ST HELENS COUNCIL
ENFORCEMENT POLICY
PRIVATE HOUSING INITIATIVES SECTION

1.0  INTRODUCTION

1.1 Responsibility for responding to service requests concerning private sector housing was transferred from the Environmental Health department in February 2006. The Private Housing Initiatives Section is responsible for enforcing numerous Acts of Parliament, together with subordinate Regulations and Orders.

1.2 The purpose of this Policy is to secure effective compliance with legislation while minimising the burden to the Council, individuals, organisations and businesses.

1.3 All enforcement action undertaken by the Private Housing initiatives Section will be in accordance with the principles of the Enforcement Concordat produced by the Cabinet Office.

1.4 This Policy is intended to provide guidance on the principles and processes which will apply when enforcement action is taken.

2.0  AIMS

2.1 Through the Community Plan and the Council’s corporate objectives the Urban Regeneration and Housing Department is committed in its Business Plan to improve the range and quality of housing provision across all tenures and to reduce the number of unfit and non-decent homes. Regenerating and renewing St Helens is a strategic objective of the overall vision of the Council’s Housing Strategy 2004-2007.

In order to achieve this priority the Section:

- Will seek to ensure properties achieve the appropriate standards by working in cooperation with the owners/agents and tenants by the provision of clear advice, guidance, training, encouragement, planning of improvements and assistance.

- Will utilise all appropriate enforcement action to achieve improved standards in properties found to be jeopardising the health, safety or welfare of individuals and may, where legislation allows, make an appropriate charge for doing so.

- Will review our enforcement processes as part of the Council’s Housing Renewal Policy and will, in doing so, consider the views of interested parties and individuals. These policies and standards, etc. will be made freely available.

- Will seek to carry out its responsibilities efficiently and effectively in a way which is open, clear and helpful to owners and occupiers and affirms its commitment to achieving consistent, balanced and fair enforcement.

- Will make an initial response within 3 working days to requests for service.
2.2 The purpose of this Enforcement Policy is to ensure that a consistent approach is adopted. It is applicable to housing disrepair complaints and enquiries, statutory nuisances and neighbourhood renewal assessments. It is also appropriate when considering action in respect of empty properties however specific action/procedures will be in line with the Empty Property Strategy.

2.3 The Council has adopted the Government’s Enforcement concordat principals of good enforcement in developing this Policy. Included in the term “enforcement” are advisory visits and assisting with compliance as well as formal action. By adopting the concordat principles the Council commits itself to the following policies and procedures.

2.4 The primary function of Central and Local Government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. We are committed to these aims and to maintaining a fair and safe trading environment.

2.5 This policy sets out what businesses and other regulated parties and individuals can expect from Enforcement Officers. It commits the Council to good enforcement policies and procedures. It may be supplemented by additional statements of Enforcement Policy in the future.

2.6 The effectiveness of legislation in protecting individuals and communities depends crucially on the compliance of those regulated. We recognise that most landlords, managing agents and individuals want to comply with the law. We will, therefore take care to help those who are regulated to meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens will reap the benefits of this policy through better information, choice and safety.

2.7 Landlord Accreditation Scheme

To facilitate partnership working with landlords, managing agents and other interested parties to ensure that a supply of safe, well managed accommodation within the private rented sector is available, we shall set up and service a Landlord Accreditation Scheme. This will incorporate a Landlords Forum, helping to achieve this specific aim. Where cooperation with the landlord fails, the full range of enforcement powers available will, where appropriate, be used to secure improvements in housing conditions. This will inevitably lead to the Private Housing Initiatives Section directing resources towards improving conditions in those properties whose Landlords refuse to take part in the scheme.

The inspection and enforcement procedure applicable in the case of landlords applying for accreditation is shown at Appendix 1.
3.0 PRINCIPLES OF GOOD ENFORCEMENT: POLICY

Standards
We will respond initially to all requests for service within a maximum of 3 working days. We will then inspect properties as appropriate, carry out all necessary investigations and consider the most effective response in each case dependant on the legislative requirements and specific circumstances. Action will be taken in accordance with the relevant legislation to achieve the required outcome. The possible consequences of a service request will be explained before an officer undertakes to visit and service users will be kept informed at all stages. The level of service and performance that users of the service and those regulated can expect to receive will be as detailed in this policy. We will publish these standards and annual performance against them.

