



Local Authority Enforcement Powers under the Housing Act 2004

Summary

Local Authorities have powers, under the Housing Act 2004, to calculate the seriousness of certain hazards and take enforcement action against building owners or landlords based on their assessment. The Ministry of Housing, Communities and Local Government (MHCLG) has announced a number of measures to make sure that local authorities have the confidence to use these powers to take enforcement action for private high-rise residential buildings with unsafe Aluminium Composite Material (ACM) cladding.

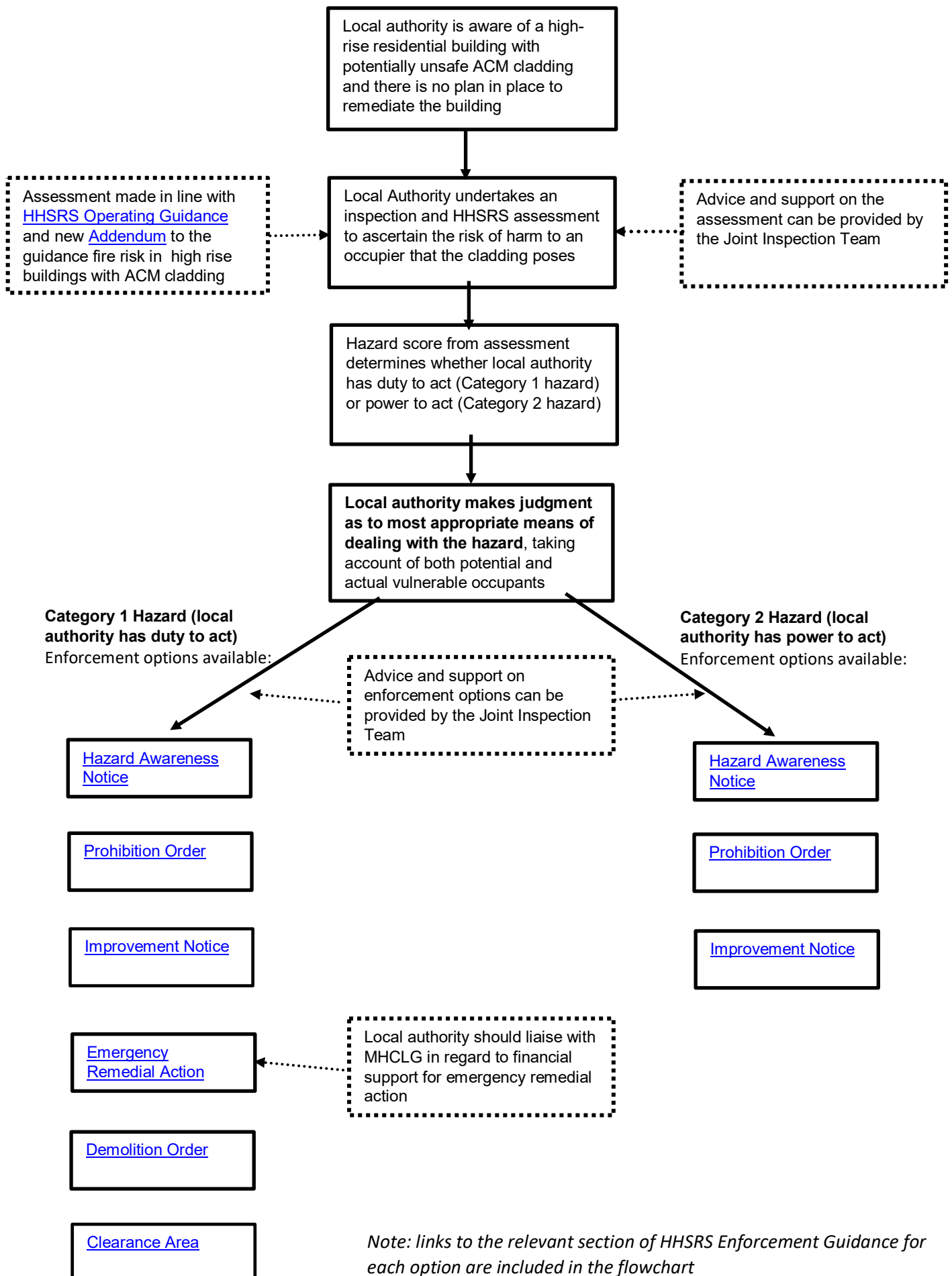
Where a local authority knows of such a building in their area, and there is no plan in place to remediate the building, it should:

- Undertake a Housing Health and Safety Rating System (HHSRS) assessment to ascertain the risk of harm to an occupier that the cladding poses
- Based on this assessment, determine the category of hazard and whether or not it has a statutory duty (for category 1 hazards) or a power (category 2) to act
- Decide on the most appropriate action to ensure remediation, based on:
 - The hazard score from the HHSRS assessment
 - Whether or not there is a category 1 or category 2 hazard. Emergency Remedial Action and Emergency Prohibition Orders are available in the case of category 1 hazards.
 - If a local authority is considering taking emergency remedial action, they should liaise with the officials at MHCLG to discuss support, including financial support, at: Towercasework@communities.gov.uk.
 - The authority's judgement as to the most appropriate means of dealing with the hazard, taking account of both potential and actual vulnerable occupants.

