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| <b>TITLE:</b>     | <b>THE HOUSING HEALTH AND SAFETY RATING SYSTEM AND ATTENDENT ENFORCEMENT RESPONSIBILITIES</b> |
| <b>TO/ON:</b>     | <b>EXECUTIVE - 24 April 2006</b>  |
| <b>BY:</b>        | <b>DIRECTOR OF ENVIRONMENTAL SERVICES</b>   |
| <b>PORTFOLIO:</b> | <b>HEALTH</b>   |
| <b>STATUS:</b>    | <b>Report</b>   |

**1. STRATEGIC FACTOR CHECKLIST**

- 1.1 The Council's Corporate Management Team has confirmed that the Strategic Factor Checklist has been applied to the development of this report and there are no key issues over and above those set out in the body of the report that need to be brought to Members' attention.

**2. SUBJECT MATTER AND PURPOSE**

- 2.1 This report advises Members of the new Housing Health and Safety Rating System (HHSRS) and the impact this will have upon private sector housing enforcement work within the District. Members are being asked to agree an enforcement action hierarchy, which is designed to both comply with the Council's statutory responsibilities and provide a consistent approach to the implementation of the Housing Act 2004.

**3. BACKGROUND**

- 3.1 The Housing Health and Safety Rating System

- 3.1.1. Since 1957 the primary standard which has applied to private sector housing is the fitness standard, with only relative minor amendments in the intervening years. To meet the fitness standard a property must:

- Be structurally stable
- Be free from serious disrepair
- Be free from dampness prejudicial to the health of the occupants
- Have adequate provisions for lighting, heating and ventilation
- Have an adequate piped supply of wholesome water
- Have satisfactory facilities for the preparation and cooking of food, including a sink with a satisfactory supply of hot and cold water
- Have a suitably located water closet for the exclusive use of the occupants
- Have, for the exclusive use of the occupants, a suitably located bath and shower and wash hand basin each of which is provided with a satisfactory supply of hot and cold water
- Have an effective system for the draining of foul, waste and surface water

If a house fails to meet one or more of these set requirements and therefore is not reasonably suitable for occupants, the property is said to be unfit for human habitation.

- 3.1.2. With such a property the Council can intervene and take steps to remedy unfitness using a range of enforcement tools, which include for the declaration of Clearance Areas, the making of Demolition Orders or Closing Orders and the service of Repairs Notices.
- 3.1.3. The current fitness standard has been abolished and been replaced by the new Housing Health and Safety Rating System (HHSRS) as of 6th April 2006.
- 3.1.4. The current housing fitness regime is based on criteria introduced some 80 years ago. Major risks to health and safety such as cold, fire risk, falls on stairs and radon are not covered at all, or, as in the case of fire risk, are covered for multi-occupied homes only. The Office of the Deputy Prime Minister (ODPM) considered that simply adding new requirements to the current fitness standard would not resolve the problem since the standard does not allow for identifying the likelihood or severity of harm.
- 3.1.5. The new HHSRS has at its heart clearly defined risk assessment procedures, which covers all the important potential health and safety risks in the home. The principle underlying the HHSRS is that any dwelling should be free from both unnecessary and avoidable hazards. Where any hazard is necessary and unavoidable, then the likelihood of an occurrence and the potential harm which results should be reduced to a minimum.
- 3.1.6. To achieve this, the system which has been devised is to be hazard based, i.e. directed to the potential effect of any defect or deficiency and it includes all the main hazards to be found within the home. These potential housing hazards are listed in Appendix 1.
- 3.1.7. The system incorporates a formula, which generates a numerical score for each hazard, and this formula contains weightings in relation to four classes of harm to reflect the severity of incapacity that could result from each individual hazard (see Appendix 2). In arriving at the score the surveyor has to assess the likelihood of an occurrence over a 12 month period from the date of inspection.
- 3.1.8. The hazard scores are then alphabetically banded from A to J (these bands are also produced in Appendix 2). The greater the score the greater the hazard. The relevance of these particular bands will become apparent when I move on to address the various enforcement actions available to the authority.
- 3.1.9. The guidance on how to use the HHSRS is extensive, running to nearly 200 pages. Before being considered competent to use the new system, staff are required to undertake two, one day training courses and undertake an inspection of a dwelling using the new standard, the results of which are marked.
- 3.1.10 To date 6 members of staff within the Division have successfully completed the training, which has been paid for by the Office of the Deputy Prime Minister and provided by IDEA and the Chartered Institute of Environmental Health.