Openness
We will provide information and advice in plain language on the legislation that we enforce and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set with organisations and individuals potentially affected by our work where appropriate. We will also discuss general issues, specific compliance failures or problems with those organisations and individuals affected or potentially affected by our work.

Helpfulness
We believe that prevention is better than cure and that our role therefore involves actively working with all affected parties to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage those affected by our work to seek advice/information from us. Applications for information and services etc. will be dealt with efficiently and promptly. We will ensure that wherever practicable our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

Complaints about the Service
We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely timescales involved. All complaints will be dealt with in accordance with the corporate complaints procedure.

Proportionality
We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. We will take account of the circumstances of the case and the attitude of the owner or their representative when considering action, taking into account our prosecution criteria included in this document.
Consistency  We will carry out our duties in a fair, equitable and consistent manner. While officers are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies. Digital images may be taken as part of any investigation and any images taken will only be used for enforcement action if such action is required. Due regard will also be given to any guidance issued in statutory Codes of Practice, Home Office Circulars and the Data Protection Act 1998 and Human Rights Act 1998.

4.0  PRINCIPLES OF GOOD ENFORCEMENT: PROCEDURES

Advice from a Council Officer will be put clearly and simply and will, if necessary, be confirmed in writing, explaining why any remedial work is necessary and over what timescale, and making sure that legal requirements are clearly distinguished from best practice advice.

Before formal enforcement action is taken, Council Officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, where there is an imminent risk to public health and safety).

Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within five working days and, in all cases, within ten working days.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (wherever possible this advice will be issued with the Statutory Notice).

The decision as to whether or not to prosecute an individual or company lies initially with the individual Officer as he or she confronts a particular situation. However, the Officer must discuss their decision with their Manager prior to any action being initiated. Prosecution is only one of a number of enforcement options available to the Officer and each option should be considered to determine whether other courses of action are more appropriate or effective.

5.0  ENFORCEMENT OPTIONS OPEN TO THE PRIVATE HOUSING INITIATIVES SECTION

5.1  In order to achieve and maintain consistency in private sector housing enforcement the Private Housing Initiatives Section will use the following range of enforcement options as appropriate:

- No action
- Informal Action
- Formal Action
- Formal Caution
- Work in Default
- Prosecution

Any decision made by an Officer regarding enforcement options will be documented along with reasons as appropriate. It is likely that such decisions may need to be justified in Court.
When deciding the appropriate enforcement action to be taken, for instance, in relation to a hazard, the Officer shall consider who is (or likely to be) in occupation e.g. if the property is owner-occupied a Hazard Awareness Notice may be the appropriate response to a Category I hazard along with the offer of a maintenance package to empower and give choice to the occupier.

5.2 Informal Action

Informal action to ensure compliance with legislation may take the form of offering advice and education (including a maintenance package and the landlord accreditation scheme), verbal warnings and requests for action, the use of letters (including requests for current gas safety certificates), ‘minded to’ documents and Hazard Awareness Notices. Officers shall ensure that where a risk to public health or hazard has been identified, the matter is brought to the attention of the relevant parties even where formal action is not being considered.

a) Informal action may be taken when:-

i) the act or omission is not serious enough to warrant formal action.
ii) it can be reasonably expected from past dealings that it will achieve compliance.
iii) the consequence of non-compliance will not pose a significant risk to health.
iv) initially consulting the responsible person about intended action and agreeing a timescale to address a Category 1 or 2 hazard.

b) Any letters or ‘minded to’ documents sent to individuals/companies will indicate the legislation contravened (if appropriate) and the measures to be taken to ensure compliance with any legal requirements, contain all the information necessary to understand what work is required and why it is necessary, and give the recipient the opportunity to contact the appropriate officer to discuss the matter further. Officers will clearly differentiate between legal requirements and good practice/recommendations.

c) A reasonable time limit must be allowed for compliance with informal action. Landlords, managing agents and individuals should be made aware that failure to comply with informal requests for action or failure to engage with the Council during a consultation period might result in formal action.

d) Also education and advice in the form of courses and documents which have been translated into various languages can be made available for persons whose first language is not English – to help them comply with the law. St. Helens Council operates a corporate translation and interpretation service.