If a local authority requires advice on a HHSRS assessment and/or taking enforcement action in regard to a high rise residential building with ACM cladding, they can contact the Joint Inspection Team project lead at:

Brian.Castle@local.gov.uk to discuss whether the Team's support is appropriate.

Flowchart Showing Enforcement Options



Further information

Risk based assessment and new guidance for high rise residential buildings

The Housing Act 2004 contains a requirement that local authorities keep under review the conditions of residential buildings in their area, including high-rise residential buildings. Authorities are able to check the condition of high-rise buildings by conducting assessments under the Housing Act's risk assessment system, the Housing Health and Safety Rating System (HHSRS). Statutory Operating Guidance on how to make an inspection and carry out assessments is available at: <https://www.gov.uk/government/publications/hhsrs-operating-guidance-housing-act-2004-guidance-about-inspections-and-assessment-of-hazards-given-under-section-9>

Where a local authority is aware of a high-rise residential building with potentially unsafe ACM cladding and there is no plan in place to remediate the building, it should undertake a HHSRS assessment to ascertain the risk of harm to an occupier that the cladding poses. For guidance on how to conduct an HHSRS assessment of a high-rise building with ACM cladding, we have published a new addendum to the Operating Guidance, which is available at:

<https://www.gov.uk/government/publications/housing-health-and-safety-rating-system-assessment-of-high-rise-residential-buildings-with-cladding-systems>

The HHSRS assessment will determine the risk level of hazards that exist within a building, and the potential impact of those hazards on residents. If a hazard scores as a serious Category 1 rating, a local authority has a duty to take enforcement action; where a hazard scores as a less serious Category 2 rating, an authority has the power to take action.

Enforcement action following a HHSRS assessment

Statutory guidance for local authorities on the use of enforcement powers under the Housing Act 2004 is in the HHSRS Enforcement Guidance, which is available at: <https://www.gov.uk/government/publications/housing-health-and-safety-rating-system-enforcement-guidance-housing-conditions>

The guidance should be followed when local authorities are making enforcement decisions following a HHSRS assessment of a buildings with ACM cladding.

The Housing Act provides local authorities with a range of enforcement options to address hazards:

- **hazard awareness notices** (see paras 5.38 – 5.43 of Guidance);
- **prohibition orders** (see paras 5.15 - 5.23);
- **improvement notices** (see paras 5.4 – 5.12);
- **emergency remedial action or emergency prohibition orders** - not available for category 2 hazards (see paras 5.32 – 5.36);
- **demolition orders** - not available for category 2 hazards (see paras 5.44 – 5.46);
- **clearance areas** - not available for category 2 hazards (see paras 5.47 – 5.49).

Detailed explanations of each of these options and how they should be used are set out in the HHSRS Enforcement Guidance in the paragraphs identified above. As an example, an improvement notice may be used to require remedial action to reduce the severity of the hazard. However, it is for the local authority to determine which is the appropriate action to deal with the hazard. This decision should be based on: the HHSRS hazard score; whether or not the authority has a duty or discretion to act; and the authority's judgement as to the most appropriate means of dealing with the hazard, taking account of both potential and actual vulnerable occupants.

Emergency remedial action

As set out in Guidance if, for example, the assessment has shown a category 1 hazard and the hazard involves an imminent risk of harm to any of the occupiers, then emergency remedial action may be the most appropriate enforcement action. In such circumstances, authorities can themselves take remedial action to remove a hazard and recover their costs.

On 29 November 2018, we announced that we are backing local authorities to take emergency remedial action where private sector building owners are refusing to remediate high-rise buildings with unsafe cladding. This will include financial support for the local authority to carry out emergency remedial work where this is necessary. Where financial support is made available, the relevant local authorities will recover the costs from the building owner.

We have asked local authority officials in the affected areas to liaise with the officials at MHCLG where this is necessary. Local authorities who consider that they may require this type of support, should contact MHCLG at: Towercasework@communities.gov.uk.

Review of the Enforcement Guidance

We are also undertaking a wide-ranging review of the enforcement guidance available to local authorities, bringing it together into a consolidated, easy to navigate document. We are also providing updated training for local authorities on making the best of the enforcement powers they have.