



**North
Northamptonshire
Council**

JOINT ENFORCEMENT POLICY:

**REGULATORY SERVICES
TRADING STANDARDS
COMMUNITY SAFETY
ENVIRONMENTAL CRIME
PLANNING & DEVELOPMENT SERVICES
PRIVATE SECTOR HOUSING**

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This policy was approved by NORTH NORTHAMPTONSHIRE COUNCIL Shadow Executive on the **XX_XXX_2021**, minute **XX** and applies to all Council services that have a responsibility for enforcing legislation, including services commissioned or contracted on behalf of the Council or hosted by the Council.

1. Introduction

- 1.1 North Northamptonshire Council's Enforcement Policy provides an overarching framework under which the Council carries out its enforcement investigations and action. All staff employed and contracted by the Council are expected to follow this policy.

Whilst this policy seeks to explain key themes and general principles, members of the public and businesses are advised that detailed service-specific enforcement arrangements exist including those in the schedule to this policy.

- 1.2 The Council is committed to maintaining and developing good enforcement policies and procedures and carrying out enforcement functions in an equitable, practical, and consistent manner, which helps to promote a thriving economy.
- 1.3 The purpose of this policy is to secure an efficient and effective approach to all council regulatory inspection and enforcement functions and improve compliance with legislation whilst minimising the burden on businesses, individuals, organisations, and the Council.

This is in accordance with the Regulator's Code, published by the Better Regulation Delivery Office (BRDO)¹.

- 1.4 In certain instances, the Council may conclude that a specific provision of the Code is either not applicable or is outweighed by another consideration. The Council will ensure that any decision to depart from the Code will be properly reasoned, documented, and based on material evidence.
- 1.5 This policy explains the approach adopted when carrying out the Council's duty to enforce a wide range of legislation and is written in general terms to accommodate this.
- 1.6 The Council will endeavour to serve residents, businesses, and consumers by working with the business community to ensure healthy, fair and safe trading, and a thriving economy. The Council will take particular care to help compliance focused small businesses, individuals, voluntary and community organisations to meet their legal obligations at minimal or proportionate cost.
- 1.7 The Council recognise that the public have a responsibility as guardians of their own community and locally decided remedies are encouraged to build stronger communities. This extends to providing authority for enforcement, on request and subject to controls, to town and parish councils and other agencies, where appropriate.
- 1.8 When the Council takes enforcement action, it will take account of national priorities alongside local priorities that exist at the time of any intervention, investigation, or offence.
- 1.9 Enforcement interventions may be targeted according to Council, neighbourhood or area priorities.

¹ www.gov.uk/government/organisations/better-regulation-delivery-office

2. Scope

- 2.1 This policy relates to all Council services which operate a regulatory function within or on behalf of the Council.

Examples of service areas which enforce legislation and have a regulatory function include:

- Environmental Health (food safety, health and safety, environmental protection, public health, environmental crime and nuisance)
- Trading Standards (doorstep crime, fraud, animal health, counterfeiting, underage sales, weights and measures, food labelling, rogue trading)
- Planning, Development and Building Control
- Private Sector Housing
- Travellers Unit (Unauthorised Traveller Encampments)
- Licensing (alcohol, hackney carriage and private hire vehicles, gambling, street trading and caravan site licensing)
- Council Tax, Benefit and Blue Badge fraud
- Waste management and street scene/environmental services including, but not limited to fly-tipping, littering and other waste offences
- Anti-social behaviour and other Community Safety matters
- Parking Services
- Highways
- Animal Welfare

Please note that this list is not exhaustive and refers to the ‘traditional’ name of the service area/function for simplicity.

- 2.2 This policy provides an overarching framework for Council employees, contractors, and hosted services to operate within but is also designed to provide those people who may be affected by regulatory decisions (members of the public, commercial businesses or voluntary organisations) with an overview of the Council’s approach and general operating principles.

- 2.3 Local task specific enforcement procedures, for example for planning, trading standards and parking enforcement exist as part of this policy to provide further detail to the public. These can be accessed on the Council’s website or obtained in hard copy format by contacting the relevant service area.

2.4 Compliance with the Primary Authority Principle

The Regulatory Enforcement and Sanctions Act 2008 introduced Primary Authority Partnerships. A Primary Authority is a local authority registered by The Office for Product Safety and Standards (OPSS), as having responsibility for providing advice and guidance to a particular business or organisation where this business is subject to regulation by more than one local authority.

We will give due consideration to any business, that wishes to enter into a Primary Authority Partnership arrangement with North Northamptonshire. We are committed to communicate with other Primary Authorities at an early stage whenever the circumstances require it.

If we come to a decision to take enforcement action against a business that has a Primary Authority Partnership with another regulator; we will notify the Primary Authority of the action we propose to take or have taken.

The Primary Authority has the right to object to our proposed action and they or we may refer the matter to the Regulatory Delivery Team for their adjudication and final decision.

3. Standards

- 3.1 All officers engaged in enforcement functions are appropriately trained and authorised to ensure the highest standards of service delivery.
- 3.2 The Council expects residents and businesses to act on its officers' advice when given. If a resident or business operator chooses not to act on this advice, an enforcement intervention should be expected.
- 3.3 Enforcement action relies upon sufficient evidence to prove or support action being taken. The Council cannot act formally in any case where there is insufficient evidence. In such cases, details will be used for intelligence purposes and may be used to support informal action.
- 3.4 In cases where there is an imminent risk to health or the environment, enforcement action may be taken before the right of challenge can be heard.
- 3.5 Section 19 of this policy provides details on how to appeal or challenge an enforcement decision and Section 27 of this policy provides details of the Council's complaints procedure.

4. Openness

- 4.1 The Council will provide information and advice in plain language and will seek to explain clearly how it undertakes its work. The Council will discuss general issues, individual compliance failures or problems with anyone experiencing difficulties on request.
- 4.2 A business or individual, will be notified of intended enforcement action as soon as is feasible, unless this could hamper an investigation or pose a safety risk to those concerned, the environment or the general public.

5. Helpfulness

- 5.1 The Council believes prevention is better than cure and therefore encourages businesses and others to seek advice to assist with compliance. The Council provides a range of chargeable complementary services including Primary Authority partnerships to help with this.
- 5.2 In correspondence, the Council will identify named contacts for service-related queries or complaints. Written correspondence will contain a unique reference number which can be quoted when contacting the Council.
- 5.3 The Council makes businesses and customers aware of the enforcement policy and changes to the enforcement policy during site visits, through correspondence and consultation processes, and will provide a printed copy of this policy on request. The enforcement policy will be made available on the council website.