Landlords with Decent Homes Refurbishment Programmes

The Housing Health and Safety Rating System Enforcement Guidance advises that working with Registered Social Landlords (RSLs) is seen as preferable to resorting to formal enforcement measures where the landlord has a timetable for making housing stock comply with the decency standard. Accordingly, informal action may be the appropriate response where a RSL can demonstrate the necessary works will be attended to within the next 12 months under a rolling programme to bring their property up to the Decent Homes Standard. There will be no flexibility with matters that pose an imminent threat if not addressed.
5.3 **Formal Action**

Formal action may be taken in the form of Statutory Notices served when there are significant contraventions of laws and regulations where:

a) formal action is proportionate to the risk to public health and safety.

b) there is a record of non compliance with legislation.

c) the authorised Officer has reason to believe an informal approach will not be successful.

d) the consequence of non-compliance could be potentially serious to public health.

e) although it is intended to prosecute, effective action needs to be taken as quickly as possible to remedy conditions that are serious or deteriorating.

f) where the legislation requires that formal action is taken, e.g. to abate a statutory nuisance.

Officers serving statutory notices will be prepared to discuss the works specified with individuals/company representatives and will fully consider the availability and suitability of alternative solutions.

Where a formal Statutory Notice is served, the method of appealing against the notice (i.e. if the recipient feels that the notice is excessive in its requirements) will be provided in writing at the same time. The notice will explain what is wrong, what is required to put things right (where appropriate) and what will happen if the notice is not complied with.

**Statutory Notices are important legal documents. Once served, failure to take follow up enforcement action has serious implications having regard to the contents of this Policy. Failure to comply with a Statutory Notice will normally result in the seeking of authority to prosecute and/or works in default, as described below.** Any Officer decision to take no action in the case of a Statutory Notice which has not been complied with shall only be made either in accordance with written Procedures or with the agreement of a Manager, which will be recorded for the file.

The principles of the formal action described at 5.3 above apply to any enforcement action taken with respect to improving housing conditions including abatement of statutory nuisance. However, more specifically formal action following assessment under the Housing Health and Safety Rating System will be taken in line with the Enforcement Guidance given under section 9 of the Housing Act 2004 (see 5.4 below).
5.4 Housing Conditions - Housing Health & Safety Rating System

5.4.1 Category 1 Hazards
Where an assessment of a property has been undertaken under the Housing Health and Safety Rating System and hazards have been rated as a category 1, band A-C, then Statutory Notice(s) will be served. Where this formal action is being considered and the person responsible agrees to take action to resolve the matter, the Officer may agree to defer formal action for a reasonable time. Deferred action will not be considered where there is an imminent risk to public health or safety.

Category 2 Hazards
Where an assessment of the property has been undertaken under the Housing Health and Safety Rating System and the hazards have been rated as a category 2 hazard, band D and below, then a Hazard Awareness Notice will be issued. If a number of upper range category 2 hazards, bands D and E, exist at the property and/or the conditions are such as to be affecting the material comfort of the occupying tenant then consideration will be given to the serving of a statutory improvement notice. This action could be considered in a situation where the occupants encounter one category 2 hazard after another as they move around the house. In such circumstances full consideration will be given to the effect of the hazards on the current occupier.

In all circumstances if the Council considers that there is a high risk to the health and safety of the occupant then there will be no delay in initiating enforcement action. This would include circumstances where a Housing Health and Safety Rating assessment has revealed a category 1 or 2 hazard. In all cases the circumstances and views of tenants, landlords and owners will be taken in to consideration when determining what action is to be taken.

There will be consultation with 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. In addition, consultation with the fire and rescue authorities before taking formal action in respect of houses in multiple occupation (HMOs) in accordance with Section 10 of the 2004 Act.

5.4.2 Improvement Notice
In serving a statutory notice the schedule of defects and necessary remedial works detailed in the Notice must, as a minimum, reduce a category 1 hazard to a category 2 hazard and prevent any recurrence of that hazard within 12 months.

It cannot require works to start within 28 days of service and carries a 21 day right of appeal to the Residential Property Tribunal (RPT).

Suspension of an Improvement Notice
In normal circumstances an improvement notice would become operative 21 days after service. However, in agreement with his or her manager, the Officer may suspend an action specified in the notice. The notice to suspend may specify an event that triggers action, such as non-compliance with an undertaking given to the authority or a change of occupancy. Suspension may be considered in circumstances for example where the hazard is not sufficiently minor to be addressed with a hazard awareness notice but the current occupiers are not members of a vulnerable group. Suspension of an Improvement Notice might also be appropriate to deal with a property as part of scheduled to be included strategic
regeneration initiative or where remedial works would lead to a high probability of serious health consequences for occupants.

