

## **ANNEX A    Statutory duties**

### **PLEASE NOTE:**

**All nuisances arising under the following legislation  
will be dealt with by Worcestershire Regulatory Services (WRS)**

**<http://www.worcsregservices.gov.uk/default.aspx>**

#### **Public Health Acts 1936 and 1961**

Section 83 Public Health Act 1936, amended by section 35 Public Health Act 1961 require the Council to serve a Notice on the owner or occupier of any premises that are:

- In such a filthy or unwholesome condition as to be prejudicial to health; or are verminous.
- If the person on whom the Notice is served does not comply with it's requirements, the Council have the power to carry out the necessary works ourselves, and recover the costs incurred in doing so.

#### **Building Act 1984**

Section 59 – Drainage of a building. We will only enforce this section of the Act as it applies to above ground drainage. If we find that satisfactory provisions for above ground drainage of a (residential) building has not been made, we have a duty to serve Notice on the owner of the building to ensure satisfactory provisions are made.

Section 76 – Defective premises. If it appears to the Council that any (residential) premises are prejudicial to health or a nuisance, and the procedure under section 80 Environmental Protection Act 1990 (see below) will cause unreasonable delay in remedying the problem, the Council have the power to take action. This action includes service of a works Notice with a 9 day limit, followed by works in default if the Notice is not complied with.

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

Private Sector Housing Officers can use sections 79 and 80 of the Act to tackle premises that are deemed to be a nuisance/prejudicial to health. Prejudicial to health is defined as injurious or likely to cause injury or health. This typically includes properties that are damp or have mould growth; these can have an affect on people's health. A nuisance is taken to be anything that interferes with the use and enjoyment of a neighbouring property or which materially affects the comfort and quality of life of the public at large. An examples of nuisances include defective guttering serving the roof of one property allowing rain to penetrate through and affect the neighbouring property.

Officers can serve a Notice under section 80 of the Act requiring the abatement of the statutory nuisance within certain time limits. Failure to comply with such as Notice is a criminal offence, with a maximum penalty of £5000.

## **The Council's statutory responsibilities**

The Housing team is responsible for ensuring that the Council performs its statutory duties under the following legislation:

### **Local Government (Miscellaneous Provisions) Acts 1976, 1982**

Section 16 Local Government (Miscellaneous Provisions) Act 1976 gives the Council the power to issue 'Requisition for Information Notices'. When the Council need to obtain information about a property in respect of which we are proposing to take enforcement action, we will serve a requisition for information Notice on the occupier and/or any person who has a legal interest in it, or who directly or indirectly receives rent, or is authorised to manage or to arrange for its letting.

Section 29 of the Local Government (Miscellaneous Provisions) Act 1982 gives the Council power to require the owner to board up a property to prevent unauthorised access, and to carry out the work in default of the owner if they fail to comply or cannot be found.

### **Housing Act 2004**

#### **Requirement for documentation to be produced**

The Council are able to use their powers under section 235 Housing Act 2004 to require documentation from any relevant person, to assist the Council with any investigation or function under Parts 1 to 4 Housing Act 2004. Failure to comply with a Notice under section 235 Housing Act 2004 is a criminal offence, with a maximum fine of £5000.

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

Part 1 of the Act refers to the application and enforcement of the HHSRS, which can be applied to all private sector housing in the Borough. The purpose of the HHSRS is to establish whether conditions in a property are such that they pose a hazard to the occupier(s). There are 29 hazards in total that can be assessed as necessary, and depending on the outcome of any assessment, the hazard will be classified as either Category 1 or Category 2. Category 1 hazards are considered to be the most serious.

Enforcement options which may be used to remove or reduce any hazards identified during an inspection:

- Improvement Notices (and to Suspend this Notice)
- Prohibition Orders (and to Suspend this Order)
- Hazard Awareness Notices.

**Please note:** Not complying with a hazard awareness notice is **not** a criminal offence; therefore there is no right of appeal for this Notice.

The following apply to Category 1 hazards only:

- Emergency Prohibition Orders [section 43, Housing Act 2004]
- Emergency Remedial Action [section 40, Housing Act 2004]
- Demolition Order [section 265(3) and (4) Housing Act 1985].
- Slum Clearance Declaration [section 289 (2ZB) Housing Act 1985].

### *Appeals Procedure*

An owner or agent who has had an improvement notice, prohibition order or emergency notice served on him by the Council can appeal against the notice, normally within 28 days, although the time period for an appeal to an improvement notice is 21 days. The Residential Property Tribunal hears appeals. The main grounds for appeal are:

- One or more other persons are responsible for carrying out work at the property;
- The enforcement action taken by the Council was not the best course of action

### **Houses in Multiple Occupation (HMOs)**

Sections 254 to 257 Housing Act 2004 provide several definitions of the term 'House in multiple occupation' (HMO), ranging from shared houses to buildings that have been converted into flats.

#### *HMO Declarations*

Where there may be a dispute or confusion over whether a building is an HMO, if the Council are satisfied that the building is an HMO, it will issue a declaration which puts beyond doubt that such a building is to be regarded as an HMO (Section 255 Housing Act 2004; Part 7).

Recipients of the notice can appeal to the Residential Property Tribunal.

#### *Management of HMOs*

The Management of Houses in Multiple Occupation (England) Order 2006 applies to all HMOs except those which are buildings that have been converted entirely into self-contained flats. The Regulations impose duties on managers of HMOs in connection to their obligations to maintain the amenities and utilities within the property in good working order. Failure to comply with any aspect of the Order is an offence, punishable by a maximum fine of £5000 per offence. It is a criminal offence to operate an unlicensed HMO, with a maximum penalty of £20,000.

