreciate their potential harmful effects on the health or safety of current or potential occupants.
- 3.4 Assessment of hazards is a two-stage process, addressing first the likelihood of an occurrence and then the range of probable harm outcomes. These two factors are combined using a standard method to give a score in respect of each hazard. HHSRS does not provide a single score for the dwelling as a whole or, in the case of multiply occupied buildings, for the building as a whole. The scores from different hazards are not intended to be aggregated. However, the presence of a number of individual category 2 hazards may be a factor in an authority's decision to take action. In specific cases, authorities will need to form a view whether a number of hazards justify the use of their powers. This needs to be approached with consistency and reflected in the authority's enforcement strategy as the action to be taken following the assessment is not determined by the score alone.
- 3.5 Assessing hazards is only the first part of the process leading to action. The score does not determine subsequent action. Action to remove a hazard is based on a three-stage consideration:
  - (a) the hazard score determined under HHSRS;
  - (b) whether the authority, in the light of the score, has a duty or discretion to act; and
  - (c) the authority's judgement as to the most appropriate means of dealing with the hazard, taking account of both potential and actual vulnerable occupants.

## PART 4

# Action Following Hazard Assessment

### Local authority duties and powers

- 4.1 The Act gives local authorities powers to intervene where they consider housing conditions to be unacceptable, on the basis of the impact of hazards on the health or safety of the most vulnerable potential occupant. Before taking formal enforcement action they should follow the principles of the Enforcement Concordat.
- 4.2 The Act puts authorities under a general duty to take appropriate action in relation to a category 1 hazard. Where they have a general duty to act, they must take the most appropriate of the following courses of action:
- serve an improvement notice in accordance with section 11;
  - make a prohibition order in accordance with section 20;
  - serve a hazard awareness notice in accordance with section 28;
  - take emergency remedial action under section 40 or make an emergency prohibition order under section 43;
  - make a demolition order under section 265 of the Housing Act 1985 as amended;
  - declare a clearance area by virtue of section 289 of the 1985 Act as amended.
- 4.3 Authorities cannot simultaneously take more than one of these actions – for example make a prohibition order and serve an improvement notice dealing with the same hazard in the same premises. The authority must therefore ensure they have thoroughly considered the most appropriate action. However, the authority can take a different course of action, or the same course again, if the action already taken has not proved satisfactory. Emergency measures are the exception. Emergency remedial action followed by an improvement notice or a prohibition order is a single course of action.
- 4.4 Authorities have similar powers to deal with category 2 hazards (see section 7 of the Act). However, emergency measures cannot be used in respect of category 2 hazards, and authorities cannot make a demolition order, or declare a clearance area in response to a category 2 hazard unless the circumstances are such as have been prescribed in regulations. No such Regulations have been made in England at the time this guidance is given.
- 4.5 It is for authorities to decide which course of action is the best in all the circumstances. See Part 5, “Enforcement options”. They should also consider whether it would be appropriate for them or other enforcement agencies to act under other legislation.

## Reasons for decision

- 4.6 Section 8 of the Act places a duty on local authorities to give a statement of reasons for their decision to take a particular course of enforcement action. This provision is designed to meet concerns that the absence of a duty on local authorities to give reasons might fail to comply with Article 6 of the European Convention on Human Rights – the right to a fair hearing.
- 4.7 Authorities must prepare a statement of their reasons for their decision and provide a copy of that statement to accompany the notices, copies of notices, and copies of orders which they are required to serve under Part 1 and relevant provisions of the 1985 Act. There is no requirement for authorities to provide a copy of their inspection report with the statement but there is nothing to prevent them from doing so if they consider that it would be helpful.
- 4.8 The requirement to give a statement extends to the declaration of a clearance area. In these cases the statement of reasons must be published as soon as possible after the passing of the resolution declaring that the area be defined as a clearance area under section 289 of the 1985 Act, and in such manner as the authority consider appropriate.

## Taking account of the current occupant and other factors influencing priority

- 4.9 The assessment of hazards under HHSRS is based on the risk to the *potential occupant who is most vulnerable to that hazard*. However, in determining what action to take, authorities should use their judgement to take account of the current occupant. This does not mean that action should always be based on the vulnerability of the current occupant. Action can be taken whether or not a person at most risk to the hazard is living in the dwelling or is a regular visitor to it. The authority should consider the turnover of tenancies. Where they consider that a wide range of occupants might potentially occupy the premises in future they may take the view that action in respect of the current condition of the premises is justified. (See also paragraph 4.14.)
- 4.10 In general, the severest risks arising from the hazards identified by the authority are likely to trigger enforcement action. This would be justified by the need to tackle poor housing conditions and would be consistent with the principle that people in their homes should not be exposed to unacceptable levels of risk. However, there could be a limited range of circumstances in which such action might be disproportionate. For example, a hazard might be significant only in relation to a category of occupant who was not in residence and would not reasonably be expected to live there in the medium to long term. Therefore, even in the case of a category 1 hazard there is a broad range of responses. Action might be necessary over a short timescale; an owner or landlord could be given longer time to make repairs; action might be suspended and changes of occupation monitored; or where it appears unlikely that vulnerable occupants will occupy the premises in the medium to long term (perhaps because they are let by an educational body to their students) it may be that hazard awareness advice is appropriate. Even in the case of student tenancies however, hazards may be a threat to young and fit people. Some student accommodation is let out during vacations. Much will depend on the extent to which students and their visitors are exposed to any hazards.