## 3.2 **Housing Enforcement**

- 3.2.1. The Housing 2004 Act introduces a new range of enforcement policies which are allied to the new Housing Health and Safety Rating System. To ensure consistency of approach the Office of the Deputy Prime Minister has produced a 33 page Enforcement Guide which sets out the available enforcement options and the circumstances in which they should be used.

- 3.2.2. These powers apply to all types of residential premises, including Houses in Multiple Occupation; purpose built blocks of flats and buildings comprising converted flats. The authority cannot take statutory enforcement action against themselves in respect of their own stock, but it will be expected to use HHSRS to assess the condition of their stock and to ensure their housing needs meet the Decent Homes Standard.
- 3.2.3. The 2004 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 the HHSRS or provide financial assistance for home repair and improvement.
- 3.2.4. Furthermore, the Act indicates that the authority must investigate by way of inspection following 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, or in the light of a request for financial assistance by the owner or tenant to improve the property.
- 3.2.5. 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 the 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.
- 3.2.6. Authorities are under a general duty to take appropriate action in relation to a Category 1 hazard (i.e. one that falls into bands A to C). They must therefore take the most appropriate of the following courses of action:
- Serve an Improvement Notice
  - Make a Prohibition Order
  - Serve a Hazard Awareness Notice
  - Take emergency remedial action or make an Emergency Prohibition Order
  - Make a Demolition Order
  - Declare a Clearance Area
- 3.2.7. Authorities have similar powers to deal with Category 2 hazards (i.e. those falling into categories D to I) but have a discretion as to whether they use these powers. However emergency measures, the use of Demolition Orders or demolition of Clearance Areas are not available for dealing with Category 2 hazards.
- 3.2.8. Whatever course of action is chosen the authority is under a duty to give a statement of reasons for this decision to take a particular course of action.
- 3.2.9. Improvement Notices
- a. The action required by way of such a notice must be a minimum to remove the Category 1 hazard.
  - b. One notice can be used to cover a multiplicity of hazards and must give the recipient at least 28 days for the works to commence. Different deadlines can be placed in relation to each hazard.

- c. Where an Improvement Notice is served, an authority should consider whether it is appropriate to offer financial assistance or advice to the recipient.
- d. The recipient can also appeal against the Improvement Notice to a residential property tribunal.
- e. The authority can also carry out works in default and recover expenses incurred in doing so.
- f. Improvement Notices can be suspended in certain circumstances.

#### 3.2.10. Prohibition Orders

- a. Such orders can prohibit the use of part or all of the premises for some or all purposes or occupation, by particular numbers or by descriptions of people.
- b. Such an order becomes operative 28 days after it is made, unless it is appealed.
- c. Again an appeal can be made to a residential property tribunal against an Order.
- d. These Orders might be appropriate:
  - Where conditions present a serious threat to health or safety, but where remedial action is considered unreasonable or impractical for cost or other reasons.
  - To specify the maximum number of persons who occupy a dwelling where it is too small for the householders' needs.
  - To control the number of persons who occupy a dwelling where there are insufficient.
  - To prohibit the use of a dwelling by a specified group (until such time as improvements are carried out). Where a dwelling is hazardous to some people but relatively safe for occupation by others.
- e. Prohibition Orders can be suspended in certain circumstances.

#### 3.2.11. Emergency Measures

- a. Emergency measures can be used as a response to hazard 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 in doing so. Or they will be able, with immediate effect, prohibit the use of all or part of a property.
- b. There is a right of appeal, but any appeal will not prevent the action from being taken or the prohibition being put into effect.

#### 3.2.12. Hazard Awareness Notices

- a. A Hazard Awareness Notice may be a reasonable response to a less serious hazard where the authority wishes to draw attention to the desirability of remedial action.
- b. This procedure does not require further action by the person served with a notice, though the authority may wish to monitor any notices it serves.

#### 3.2.13. Demolition Orders

- a. These orders, whilst amended, remain essentially the same as currently exist but can only be used in relation to Category 1 hazards.