#### *Temporary Exemption Notice*

The Council may serve a temporary exemption notice (section 62 Housing Act 2004) where a person who is required to be licensed notifies the Council that they propose to take steps to ensure the property is no longer required to be licensed. The notice is served on this person and exempts that property from being licensed for a period of

three months. In exceptional circumstances the Council may serve a second temporary exemption notice that lasts a further three months. No further notice can be served after the expiry of the second Notice.

The Council can refuse to serve a temporary exemption notice which allows a right of appeal to the RPT. Such circumstances where the Council may refuse to serve a temporary exemption notice is where the owner has failed to supply clear evidence showing that they are taking steps to exempt the HMO from the criteria for licensing.

#### *Interim and Final Management Orders Part 4 Housing Act 2004*

The council are under a duty to make a management order in respect of a house if:

- It is an HMO which is required to be licensed under the aforementioned schemes and it not, and there is no reasonable prospect of the houses being licensed; or
- It is necessary to protect the health, safety or welfare of persons occupying the house, or persons occupying or having an estate or interest in any premises in the vicinity.

The council have to apply to the Residential Property Tribunal for the Order. If the Order is granted, the council has right to possession of the property, and have the right to do anything a person having an estate or interest in the house would be entitled to do. The Order is a local land charge.

#### *Rent Repayment Orders:*

A Rent Repayment Order (RRO) is a financial penalty imposed upon a landlord by the RPT when he has failed to obtain a licence for an HMO. The Order requires the appropriate person (usually the landlord) to pay the applicant (usually the tenant) such an amount paid in respect of rent for a period of up to 12 months whilst the HMO was unlicensed. This also applies to any housing benefit payments made during the unlicensed period (up to a maximum of 12 months).

### **Empty Properties**

#### *Boarding up of empty dwellings*

See Local Government (Miscellaneous Provisions) Act above

#### *Enforced sale*

Where the council have carried out works on an empty property, the owner of the property will normally be billed for the costs of the works. If the owner cannot or will not pay the council for the work it has done, the Law of Property Act 1925 states that a local authority with a debt on a property can, under certain circumstances, register the debt as a first charge with the Land Registry. The Council can then sell the property at a public auction and deduct its costs and charges from the sale price. This is called the 'enforced sales' procedure. It is a council power; we do not need to get permission from a court.

### *Empty Dwelling Management Orders Part 4 Housing Act 2004*

If a property has been empty for at least six months, and the owner has not responded to requests from the Council to repair and re-occupy the property, the Council can apply to the RPT for an Empty Dwelling Management Order. This Order allows the Council to take over the property, carry out any repair work that may be necessary, and then and rent it out to tenants. The owner of the property will only get any income that remains once the Council has recovered its costs in bringing the property up to a decent standard, and as well as its costs in managing the property.

### **Discretionary Assistance**

Housing Assistance in the form of a grant or a loan may be offered, in accordance with “Discretionary Housing Assistance Policy” (see Annex B). Loans or grants may be made available up to a maximum of £5,000 subject to the availability of funding.

### **Overcrowding**

Part X of the 1985 Act will be used to assess overcrowding in all single occupancy dwellings.

**Overcrowding in HMOs** will be tackled using the requirements of the Act to assess the numbers suitable for the HMO as a whole and for each room. HMO’s that do not require a licence will have their numbers controlled by service of notice under sections 139-144 of the Act. For those HMOs which hold a licence the number of persons allowed to occupy the property will be controlled by the conditions imposed on the licence.

### **Mobile Homes and Caravan Site Licensing**

The framework for developing local policies is set out in the relevant legislation:

#### **Caravan Sites & Control of Development Act 1960**

#### **Caravan Sites Act 1968**

#### **Mobile Homes Acts 1983 & 2013**

The Council has adopted a Mobile Homes and Caravan Site Licensing Policy which includes provision for a caravan site licensing procedure, enforcement of the relevant legislation and model standards, and implementation of prescribed fees and charges in respect of site licensing and inspection.

Site owners are encouraged to request any necessary transfers or changes to site licences before the charging regime comes into effect on 6 April 2016.

## **Energy Act 2015**

Section 150(1) of the Energy Act 2013 provides that the Secretary of State may by regulations impose duties on a relevant landlord of residential premises, in England, to ensure that the premises, when occupied under a tenancy, are equipped with smoke and carbon monoxide alarms. Section 150(3)(a) enables the Secretary of State to provide for the enforcement of any duty imposed by the regulations.

**Smoke and Carbon Monoxide Alarm (England) Regulations 2015** came into effect on 1 October 2015 and relevant powers have been delegated to the Head of Planning & Housing.

These Regulations require landlords in the private rented sector in England to ensure that a smoke alarm is equipped on every storey of their rented dwelling when occupied under a tenancy, and that a carbon monoxide alarm is equipped in any room which contains a solid fuel burning combustion appliance.

They also require landlords to ensure that such alarms are in proper working order at the start of a new tenancy. In addition, the Regulations amend the conditions which must be included in a licence under Part 2 or 3 of the Housing Act 2004 in respect of smoke and carbon monoxide alarms.

When it becomes aware of a privately rented property which fails to comply with the requirements of the Act the Local Authority must serve a Remedial Notice upon the landlord. If a landlord fails to comply with a Remedial Notice the Local Authority must within 28 days of expiry of the Remedial Notice arrange for an authorised person to carry out remedial action (after giving 48 hour notice to the occupier).

If a private landlord has failed to comply with a Remedial Notice the Council will require the landlord to pay a Penalty Charge; this must not exceed £5,000. The level of charge payable will be determined by the Council with reference to its adopted Statement of Principles, which will be published on its website.