- 4.11 Authorities should consider carefully how occupancy factors and management in HMOs might compromise safety. There are also some groups of people who are not among the vulnerable groups considered by the hazard assessment but may nevertheless be at risk, for example in the case of hostels housing people with alcohol or drug dependency, or where people are housed temporarily, or in circumstances over which they have no control, or are unfamiliar with facilities. In these circumstances, once a hazard has been assessed, the authority would be justified in considering the express use of such accommodation and whether accommodation targeted at specific groups provides a safe environment.
- 4.12 For category 1 hazards an improvement notice will be an appropriate means of mitigating a hazard, where works of mitigation are practicable and the occupants are vulnerable. However, occupancy factors may suggest to the authority that some other form of action is appropriate. Occupancy factors may also suggest that action can be suspended pending a future change of circumstances.
- 4.13 As suggested above, a factor which may weigh with authorities is the control that occupiers have over their living conditions and their ability to finance and carry out remedial action. Authorities should weigh up all the circumstances when considering what action to take in respect of owner-occupiers. Early consultation on the HHSRS enforcement regime showed that a majority of authorities considered the regime should be tenure neutral. There is a risk of challenge if an authority takes action in tenanted property where it would not take similar action in owner occupied property in similar circumstances.
- 4.14 One of the factors authorities may wish to consider alongside the vulnerability of the occupant is the risk of the exclusion of vulnerable groups of people from the private rented sector. Authorities should weigh the evidence of the HHSRS assessment against the benefits of the retention of accommodation which might house vulnerable people. Gradual improvements to a property might be one solution, with care taken to minimise risk and inconvenience taken in the interim.
- 4.15 Authorities should also take some account of the views of occupants. Where there are concerns about vulnerable occupants, authorities should consult other relevant agencies to agree an appropriate response to hazards, such as social services, child protection teams, and the police.

## Multiple hazards

- 4.16 Authorities have a general power under section 7 to take enforcement action in relation to category 2 hazards. But aside from hazards which are at the upper range, in band D for example, residential property may contain a number of more modestly rated hazards which appear to create a more serious situation when looked at together. There may for example be a minor hazard to health from damp in the bathroom ceiling, plus a moderate fall hazard from a loose but not actually broken handrail on the stairs, plus a food hygiene hazard from old-fashioned preparation facilities in the kitchen. In this example, the hazards do not combine in any measurable way. However the situation in the property may be considered unsatisfactory because the occupants encounter one hazard after another as they move around. Such a property may be perceived as less safe than one with a single high-scoring hazard.

- 4.17 There may be pressure on authorities, particularly from tenants, to act against a number of moderate hazards on the grounds that they present a picture of a run-down property, even though no single hazard is evidence of a serious risk to health and safety. HHSRS is designed to deal with all hazards, no matter how serious, which arise from deficiencies in and around the home. Therefore, even minor category 2 hazards need not go un-addressed if the local authority considers that it is appropriate in all the circumstances to take action in relation to those hazards. Authorities can use their powers to deal with single or multiple category 2 hazards. More generally, authorities may also decide that they will always act on certain bands of category 2 hazards.

## Building Regulations

- 4.18 Satisfying the requirements of the current Building Regulations, the supporting Approved Documents and relevant standards and Codes of Practices will usually achieve the Ideal for the majority of hazards as described in the operating guidance. In a few cases, the Ideal might be at a higher level than Building Regulations require. In practice, the difference will be negligible and is extremely unlikely to result in enforcement action.
- 4.19 Work to mitigate hazards may need to comply with the current Building Regulations where major improvements are carried out, or windows are replaced. A house built under the Building Regulations as a single family dwelling may need additional works if it is to be used as an HMO. Where the Building Regulations will apply to the works of improvement, separate approval will need to be sought by the owner.

## Empty property

- 4.20 As the hazard score is based on the most vulnerable potential occupant, HHSRS can be used to assess an empty property. Property condition may be a factor in an authority's empty property strategy, and they may decide to target properties, in part, because of their condition so that the property can be improved at the same time as it is brought back into use for housing. But authorities will need to take care that, aside from the intention to bring housing back into use, they deal with hazards in an empty property in an appropriate way. For example, should an improvement notice be issued when a house has been unoccupied for some time and the owner has no intention of letting it? If there is no occupant there will be less risk of an accident or ill health. Should the authority intend to carry out works itself it may do so with the co-operation of the owner. Where such co-operation is not forthcoming, Part 7 of the Act contains provisions that enable authorities to gain access. (See Part 7 of this guidance, "Powers of access").
- 4.21 Aside from the authority's empty property strategy, where category 1 hazards have been identified in two units of accommodation – either in the same building or in separate premises – and one of the units is unoccupied whereas the other is occupied, the fact that the property is occupied raises the priority for intervention.

## Guidance on specific hazards

### Radiation

- 4.22 The average hazard scores provided in the operating guidance are based on the member of the vulnerable group who has had a lifetime exposure to the radon level under consideration. When deciding the most appropriate course of action, authorities should take into account, so far as they can, the likelihood of past and likely future exposure to radon of the actual occupants. Past exposure will be partly dependent on the location of the current occupant's previous homes and the length of time resident there. Maps showing radon levels in England are available from the Health Protection Agency. In considering future exposure, it should not automatically be assumed that the current occupants will move and that their radon exposure in the future will be less than in their current dwelling.

### Space and crowding

- 4.23 Authorities should take note that in assessing this hazard only the risk to the current occupiers is considered.
- 4.24 There are other statutory provisions in relation to overcrowding and the numbers permitted to occupy residential premises. The overcrowding provisions in Part 10 of the 1985 Act define overcrowding in housing accommodation other than HMOs and provide authorities with certain powers to act. An Order under section 216 of the Act may disapply or amend the standards in Part 10. It may also disapply or amend sections 139 to 144 of the Act, under which local authorities may control overcrowding in HMOs not subject to mandatory licensing. Section 216 of the Act also enables the Secretary of State to prescribe the factors that local authorities should take into account in making determinations.
- 4.25 Authorities are advised, as a first step, to assess the health and safety implications of overcrowding and to consider the appropriateness of action under Part 1 of the Act. Such action would need to be based on the evidence of the harmful impact of overcrowding in relation to the household's needs. A wide range of factors is relevant to the space and crowding hazard, including the number, sizes and layout of rooms. If authorities choose to use their Part 1 powers it will not normally be appropriate to make parallel use of the Part 10 provisions. Concerns over the provision of facilities in HMOs not subject to licensing which do not give rise to health and safety issues might still be addressed under sections 139 to 144 of the Act, should authorities consider that they should act to influence the provision of amenities in such HMOs.