6. Proportionality

- 6.1 The Council will endeavour to ensure that any action it requires an individual or business to take, is proportionate to and balanced against the risks. As far as the law allows, the Council will take account of the individual circumstances of each case when considering action. This includes the seriousness of the offence, past history, confidence in management, the consequences of non-compliance and the likely effectiveness of the various enforcement options.

7. Consistency

- 7.1 The Council will carry out its duties in a fair, equitable and consistent manner. Whilst officers are expected to exercise judgement in individual cases, the Council has arrangements in place to promote consistency, including effective liaison arrangements with other authorities and enforcement agencies which may have a shared enforcement role.

All investigations are undertaken in accordance with legal requirements and relevant government guidance.

The Council maintains management systems to monitor the quality and nature of enforcement activity undertaken so as to ensure, as far as is practicable, uniformity, consistency in approach and a quality service in general.

- 7.2 The Council ensures that where supplementary decision-making policies and tools exist, for example, the Health and Safety Executive's (HSE) Enforcement Policy² and Enforcement Management Model (EMM), they are used;

- to provide a framework for making consistent enforcement decisions
- to monitor the fairness and consistency of inspectors' enforcement decisions in line with policy
- to assist offenders in their understanding of the principles which inspectors follow when deciding on a particular course of action

8. Levels of enforcement action

- 8.1 The Council takes an incremental approach to non-compliances which may amount to contraventions of legislation. Before formal enforcement action is taken, the Council will provide an opportunity to the individual to discuss the circumstances of the case and take these into account when deciding on the most suitable approach. However, this will not apply when immediate action is required to prevent or respond to a serious breach, or where to do so is likely to defeat the purpose of the proposed enforcement action. When an officer is investigating possible criminal offences, any discussion of the case may need to be by way of formal interview, in accordance with the Police and Criminal Evidence Act 1984.

Legislative compliance will be secured by one or a combination of the following methods:

² www.hse.gov.uk/enforce/enforcepolicy.htm

Promotion: to raise awareness about legal standards and promote good practice. This is typically achieved by the issuing of press releases, website information, distributing leaflets, signage and other forms of guidance available to the public and businesses, by face-to-face contact and schemes to enhance compliance and self-regulation. Advice will normally be given through access to written information although this can be varied if it is more easily understood another way.

Informal warnings: these will be used to reinforce promotional activities where, whilst the law may have been broken or standards not met, it was not thought appropriate to take more formal action. An informal warning can be oral or written and will be a matter of record. If it is believed by the recipient that such a warning is inappropriate or unjustified then they may request for the decision to be reviewed by a senior officer.

Isolated minor infringements are unlikely to lead to formal action. However, if the incident is repeated, or if previous advice has been ignored, formal action may follow.

Formal enforcement: this includes but is not limited to the use of statutory (legal) notices, written undertakings and civil enforcement orders, revocation of a licence or registration, cautions, fixed penalty notices, penalty charge notices, administration penalties, powers of seizure, the use of injunctions, restorative justice and prosecution.

Enforcement action is taken following procedures laid down in legislation, codes of practice and professional guidance notes. Where members of the public need protecting from behaviour that is likely to cause harassment, alarm or distress, the Council may seek to use a range of anti-social behaviour enforcement tools, independent action, or action in consultation with the police and or the Crown Prosecution Service following conviction.

In each case, which has the potential to result in prosecution, the investigating officer will compile a report objectively setting out the facts of the matter.

Consideration will be given to factors which will be ultimately relevant when considering whether to prosecute, such as, whether it is expedient for the promotion or protection of the interests of the inhabitants of the particular area. The report will be used when considering whether to prosecute or to use an alternative formal route.

- 8.2 There may be cases where the local authority cannot act due to the absence of independent evidence.

9. Statutory (legal) notices

- 9.1 Many Acts of Parliament enforced by the Council allow for, or require the service of statutory notices, which require a person, business or organisation to comply with specific legal requirements within a specified time period. Where a formal notice is served, the method for appealing against the notice will be provided in writing at the same time.

The notice will explain what legislation has been breached, how to comply with the notice and the consequences of not complying with a notice.

- 9.2 In general, failure of a person to comply with a properly written and served statutory notice makes the person or business named in the notice (the recipient of the notice) liable to prosecution. In some cases, the Council is able to, and will carry out works to comply with the notice and recover the cost to the Council from the recipient(s) of

the notice.

- 9.3 In some circumstances both prosecution and carrying out works in default to comply with the notice may be appropriate.

10. Written undertakings and enforcement orders

10.1 Where an individual or organisation persistently fails to comply with the law, the Council may seek a written undertaking from that person that they will cease the action. In such circumstances, and as a proportionate measure, the Council may decide that no further formal action will be taken unless the agreement is breached.

10.2 In cases where an individual or organisation has breached an undertaking or has refused to provide a written undertaking to cease an action, or committed a relevant offence, an application to a court or tribunal may be made for an enforcement, repayment or banning order, or for other formal action in accordance with the relevant legal provisions.

11. Injunctions and other civil actions

11.1 In certain circumstances the Council may consider it necessary or expedient to seek an injunction to restrain or compel behaviour or activity. Injunctions are orders of the court, breach of which are punishable as a contempt of court by imprisonment or a fine.

11.2 The Council can also apply for Criminal Behaviour Orders.

11.3 As an alternative to an injunction order the Council may accept a written undertaking.

12. Fixed Penalty Notices

12.1 A Fixed Penalty Notice may be used as a means of dealing with an offence instead of prosecution. Certain 'low level' offences such as littering, dog fouling and smoking in prohibited places are subject to Fixed Penalty Notices and they enable the offender to avoid a criminal record. Fixed Penalty Notices can also be issued to companies where they fail to comply with permit or other statutory requirements.

12.2 The Council will comply with any relevant guidance on the use of Fixed Penalty Notices. This includes:

- a) There must be sufficient evidence for a realistic prospect of conviction.
- b) The offence is not too serious and is of a nature suitable for being dealt with by a Fixed Penalty Notice.

12.3 The Council follows specific guidance on issuing Fixed Penalty Notices to juveniles. In particular, a Fixed Penalty Notice issued to a juvenile aged 10-15 years must be issued in front of his or her parent or legal guardian. The procedure for issuing Fixed Penalty Notices to young people aged 16 and 17 is the same as for adults.

12.4 Where there is doubt as to whether an offender is aged 16 or 17, the procedure for issuing Juvenile Fixed Penalty Notices to persons aged between 10 to 15 year olds will be followed.

- 12.5 A Fixed Penalty Notice will not be issued to a juvenile between 10 and 17 years of age for a first offence.
- 12.6 A Fixed Penalty Notice may only be issued to a juvenile for a second (or subsequent) offence and then only if it is considered an appropriate course of action after the case has been referred to the Youth Offending Team and considered for an alternative appropriate intervention.
- 12.7 Where an adult recipient (i.e. a person 18 years of age or above) does not pay the penalty offered, or is a repeat offender, there will be a presumption that prosecution will follow in relation to the actual offence.