### 3.2.14. Clearance Areas

- a. As with Demolition Orders, the Clearance Area powers remain essentially the same allowing authorities to declare a Clearance Area. (Where it is satisfied that each of the residential buildings in the area contains one or more Category 1 hazards and that is the most appropriate course of action for dealing with those hazards.)

3.2.15. 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.

3.2.16. The expenses are in connection with the inspection of premises; the subsequent consideration of any action to be taken and the service of notices. Whilst the Act allows for the Secretary of State to set a maximum limit for such charges there are no plans currently to do so.

3.2.17. The charge will take effect as a legal charge, which is a local land charge.

## 4. **RELEVANT/MATERIAL CONSIDERATIONS**

4.1 There is no discretion for the authority on whether or not to carry out this work as the legislation imposes a mandatory obligation on local authorities. At the present time the costs associated with carrying out the enforcement activities cannot be quantified. What it will necessitate, if the workload proves to be significant, will be a re-prioritisation of the Environmental Health Officers' workload. A further report will therefore be brought before Members in 6 months time to fully advise Members of the effect of the new system, at which time it would be appropriate to undertake a review of the Housing Financial Assistance Policy, and assess the impact on resources both from a financial and workforce perspectives.

4.2 The new housing provisions require the Council to consider how it is to use enforcement as a tool for imposing housing conditions. The material considerations are as follows:

- The type of hazard where enforcement is considered appropriate
- Property tenure
- Enforcement protocols
- Delegated powers
- Charging

### 4.3 Type of hazard

4.3.1. The new Housing Health and Safety Rating System already provides a distinction between serious and less serious hazards by applying Category 1 and Category 2 hazard ratings, with only Category 1 hazards being applied in relation to the decent homes standard. This therefore gives us a starting point for the use of enforcement powers. I would therefore recommend:

#### **RECOMMENDATION 1**

**That in normal circumstances enforcement action will be restricted to dwellings which contain one or more Category 1 hazards.**

- 4.3.2. There will, however, be instances where the presence of only Category 2 hazards may still require some kind of enforcement. An example would be a dwelling containing a number of modestly rated hazards, which will appear to create a more serious situation when looked at together to cover such eventualities. I would therefore recommend:

#### **RECOMMENDATION 2**

**Only in exceptional circumstances will enforcement action be taken in relation to dwellings containing Category 2 hazards.**

#### 4.4 Tenure

- 4.4.1 Whilst experience has shown that enforcement action is more likely to be taken following complaints from residents within the private rented and house in multiple occupation sectors, the possibility of enforcement action in relation to the owner occupier sector should not be automatically ruled out. It is of course for the authority to consider as part of the decision making process the degree of control that occupiers have over their living conditions and their ability to finance and carry out remedial action. With this in mind I would recommend:

#### **RECOMMENDATION 3**

**That in deciding the most appropriate course of action, decisions will be taken in the light of all prevailing circumstances and not solely based on the tenure of the property.**

#### 4.5 Enforcement protocols

- 4.5.1 Derwentside District Council's enforcement policy, "An Approach to Good Enforcement", reflects the Council's commitment to better regulation and supports the Government's 'Enforcement Concordat' which promotes consistency, proportionality, openness and fairness. 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.
- 4.5.2 All enforcement decisions will be made in accordance with the Council's overarching enforcement policy. It is recognised, however, that further guidance is required when considering the range of enforcement options available to specifically deal with private sector housing conditions. As such I would recommend:

#### **RECOMMENDATION 4**

**A specific enforcement policy and procedures are prepared identifying the new enforcement framework and enforcement options available to the Council. This specific policy should make provision for the views and circumstances of occupants, tenants, landlords and owners to be taken into consideration.**

#### 4.6 Delegated Powers

- 4.6.1 Part I of the Housing Act 2004 replaces existing housing fitness enforcement powers set out in the Housing Act 1985, including separate provisions for Houses in Multiple Occupation, and these new duties and powers need to be reflected within the Authority's Scheme of Delegation as part of the overall constitutional arrangements. I would recommend:

## **RECOMMENDATION 5**

**The authority's existing scheme of delegation and list of named authorised officers is revised and is subject to a further report to Members.**

