Chartered Institute of Environmental Health

Housing Act 2004 Part 1

Housing Conditions: Guidance to local housing authorities about the use of their powers

Response to draft guidance produced by the Office of the Deputy Prime Minister

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July 2005

THE CHARTERED INSTITUTE OF ENVIRONMENTAL HEALTH

Founded in 1883, the Chartered Institute of Environmental Health (CIEH) is a professional and education body, dedicated to the promotion of environmental health and to encouraging the highest possible standards in the training and the work of environmental health professionals.

The Chartered Institute has approximately 9,000 members, most of whom work for local authorities in England, Wales and Northern Ireland. As well as providing services and information to its members, the Chartered Institute provides information to government departments and evidence to them on proposed legislation relevant to environmental health.

In 1993 the Chartered Institute became the World Health Organisation (EURO) Collaborating Centre for Environmental Health Management in Europe.

Environmental Health Officers (EHOs) employed by local housing authorities are well placed, by virtue of their qualifications, training and experience to address the day to day problems raised by poor housing standards; they can bring an holistic approach to enforcement using the following qualities:

- experience in risk assessment procedures and ability to take an holistic view of the health, safety and welfare of occupiers alongside traditional building and means of escape defects

- skills in tenant liaison (in addition to dealing with the problems of bricks and mortar) which is vital to achieve the goals in privately rented premises where the inevitable disruption can cause severe problems for occupiers many of whom are the most disadvantaged members of the community

- experience and training in administering prosecutions including Court appearances when litigation becomes necessary

- control of a broad range of functions with consequent ability to resolve conflicts between them when they arise

- ability to provide a central unitary point of contact for all involved including local authority housing/rehousing officers, rent officers, social services, housing benefits, tenancy relations and voluntary agencies

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1. INTRODUCTION

1.1. The CIEH welcomes the draft guidance which will be of considerable help to local authorities. Part 2 of the guide, taking a strategic approach, is particularly relevant to raising standards in the private sector.

2. Taking a strategic approach

2.1. The CIEH welcomes the requirement for local housing authorities (LHAs) to liaise fully with Registered Social Landlords (RSLs) in keeping housing conditions under review and taking enforcement action. However, there is some concern that even though category 1 hazards have been identified, LHAs might be deterred from taking enforcement action if a programme of works for the dwelling(s) concerned had been established. Programmes of work often fall behind schedule and tenants, who have already possible endured category 1 hazards for some time, may perceive the LHA's willingness to work with the RSL as inaction.

2.2. Formal action to deal with properties that fall below an acceptable level should not be regarded as a last resort. Enforcement policies should conform to the requirements of the Enforcement Concordat but still form a routine part of an authorities approach to tackling unsatisfactory conditions. Informal action provides no safeguards to occupiers if undertakings given to an LHA are subsequently not kept. The service of a notice can formalise an undertaking that an owner has given which, if kept, would not prejudice the owner.

3. Action following hazard assessment

3.1. More information is needed in the guidance as to the person or persons on whom a notice(s) should be served.

3.2. Part 1 enforcement action in relation to self contained flats and their common parts/external parts of the property, owned by a number of individuals or companies, will often involve the service of more than one notice on any number of individuals/companies.

3.3. The responsibility for removing the hazard(s) in the common parts may lie jointly with the individuals/companies involved. For any individual flat the leaseholder will be responsible for inside the flat and may have some element of responsibility for communal parts, but may have no control over when works required may be undertaken. Guidance on this situation would be welcomed.

3.4. Whilst the proposed Regulations and enforcement guidance, in various parts, identify the "HMO" as the unit that should be free from hazards and targeted for enforcement action, the HHSRS guidance is applied to individual rooms or bedsits within an HMO. In this regard, the separation of the term "HMO" from "dwelling" in the Regulations and enforcement guidance causes confusion and it is not always clear as to how the LHA is to achieve certain of the stated aims in the enforcement guidance given the proposed application of the HHSRS guidance to assess conditions in HMOs.