13. Penalty Charge Notices

- 13.1 Penalty Charge Notices are issued in relation to breaches of parking restrictions.
- 13.2 The method and circumstances for issuing Penalty Charge Notices is prescribed by specific legislation and is used as a method of enforcement whereby an individual pays an amount of money as a consequence of breaching a parking restriction. Failure to pay a Penalty Charge Notice may ultimately result in the relevant individual being pursued by the Traffic Enforcement Centre, Northampton County Court for non-payment of the debt.
- 13.3 A Penalty Charge Notice does not result in the creation of a criminal record and it is common practice for a Penalty Charge Notice to be issued without first issuing a warning.

14. Revocation, suspension and withdrawal of licences and permits

- 14.1 Where the council has issued a permit, approval, licence or other form of permission, removal of that permission, in line with the relevant guidance or legislation will be considered as an enforcement remedy.

15. Forfeiture

- 15.1 In certain cases, the Council may seek an order of the court for forfeiture of goods, equipment, materials or vehicles it has seized either as part of a criminal investigation or in the exercise of its enforcement functions.

16. Alternative sanctions

- 16.1 In certain circumstances alternative sanctions may be offered. Alternative sanctions include paying to attend a training or awareness-raising event linked to the offence as an alternative to prosecution or any other enforcement measure.

17. Simple cautions

- 17.1 As an alternative to prosecution, in appropriate circumstances a simple caution may be considered in accordance with the guidelines relevant to the cautioning of adult offenders. The issuing of a caution is subject to the individual's admission of the offence.
- 17.2 A simple caution is not a criminal conviction but will form part of an offender's criminal

record and may be referred to in any subsequent proceedings.

- 17.3 For a simple caution to be issued the following are required:
- a) sufficient evidence to provide a realistic prospect of conviction and in the public interest to caution
 - b) a reliable admission by the offender
 - c) the offender must be over 18 years of age

17.4 The refusal of an offender to accept a simple caution will not prevent the matter from being prosecuted.

18. Prosecutions

18.1 The Council has a power to institute proceedings under section 222 of the Local Government Act 1972 where it considers it expedient for the promotion of the interests of the inhabitants of its area.

18.2 Each case is unique and must be considered on its own facts and merits. The Council will use its discretion when deciding whether to initiate a prosecution.

18.3 Any decision to prosecute will take account of the criteria set down in the Code for Crown Prosecutors issued by the Director of Public Prosecutions.

18.4 Before deciding to prosecute there must be sufficient evidence for a realistic prospect of conviction taking account of any defence that may be available, and it must be in the public interest.

18.5 The following public interest criteria will normally be taken into account when deciding on the relevance of legal proceedings, although this list is not exhaustive:

- The prevalence of the type of offence
- The need for a suitable deterrent
- The risk of danger or injury to the public
- Significant impact in the environment and/or community
- The failure to comply with a statutory notice or respond to advice about legal requirements
- The disregard of legal requirements for financial reward
- Significant financial loss, potential or actual, to a third party
- A history of similar offences
- Persistent breaches of legislation
- Where fraud, gross negligence or guilty knowledge is a factor
- Minor breaches of a number of statutes

18.6 Where possible an offender will be told as soon as sufficient evidence is obtained that a prosecution may follow.

18.7 All prosecutions will be brought without unnecessary delay. The length of any investigation will be proportionate to the complexity and extent of material under examination and the time constraint set out in the applicable legislation.

18.8 The Council will aim to maximise its effectiveness by working with other authorities and other agencies, sharing intelligence where it is lawful to do so and mounting joint

operations where that would bring benefits.

Outside agencies include:

- Northamptonshire Police
- Environment Agency
- Health and Safety Executive
- Food Standards Agency
- Northamptonshire Fire and Rescue Service
- HM Revenue and Customs
- DEFRA / Animal Health and Veterinary Laboratories Agency
- Office of Product Safety and Standards
- Serious Organised Crime Agency
- Department for Work and Pensions
- Registered Social Landlords
- The enforcement arms of trade protection organisations such as the Federation against Copyright Theft
- DVLA
- DVSA
- Other local authorities

This is not an exhaustive list and other agencies may be consulted

- 18.9 Where there has been a work-related death, or there is a strong likelihood of work-related death, the Council will liaise and work jointly with the Police, Coroner and the Crown Prosecution Service in accordance with the joint Work-Related Death Protocol. <http://www.hse.gov.uk>
- 18.10 After prosecution the Council may consider preventative action to protect the public from further harm. This can include adding a name to a national prohibited person/rogue landlord data base, or similar, to prevent trading.
- 19. Appeals, challenges and making representation about an enforcement decision**
- 19.1 Appeals, challenges and making representation about an enforcement decision should not be confused with complaints about an officer or the service.
- 19.2 Where statutory appeal processes exist, guidance on how to appeal will be provided at the time of enforcement action.
- 19.3 Where no statutory appeal process exists, for example in the case of a Penalty Charge Notice issued for a parking offence, guidance on how to challenge or make a representation is provided at the time of issue and on the Councils website.
- 20. Proceeds of Crime**
- 20.1 In appropriate cases, an application will be made under the provisions of the Proceeds of Crime Act 2002 for confiscation of assets to recover the financial benefit an offender has obtained during the course of their criminal conduct.

Advice should be sought from the Accredited Financial Investigator at an early stage of a criminal investigation so that the Financial Investigation can be progressed

without delay.

- 20.2 Notice of the application to proceed to confiscation must be made after a conviction has been secured but prior to sentencing.

21. Charges and costs

- 21.1 Certain enforcement activities incur a charge. Any charges made are to recover costs, not to make a profit. Some charges are set by statute; others are determined by the Council.

When setting fees and charges the authority must be able to demonstrate they are fair, reasonable, transparent, and consistent.

In certain exceptional cases the Council has discretion to take into account the personal circumstances of the recipient of the charge for enforcement action. Fees and charges are set annually and can be viewed on the Council website.

- 21.2 Where possible the fee must be paid before receipt of the service.
- 21.3 Where appropriate, the Council will seek to recover from the offender or perpetrator the reasonable cost it incurs in pursuing a particular enforcement route including prosecution, injunctive action or appeal.

22. Enforcement in local authority-run establishments

- 22.1 Where the Council is the Enforcing Authority for its own premises, steps are taken to ensure that enforcement decisions are free from any conflict of interest.
- 22.2 Serious breaches of law are brought to the attention of the relevant Head of Service and Chief Executive without undue delay.

