



## Private Sector Housing Enforcement Policy 2014

**RENTAL APPLICATION**

Personal Information

Post

City

**TENANCY AGREEMENT**

**PARTIES AND PREMISES**

1. THE LANDLORD IS:  
LANDLORD ADDRESS:  
LANDLORD TEL. NO.:
2. THE TENANT IS:
3. THE ACCOMMODATION LET IS:

**COMMENCEMENT & DURATION:**

4. The tenancy will commence on:  
and will end on:  
if the agreement is not brought to end by either party on the above date, it will continue thereafter on a month-to-month basis unless terminated by either party giving not less than 2 months notice to the other party.

**RENT AND OTHER CHARGES**

5. RENT:  
The rent is:  
paid at date of entry or before and subsequent payments are due and must be paid on or before the date specified hereafter. The landlord may increase the rent after the initial and date specified at 4 above. The tenant will be given a minimum of 1 month's notice in writing of any change.

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# PRIVATE SECTOR HOUSING ENFORCEMENT POLICY

## 1. Introduction

This **Private Sector Housing Enforcement Policy** relates specifically to the enforcement activity of the Private Sector Housing Team. This enforcement activity includes:

- Work to address health or safety hazards in dwellings
- Regulation of houses in multiple occupation
- Work to bring empty homes back into use
- Work with landlords to promote good standards in rented dwellings
- Work to address public health problems associated with premises that cause statutory nuisance

All investigations into possible breaches of legislation will follow best professional practice and the requirements of:

- The Human Rights Act 1998
- The Regulation of Investigatory Powers Act 2000
- The Police and Criminal Evidence Act 1984 – Codes of Practice
- The Criminal Procedures & Investigations Act
- The Code for Crown Prosecution
- The Statutory Code of Practice for Regulators

In addition the Council will have regard to current guidance on the particular law being considered. This guidance includes:

- Government guidance, such as the Housing Health and Safety Rating System Operating and Enforcement Guidance
- Decisions of previous courts that form case law and decisions of the Residential Property Tribunals that may provide direction on principles of enforcement
- Guidance produced by other national bodies, such as LACORS (the Local Authorities Co-ordinators of Regulatory Services)

## 2. General principles of enforcement

The **Statutory Code of Practice for Regulators** sets out some general principles that the Council must keep in mind when considering any enforcement action:

### **Economic Progress**

“Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.”

The Council recognises that its housing enforcement action may have an economic impact on tenants and landlords and that intervention must therefore be clearly justified.

### **Risk Assessment**

“Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that needs them most. “

The Council uses intelligence, such as the Private Sector House Condition Survey or complaints about poor housing standards, to target resources where they are needed most.

### **Advice and Guidance**

“Regulators should provide authoritative, accessible advice easily and cheaply.”

The Council actively promotes membership of the Decent and Safe Homes (DASH) Landlord Accreditation scheme which provides independent advice and training for private sector landlords.

### **Inspections and other visits**

“No inspection should take place without a reason.”

The Council will focus more resources where there is reason to believe that there may be significant breaches of law and a higher likelihood of non-compliance. This may include instances where a tenant has complained about circumstances that could present a serious risk to their safety or health, or proactive work in areas where intelligence suggests a concentration of poor standards.

### **Information requirements**

“Business should not have to give unnecessary information or give the same piece of information twice.”

The Council usually only requires information from landlords or their agents when this is necessary to ensure the safety of their tenants or to address a serious public health issue.

### 3. Specific principles of enforcement

The Government's **Enforcement Concordat** sets out the principles that apply to each case that the Council deals with:

#### Setting clear standards

The Private Sector Housing Team will provide clear information about the standards it enforces.

Written information provided by the team will:

- Provide clear information about the standard expected.
- Explain any deficiencies identified and the action necessary to achieve the standard required.
- Distinguish between legal requirements and good practice.
- Include details of how to request further information or advice.
- Be timely.

In some circumstances the severity and likelihood of a problem may mean that enforcement action to protect public health takes priority over the explanation of standards.

#### Providing clear and open information

Openness is important to maintain public confidence in the Council's ability to regulate. It means helping those regulated and others to understand what is expected of them and what they should expect from the Council. It also means making clear why an Officer has taken, or intends to take, enforcement action.