- 4.6.2 The authority must ensure that those officers authorised to carry out the duties and powers under the Housing Act 2004 have adequate training and skills to perform their functions efficiently on behalf of the authority. I would therefore recommend:

## **RECOMMENDATION 6**

**Only those officers who are able to demonstrate competence in accordance with the Environmental Health Authorisation Policy and Procedures will be authorised to carry out the inspection and enforcement duties contained within the Housing Act 2004.**

## 4.7 Charging

- 4.6.1 In deciding whether to make a charge and the level of any charge, authorities should take into account the personal circumstances of the person or persons against whom the enforcement action is to be taken. Any charge, until recovered by the authority, will remain as a charge on the premises concerned. The charges to be applied are likely to be variable, depending on the circumstances and the amount of work carried out by the Authority. Proper time recording arrangements will need to be put into place.
- 4.6.2 The level of charge should be based upon the reasonable cost of enforcement action and in establishing coherent and transparent costs. I would recommend:

## **RECOMMENDATION 8**

**A cost accounting exercise is undertaken, to determine the reasonable costs of enforcement actions and that these costs are then applied by the authority as a charge, to enable the recovery of certain expenses incurred when considering or taking enforcement action.**

## **6. RECOMMENDATIONS / REASONS**

- 6.1 Members are advised to note the implications of the Housing Health & Safety Rating System.
- 6.2 Members endorse the enforcement action hierarchy as outlined within the report.
- 6.3 Members agree to the recommendations contained within the report to both comply with the Council's statutory responsibilities and provide a consistent approach to the implementation of the Housing Act 2004.
- 6.4 A further report to be submitted to Members to review the impact of the new system.

Peter Reynolds: Director of Environmental Services

Report prepared by Joanne Waller, Acting Head of Environmental Health and Private Sector Housing

**Housing Health & Safety Rating System**

**5. A PHYSIOLOGICAL REQUIREMENTS**

**Hygrothermal Conditions**

1. Damp and mould growth
2. Excess cold
3. Excess heat

**6. Pollutants (non-microbial)**

4. Asbestos
5. Biocides
6. Carbon Monoxide and fuel combustion products
7. Lead
8. Radiation
9. Uncombusted fuel gas
10. Volatile Organic Compounds

**7. B PHYSIOLOGICAL REQUIREMENTS**

**8. Space, Security, Light and Noise**

11. Crowding and space
12. Entry by intruders
13. Lighting
14. Noise

**C PROTECTION AGAINST INFECTION**

**9. Hygiene, Sanitation and Water Supply**

15. Domestic hygiene, Pests and Refuse
16. Food Safety
17. Personal hygiene, Sanitation and Drainage
18. Water supply for domestic Purpose

**D PROTECTION AGAINST ACCIDENTS**

**Falls**

19. Falls associated with baths etc.
20. Falls on the level
21. Falls associated with stairs and steps
22. Falls between levels

**Electric Shocks, Fires, Burns and Scalds**

23. Electrical hazards
24. Fire
25. Hot surfaces and materials

**Collisions, Cuts and Strains**

26. Collision and entrapment
27. Explosions
28. Ergonomics
29. Structural collapse and failing elements



## Classes of Harm with examples and Weightings

| CLASSES OF HARM    | EXAMPLES OF HARM  | WEIGHTING     |
|--------------------|---|---------------|
| <b>I Extreme</b>   | <b>Death, permanent paralysis below the neck, malignant lung cancer, regular severe pneumonia, permanent loss of consciousness, and 80% burn injuries</b>   | <b>10,000</b> |
| <b>II Severe</b>   | <b>Chronic confusion, mild strokes, regular severe fever, loss of a hand or foot, serious fractures, very serious burns and loss of consciousness for days.</b>   | <b>1,000</b>  |
| <b>III Serious</b> | <b>Chronic severe stress, mild heart attack, regular and persistent dermatitis, malignant but treatable skin cancer, loss of a finger, fractures skull, severe concussion, serious puncture wounds to head or body, severe burns to hands, serious strain or sprain injuries and regular and severe migraine.</b> | <b>300</b>    |
| <b>IV Moderate</b> | <b>Occasional severe discomfort, chronic or regular skin irritation, benign tumours, occasional mild pneumonia, a broken finger, sprained hip, slight concussion, moderate cuts to face or body, severe bruising to body, 10% burns and regular serious coughs or colds.</b>                                      | <b>10</b>     |

| HHSRS BANDS | Hazard Score Range |
|-------------|--------------------|
| A           | 5,000 or more      |
| B           | 2,000 to 4,999     |
| C           | 1,000 to 1,999     |
| D           | 500 to 999         |
| E           | 200 to 499         |
| F           | 100 to 199         |
| G           | 50 to 99           |
| H           | 20 to 49           |
| I           | 10 to 19           |
| J           | 9 or less          |