23. Gathering evidence

- 23.1 Regulatory bodies are empowered to gather evidence by various means, this can include overt methods i.e. where the subject is aware or where appropriate, covert methods, where the subject is unaware.
- 23.2 The Regulation of Investigatory Powers Act 2000 and the Investigatory Powers Act 2016 provide a framework for public bodies, including local authorities, to use 'covert surveillance' to gather information about individuals without their knowledge for the purposes of undertaking statutory functions in connection with the prevention or detection of crime.
- 23.3 This 'covert surveillance' can include the use of photography or video to record persons suspected of being engaged in criminal activity. The Council may covertly obtain communications data such as telephone subscriber details and service use.
- 23.4 In such cases of directed surveillance or obtaining communication data, appropriate authorisation is sought in accordance with the Regulation of Investigatory Powers Act 2000 (RIPA) and the Protection of Freedoms Act 2012.
- 23.5 Authorisation may be sought for directed surveillance if the offence in question could result in a sentence of six months or more imprisonment. There are however exemptions to these criteria, for example, if the investigation concerns the sale of

alcohol and tobacco to children. Covert surveillance is used in cases where it is important to obtain information to support potential criminal proceedings, and only where that information cannot be obtained by other means.

- 23.6 Council officers carrying out enforcement duties may not always conduct their duties in Council issue uniform.

For example, in areas of concern where high levels of littering and dog fouling have been reported, it may be necessary for plain clothed enforcement officers to undertake patrols. This will only occur when residents in the area have been made aware of in advance by one or more of the following methods: Letter / leaflet; community notice board; local newspaper; on street signage or other locally agreed method.

The types of police powers used by uniformed community/neighbourhood safety wardens include the requiring of persons under 18 to surrender alcohol and powers to request names and addresses of persons acting in an anti-social manner together with the associated power to issue a Fixed Penalty Notice for failing to comply.

- 23.7 During an investigation, we may gather one or more of the following:

- Paper records
- Computer records
- Photographs
- CCTV and information from personal observations
- Body camera footage
- Samples (food, water, environmental, faecal, pests)
- Counterfeit goods
- Witness statements
- Test purchases
- Invoices
- Dangerous equipment
- Noise monitoring equipment / recordings
- Plans / sketches
- Information available on social networking websites and other open source data
- Communications data
- Information from other agencies such as the Police or Health and Safety Executive

This list is not exhaustive.

- 23.8 Material may be retained so long as is necessary in all the circumstances. The Council considers each case on its own individual facts at each stage of the investigation and prosecution. In certain circumstances, where there is a potential risk to health, the Council may seek to destroy equipment that has been seized. This would include, for example, the destruction of tattooing and body piercing equipment used by an unlawful operator, to prevent the spread of blood borne disease.

- 23.9 Failure to assist an investigation and / or obstruct an officer is an offence under many pieces of legislation. The Council expect co-operation and will take action in the event of non-co-operation. If an individual fails to give their personal details during an investigation, this may be considered an additional offence.

- 23.10 In gathering evidence, the Council routinely undertake recorded investigative interviews under caution in accordance with the rules set out in the Police and Criminal Evidence Act 1984 and associated Codes of Practice. The aim of the interview is to obtain an honest and accurate account about the matter under investigation and allows the individual or business the opportunity to convey their version of events as part of an investigation.

Attendance in person at an interview under caution is expected on the grounds of gathering best evidence and efficiency of the investigation process. This process assists the individual or business in the 'right to a fair trial' in accordance with the Human Rights Act 1998.

An individual is entitled to be legally represented at the interview.

- 23.11 Information on the conduct of the interview and rights of an individual or business will be explained before the interview in accordance with the Codes of Practice.
- 23.12 In some circumstances a caution may be issued on site if the officer believes an offence has been committed and questions need to be asked at that time. The officer will then record, normally in a pocket note book, contemporaneous notes of the following conversation and request a signature in this pocket note book entry

24. Equality and diversity

- 24.1 Procedures developed under this policy and the policy itself are subject to an Equality Analysis to ensure that all aspects of Equality and Diversity are considered in its production.
- 24.2 All Equality Analyses are subject to regular review to ensure a continuing commitment to be inclusive and are available on the Council's Website.
- 24.3 This policy and service standard documents can be provided in other formats such as audio, large print, on CD or can be translated on request.
- 24.4 Officers will visit customers with an access need where this is necessary.
- 24.5 Translation services are available to support investigations and, pictures and taped interviews can be used as an alternative to written exchanges where a need is identified.

25. Protection of human rights

- 25.1 This policy and all associated enforcement decisions take into account the provisions of the Human Rights Act 1998. In particular:
- The right to a fair trial (article 6)
 - The right to respect for private and family life, home and correspondence (article 8)

26. General principles of officer conduct

- 26.1 In addition to the principles set out in this policy, officers will be professional and

courteous.

- 26.2 Officers will, as the circumstances allow, announce who they are and in what capacity they are acting. However, there may be occasions when officers legitimately delay identifying themselves until a later stage of the investigation.
- 26.3 Officers will carry and show their identity card or authorisation as appropriate.
- 26.4 Officers must be fair, independent and objective and must not let any views about ethnic or national origin, sex, religious beliefs, sexual orientation or political views, influence decisions. They must not be affected by improper or undue pressure from any source. Authorised officers will act in the interests of justice.

27. Complaints, compliments, and suggestions

- 27.1 Complaints, compliments, or suggestions on any aspect of the services the Council provides, should, in the first instance, be directed to the Service Manager of the relevant service area.
- 27.2 Details of the Council's corporate complaints procedure is available as follows: On the web at:

Via email on:

By telephone on: **XXXX XXX XXXX**

Or, by writing to:

Or visit a customer service centre and ask to make a comment, compliment, or complaint.

If the Council's response to a complaint about the service fails to resolve the matter, you may lodge a formal complaint. The issue will then be investigated through the Council's corporate complaints procedure.

- 27.3 Where a complaint is received about the conduct of an officer, an investigation will be conducted in parallel to the enforcement action and will not delay the enforcement process.

28. Review of this enforcement policy

- 28.1 Changes to this policy will be considered annually, and a formal review process will be carried out every five years.
- 28.2 If you have any queries regarding the content of this policy, please contact **XXXX XXX XXXX**.

29. Enforcement Policy Schedule: Trading Standards

This schedule sits as part of the Council's Enforcement Policy and contains further detail to set out the functions of both regional and local trading standards teams. This schedule should be read in conjunction with the broader Enforcement Policy.