The Private Sector Housing Team will continue to train its staff and to develop its procedures to ensure that:

- where remedial action is required, it is clearly explained (in writing, if required) why the action is necessary and when it must be carried out; a distinction being made between best practice advice and legal requirements.
- Wherever appropriate an informal approach will be used in the first instance.
- where urgent action is required, a written explanation of the reasons is provided as soon as practicable after the event.
- written explanation is given of any right of appeal relating to the formal enforcement action at the time the action is taken.

## **Helping businesses by advising on and assisting with compliance**

The Private Sector Housing Team regards prevention as better than cure and therefore offers information and advice to those it regulates. The team aim to secure co-operation, thus avoiding bureaucracy or excessive cost.

In recognition that consumers of the Private Sector Housing function have differing needs the team will:

- Discuss compliance failures or problems with anyone experiencing difficulties.
- Provide information in languages other than English where required.
- Provide information in large print or audio format where required.
- Arrange appointments at times convenient to people using the service.
- Comply with the Council's Customer Care Strategy.
- Perform inspections on an advisory basis.
- Supply literature and information.

## **Having a clear complaints procedure**

The team hope that by carrying out enforcement activity in accordance with the principles in sections 2 and 3 above, complaints will be avoided.

The Council has a formal procedure for registering complaints. If owners/tenants or members of the public indicate that they wish to complain about any aspect of enforcement work, officers will ensure that the mechanism for doing so is clearly explained.

Anyone served with a notice or order under the Housing Act 2004 has right to appeal to the Residential Property Tribunal. Appeal provisions also exist for most other legislation enforced by the Private Sector Housing Team.

## **Enforcement that is proportionate to the risks involved**

The enforcement action taken by the Private Sector Housing Team will be proportionate to the risks involved and to the seriousness of any breach of the law.

The Private Sector Housing Team's first enforcement priority is to prevent harm to people living in the borough. In carrying out enforcement the human rights of people living in a neighbourhood may take precedence over the rights of an individual who is putting others at risk.

## **Ensuring consistent enforcement practice**

Consistency means taking a similar approach in similar circumstances to achieve similar ends. The Private Sector Housing Team aims to achieve consistency in its advice, the response to service requests, the use of powers and decisions on whether to prosecute.



Officers need to take account of many variables such as the likelihood and severity of a problem, the attitude and actions of persons involved and the history of previous incidents or breaches. Decisions on enforcement action are usually a matter of professional judgement based on available guidance. Discussion of formal action with a senior officer or Head of Service ensures consistency of approach.

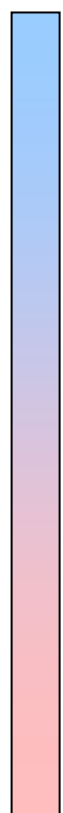
## 4. Equality

The Private Sector Housing Team is committed to exercising its enforcement duties and powers fairly and consistently regardless of the personal or collective characteristics of the people involved.

In many instances, enforcement helps to address inequality by improving the housing conditions of people that are disadvantaged.

## 5. Enforcement Options

When the Council investigates a possible breach of housing law the actions available include:

- 
- No action
  - Verbal advice or information
  - Written advice or information
  - Recommendations set out in a Property Improvement Plan
  - A letter requesting that action is taken
  - A legal notice advising that action is needed
  - A legal notice requiring specific action to be taken within a set time limit
  - An order that prohibits all or part of a property being occupied
  - A suspended notice or order that comes into force at a later date
  - Emergency action to resolve a serious situation
  - Work in default of a legal notice or order
  - Suspending or revoking a license
  - Formal caution
  - Prosecution

The Council aims to secure compliance with the statutory requirements and to promote best practice. To achieve these aims the Council will usually take more informal action nearer the top of this list in the first instance, unless there are particular reasons why more serious action is necessary.

## 6. Authorisation of Officers

Decisions on enforcement action are a matter of professional judgement and officers will need to exercise discretion. Officers will be properly trained to ensure consistency in the decisions made. Authorisation of officers will be made under delegated powers to a level that is considered appropriate to the competence of the individual officer. Officers will produce evidence of authorisation on request. Officers will refer to this policy when considering enforcement action.