### Nitrogen dioxide and carbon monoxide

- 4.26 Authorities should be aware of research published in October 2004 commissioned by the Department of Trade and Industry and the Health and Safety Executive which suggests that, under certain conditions, levels of some pollutants in the home from gas appliances may exceed outdoor air quality standards. Further information on nitrogen dioxide and carbon monoxide can be found on the website of the Committee on the Medical Effects of Air Pollutants.<sup>4</sup>

4. [www.advisorybodies.doh.gov.uk](http://www.advisorybodies.doh.gov.uk)

## **PART 5**

### **Enforcement options**

- 5.1 As noted above, the Act provides authorities with a range of enforcement options to address hazards:
- improvement notices;
  - prohibition orders;
  - hazard awareness notices;
  - emergency remedial action or emergency prohibition orders (not available for category 2 hazards);
  - demolition orders (not available for category 2 hazards);
  - clearance areas (not available for category 2 hazards).
- 5.2 The first three enforcement options are available for both category 1 and category 2 hazards. There may be circumstances when, given similar conditions in different dwellings, the authority might decide to respond differently to similar hazards or in a similar way towards different types of hazard. An authority might respond to a category 1 hazard in some dwellings by requiring works of improvement while in another by prohibiting occupation (or by suspending action). The action authorities choose to take must be the most appropriate course of action in relation to the hazard in all the circumstances.
- 5.3 Schedules 1 and 2 to the Act make provision for the service of, and appeal against, improvement notices, hazard awareness notices and prohibition orders. Schedule 3 deals with enforcement action being taken by local authorities and the recovery of their expenses. As regards service of demolition orders, see section 268 of the 1985 Act. Clearance procedures remain in sections 289-298 of the 1985 Act.

### **Decision to serve an improvement notice**

- 5.4 An improvement notice under section 11 or 12 of the Act is a possible response to a category 1 or a category 2 hazard. Under section 11, action must as a minimum remove the category 1 hazard but may extend beyond this. For example, an authority may wish to ensure that a category 1 hazard is not likely to reoccur within 12 months, or is reduced to category 2, or both. Such work would need to be reasonable in relation to the hazard and it might be unreasonable to require work which goes considerably beyond what is necessary to remove a hazard.

- 5.5 Authorities should try to ensure that any works required to mitigate a hazard are carried out to a standard that prevents building elements deteriorating. It would be a false economy to allow work which only temporarily reduces a category 1 hazard to, say, a band D category 2 hazard. It is worth bearing in mind that a duty on the authority may arise again should conditions deteriorate. Authorities should avoid taking enforcement action which results in “patch and mend” repairs.
- 5.6 An improvement notice may relate to more than one category 1 hazard. Where there are multiple hazards, including category 2 hazards, the same notice can require action to deal with both category 1 and 2 hazards.
- 5.7 An improvement notice must contain the information set out in section 13. It must specify:
- whether the notice is served under s11 or s12;
  - the nature of the hazard and the premises on which it exists;
  - the deficiency giving rise to the hazard;
  - the premises in relation to which remedial action is to be taken and the nature of that remedial action;
  - the date when the action is to be started;
  - the periods in which the action is to be completed.

The notice must also contain information about the right to appeal.

- 5.8 Authorities should take care to ensure that the requirements as to the contents of notices are complied with, not only in the interests of the person on whom the notice is served, but also to reduce the risk of appeals on the grounds that the notice has not been properly served.
- 5.9 A notice cannot require remedial works to start within 28 days of the service of the notice. Where a landlord has been asked to carry out works in more than one property, consideration should be given to staggering start times to enable the landlord to organise the work. As more than one hazard can be dealt with in the same notice, the notice can specify different deadlines for completion of the various actions required, allowing less time to tackle serious hazards and longer time for the less serious hazards. This is reasonable and appropriate where all the hazards are sufficiently serious to be the subject of an improvement notice. However, it might be more appropriate to deal with lesser hazards by a separate improvement notice or a hazard awareness notice so that they do not remain the subject of outstanding action.

- 5.10 An improvement notice must be revoked when the notice has been complied with. It may also be revoked or varied in other circumstances. The authority may need to make a judgement that, although the terms of the notice itself may not have been fully complied with, the hazard has ceased to be a category 1 hazard and they do not intend to take further action. Where a notice deals with more than one category 1 or 2 hazard, or a combination of categories of hazards, the notice can be revoked in relation to certain hazards and varied in relation to the rest. A notice can also be varied by agreement.
- 5.11 Where an improvement notice has been served an authority should consider whether it is appropriate to offer financial assistance or advice to the owner, landlord or tenant, for example on the availability of Disabled Facilities Grant. It should also consider the circumstances and wishes of tenants and owner-occupiers, including the extent to which they are able to carry out or tolerate repairs. Where in the opinion of the authority, remedial works would lead to a high probability of serious health consequences for occupants, this is a factor which might lead them to suspend the action or to issue a hazard awareness notice.
- 5.12 An appeal can be made to a residential property tribunal against an improvement notice by the person on whom the notice was served. In particular, an appeal can be made on the grounds that someone else ought to take the action or pay the costs, or that an improvement notice was not the most appropriate option. Appeals can also be made in relation to the variation or revocation of the notice. Any appeal must be made within 21 days from the service of the notice.

