

**To: City Executive Board**

**Date: 20<sup>th</sup> May 2009**

**Item No:**

**Report of: Head of Environmental Development**

**Title of Report: Charging for certain Housing Act notices**

### **Summary and Recommendations**

**Purpose of report:** To update the current Environmental Development's enforcement policy to include charging for certain Housing Act notices

**Key decision? No**

**Executive lead member: Councillor Turner**

**Report approved by:**

**Finance: Chris Kaye**

**Legal: Emma Griffiths**

**Policy Framework: Private Sector Housing Strategy 2007-2010**

**Recommendation(s): To amend the current Environmental Development Enforcement Policy to allow for the service of certain Housing Act notices**

## **1. Introduction**

The Housing Act 2004, which was introduced in April 2006, allows for a local authority to charge for the service of certain notices; these notices are served under Part 1 of the legislation and relate to hazards found in residential accommodation.

A charge can be made when serving the following notices

- Improvement Notice
- Prohibition Order

- Emergency Remedial Action Notice
- Emergency Prohibition Order.

The charges can cover costs in determining the course of action, including the inspection of the property, undertaking the assessment of the hazard ,the specification of actions to be taken and the service of the notice.

## **2. Amendments to the existing policy**

Following advice from Legal Services and LACORS (Local Authorities Coordinators of Regulatory Services) national guidance, it is recommended that the current policy is amended to outline that a charge will be made for the service of these notices. The amended policy is attached in Appendix 1

## **3. Equality Issues**

Legal notices and letters warning of action are technical and can be difficult to understand. Therefore assistance will be given where requested to ensure that recipients fully understand the implications

## **4. Climate Change Implications**

There are no climate change implications in relation to this amendment.

## **5. Financial implications**

The charge for the service of these notices has been set for 09/10 in line with the Fees and Charges at £300 per notice. This figure will be reviewed to ensure that it is in line with the true costs of serving notices.

## **6. Recommendations**

Members are recommended to agree the changes to amend the policy as outlined in Appendix 1, to allow for the charging of certain Housing Act Notices.

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**List of background papers: None**

**Version number: 1**

## Appendix 1

### Oxford City Council Environmental Development Enforcement Policy

1. The objective of the Environmental Development Service is to promote long term improvement in the health and wellbeing of the people in Oxford and to enhance the local environment for present and future generations. The functions of the Service include the enforcement of a wide range of Environmental Development legislation.
2. This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulators' Compliance Code ("the Code").
3. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.
4. The policy sets out the principles of good enforcement practice that will be used to deliver fair, proportionate and consistent enforcement across the Environmental Development Service. The following key principles of the Regulators' Compliance Code will inform all enforcement activities and support legislative requirements and the guidance provided by statutory codes of practice.

- **proportionality** - the service aims to balance any action it takes to safeguard the public against risks and costs;
- **consistency** - similar measures will be taken in similar situations to achieve similar outcomes. However, each situation may involve different variables and each case will be judged on the individual circumstances;
- **transparency** - this is needed to maintain public confidence in the system. The Environmental Development Service aims to explain clearly in each case why remedial action is required and where appropriate to discuss what steps need to be taken before formal action would be initiated. Whenever it is necessary to take immediate action the Environmental Development Service will provide a written explanation as soon as possible. A written explanation will also be provided about any rights of appeal against any enforcement action that is taken;
- **targeting** – inspections will be targeted on those activities which give rise to the most serious risks or where the hazards are least well controlled and will focus on the duty holders who are responsible for the risk and are best placed to control it for example employers, landlords and suppliers etc.;
- **accountability** – we will work to clear standards which will set out the level of service and performance the public and businesses can expect to receive. Performance will be measured against these standards which will be reported

annually. We will provide service users with an effective method of raising issues about service quality, including recourse to the Council's Corporate Complaints Procedure.