Introduction:

1. The Council is committed to the aims of the Enforcement Policy and to maintaining a fair and safe trading environment.
2. The Council supports the Local Government Home Authority Principle and the Office for Product Safety and Standards (OPSS) Primary Authority Scheme. The Council places special emphasis on goods and services originating in its area and providing businesses with a source of guidance and advice.
3. The Council will work closely with both regional and national teams where their activities are complementary or have a significant influence in relation to issues in North Northamptonshire. It recognises that there will be several occasions when business activities conducted in one region will directly affect the inhabitants of another region, such as a business located in one area trading with consumers at a national or international level.
4. The Council will also have regard to national policy and strategic objectives as set out by National Trading Standards Board such as ensuring effective delivery and co-ordination of national and cross boundary enforcement projects in relation to serious consumer protection crime (including eCrime and business to business fraud) and mass marketing scams.

Compliance with the Primary Authority Principle:

5. The Regulatory Enforcement and Sanctions Act 2008 introduced Primary Authority Partnerships. A Primary Authority is a local authority registered by Regulatory Delivery (RD), as having responsibility for providing advice and guidance to a particular business or organisation and this business is subject to regulation by more than one local authority.
6. We will give due consideration to any business, that wishes to enter into Primary Authority Partnership arrangement with North Northamptonshire Trading Standards Service.
7. We are committed to communicate with other Primary Authorities at an early stage whenever the circumstances require it.
8. If we come to a decision to take enforcement action against a business that has a Primary Authority Partnership with another regulator; we will notify the Primary Authority of the action, we propose to take or have taken.
9. The Primary Authority has the right to object to our proposed action and they or we may refer the matter to the Regulatory Delivery Team for their adjudication.

Provision of Advice to Businesses

10. We will provide advice to businesses based in Northamptonshire in accordance with our Business Advice Policy. Basic “Compliance Advice” will be offered free of charge to all businesses regardless of size, as required by the Regulators’ Code. More detailed ‘Comprehensive Advice’ may be subject to a fee.

Information Sharing:

11. The Council also works closely with regional and national enforcers, such as Regional Investigation Teams, Illegal Moneylending Team, the National Scams Hub and National Trading Standards. This is in accordance with regional and national priorities and objectives to ensure effective and efficient investigation and enforcement action.

This section must be read in conjunction with the rest of the Council’s Joint Enforcement policy

30. Enforcement Policy Schedule: Environmental Crime

Introduction

This schedule sits as part of the Council's Enforcement Policy and contains further detail to set out approach to dealing specifically with environmental crime. It should be noted that the Council operates a Zero tolerance policy in respect of environmental crime.

Specific Offences

Environmental crime relates to the following offences;

1. Littering
2. Public Space Protection Orders (Dog Control Order)
 - i. Fouling
 - ii. Dogs on leads
 - iii. Exclusion of dogs from designated areas
 - iv. Limits on the number of animals under the control of one person in a public place
3. Fly Tipping
4. Domestic waste offences – failing to present household waste in accordance with the Council's waste collection policies without reasonable excuse
5. Commercial Waste Offences
6. Waste Transfer Offences
7. Failure to comply with Community Protection Notice
8. Graffiti
9. Fly Tipping
10. Abandoning a Vehicle
11. Nuisance Parking

Publicity

The Council takes a positive approach to publicising enforcement work and recognises the significant impact of such publicity. The aim of this publicity is to raise the profile of the offences, increase confidence from the public and deter future offenders. The Council will also periodically publish performance information on FPNs and other enforcement action through the Council's reporting mechanisms.

This section must be read in conjunction with the rest of the Council's Joint Enforcement policy

31. Enforcement Policy Schedule: Community Safety in respect of Anti-Social Behaviour

Introduction

This schedule sits as part of the Council's Enforcement Policy and contains further detail to set out the community safety functions in respect of the Anti-Social behaviour, Crime and Policing Act 2014 (the Act). This schedule should be read in conjunction with the broader Enforcement Policy.

Each of the powers has a specific test, set out in the Act that must be met if a formal notice or sanction is required. The choice of enforcement options will depend on the type of anti-social behaviour being committed, the evidence demonstrating that the test for each power has been met and whether there is a realistic chance of securing a conviction if a notice has been breached by the offender.

Range of enforcement options

The range of enforcement options is set out below:

- No action
- Informal interventions
- Obtaining a Civil Injunction
- Issuing a Community Protection Notice Warning (in the case of the Community Protection Notice power)
- Serving a Community Protection Notice (CPN)
- Obtaining a Criminal Behaviour Order (CBO)
- Prosecution for the breach of a CPN or CBO

No action

All complaints about ASB will be fully investigated. In some cases, officers can give advice to a complainant, which may involve trying to talk issues through with their neighbours or the people causing the problem. Sometimes perpetrators of ASB do not realise that their behaviours are causing a problem. If things can be corrected or resolved through advice, then North Northamptonshire Council may consider taking no enforcement action.

Detailed records will still be taken even if no action is taken.

Informal interventions

Where advice appears not to work and a firmer intervention could help resolve a conflict, North Northamptonshire Council will look towards informal interventions. The use of informal interventions will depend on the circumstances of the case. In the case of a verbal warning, this would be used to warn an offender that a formal Community Protection Warning letter (for the CPN power) would be issued to them if they do not stop what they're doing. The consequences of not adhering to the warning letter would result in a formal CPN being issued.

If available, mediation might be considered as a way of getting the parties to try and resolve their differences.

Obtaining a Civil Injunction

The injunction, under Part 1 of the Anti-Social Behaviour, Crime and Policing Act 2014 is a civil power that can be applied for to deal with anti-social individuals. The injunction can offer fast and effective protection for victims and communities and set a clear standard of behaviour for perpetrators, stopping the person's behaviour from escalating.

Community Protection Notice Warning Letter (CPNW)

Where verbal warnings or other informal interventions have not worked or are unlikely to work and the offender's behaviour meets the test for the CPN power, North Northamptonshire Council will consider issuing a formal Community Protection Notice Warning Letter. This will state why the offender's behaviour is considered to be causing harassment, alarm or distress to the victim and what they must do to stop it.

Community Protection Notice (CPN)

If an offender fails to comply with a Community Protection Notice Warning Letter they will be served with a formal Community Protection Notice (CPN). Breach of a CPN will constitute a criminal offence.

Obtaining a Criminal Behaviour Order (CBO)

Where an offender's behaviour is serious enough for them to be convicted of a criminal offence, examples would be: threatening violence against the others in the community or persistent drunk and aggressive behaviour, a Criminal Behaviour Order (CBO) may be applied for if it considered reasonable and proportionate by North Northamptonshire Council.

This section must be read in conjunction with the rest of the Council's Joint Enforcement policy

32. Enforcement Policy Schedule: Planning and Development

This schedule sits as part of the Council's Enforcement Policy and contains further detail to set out the functions of both regional and local trading standards teams. This schedule should be read in conjunction with the broader Enforcement Policy.