### **Works in default and action by authorities with owner's agreement**

- 5.13 Section 31 and Schedule 3 to the Act enable authorities to take the action required by an improvement notice itself, with or without the agreement of the person on whom the notice was served. The need to act with agreement may arise where a category 1 hazard exists and remedial action is required without undue delay, but the owner is not in a position to carry out the works or arrange for the work to be done, perhaps for financial reasons. Authorities may have to carry out works without agreement where a notice has not been complied with.
- 5.14 Where the authority takes action with the agreement of the person served with the improvement notice the works are to be taken at his expense. Where the authority takes action without agreement, it may recover expenses reasonably incurred, with interest. Such expenses may be made a charge on the property. Schedule 3 also deals with appeals against the recovery of expenses.

### **Decision to make a prohibition order**

- 5.15 A prohibition order under section 20 or 21 of the Act is a possible response to a category 1 or a category 2 hazard. It may prohibit the use of part or all of the premises for some or all purposes, or occupation by particular numbers or descriptions of people.

- 5.16 A prohibition order must contain the information set out in section 22. It must specify:
- whether the order is made under section 20 or 21;
  - the nature of the hazard and the residential premises on which it exists;
  - the deficiency giving rise to the hazard;
  - the premises in relation to which prohibitions are imposed;
  - any remedial action that would result in the order being revoked.

The notice must also contain information about the right to appeal.

- 5.17 An authority can be asked to approve a use of the premises, and that approval should not be unreasonably withheld. Any such refusal must be notified to the applicant within 7 days of the date of the decision to refuse.
- 5.18 An order becomes operative 28 days after it is made, unless the order is appealed. Copies of the order must be served on everyone who, to the authority's knowledge, is an owner, occupier, is authorised to permit occupation, or a mortgage lender in relation to the whole or part of the premises. Copies must be served within 7 days of the making of the order. The requirement in respect of occupiers may be met by fixing a copy of the order to a conspicuous part of the premises.
- 5.19 A prohibition order in relation to a category 1 hazard must be revoked if the authority is satisfied that the hazard in respect of which the order was made no longer exists. An order in respect of a category 1 hazard can also be revoked if the authority is satisfied that there are special circumstances making it appropriate to revoke the order. For example, the authority may need to take a view on whether any work to remove a hazard might lead them to reconsider their original decision. An order in relation to a category 2 hazard may be revoked if it is appropriate to do so. An authority may revoke or vary a prohibition order either in response to an application from any person on whom a copy of the order was required to be served, or on their own initiative.
- 5.20 An appeal can be made to a residential property tribunal against an order by an owner, occupier, a person authorised to permit occupation, or a mortgage lender in relation to the whole or part of the premises, on the specific ground that an order is not the most appropriate option, or on general grounds. The appeal must be made within 28 days from the date the order was made. An appeal can also be made against a decision on the revocation or variation of an order. There is a right of appeal against an authority's refusal to permit the use of the premises for any other purpose while the prohibition order is in operation, within 28 days of the date on which the decision was made.

5.21 An Order might be appropriate:

- where the conditions present a serious threat to health or safety but where remedial action is considered unreasonable or impractical for cost or other reasons. These other reasons may include cases where work cannot be carried out to remedy a serious hazard with the tenant in residence. The landlord may not be able to rehouse the tenant, though the authority may consider offering temporary or permanent alternative accommodation to the tenant to assist in progressing remedial works;
- to specify the maximum number of persons who occupy a dwelling where it is too small for the household's needs, in particular the number of bedrooms (action to deal with future occupation could be taken through the use of a suspended order);
- to control the number of persons who occupy a dwelling where there are insufficient facilities (e.g. personal washing facilities, sanitary facilities, or food preparation or cooking facilities) for the numbers in occupation (a suspended order could deal with future occupation);
- to prohibit the use of a dwelling by a specified group (until such time as improvements have been carried out), where a dwelling is hazardous to some people, but relatively safe for occupation by others. The specified group relates to the class of people for whom the risk arising from the hazard is greater than for any other group, for example, elderly people or those with young children;
- in an HMO, to prohibit the use of specified dwelling units or of common parts.

5.22 It is important to bear in mind that prohibition orders are intended to deal with health and safety matters, whereas the separate provisions dealing with non-licensed HMOs in Part 4 of the Act are available where action is required to limit the number of occupants in relation to the inadequacy of amenities. (See Part 6 of this guidance.)

5.23 When considering serving a prohibition order, the local authority should also:

- have regard to the risk of exclusion of vulnerable people from the accommodation;
- consider whether the premises are a listed building or a building protected by notice pending listing. Where improvement is not the most appropriate course of action, serving a prohibition order in respect of a listed or protected building should always be considered in preference to demolition (aside from whether consent would be forthcoming for demolition). The authority will need to balance the gain from preservation of the listed building in anticipation of future remedial works against the problems that might result in a vacant property in poor condition deteriorating further;
- take account of the position of the premises in relation to neighbouring buildings. Where improvement is not the most appropriate course of action and demolition would have an adverse effect on the stability of neighbouring buildings, prohibition of the whole or part of the building may be the only realistic option;
- irrespective of any proposals the owner may have, consider the potential alternative uses of the premises;

- take into account the existence of a conservation or renewal area and of any proposals generally for the area in which the premises are situated. Short term prohibition may be an option if the long term objective is revitalisation of the area;
- consider the effect of complete prohibition on the well being of the local community and the appearance of the locality;
- consider the availability of local accommodation for rehousing any displaced occupants. Rehousing in such cases is for the authority to consider, particularly where they may have a duty to provide accommodation. It is unrealistic to expect a landlord owning a small number of properties to re-house the tenant. Landlords have no legal responsibility to re-house their tenants as a result of action by the authority, although the tenant may be able to seek redress;
- consider whether it is appropriate to offer financial advice or assistance.