3.5. There is nothing in the guidance to inform LHAs as to how they would improve conditions in a HMO that generated a range of hazard scores for the same hazard in different parts of the building. In HMOs, the HHSRS is to be applied to individual bedsits and hazard scores generated for each individual accommodation unit, but there is no mechanism to generate an overall score for the HMO building (point 3.3). A range of hazard scores would be generated depending upon the particular defects in the various bedsits and, for some hazards, the relative position of the bedsit in the building. For example, for Fire, there may be a spread of hazards in a 4 storey bedsit-type HMO from "E" on the ground floor to "B" on the top floor. Although the risks of fire to the occupants of the ground floor units might be considered "moderate", the conditions and lack of fire precautions in these units will be contributing to the higher hazard scores on the upper floors.

3.6. The following questions arise:

- Works to these units would form part of the overall package of improvements that was necessary to reduce the hazards in the upper units to an acceptable level, but how would this be achieved in practice?

- Some bedsits would contain a category 1 hazard for Fire and others a Category 2 hazard. Would there be one schedule of works for the whole HMO (as with current section 352 Notices) or would the schedule need to relate to individual "dwellings"?

- Would a single Notice (for example an Improvement Notice) be served to deal with category 1 and category 2 fire hazards that existed in different parts of the "residential premises"?

- How would notices be served if different owners/agents controlled different parts of the premises, some of which contained category 1 fire hazards and some of which only category 2 fire hazards?

3.7. The CIEH believes that there would be some limited occasions where it might be appropriate to serve an improvement notice and make a prohibition order simultaneously to deal with the same hazard in the same premises. For example a tall HMO, whose height would warrant a secondary means of escape in order to reduce the risk of fire to a reasonable level, but where it was not physically possible to provide such a secondary escape. In such a situation, a LHA could be justified in making a prohibition order to prevent the occupation of the upper storey (or storeys) whilst at the same time serving an improvement notice to upgrade the means of escape on the lower floors.

3.8. The guidance recommends that action might be suspended in cases where the premises is not occupied by a member of the most vulnerable group or their regular visitors. There is no definition of "regular" in the guidance. In the absence of more precise guidance, such a concept could be open to legal challenge. For safety hazards (such as falls on stairs), it could be argued that an infrequent visitor is more likely to fall on a hazardous staircase as they are less familiar with the hazard than a more regular visitor.

3.9. If a dwelling is occupied by a person who cannot physically cope with the remedial works necessary to remove a serious hazard, it would be reasonable to suspend action in such a case. Outside of this scenario, there would seem to be little justification in suspending action to remove serious hazards.

4. Enforcement options

4.1. Decision to serve a hazard awareness notice – the CIEH accepts that Hazard Awareness Notices will not normally be served in respect of Category 1 hazards but this may well be appropriate in the case of owner occupiers who are not residential landlords. The guidance should give this as an example.

4.2. The guidance advocates that works to remove a hazard be should carried out to a standard that prevents elements deteriorating (thereby avoiding "patch and mend" repairs), but more specific guidance would give LHAs a clearer framework in which to operate. The following addition is proposed:

"The action required by an improvement notice should reduce the hazard to an acceptable level. As a minimum, this would normally result in the hazard being reduced to the 'average' for the age and type of the dwelling, but, in the case of a category 1 hazard, works could be specified which reduce the hazard still further towards the ideal".

4.3. The use of a prohibition order to specify the maximum number of persons who should occupy a dwelling where there are insufficient facilities for the numbers in occupation could be problematic in respect of an HMO containing a number of dwellings. Each dwelling (room or bedsit in the HMO) might not be individually overcrowded but the HMO as a building might lack certain amenities. It would be necessary in such cases to be able to specify a total number of persons who can occupy the HMO and/or individual dwellings within the HMO.

5. Application of HHSRS to HMOs

5.1. The need for parts 1 and 2 of the Act to be enforced independently from each other is understood. However, it would be entirely inappropriate for a LHA to specify, in a HMO licence, a maximum number of persons that could occupy the HMO (para 6.4) which is in excess of a limit which has been imposed by a prohibition order whether suspended or not. Any such limit in the licence (above a limit imposed in a prohibition order) would place the occupants of the HMO at risk. The CIEH believes this paragraph to be confusing and unnecessary; it should be deleted.

5.2. The last sentence in para 6.6 is unhelpful. Many of the issues dealt with under current Management Regulations relate to issues that cannot be related to risk assessment insofar as they deal with issues of comfort and welfare. The most effective solution would be the deletion of this sentence.