## 7. Housing Act 2004 – Health and Safety Hazards

The Housing Act 2004 requires local authorities to keep housing conditions under review and includes provision relating to:

- Rating hazards within dwellings using the Housing Health and Safety Rating System
- Licensing of houses in multiple occupation
- Management Orders

### Housing Health and Safety Rating System

The Housing Act 2004 introduced the Housing Health & Safety Rating System (HHSRS), a systematic method of assessing hazards that categorises them as either Category 1 or Category 2. The table below summarises the two categories:

Table 1 Category 1 and 2 hazards

HHSRS	Band	Severity	Response
<b>Category 1 hazards</b>	<b>A</b>	Serious hazards	The Council has a duty to take enforcement action.
	<b>B</b>		
	<b>C</b>		
<b>Category 2 hazards</b>	<b>D</b>	Less serious hazards	The Council has discretion to take action
	<b>E</b>		
	<b>F</b>		
	<b>G</b>		
	<b>H</b>		
	<b>I</b>		
	<b>J</b>		

A competent officer will, wherever possible, undertake a full survey of a property to identify the nature and extent of all hazards present. Subject to there not being any defects or deficiencies that present imminent risk identified during the survey, the Council will write to the property owner to inform him/her of the hazards identified and any work recommended. If the property is rented, a copy of this letter will usually be sent to the tenant(s).



In most cases the property owner will act on the letter and complete work that reduces the risk. If the letter does not result in action, Table 2 below shows the range of enforcement options that the Council can use.

Where there is an imminent risk, immediate action will be taken to eliminate or manage that risk.

It is for Kettering Borough Council to determine the most appropriate course of action in all circumstances.

The Council cannot take more than one of the actions available at any one time to address the same hazard (unless it is an emergency action) but can vary the action required if one of the actions taken has proved unsuccessful.

Table 2 Enforcement Options

<b>Action</b>	Category of hazard where action appropriate	
	<b>Category 1</b>	<b>Category 2</b>
No action	No	Yes
Hazard awareness notice	Yes	Yes
Improvement notice	Yes	Yes
Prohibition order	Yes	Yes
Emergency remedial action	Yes	No
Emergency prohibition order	Yes	No
Demolition order	Yes	In prescribed circumstances
Clearance area	Yes	In prescribed circumstances

When considering which of these actions is appropriate the Council will consider the factors listed below:

- The significance of the hazard(s) – the rating score & band
- The extent and location of the hazard(s) within the premises
- The range of hazards identified within the premises
- Whether the Council is under a duty or has a power to take formal action in respect of the hazard(s) identified
- The hazard(s) is/are not considered sufficiently serious to warrant a local land charge
- The level of risk posed to the current occupiers, including whether there is an imminent risk of serious harm
- The views and intentions of the occupier(s) (or occupiers representative(s))
- The risk of social exclusion of a vulnerable group or individual
- The availability of alternative accommodation
- The views and intentions of the owner(s) (or owner's representative(s))
- The compliance record of the person(s) in control of the premises
- Whether the chosen option is practical, reasonable and proportionate in reducing the hazard(s) to an acceptable level
- The building is listed or located within a conservation area
- The potential for alternative use of the premises or site
- The physical impact on adjoining buildings
- The longer term viability of the [premises] [and] [area]

- The impact on the local community and on the appearance of the local area
- The extent of hazards within neighbouring premises and the general condition of the neighbourhood
- Availability of alternative housing for current occupants
- Likely demand for accommodation if the hazards were remedied
- Prospective use of the site if cleared

The Principles of Enforcement, set out in section 2 and 3 previously, say that the Council should target its enforcement action at more significant risks and that action should be proportionate.

If a Category 2 hazard falls within Band D of the Housing Health and Safety Rating System (see Table 1), the Council will normally use its full range of enforcement powers to ensure that the defects identified are remedied.

For Category 2 hazards that fall in bands E-J, the Council will not always require action. In addition to the factors above, the Private Sector Housing Team will consider the following factors when deciding whether enforcement action beyond a letter or hazard awareness notice is justified:

- Whether the number of Category 2 hazards combine to create a more serious situation
- The potential for the Category 2 hazard to become a Category 1 hazard within 2 years
- Whether the Council will be taking action to address Category 1 or Category 2 (band D) hazards at the same time
- Whether the property falls within a wider regeneration scheme.
- Whether a current occupier is within the vulnerable group.
- Any other factor that is considered significant.

The flowcharts in Appendix 2 will aid officers in determining the type of enforcement action that may be appropriate.