5. The Environmental Development Service advocates a "prevention rather than cure" approach and therefore works actively with the business community in Oxford, especially small and medium sized businesses, to advise on and secure coherent compliance with legislation.
6. The Environmental Development Service generally carries out its functions during normal office/shop opening hours but some routine inspections will be carried out at times to suit businesses and other clients, for example during the evening or at weekends. A 24-hour service to deal with emergency service requests is also provided.
7. The City Council has committed itself to the principles of good enforcement laid down in the central and local government Concordat on Good Enforcement and has signed the Concordat. This policy document embodies those principles but goes further by outlining the circumstances in which prosecution would follow enforcement.
8. Enforcement action is intended to ensure that measures are taken to prevent or remedy harm to the public and/or to secure compliance with the law. The Environmental Development Service's powers include the ability to serve a wide range of formal improvement and prohibition notices that require works to be carried out.
9. A charge as specified in the Council's current Fees and Charges report will be made if the following notices are served:
  - a) Housing Act - section 11(improvement notices)
  - b) Housing Act - section 12
  - c) Housing Act - section 20(prohibition orders)
  - d) Housing Act - section 21
  - e) Housing Act - section 41( Emergency Remedial Action)
  - f) Housing Act - section 43 ( Emergency Prohibition)

Written notification will be given, where practicable to a recipient of a notice requiring non – emergency works.

In case of emergency works, every reasonable effort will be made to contact the recipient before action is taken.

10. Each service area of the Environmental Development department works in accordance with its own operations manual which lays down, in detail, procedures to be followed by officers in the investigation of complaints or the carrying out of routine inspections. The procedures specify the circumstances in which enforcement notices are to be served.

11. If a criminal offence is committed, the Environmental Development Service may consider prosecuting, administering a caution, or issuing a warning.
12. Enforcement action is mainly targeted at persons whose actions seriously endanger their clients or members of the public. Non compliance with statutory requirements will be followed up in accordance with the principles set out above.
13. Where appropriate, the Environmental Development Service will prosecute either individuals or companies, as appropriate. This will only happen when sufficient evidence is available to ensure that there is a realistic prospect of success and it is in the public interest to prosecute. In addition, other action may be taken, for example works in default, seizure of equipment.
14. When deciding whether or not to prosecute, the Environmental Development Service will follow the general advice set out in the Code for Crown Prosecutors and, in particular, will consider the following factors:
  - a) the nature of the offence,
  - b) the effect of the offence,
  - c) the foreseeability of the offence or circumstances leading to it,
  - d) the intent of the offender(s),
  - e) the history of offending,
  - f) the attitude of the offender(s),
  - g) the deterrent effect of prosecution on the offender(s) and others.
15. Where sufficient, reliable and admissible evidence exists, the Environmental Development Service will normally prosecute in the following situations:
  - a) incidents/breaches with significant adverse effects,
  - b) excessive/continued breaches of the law,
  - c) failure to comply or adequately comply with formal remedial requirements,
  - d) utter disregard for legal standards,
  - e) obstructing an officer of the Environmental Development service.
16. The City Council is a public authority within the provisions of the Human Rights Act 1998 and must apply the principles of the European Convention on Human Rights in accordance with the Human Rights Act.
17. This policy will be monitored and reported on annually by the Head of Environmental Development. Any variations will be addressed within the Environmental Development Business Plan.

## CEB Report Risk Register

Risk Score **Impact Score:** 1 =Insignificant; 2 = Minor; 3 = Moderate; 4 = Major; 5 = Catastrophic **Probability Score:** 1 = Rare; 2 = Unlikely; 3 = Possible; 4 = Likely; 5 = Almost Certain

No.	Risk Description Link to Corporate Obj	Gross Risk		Cause of Risk	Mitigation	Net Risk		Further Management of Risk: Transfer/Accept/Reduce/Avoid		Monitoring Effectiveness				Current Risk	
		I	P			I	P	Action:	Outcome required:	Q 1	Q 2	Q 3	Q 4	I	P
1	Dissatisfaction from recipient of notice arising from amended policy. Linking to Corporate objectives of more housing, better housing for all, improve local environment, economy and quality of life and reduce crime and anti- social behaviour	1	2	Poor property management in private rented sector necessitating the need to serve statutory notices	Mitigating Control: none Level of Effectiveness: (HML)	1	2	Action: Action Owner:  Mitigating Control: Control Owner:	Outcome required: Milestone Date:  None proposed	☹	☹	☹	☹		
2					Mitigating Control: Level of Effectiveness: (HML)			Action: Action Owner:  Mitigating Control: Control Owner:	Outcome required: Milestone Date:						
3					Mitigating Control: Level of Effectiveness: (HML)			Action: Action Owner:  Mitigating Control: Control Owner:	Outcome required: Milestone Date:						