## Decision to suspend an improvement notice or prohibition order

- 5.24 Normally, an improvement notice becomes operative 21 days after service of the notice, while a prohibition order becomes operative after 28 days. However, an authority may suspend the action specified in an improvement notice or a prohibition order. The notice may specify an event that triggers the end of the suspension, such as non-compliance with an undertaking given to the authority, or a change of occupancy. Suspension may be appropriate where the hazard is not sufficiently minor to be addressed by a hazard awareness notice but the current occupiers are not members of a vulnerable group. However, in this kind of circumstance, authorities will need to judge whether a risk exists which warrants a programme of improvement over a more relaxed timescale.
- 5.25 The authority should consider the likely turnover of tenants at the property. To suspend the action of a notice may not be appropriate where there has been quick turnover in occupancy. In these circumstances the authority should consider the likelihood that a range of occupants will be housed in the property in the coming 12 months.
- 5.26 Suspension may be appropriate where enforcement can safely be postponed while a more strategic approach to area renewal is considered, including where landlords have a programme to make their stock decent. It may also be appropriate in the case of accommodation occupied during term time by students. It may be possible to time the operation of the order to coincide with the accommodation being vacated. In the case of category 1 hazards, the authority will need to consider very carefully whether a suspended notice is an appropriate way of responding.
- 5.27 Typically, an event that might trigger the re-activation of a suspended notice would be a change of occupancy, where an occupier considered less vulnerable to the hazard is replaced by one who is more vulnerable. The authority needs to know who is living in a property and consider the kind of circumstances that would be a reasonable trigger. The circumstances that will trigger the action must be specified in the notice. The notice might require an owner or landlord to notify the authority of a change of occupancy to ensure that the notice can be reviewed. The use of a suspended order is appropriate to deal with future occupation.

- 5.28 Authorities will need to establish appropriate procedures regarding notification, and the consequences of failure by owners to notify them of a change in circumstances. Authorities should ensure that the owner is clear about the circumstances that will trigger the notice or order. As failure to notify is not an offence, authorities may want in future to take immediate enforcement in relation to landlords who have failed to notify them in the past.
- 5.29 Authorities should consider any request by a tenant to suspend action, or to replace the action by the issue of a hazard awareness notice. But they should also consider the other factors given in this guidance.

## **Review of suspended improvement notices and prohibition orders**

- 5.30 The authority must review suspended notices and orders not later than 12 months after the date the notice was served or the order was made, but they can do so earlier. They should also decide the method of the review, which could be a further visit and inspection of the property, or an assessment of reliable information collected on the dwelling.

## **Emergency measures**

- 5.31 Local authorities have discretion to take emergency enforcement action against hazards which present an imminent risk of serious harm to occupiers. In such circumstances, authorities will themselves take remedial action to remove a hazard and recover reasonable expenses, or they will be able to prohibit the use of all or part of a property. The owner of a property will be able to appeal, but any appeal will not prevent the action from being taken or the prohibition being put into effect. These provisions may only be used where there is a category 1 hazard; the hazard involves an imminent risk of harm to any of the occupiers of those or other residential premises; and no management order is in force under Part 4.

## **Emergency remedial action**

- 5.32 Where the requirements of section 40(1) are fulfilled, an authority may enter the premises at any time to take emergency remedial action. The action will consist of whatever remedial action the authority considers necessary to remove an imminent risk of serious harm. Action may be taken in respect of more than one hazard in the same premises. It is a matter of judgement as to whether emergency action should be taken. The same deficiency, for example in relation to heating, is likely to be a greater cause for concern in winter than in summer.
- 5.33 The authority may apply to a Justice of the Peace for a warrant to enter premises to take emergency remedial action. A warrant may only be granted where the Justice of the Peace is satisfied there are reasonable grounds to believe the authority would not gain admission without a warrant.

5.34 The authority must serve a notice of emergency remedial action within 7 days of taking that action. The notice must specify:

- the nature of the hazard and the residential premises on which it exists;
- the deficiency giving rise to the hazard;
- the premises in relation to which emergency remedial action has been or is to be taken, and the nature of the action;
- the power under which the remedial action was or is to be taken;
- the date when the action was or is to be started.

The notice must also contain information about the right to appeal.

## Emergency prohibition orders

5.35 Where the conditions of section 43(1) are fulfilled, an authority may enter the premises at any time to make an emergency prohibition order, prohibiting the use of all or any part of the premises with immediate effect. The order must specify:

- the nature of the hazard and the residential premises on which it exists;
- the premises in relation to which prohibitions are imposed;
- any remedial action which would result in the order being revoked.

The order must also contain information about the right to appeal.

5.36 An emergency prohibition order is served on the day it is made. It will be for the authority to consider whether subsequent action by the owner gives grounds to revoke or vary the order. Once issued, an emergency prohibition order can be reviewed and varied or revoked in the same way as ordinary prohibition orders.

## Appeals against emergency measures

5.37 A person served with a notice of emergency remedial action can appeal against the action taken, whilst any person who was served with a copy of an emergency prohibition order can appeal against such an order. Appeals are made to a residential property tribunal and must be made within 28 days of the date emergency remedial action is to be started or the date an emergency prohibition order is made. The tribunal may allow late appeals if it considers there are good reasons for the delay.

## Decision to serve a hazard awareness notice

5.38 A hazard awareness notice under section 29 of the Act may be a reasonable response to a less serious hazard, where the authority wishes to draw attention to the desirability of remedial action.