Section 8 of the Housing Act 2004 requires that notices and orders have a 'Statement of Reasons'. The statement should include why one type of enforcement action was taken rather than the other options available. A copy of the statement will accompany the notice or order.

The HHSRS Enforcement Guidance details the factors that will be considered when enforcement action is taken. These are summarised on the template for a 'Statement of Reasons', which must be completed whenever enforcement action is taken under the Housing Act 2004.

If enforcement action is taken and there is a change in circumstances, such as a change in ownership, the notice can be enforced on the new owner or recipient. However any outstanding liabilities such as fines will remain with the original owner or recipient of the notice.

There is a right of appeal against any notice, order or decision made by the Council. All appeals are made to the Residential Property Tribunal (RPT). The RPT may confirm, quash or vary the notice, order or decision. Information on how to appeal will accompany every notice or order where appeal provisions are available.

### **Licensing of Houses in Multiple Occupation**

The 2004 Act also introduced compulsory licensing of larger Houses in Multiple Occupation (HMOs) and set out how Local Authorities might extend licensing to cover other types of privately rented housing. Regulations made under the 2004 Act set out general management requirements that apply to all HMOs.

### **Management Orders**

Part 4 of the Housing Act 2004 sets out the provisions for interim and final management orders. Section 102 places a duty on the Council to make an interim management order if a licensable house in multiple occupation (HMO) is unlicensed, or the license has been revoked, and there is no prospect of it becoming licensed and the order is necessary to protect the health, safety or welfare of the tenants.

The interim management order must be replaced with a final management order when the interim order expires if the property continues to need a license but the authority considers that the license cannot be issued.

The Act includes other provisions for interim and management orders that are discretionary powers. The circumstances in which these orders maybe used, and the procedure for making them are specified in the Act. The infrequency with which they are used reflects the complex restrictions that are applied. Each case will therefore be considered on its own merits, having regard to the relevant legislation and guidance available.

## **8. Powers of Entry**

In most cases, the exercise of powers of entry is unnecessary because access is voluntarily given.

Section 239(5) of the Housing Act 2004 requires that at least 24 hours notice of intention to enter is given to the owner (if known) and occupier of premises for the purpose of carrying out a survey or examination. Exceptions to this requirement are made for investigations into offences against the management or licensing of HMOs.

The Council will seek to obtain a warrant to enter premises where legislation provides for this and the circumstances justify the action.

## 9. Prosecution and Cautions

The potential for taking a prosecution is an important part of enforcement. The purpose is to punish wrong doing, to avoid a recurrence and to act as a deterrent to others. Where the matter is of a serious nature, there have been persistent breaches by the same offender or where the suspect does not accept his guilt for offences, a prosecution may be commenced.

A decision to prosecute will take account of the Code for Crown Prosecutors and other relevant guidance as well as legal advice from the Council's solicitors. Decisions will be taken in accordance with the two principles set out below.

### Sufficiency of evidence

As a public prosecutor we will only commence a prosecution when it is satisfied that there is a "realistic prospect of conviction" on the available evidence. If the case does not pass this evidential test it will not go ahead, no matter how important or serious the allegation may be.

If the sufficiency of evidence test is met, then the public interest test will be considered.

### Public Interest factors

In addition to the personal circumstances of the offender and the circumstances of the offence, we will also consider the following factors in deciding whether or not to prosecute.

These factors include:

- The impact or potential impact of the offence on health and safety of the public, the environment or local amenity.
- The implications of the offence for the enforcement of the regulatory regime (e.g. although no tangible harm comes of it, a failure to register a registerable activity undermines the integrity and efficiency of a regulatory regime and may deprive the Council of fee income.)
- Other financial aspects of the offence e.g. the benefit obtained from not seeking the requisite licence and undercutting legitimate operators.
- Whether the offence was committed deliberately or officials obstructed.
- The previous enforcement record of the offender.
- The attitude of the offender, including his behaviour towards officials and whether corrective measures to remedy the offence or prevent any reoccurrence are being put in place.
- Where offences are prevalent or difficult to detect, the general deterrent effect on others by a well-publicised prosecution.
- If the offence arose from unusual or mitigating circumstances.
- The health of the offender may be considered as a mitigating circumstance.

When determining whether to prosecute for an offence the legal actions forms (see Appendix 1) will be completed in all cases. The decision to prosecute will be made jointly by the case officer and the Head of Housing.