5.4.3 **Prohibition Order**
A Prohibition Order prohibits using the whole or part of a dwelling for some or all purposes, or occupation by particular numbers or descriptions of people. The Order must:
- Specify whether the order is made under section 21 or 22 of the 2004 Act
- The nature of the hazard
- The deficiency giving rise to the hazard
- The properties in which prohibitions are imposed
- Any remedial action that would result in the order being revoked
- The right of appeal (within 21 days to RPT)

A Prohibition Order becomes operative 28 days after service if no Appeal made.

5.4.4 **Emergency Remedial Action**
If a category 1 hazard exists on the property, and in the opinion of the inspecting Officer, the hazard involves an imminent risk of serious harm to the health and safety of the occupiers or any other residential premises, the Council may enter the premises at any time upon obtaining a warrant (if required) to take out emergency remedial action. This action is whatever is necessary to remove the imminent risk of serious harm.

A notice will be served on the responsible party within seven days of taking the emergency action. This notice will include the details of the hazard, the premises in which the action was taken, the nature of the remedial action, the date the action was taken and the right to appeal.

5.4.5 **Demolition Order**
A Demolition Order is only available in response to the identification of a category 1 hazard. The Council must:
- Take into account availability of local accommodation for rehousing
- 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 environmental impact of the action.
A Demolition Order carries a 21 day right of appeal to RPT

5.4.6 **Clearance Area Action**
The provisions of Part 9 of the Housing Act 1985 and Part 7 of the Local Government and Housing Act 1989 in respect of clearance activity are retained in respect of Clearance areas. A Council must be satisfied that clearance represents the most satisfactory course of action.

5.4.7 **Charges for Serving Notice**
Having regard to statutory powers at section 49 of the Housing Act 2004, from 1st October 2006 when a statutory notice has to be served the Council will recover the administration costs incurred to undertake this action. In assessing these costs the following factors will be considered: the time involved in carrying out the original inspection; the time involved in giving consideration to serving the notice; and other costs directly associated with serving the notice.
The administrative and other expenses that the Council will recover are those incurred in –

(a) serving an improvement notice under section 11 or 12 of the Housing Act 2004;
(b) making a prohibition order under section 20 or 21 of the 2004 Act;
(c) taking remedial action under section 40 of the 2004 Act;
(d) making an emergency prohibition order under section 43 of the 2004 Act; or
(e) making a demolition order under section 265 of the Housing Act 1985.

The charge will be levied on the person upon whom the notice or copy of the order is served and will be subject to a maximum amount fixed by the Council per notice or order served, subject to annual review of the Council’s fees and charges. In all cases the Council will instigate debt recovery action.

5.4.8 Licensing of Houses in Multiple Occupation (HMOs)
This authority will implement Mandatory Licensing of HMOs of three storeys or more occupied by 5 persons or more living in two or more single households and sharing facilities such as bathrooms, water closets and kitchens. It will be a condition of licences that:
• Satisfactory provision of facilities is provided
• There is adequate means of escape from fire
• The premises are satisfactorily managed

A licence may only be issued to fit and proper person and will be renewed on an annual basis for an agreed fee.

The Enforcement Concordat principles will apply in the case of a landlord failing to apply for, or operating without, a licence. Immediate prosecution may be considered where there is gross negligence putting the health and safety of occupants at imminent risk. Also failure to respond after 3 reminder letters.
Where a house is occupied as an HMO, planning permission may be required and in such circumstances the Private Housing Initiatives Section should liaise with Development Control.

Please note: Action will be taken in accordance with this policy to address Category I and II hazards in HMOs irrespective of, and in addition to, any license requirements.

5.5 Formal Caution

b) Formal Cautions can be issued as a final warning and Guidance on their use has been issued in Home Office Circular 18/1994.

c) For a Formal Caution to be issued, the following criteria must be met:
   i) There must be sufficient evidence to prove the case.
   ii) The offender must admit the offence.
   iii) The offender must agree to be cautioned.
   iv) The offence must not have been committed by the offender before.
d) A record of the caution will be sent to the Office of Fair Trading and will be kept on file for three years. Within the three year period the caution may be cited in court if the offender re offends.