## STRATEGIC FACTOR CHECKLIST

| <b>STRATEGIC FACTORS</b>              | <b>THE HOUSING HEALTH AND SAFETY RATING SYSTEM AND ATTENDENT ENFORCEMENT RESPONSIBILITIES</b>  |
|---------------------------------------|--|
| Community Strategy/<br>Corporate Plan | <p>Addresses the Community Strategy aim to “apply the key principles of sustainability to the development, regeneration and conservation of the built environment”.</p> <p>Supports the Corporate Objectives to deliver a safer place, with strong cohesive communities, to improve the health of the population and reduce inequalities and provide an attractive and sustainable environment.</p>  |
| Service Planning                      | <p>The introduction of the Housing Act 2004 was identified within the Environmental Health Service Plan 2005 as a national priority. The Action Plan (Part L) includes for the successful implementation of the Housing Health and Safety Rating System to support the service objective “To develop and implement elements of the ‘Fit for Purpose’ Housing Strategy aimed at regenerating, improving, repairing, adapting and managing the private sector housing stock by way of either one off actions or area based initiatives.”</p>   |
| Consultation                          | <p>A comprehensive consultation exercise on the draft legislation was undertaken by the ODPM.</p>  |
| Financial Implications                | <p>Training has been provided to Officers to assist them in the implementation of the HHSRS and there will be associated costs for the authority in the development of documentation including enforcement notices. The HHSRS software has been installed onto existing computers, however due the complexity of the assessment process, additional hardware has been obtained to assist officers in completing assessments on site. Costs associated with the stationery and hardware have been met from within existing budgets.</p> <p>Assessment of fitness using the HHSRS may identify further financial implications for the authority which will need to be taken into consideration when reviewing the Housing Financial Assistance Policy.</p> |
| Sustainability                        | N/A  |
| Communications                        | Advisory leaflets will be made available.  |
| <b>CORPORATE FACTORS</b>              |  |
| Procurement                           | Hand held equipment has been purchased through the IT Division.  |
| Efficiency                            | <p>The procurement of hand held equipment to assist in the assessment of dwellings on site will lead to improved services and increase Officer efficiency.</p>   |
| Strategic Risk Management             | <p>Fail to meet statutory obligations. Failure to meet Corporate Objectives. Inability to assess housing conditions. Legal Challenge and Government intervention.</p>  |
| E-Government                          | <p>Assessment will be undertaken electronically and development of standard documentation and advisory leaflets will be made available electronically.</p>   |
| Legal Considerations                  | <p>Inability to assess house condition may lead to legal challenge e.g. appeal</p>   |

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|-------------------------|--|
|                         | against enforcement action.  |
| Staffing Issues         | The authority must ensure that those officers authorised to carry out the duties and powers under the Housing Act 2004 have adequate training and skills to perform their functions efficiently on behalf of the authority.<br>As this new system is extremely complex, there is a likelihood that more officer time will be spent in assessing house conditions than under the previous fitness standard, and this will have a direct impact on staff capacity and may affect other service priorities. |
| Evaluation              | Environmental Health Service Plan will evaluate the implementation of the HHSRS and impact on current resources including service improvements.  |
| <b>COMMUNITY IMPACT</b> |  |
| Equality and Diversity  | <b>None</b>  |
| Crime and Disorder      | <b>None</b>  |
| Communities of Interest | Vulnerable Groups<br>Landlords   |
| <b>SCRUTINY</b>         | <b>Not reported</b>  |
| <b>KEY DECISION</b>     | Part 1 of the Housing Act 2004 provides for the introduction of the Housing Health and Safety Rating System (HHSRS) an evidence-based system for local authorities to use when assessing housing conditions and enforcing housing standards.   |