Local Performance Targets

Cases can be very different; some can be resolved quickly but others take much longer. The Council does not therefore use the length of time taken to resolve a breach as a measure of our performance. Instead, the Council will monitor the number of cases satisfactorily resolved / unresolved and report these regularly to the relevant planning committee.

We will operate to the following local performance targets for enforcement and we will monitor our success against them:

- All letters or emails received that suggest a breach of planning control may have taken place will be acknowledged within 5 working days
- A site inspection will be carried out in line with the prioritisation scheme at paragraph 4.8 of this document
- Within 20 working days of an acknowledgement, we will contact the complainant to explain our findings, and what action is proposed.
- Where a formal notice is served, we will let the complainant know within 5 working days of service of the notice.

Because of the potential complexity of some enforcement cases it is difficult to prescribe timescales beyond acknowledging an enquiry and making the initial site visit. However, we will keep the complainant updated at regular intervals and key stages throughout the life of the case and they are always welcome to discuss the matter with the investigating officer. Whilst it is difficult to prescribe timescales, the planning enforcement service will seek to deliver appropriate outcomes that are both robust and as timely as possible.

The Enforcement Process

Enforcement officers deal with enquiries from residents, Councillors and Town and Parish Councils. However, we are also contacted by a range of internal and external stakeholders and aim to provide an equitable service to all. We also pro-actively monitor compliance with some planning permissions that have been granted, including checking that planning conditions are being complied with. See paragraph 4.8 below which help to determine how we pro-actively monitor potential situations of high risk.

When we receive a planning enforcement enquiry, we will acknowledge it and inform the complainant of the name and contact details of the case officer within 5 days of receipt. We will let the local Councillors know about any significant cases and when formal enforcement action is taken.

Enforcement cases are confidential, and we do not disclose the identity of the person who has reported their concerns to us. **However, in rare cases we may need to reveal the identity of a complainant to support the Council's case if we take formal enforcement action and there is a subsequent appeal. We may also need to reveal a complainant's identity to the court if a breach of planning legislation leads to a prosecution.**

The only other time that we would disclose a complainant's identity is if the matter has been raised by a councillor of either a Parish or Town Council or North Northamptonshire Council in their official capacity as an elected representative of the community.

We do not normally investigate anonymous enquiries, to avoid the risk of vexatious complaints. However, if the complaint appears to be of a serious nature, we will make initial enquiries to judge whether further action is required. Information on persistent, vexatious and inappropriate complainants can be found in the Council's Customer Feedback and Complaints Policy.

We will also not investigate an enquiry relating to a non-planning matter. Frequently encountered examples of this are: disputes over land ownership and boundaries, restrictive covenants and legal agreements, moral and ethical concerns, commercial competition and private interests.

The course of an enforcement case can be very varied but, generally, it will have three main parts as follows:

1	<p>Desktop investigation</p> <p>The investigating officer will check the planning history of the site, planning policy considerations and review relevant legislation, case law and any other pertinent information.</p> <p>This process informs what needs to be checked on site to establish if the subject of the enquiry amounts to a breach of planning control. Sometimes the complainant may be asked to complete diary sheets or provide other information to substantiate their allegation. This can be necessary to provide officers with reasonable grounds upon which to commence their investigation.</p>
2	<p>Site visit</p> <p>The investigating officer will adopt a considerate and sensitive approach, recognising that there may be no breach of planning control, or that any breach was carried out quite unintentionally.</p> <p>Once on site, the officer will identify themselves and the reason for their visit and, where possible, obtain the identity of the person who owns or is otherwise responsible for the site. If the officer has reasonable grounds for suspecting a criminal offence has been committed, they will have regard to the provisions of the Police and Criminal Evidence Act in relation to cautioning suspected offenders and gathering evidence.</p> <p>Where unauthorised development is found or suspected, photographs and any necessary measurements will be taken along with a written description of the development and any other relevant information.</p> <p>Section 196 of the Town and Country Planning Act 1990 provides authorised officers with the power to enter land and buildings (having first given 24 hours notice in the case of a building used as a dwellinghouse) including using force under warrant if necessary. It is an offence to willfully obstruct an authorised officer seeking access to land in the course of their duties. All the Council's</p>

	<p>Planning Enforcement Officers are authorised officers and will use these powers if there are reasonable grounds to do so.</p>
3	<p>Next steps</p> <p>If the site visit confirms that a breach of planning control has not occurred, the officer will close the file and update the complainant accordingly. In the case of an alleged unauthorised use, the case officer will make a maximum of three visits to the site and if no evidence of a breach of planning control is found the case will be closed and the complainant informed.</p> <p>It is important to note that planning enforcement powers are discretionary, and the Council can only take formal action when it is expedient to do so. This means that when deciding to take action we take into account national and local planning policy and other material considerations, including the effect on a business, the harm to the amenity of neighbours and the public interest.</p> <p>It is unlikely to be expedient to take enforcement action against a breach of planning control that is minor or technical in nature and does not, in the Council's view, cause any harm. Sometimes it may be appropriate in these cases to invite an application for retrospective planning permission. When this is the case, an application will be requested, the enforcement case will be closed and there will be no further monitoring.</p> <p>If a significant breach of planning control is confirmed the most appropriate course of action will normally be to seek a negotiated resolution with the developer. Where the development appears to be in accordance with the relevant planning policies, or any harm may be remedied by compliance with planning conditions, it may be appropriate for the developer to make an application for retrospective planning permission. If this is the case consideration of formal enforcement action would normally be held in abeyance pending the outcome of the application.</p> <p>Sometimes only the reversion or alteration of an unauthorised development will remedy the harm arising from it. In such cases, officers will usually seek to have the necessary works carried out without the need for formal enforcement action.</p> <p>Formal enforcement action will usually be appropriate in the case of unauthorised development that causes significant, immediate or irreparable harm to the environment or amenity, or when it is clear that a harmful breach of planning control will not be remedied by way of negotiation. The Council will always use its enforcement powers when it is appropriate to do so.</p>

To enable the most effective use of Council resources the following priorities are followed when we investigate breaches of planning control:

Category	Example breaches
A - High Priority Requiring urgent action Site visit within 1 working day	<p>Any unauthorised development which causes immediate, irreparable and serious harm to the neighbourhood.</p> <p>Any non-compliance with a condition or legal agreement, which is causing immediate or serious harm to the environment or public safety.</p> <p>Unauthorised works to a listed building or Scheduled Ancient</p>