### **Civil Remedies**

Where complainants may have a civil redress in respect of the complaint, they will be given advice on what action they may pursue themselves through the civil courts or information as to where to seek further advice on civil remedies. Civil remedies include:-

- Right of repair under section 11 of the Landlord and Tenant Act 1982
- Right to seek compensation if the tenants deposit was not protected
- Rights of leaseholder and freeholders under the terms of their lease
- Rent repayment orders
- Right for compensation for removal or damage of belongings by a landlord

### **Alternatives to Prosecution**

A formal caution is the written acceptance by a person that they have committed an offence and may only be used where a prosecution could properly have been brought. For those who have offended for the first time or where there are 'sympathetic considerations' (for example, the defendant is very old or is showing signs of severe emotional distress) then a caution may be appropriate. We will consider each case on merit and will complete the evidence test form for each case. The decision to issue a formal caution will be made jointly by the case officer and the Head of Housing.

The Council will only issue one formal caution. If a person has received a formal caution and subsequently commits a further offence then we will consider prosecution. If we subsequently take a prosecution it will be brought to the Court's attention that the offender has received a formal caution.

Simple cautions are normally not appropriate where there is history of offending within the last two years or where the same type of offence has been committed before. In these circumstances prosecution is more appropriate.

The rules covering Simple Cautions are provided on the Home Office web site or in Home Office Circular 30/2005.

## **10. Expenses incurred by undertaking works in default**

Section 31 and Schedule 3 of the Housing Act 2004 give the local authority power to take action to resolve housing defects with or without the owner's agreement. The Council can recover the costs of such action from the relevant person.

Where legislation allows the apportionment of costs between several parties, the council will divide costs in equal share unless the circumstances and evidence show that responsibility is unequally shared.

The Council may recover the costs incurred in carrying out works in default by one of the following methods:

- Invoice for the applicable amount and County Court action if the invoice is not settled in full.
- A charge put on the property. The charge remains in place until the debt is cleared. The debt will accrue compound interest at 8% until the debt is settled.
- By serving notice on the tenant requiring them to pay rent direct to the Council until the costs are recovered.

## **11. Targeted enforcement action**

From time to time, the Private Sector Housing Team may undertake targeted enforcement action to address problems in a particular geographical area or type of property.

The types of issues that may trigger targeted action are:

- Concerns about unlicensed HMOs in an area
- Concerns about concentrations or increases in numbers of empty properties
- Concerns about concentration of HMOs in an area
- Low quality housing in an area predominantly in the private rented sector
- Checking HMO license conditions
- Concerns about properties owned by a portfolio landlord where some properties have fallen significantly below legal standards or have Category 1 hazards present
- Investigating whether to introduce selective or additional licensing.

## 12. Complaints

If you wish to make a complaint that the Council has not acted in accordance with this policy you should contact:

Executive Liaison Officer  
Kettering Borough Council  
Municipal Offices  
Bowling Green Road  
Kettering  
Northants  
NN15 7QX

If you remain dissatisfied after your complaint has been processed through the Council's internal complaints procedure, you have the option of referring the complaint to the Local Government Ombudsman.

Local Government Ombudsman  
The Oaks No 2  
Westwood Way  
Westwood Business Park  
Coventry CV4 8JB  
Phone: 024 7682 0000  
Fax: 024 7682 0001

[www.lgo.org.uk](http://www.lgo.org.uk)



## Appendix 1 Decision to prosecute form

	Relevant Legislation	Details of Offence
<b>Offences</b>		

<b>Evidential Stage</b>	
What evidence is available to support the case?	
Are there any problems with the evidence/witnesses?	
Are there any statutory defences?	
What is the defence case likely to be?	
Is there a realistic prospect of conviction	

**Is the evidential stage passed Yes / No**

**Investigating Officer:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Authorising Officer:** \_\_\_\_\_ **Date:** \_\_\_\_\_