- 5.39 A hazard awareness notice under section 28 is also a possible response to a category 1 hazard as long as no management order is in place under Part 4. There may be circumstances where works of improvement, or prohibition of the use of the whole or part of the premises, are not practicable or reasonable, in which case a hazard awareness notice might be appropriate.
- 5.40 A hazard awareness notice must specify:
- the nature of the hazard and the residential premises on which it exists;
  - the deficiency giving rise to the hazard;
  - the premises on which the deficiency exists;
  - the authority's reasons for deciding to serve the notice, including their reasons for deciding that serving the notice is the most appropriate course of action;
  - the details of any remedial action which the authority considers would be practicable and appropriate to take.
- 5.41 This procedure does not require further action by the person served with the notice, though the authority should consider monitoring any hazard awareness notices that it serves.
- 5.42 There is no provision for an appeal against a hazard awareness notice and there is no requirement to register these notices as a local land charge. The advisory nature of the procedure, with no follow-up to determine whether the advice has been acted upon, makes an appeal process or a land charge inappropriate. If an authority considers that the hazard is sufficiently serious to require a local land charge, it should not adopt this procedure.
- 5.43 Authorities may wish to use the hazard awareness notice procedure without issuing an improvement notice where an owner or landlord has agreed to take remedial action and the authority is confident the work will be done in reasonable time. This might be a way of recording and monitoring the action and would provide evidence should the remedial works not be carried out, or be carried out inadequately. The service of a hazard awareness notice does not prevent further formal action, should an unacceptable hazard remain.

## Demolition orders

- 5.44 Demolition orders remain available under Part 9 of the 1985 Act as amended. They are a possible response to a category 1 hazard where this is the appropriate course of action, unless the premises are a listed building. In deciding whether to make a demolition order an authority should:
- take into account the availability of local accommodation for rehousing the 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, the suitability of the area for continued residential occupation and the impact of a cleared site on the appearance and character of the neighbourhood.

5.45 The authority must serve a copy of the order on every person who, to their knowledge is an owner or occupier, is authorised to permit occupation or is a mortgage lender in relation to the whole or part of the premises, within 7 days from the date the order was made. The requirement in relation to occupiers will be met if a copy has been fixed to a conspicuous part of the premises. An aggrieved person may appeal against a demolition order to the residential property tribunal within 21 days from the service of the order.

5.46 It is possible to substitute a demolition order with a prohibition order if proposals are submitted for the use of the premises other than for human habitation.

## Clearance areas

5.47 The provisions of Part 9 of the 1985 Act are retained in respect of clearance areas, with changes to align them with the provisions of the new legislation. An authority 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* that these buildings are dangerous or harmful to the health or safety of the inhabitants as a result of their bad arrangement or the narrowness or bad arrangement of the streets); and any other buildings in the area are dangerous or harmful to the health of the inhabitants. In a building containing flats, two or more of those flats must contain a category 1 hazard before a clearance area can be declared.

5.48 A local authority should consider the desirability of clearance in the context of proposals for the wider neighbourhood of which the dwelling forms part. In deciding whether to declare the area in which hazardous dwellings are situated to be a clearance area, a local authority should have regard to:

- the likely long-term demand for residential accommodation;
- the degree of concentration of dwellings containing serious and intractable hazards within the area;
- the density of the buildings and street pattern around which they are arranged;
- the overall availability of housing accommodation in the wider neighbourhood in relation to housing needs and demands;
- the proportion of dwellings free of hazards and other, non-residential, premises in sound condition which would also need to be cleared to arrive at a suitable site;
- whether it would be necessary to acquire land surrounding or adjoining the proposed clearance area; and whether added land can be acquired by agreement with the owners;

- the existence of any listed buildings protected by notice pending listing – listed and protected buildings should only be included in a clearance area in exceptional circumstances and only when building consent has been given;
- the results of statutory consultations;
- the arrangements necessary for rehousing the displaced occupants and the extent to which occupants are satisfied with those arrangements;
- the impact of clearance on, and the scope for relocating, commercial premises;
- the suitability of the proposed after-use(s) of the site having regard to its shape and size, the needs of the wider neighbourhood and the socio-economic benefits which the after-use(s) would bring, the degree of support by the local residents and the extent to which such used would attract private investment into the area.

5.49 Clearance may be a feature of plans to redevelop areas where there is low demand for housing or other reasons for development. Where the reasons for redevelopment are not primarily related to housing condition, the powers in the Act will not be the most appropriate. Local authorities may therefore have to make a compelling case that clearance is necessary for the 'well being' of residents. As an alternative to declaring a clearance area, an authority could consider use of compulsory purchase powers.

## **Powers to charge for enforcement action**

5.50 The Act enables local authorities to make a reasonable charge as a means of recovering certain expenses incurred in serving an improvement notice, making a prohibition order, serving a hazard awareness notice, taking emergency remedial action, making an emergency prohibition order, or making a demolition order. The expenses are in connection with the inspection of the premises, the subsequent consideration of any action to be taken and the service of notices. Authorities will be able to charge for each course of action including, where emergency remedial action is taken, for any subsequent notices.

5.51 This provision does not relate to the cost of any remedial action taken by the authority either with or without agreement. These are separate charges covered by section 31 and Schedule 3 to the Act.

5.52 The Act provides for the appropriate national authority to set a maximum charge to be made by authorities. No such maximum has been set in England and the Secretary of State has no current plans to do so. Authorities are reminded that they should charge only the reasonable costs of enforcement. In deciding whether to exercise their powers to make a charge and the level of any charge, authorities should take account of the personal circumstances of the person or persons against whom the enforcement action is being taken. The degree to which authorities consider personal circumstances is at their discretion, having regard to the resources available to them. Section 50 of the Act sets out the powers available to a local authority for recovering any charge they make under their section 49 powers.