	<p>Monument, tree protected by Tree Preservation Orders or trees within Conservation Areas.</p> <p>Unauthorised demolition of all or part of a building within a Conservation Area.</p> <p>Breaches of conditions attached to planning permissions which have serious safety issues.</p> <p>Other breaches where any delay may allow the situation to deteriorate significantly or make it more difficult to remedy.</p>
<p>B - Medium Priority</p> <p>Site visit within 10 working days</p>	<p>Breaches contrary to policies in the development plan.</p> <p>Breaches that cause an ongoing disturbance to neighbours and the character of the area.</p> <p>Unauthorised and inappropriate residential extensions or alterations.</p>
<p>C - Low Priority</p> <p>Site visit within 15 working days</p>	<p>Breaches relating to untidy land.</p> <p>Technical breaches of planning control where there appears to be no significant harm being caused.</p> <p>Unauthorised display of adverts.</p> <p>Temporary breaches which are likely to resolve themselves.</p> <p>Matters where an initial assessment indicates it may be “permitted development” or recommended for approval if a regularising application were submitted.</p>

Forms of action

The Council has a range of enforcement powers that it can use to investigate and tackle unauthorised development and officers will always consider which is the most appropriate according to the circumstances of each case. A brief overview of the various notices and legal powers are set out below:

Planning Contravention Notice (PCN)

This is served on landowners, operators or other relevant people to obtain information about a suspected breach of planning control. The information provided is used to decide whether further action is required. Failure to reply to the notice could lead to a fine upon conviction.

Breach of Condition Notice (BCN)

This is issued where there has been a breach of a condition attached to a planning permission. The BCN will set out the necessary remedial action to ensure compliance with the condition(s) being breached. There is no right of appeal and failure to comply could result in prosecution and a fine for each offence.

Enforcement Notice

This is used when a serious breach of planning control has occurred. The Notice does not come into effect until at least 28 days after its date of issue. A person served with an Enforcement Notice can appeal during this period. The effect of the appeal is to suspend the Notice. The appeal is usually determined by an independent Planning Inspector. If the appeal is dismissed or no appeal is made, then failure to comply with the requirements of the Notice is a criminal offence, punishable by a fine on conviction.

Stop Notice

This can be issued with or following an Enforcement Notice in order to require a particularly harmful activity to cease before the Enforcement Notice comes into effect. There is no right of appeal, but the Council may have to pay compensation if the associated Enforcement Notice is, on appeal, quashed on legal or planning grounds. Non-compliance with the Stop Notice is an offence, punishable by a fine.

Temporary Stop Notice

If the breach of planning control is causing significant environmental effects, a Temporary Stop Notice can be served. This requires the unauthorised activity to cease immediately for a period of no more than 28 days.

Injunction

An Injunction is a Court Order requiring the defendant to either refrain from doing a specific act, or requiring the defendant to carry out a specific act. It is therefore used to prevent or stop harmful activity or force remedial measures to be carried out. This is the most serious action that the Council can take; therefore, it will only be taken as a last resort where no other effective means of enforcement remain. Failure to comply with the terms of an injunction is contempt of court, which is punishable by imprisonment. Therefore, the Court is only likely to grant an Injunction in the most serious of cases.

Direct Action

If a person fails to comply with the requirements of a notice the Council can enter the land and undertake works in compliance with a Notice. The cost is then charged to the landowner but would have to be borne by the Council in the short term until the money is collected. Direct action may be pursued at any time after the compliance period of a Notice has passed.

Decision Making

Planning enforcement is a discretionary power and we take action if it is “expedient” to do so. This means that when deciding whether to act the enforcement team will take into account national and local planning policy and other material considerations, including the effect on a business, the harm to the amenity of neighbours and the public interest.

It is not a criminal offence to carry out development without planning permission, except for works to listed buildings, protected trees and the display of unauthorised advertisements. If a breach can be remedied by imposing planning conditions or with minor changes, the enforcement team will request submission of a retrospective planning application.

The Government advises that enforcement action should not just be taken because development has taken place without planning permission. In situations where there is limited harm and the only reason that an application has been requested is to regularise the development (e.g. where a structure is marginally bigger than that allowed under permitted development rights) the enforcement team will close the case and will not

monitor whether an application has been submitted.

If a planning application has been submitted to remedy a breach, we will usually delay enforcement action; however, there will be cases when it will not be appropriate to do so. For example, where enforcement action may not be possible after legal time periods have elapsed, or an application has been submitted contrary to advice that there is no reasonable prospect of planning permission being granted.

Appeals

Some formal notices that the Council may serve are liable to appeal. If an appeal is made, we will inform the original complainant, local councillors and the Town or Parish Council along with any residents we feel are affected by the development and explain how they can make their representations to the Planning Inspectorate.

Further information on enforcement appeals for those who have been served with a notice and other interested parties is available online at <https://www.gov.uk/appeal-enforcement-notice>

Other Enforcement Powers Prosecution

In certain circumstances, the Council can instigate prosecution proceedings, without first having to serve a notice. These instances include:

- Unauthorised works to a Listed Building
- Unauthorised display of an advertisement
- Damage to a tree covered by a Tree Preservation Order or within a Conservation Area
- Damage to safeguarded hedgerows

It is also an offence to be in breach of the requirements of the various planning notices that the Council can serve.

In the case of any prosecution, evidence will be gathered and stored in accordance with the Policy and Criminal Evidence Act 1984 and full consideration given to the evidential and public interest tests within the Code for Crown Prosecutors.

To prevent the most serious of planning breaches the Council may apply to the County or High Court for an Injunction.

Listed Buildings

It is an offence under Section 9 of the Act to carry out unauthorised works to a Listed Building. The owner of a Listed Building or persons who have carried out the works may be prosecuted by the Council irrespective of whether consent is later obtained or the unauthorised works are later made satisfactory. A person found guilty of an offence may be liable to a fine and/or a term of imprisonment of up to two years. There is no time limit for the Council to pursue action against unauthorised works to a Listed Building.

A Listed Building Enforcement Notice may be served requiring remedial works to the building within a certain time period. There is a right of appeal to the Secretary of State, but failure to comply with the Notice is an offence, which is liable to a fine.

Advertisements

The display of advertisements/signs is controlled under the Town and Country Planning (Control of Advertisements) Regulations 2007 (as amended) http://www.legislation.gov.uk/ukxi/2007/783/pdfs/ukxi_20070783_en.pdf.

They are divided into three main groups:

- Those that are 'expressly' excluded from planning control.
- Those which have 'deemed consent' whereby the Council's consent is not required provided the advertisement falls within certain categories.
- Those for which the Council's consent is always needed.

It is an offence to display an advertisement without the necessary consent, but in most cases the Council's initial course of action will be to request the cessation of the display or invite an application for consent. However, in the case of a particularly flagrant or repeated offence the Council may decide that it is appropriate to take the matter straight to Court. Similarly, the display of an advertisement after consent has been refused (subject to any appeal) could result in a prosecution being brought.

Protected Trees

Under Section 198 of the Town and Country Planning Act 1990 the Council has the right to make provision for the preservation of trees by issuing a Tree Preservation Order (TPO).