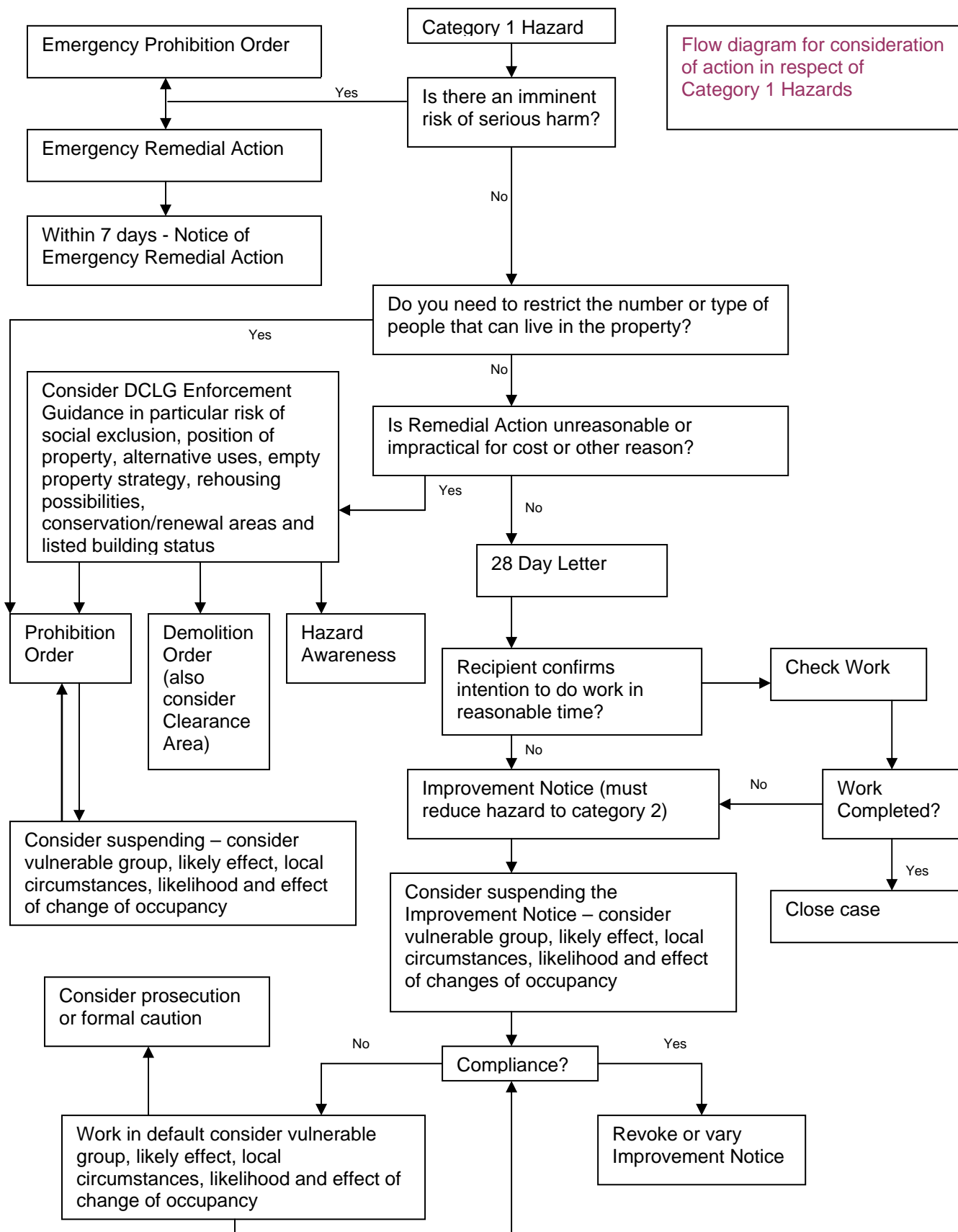
<b>Public Interest Stage</b>	
<b>Factors Considered</b>	<b>Comments</b>
Seriousness of offences – is a significant sentence/ fine likely to result?	
Is conviction likely to result in a confiscation or other order	
Was the offence premeditated	
Was the victim vulnerable, put in fear, suffered attack, damage or disturbance	
Was the offence motivated by any form of discrimination	
Will prosecution adversely affect the victim	
Are there relevant previous convictions/ cautions	
Are there grounds to suspect that offences will continue or be repeated	
Will a prosecution have a significant positive impact on community confidence	
What explanation was offered by the offender	
Was the offence a genuine mistake/ misunderstanding	
Was there a victim/ someone who suffered loss	
Is the offence widespread across the area	
Has there been a long delay between the offence and the decision to pursue it	