## PART 6

### Application of HHSRS in HMOs

#### Link with licensing

- 6.1 The HMO licensing regime provides local authorities with procedures to assess the fitness of a person to be a licence-holder, potential management arrangements of the premises and suitability of the property for the number of occupants, including the provision of relevant and adequate equipment and facilities at the property. An assessment under HHSRS is *not* part of the licensing procedure.
- 6.2 Under section 55 of the Act, authorities are required to satisfy themselves as soon as practicable and not later than 5 years after an application for a licence has been received that there are no Part 1 functions that ought to be exercised by them in relation to premises in respect of which the licensing application is made. It is not intended that authorities should always carry out a comprehensive inspection in every HMO. But the licensing process may bring to light properties which the authority wants to prioritise in order to mitigate possible hazards. It would be for the authority to decide on the extent to which an inspection of the dwelling is necessary, subject to section 4 of the Act. (See Part 2, "Identifying the need for action".)
- 6.3 Where all matters in relation to the application for a licence listed in section 64(3) of the Act are satisfied, the authority should not unreasonably delay the grant of a licence pending its consideration of its duties or powers under Part 1. (See however, paragraphs 6.4 and 6.5.) Any works necessary to mitigate a hazard should follow the procedures set out in Part 1. Although it is possible to attach conditions to a licence requiring such works to be carried out, section 67(4) provides that authorities should proceed on the basis that generally they should exercise Part 1 functions to identify, remove or reduce category 1 or 2 hazards in the house in preference to imposing licence conditions.
- 6.4 Separate action under HHSRS may restrict the number of occupants under a prohibition order, for example because of fire hazard. Licensing decisions in relation to the maximum number of occupants who may occupy the HMO will not always be influenced by a prohibition under Part 1. However, where the authority considers that the condition of an HMO is such that it might take action under Part 1 to prohibit the use of an HMO or restrict occupancy, it would be justified in considering this process a priority and proceeding with any licence application subsequently.
- 6.5 Management regulations under section 234 of the Act impose duties on landlords and managers of HMOs (whether or not subject to licensing). Though there are no notice serving powers under section 234, the authority can prosecute landlords for breach of the regulations. In considering such action, authorities should consider whether they should also or alternatively take action in relation to such facilities by exercising their powers under Part 1.

## Factors to consider in HMOs

- 6.6 HHSRS covers the whole range of hazards stemming from physical factors likely to be experienced in all types of housing, including HMOs. This type of accommodation has long been regarded as being of higher risk to health and safety than dwellings built for and containing single households. It is essential to prioritise intervention, and resources, wherever these higher risks are found. In HMOs, hazards are assessed for each individual unit of accommodation and the shared facilities and common parts attributable to that unit. Each assessment will reflect the contribution of conditions in the common parts. The same enforcement tools will be appropriate to HMOs as to other sorts of housing. However, additional guidance is contained in the operating guidance on the application of HHSRS in HMOs.
- 6.7 Where, following the issue of a statutory notice or order, an HMO reverts to single occupancy, the authority should consider whether a different course of action is now more appropriate. Following a change of circumstances the authority will need to consider whether the impact of any hazard has diminished, and whether the same or different, or any, action is required. The authority should also consider whether any notices or orders should be revoked or varied.

## Targeting action in HMOs

- 6.8 Hazards in HMOs are assessed in relation to individual dwelling units – for the purposes of the Act these will be “dwellings”. Deficiencies are likely to arise in shared facilities and common parts as well as in the living units and the Act enables action to be taken in relation to any part of the building and for notices to be served on a range of people where there is joint or separate responsibility.
- 6.9 A deficiency in shared facilities or common parts giving rise to a hazard can be dealt with in a notice served on the person responsible for those parts of the building. A deficiency relating to the structure can normally be dealt with in a notice served on the person who owns the building. A notice can always be served on a superior landlord if this is where ultimate responsibility lies.
- 6.10 It may occasionally be necessary to make a choice in dealing with hazards. Where there is a category 1 hazard and a category 2 hazard arising from the same deficiencies, the category 1 hazard alone need be dealt with.
- 6.11 Authorities cannot simultaneously take more than one form of action – for example make a prohibition order and serve an improvement notice – dealing with the same hazard in the same premises. However, where the same deficiencies in an HMO give rise to more than one hazard, each hazard can be dealt with at the same time and by way of different enforcement action. Works to the units or common parts could form part of an overall package by combining the hazards on the same notice, where appropriate. Improvement notices could include category 1 and 2 hazards. They must however be served on the appropriate person(s) and this may determine the number of notices served in relation to the HMO.

## Consultation with fire and rescue authorities

- 6.12 The Regulatory Reform (Fire Safety) Order 2005 (SI 2005 No. 1541) will rationalise existing fire safety legislation, including the Fire Precautions Act 1971, and bring it into one regime. Guidance will be issued under the Order.
- 6.13 Section 10 of the Act requires local housing authorities to consult the local fire and rescue authority before taking enforcement action in respect of a prescribed fire hazard in an HMO or in the common parts of a building containing flats. The form of the consultation is not prescribed. Where emergency measures are to be taken in relation to a prescribed fire hazard the housing authority must consult the fire and rescue authority before taking those measures as far as is practicable.
- 6.14 Effective communication between the two enforcement agencies is essential for the successful operation of both Part 1 functions and Part 2 licensing functions. Where an inspection or assessment of the property shows the occupants to be at a high risk, there should be an agreed procedure in place for informing the fire and rescue authority of that risk so that the fire and rescue authority may develop appropriate intervention tactics for dealing with an incident at the property.
- 6.15 It is important therefore that protocols are established between fire and rescue authorities and local authorities to set out good working practice and create failsafe lines of communication between them in relation to Part 1.
- 6.16 In general, protocols should cover the agreed method of consultation and the time allowed for a response and should agree other administrative procedures so that it is not necessary in all cases for the authorities to make joint visits to premises. Agreements about this might be based on their respective knowledge of properties in the area.
- 6.17 It is not expected that consultation will re-examine the HHSRS assessment of the hazard or attempt to apply considerations that fall outside the scope of the HHSRS assessment and enforcement guidance. But it is important for housing authorities to liaise closely with the fire and rescue authority in respect of HMOs, and in particular over any action that needs to be taken, or conditions that have to be met, under any Part of the Act. The views of the fire and rescue authority should include the proposed remedial action and whether it is sufficient in providing an adequate means to fight fire and escape in case of fire. The housing authority is expected to take a holistic approach to the property, taking into account matters such as security and overcrowding. The final decision to serve a notice or make an order under housing legislation lies with the housing authority, and it may have to defend its decision before a residential property tribunal.
- 6.18 The extent to which consultation should include the assessment of fire risks in properties which are not subject to proposed enforcement action is a matter for local agreements between local housing authorities and fire and rescue authorities.
- 6.19 In considering the form of local protocols, authorities may wish to consider as a model any existing protocols that may have been agreed at a national or regional level between housing and building control bodies and fire and rescue authorities or other professional bodies.