5.6 Carrying out Works in Default

a) Where statute allows, works in default can be carried out by the Council where there has been non-compliance with a Statutory Notice and the time given in that Notice has expired. This will be on a case by case basis normally having first issued a 14 day reminder/warning letter following expiry of the notice. The Council may recover the costs of administering and supervising the works. Unpaid accounts in respect of these works in default can be placed as a land charge against the property with interest accruing at the rate of the time.

b) The Council will normally only carry out works in default of a statutory notice where:
   i) There is an imminent risk to health/safety or a situation is prejudicial to health, such that the consequences of not taking immediate and decisive action would be unacceptable including lack of hot water/heating or drainage defects or
   ii) Statute does not permit prosecution for non-compliance with a statutory notice or
   iii) Exceptional circumstances have been agreed in consultation with the Manager, in which case a written record of the reasons will be kept.

c) When organising Works in Default, the Officer is to ensure the CIS registration of the contractor undertaking the work has been properly considered.

5.7 Prosecution

The Private Housing Initiatives Section recognises that the decision to prosecute carries considerable consequences. Legal proceedings will only be instigated where there is sufficient, admissible and reliable evidence that an offence has been committed by an identifiable individual or company, that there is a realistic prospect of conviction and that prosecution for the offence is in the public interest.

6.0 CRITERIA FOR TAKING FORMAL PROSECUTION ACTION

6.1 Prior to deciding whether to take formal enforcement the Officer should consider the Guidance provided in the Code for Crown Prosecutors and the factors listed below. The list is not considered exhaustive nor prescriptive since ultimately each case must be taken on its merits.

6.2 Evidential Test

a) What the law actually states
b) Whether or not an offence has been committed
c) What the offence is
d) Who is responsible under the Act
e) Who has power of enforcement
f) Who investigates
g) Who decides to prosecute (this shall not be the investigating officer)
h) Sufficient evidence
i) Reasonable chance of success
j) Avoidance of undue delay

6.3 Public Interest Test

a) The Seriousness of the offence

i) A serious offence would include instances of blatant and reckless disregard of the law which may or is likely to be a serious risk to public health and safety

ii) A serious offence would also include the failure to comply with a Statutory Notice.

b) The Public Benefit of a Prosecution

i) Any prosecution must be able to demonstrate that it is only taken for the benefit of the general public. If there is no public benefit then the prosecution should not be pursued.

ii) A prosecution which attracts local publicity can have a salutary effect on the occupiers of similar premises.

iii) The prosecution might also establish a legal precedent applicable to other individual companies or other geographic areas.

c) The likelihood of the defendant being convicted

i) Cases should not be instituted unless the officer considers he or she has adequate evidence to prove the matter beyond reasonable doubt.

ii) Consideration must also be given to whether the individual or company will be able to establish and maintain a "due diligence" defence.

d) The Previous History of the Party or Premises Concerned

i) This would include instances of persistent and repeated breaches of legal requirements leading to poor and deteriorating standards in the premises affected or where it appears the individual, or management, is neither willing or structured to deal with these repeated breaches of the law.

ii) Consideration must also be given as to whether the individual or company ever received a formal caution in the past.

e) Witness co-operation

i) The Officer must also take into account the ability and suitability of any important witness to give evidence and their willingness to co-operate in the legal process.

6.4 General Mitigating Factors
Mitigating factors are very important but by definition are likely to be at odds with, and therefore have to be balanced against evidential and public benefit tests. It is expected that where a case meets all other criteria then mitigating factors will not prevent a prosecute being considered. However, an Officer will always seek to identify any mitigating factors and these shall be clearly taken into account in coming to any decision.

Mitigating factors may include:

- Any explanation by the individual/company
- Evidence that the individual or Company is concerned to prevent a recurrence of the problem
- Offenders age and state of health
- Offenders attitude to the offence

6.5 **Who Makes The Decision**

All prosecutions will be brought without delay. The decision to prosecute rests with the Manager (Private Housing Initiatives) in consultation with the Director of Urban Regeneration and Housing following a report and justification by appropriate field officers. In the absence of the Manager, proceedings can be instigated by other Council officials such as the Assistant Chief Executive (Legal and Administrative Services). In all cases where a preliminary recommendation to instigate proceedings is made, the evidence is independently assessed by the Legal and Administrative Services Department. All recommendations and advice are considered before a final decision to prosecute is made.

Any departure from this policy when making a decision with regard to prosecution will require justification and authorisation from the Manager.

Any person subject to potential prosecution action will be invited to send written representations to the Council for consideration prior to any final decision being made.
Please contact us to request translation of Council information into Braille, audio tape or a foreign language.