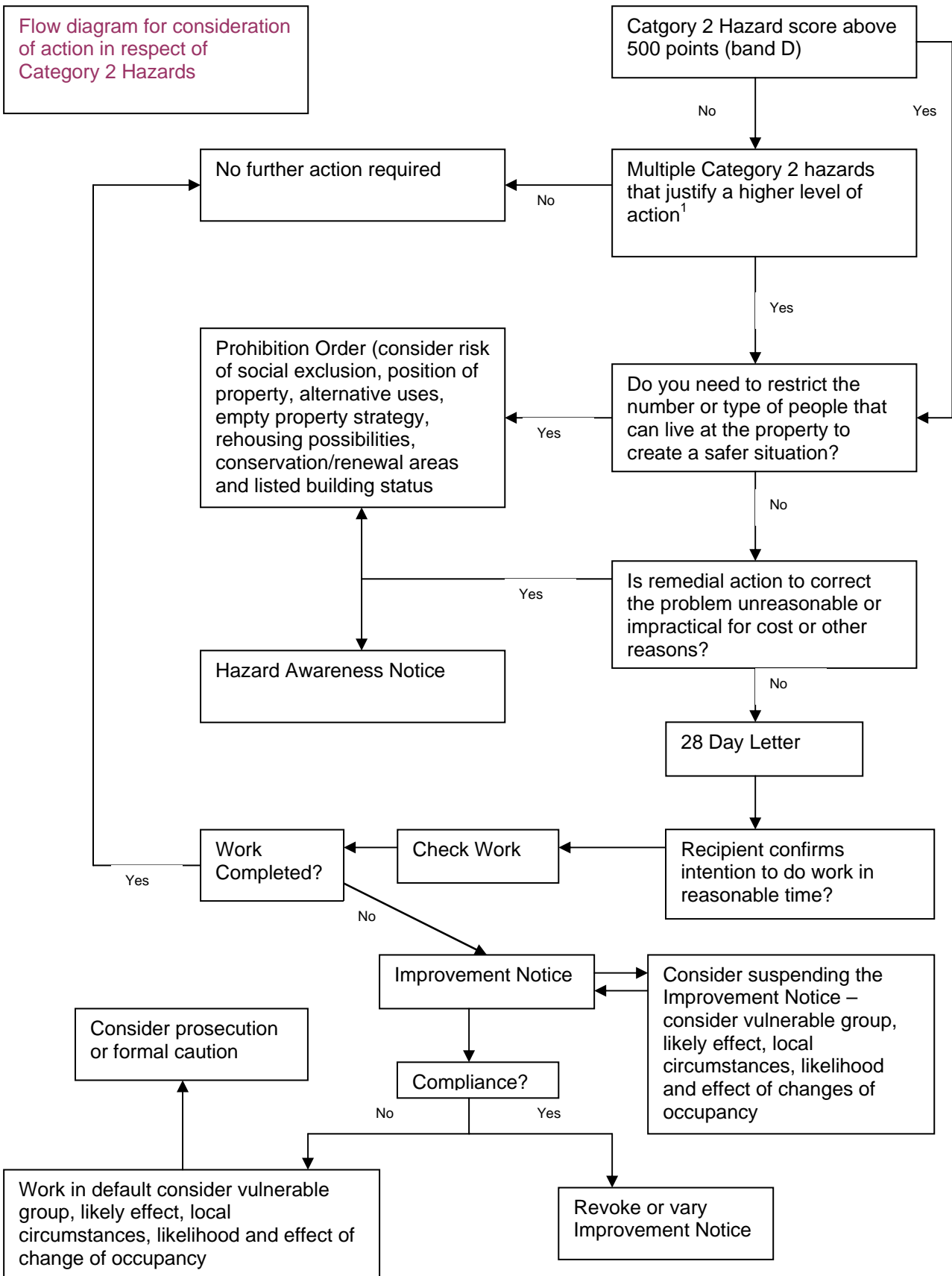
**Proposed Course of action:** \_\_\_\_\_

**Investigating Officer:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Authorising Officer:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## Appendix 2 Flow Chart for Housing Act 2004 Enforcement Considerations





<sup>1</sup> This is to be a judgement call made by the investigating officer and will be determined by whether the culmination of category 2 hazards make it necessary to take some form of action – in other words, it would be unethical not to do something