## **PART 7**

### **Other issues**

#### **Powers of access**

- 7.1 Section 239 of the Act gives a local authority power of entry to properties in pursuance of its duties under Part 1 of the Act when certain conditions are met. In particular, this enables authorities, where it is necessary to carry out an inspection under section 4, to see whether a category 1 or 2 hazard exists.
- 7.2 Representatives of the authority must have written authorisation which sets out the purpose for which the entry is authorised and must give at least 24 hours notice to the owner or occupier of the premises they intend to enter. Authorisation must also be given by the appropriate officer of the authority. Section 243 requires that the authorisation is given by a deputy chief officer within the meaning of section 2 of the Local Government and Housing Act 1989 whose duties consist of or include the exercise of functions relevant to the authorisation. Permission under this section does not include a power to use force to obtain entry. Section 240 enables a justice of the peace to issue a warrant for admission to premises. This includes power to enter by force if necessary. This power is only applicable, however, when entry under section 239 has been refused; or the property is empty and immediate access is necessary; or prior warning of entry is likely to negate the purpose of access.
- 7.3 The powers of entry allow authorities to leave recording equipment, but such equipment must be relevant to their enforcement powers, for example to record levels of radon or other harmful gases or particles. The equipment may need to be left in working order and collected after a period of time. The authority needs reasonable grounds to leave the recording equipment.
- 7.4 Local authorities also have powers in section 235 to require the production of documents reasonably required to enable them to carry their enforcement functions.

#### **Use of premises for temporary housing accommodation**

- 7.5 Instead of making a prohibition order or a demolition order, the authority can make a determination under section 300(1) or (2) of the 1985 Act (as amended by paragraph 20 of Schedule 15 to the Act), enabling it to purchase the property if it is capable of providing adequate accommodation for temporary housing use. Authorities should not consider a property to be adequate for temporary housing if it contains category 1 hazards in respect of which they would find it impracticable to carry out remedial work to make conditions acceptable for potential occupants particularly vulnerable to the hazards. Following a determination the property can then be bought by agreement with the owner, or through compulsory purchase. This power is not available in relation to a listed building. Aside from this power, authorities can seek to acquire land for housing purposes under section 17 of the 1985 Act.

- 7.6 Under section 301 of the 1985 Act an authority may also retain property acquired for clearance for temporary housing use where it can be improved to an adequate standard. Again, authorities should not consider a property to be adequate if it contains category 1 hazards in respect of which they would find it impracticable to carry out remedial work to make conditions acceptable for potential occupants particularly vulnerable to the hazards.
- 7.7 For further guidance on housing CPOs see the current guidance issued by the ODPM.<sup>5</sup>

## Disrepair

- 7.8 Disrepair is likely to contribute to a number of hazards that can be assessed under HHSRS. These include hazards from cold, falls, fire, damp and mould growth, electrical hazards, entry by intruders, and structural failure. The HHSRS operating guidance illustrates the kinds of disrepair that can give rise to these hazards and against which authorities will have either a duty or a discretionary power to take action according to their severity.
- 7.9 Authorities should consider whether minor disrepair, and conditions giving rise to discomfort, is a priority, given the spread of hazards they may encounter in the local stock. Authorities can consider the use of financial assistance and other non-enforcement tools to encourage owners to deal with minor disrepair.
- 7.10 Authorities may wish to ensure that hazards are dealt with where they contain deficiencies to building elements which might deteriorate. Such action might ensure that the deficiencies which gave rise to hazards do not recur over at least the next 12 months. Intervention may therefore be justified in the case of a hazard in a low band where deterioration is likely to occur and result subsequently in a hazard in a higher band.

## Mortgage lenders in possession

- 7.11 Where a local authority takes enforcement action the notice requires the person on whom it is served – normally the owner or landlord – to take the remedial action specified. The Act makes provision for a change in circumstance so that the original recipient of a notice is no longer responsible for complying with it. This is likely to arise where an owner or landlord has sold the property or where a mortgage lender has taken possession of it. In such cases, the action required by a notice can be enforced on the successor. The exception is where the person on whom the notice was originally served has already incurred a liability – e.g. he has been fined for non-compliance or obstruction – he retains that liability despite the subsequent transfer of responsibility.
- 7.12 Liability should not take new owners unawares, as improvement notices and prohibition orders are land charges and will be revealed by the local search. But in these and in other cases the local authority has discretion to vary or revoke a notice and may very well do so where it considers that it is safe to take no further action, for example in an unoccupied property. Where a house is in an unsafe condition – though empty, there may be dangers to passers-by or to visitors – the authority may still require the new owners, including a mortgage lender, to make the house safe.

5. Compulsory Purchase Orders, ODPM Circular 02/2003, February 2003

- 7.13 In most cases a mortgage lender is likely to secure the property following repossession and may carry out checks on its condition to ensure that it is safe eg slates are not likely to fall off and endanger passers-by. Nevertheless, authorities are advised to discuss the situation with a mortgage lender who has taken possession of a property before continuing with enforcement action.

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