Any unauthorised works to protected trees is an offence under Section 210 of the Act. It is an offence to cut down, uproot, or wilfully destroy a protected tree, or wilfully damage, top or lop a protected tree in such a manner as to be likely to destroy it. The offence is liable, on summary conviction, to a fine of up to £20,000 and on indictment to a further fine. The Council may also serve a Tree Replacement Notice requiring a tree of appropriate size and species to be planted at the landowner's cost where a protected tree has been removed unlawfully. Most established trees in Conservation Areas are similarly protected, under Sections 211 and 212 of the Act and the same penalties for these offences apply.

Consent is not required for the following works to protected trees:

- Works to trees that are dying, dead or have become dangerous.
- Works to trees authorised by the grant of planning permission.
- Works to trees cultivated for the production of fruit where such work is in the interests of that business or trade.

The Council encourages all owners of trees covered by a Preservation Order to consult the Council before undertaking works on the tree(s).

Monitoring (Waste and Minerals)

Section 19 of The Waste (England and Wales) Regulations 2011 makes it a duty that where a planning authority has planning functions in relation to establishments or undertakings carrying out disposal or recovery of waste, the planning authority must ensure that appropriate periodic inspections of those establishments or undertakings are made. Provision is also made in legislation to allow the Council, as a Minerals & Waste Planning Authority, to charge for monitoring visits to mining sites and landfill sites under The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012.

Therefore, the Council will seek to prioritise the monitoring and enforcement of sites that are monitored under The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 and under The Waste (England and Wales) Regulations 2011. Before each monitoring year the Council will assess the frequency that sites should be monitored, based upon the following criteria:

- i) The size of the site;
- ii) The number and the complexity of conditions;
- iii) The number of issues requiring monitoring;
- iv) The stage of development at the site;
- v) Whether the operator has ISO 14001 or EMAS accreditation;
- vi) The progressive nature of working/restoration;
- vii) The number of breaches of planning control observed;
- viii) The number of complaints received for a site, which have proven to be justified.

In practice using these criteria active minerals and landfill sites would be likely to be subject of between 2-4 visits per year, and sites for the recovery, transfer and recycling of waste are likely to be the subject of 1-2 visits per year.

Complaints

The Council has a Corporate Complaints procedure, which has been designed to ensure that all complaints are dealt with fully and properly by the most appropriate person in the Council. Written complaints will be acknowledged and then fully and promptly investigated. The complainant will be given a written response explaining the outcome of the investigation and any action that we propose to take. If no action is proposed, the reasons will be explained.

If you feel that we have not followed the correct procedures, you can ask the Commissioner for Local Administration (the Local Government Ombudsman) to investigate the matter. The Ombudsman would, however, normally expect a complainant to have first followed the Council's formal complaint procedures.

Joint working

Quite often, cases that are presented as a planning enforcement matter can in fact involve other regulatory services within the Council or external partners, and may not necessarily be directly a planning enforcement matter. Where this is the case, officers across the relevant different teams and/or agencies will discuss the query to establish the most appropriate advice that may be help the customer in establishing how best to proceed.

This section must be read in conjunction with the rest of the Council's Joint Enforcement policy

33. Enforcement Policy Schedule: Private Sector Housing

Introduction

The Private Sector Housing team principally deals with the following areas of work in carrying out its regulatory and enforcement functions:

- **Inspections:** Where there is a statutory duty to do so, or in cases where the local authority considers that it is appropriate, an inspection will be conducted by Officers.
- **Hazard assessments:** Using the Housing Health and Safety Rating System (HHSRS) Officers will assess the likelihood of a hazard in a property to cause a risk to health. A range of enforcement powers are available under the Housing Act 2004 to remove or reduce any hazards identified to an acceptable level.
- **Houses in Multiple Occupation (HMOs):** HMOs are houses (and flats) in which the occupants share facilities. Officers will inspect HMOs to ensure they meet health and safety requirements.
- **Mandatory HMO licensing:** Current legislation requires HMOs to be licensed which have five or more occupants comprising of two or more family units, who share basic amenities such as washing and cooking facilities. The Council will take steps to ensure that properties that require a licence are licensed and take enforcement action against landlords of unlicensed properties.
- **Empty properties:** At any one time, there are multiple vacant properties in the District. Properties which remain empty for long periods of time can attract vandalism, crime, and other problems affecting the whole community. In partnership with officers from across the Council, the Private Sector Housing Team will work to provide assistance to owners of empty properties to bring them back into use.
- **Overcrowding:** When we identify severe cases of overcrowding, we will work with the Council's Housing Options team to ensure customers receive advice and assistance regarding re housing. Unlike other hazards formal enforcement action may not bring about the most appropriate solution to the housing problem.
- **Rogue landlords:** The Government has introduced several initiatives to crack down on landlords who knowingly flout their obligations by renting out unsafe and substandard accommodation to tenants. These include protections for tenants against retaliatory eviction, banning orders, and civil penalties. The Council will use these initiatives to tackle rogue landlords in the District where appropriate and work with Housing Options to re house tenants.
- **Harassment & Unlawful Evictions:** When tenants are unlawfully evicted or threatened [harassed] with unlawful eviction, The Private Sector Housing Team will intervene and when appropriate to do so will re-instate tenants in the property and prosecute the landlord for unlawfully evicting/harassing the tenant(s).
- **Smoke and Carbon Monoxide alarms:** For properties deemed 'single family dwellings' private sector landlords are required to have at least one smoke alarm installed and maintained on every storey of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance.
- **Gas and electrical installations:** There are specific requirements set down in law pertaining to safety standards for the use of gas and electricity within privately rented accommodation, which include the production of documents to tenants as a matter

of course upon commencement of a new 'assured shorthold tenancy' and to Local Housing Authorities when requested. The Council will investigate complaints from tenants in relation to the lack of documentation being provided to tenants at the commencement of their tenancy or issues associated with gas / electrical installations.

Approach to enforcement in private sector housing

1. The type of enforcement taken will vary according to the legislation being applied. In some cases, taking enforcement action is a statutory duty, provided certain criteria are met. In some circumstances officers may use informal action to offer advice, information and assistance to aid compliance with housing related legislation, working with landlords and residents. However, robust action will be taken to deal with housing contraventions.
2. Where failure to comply is of a serious nature, officers will use the full range of enforcement options available to them under the relevant legislation to achieve compliance to protect those at risk. In the most serious contraventions possible action will include prosecution.
3. The type of enforcement action pursued is always considered on a case by case basis, based on its own merits. Following consideration of the specific circumstances of the particular case the most appropriate enforcement option will be applied accordingly. In every case enforcement seeks to:
 - Promote and achieve sustained compliance with the law
 - Ensure that landlords take action to deal immediately with serious risks
 - Ensure that landlords who breach legislative requirements are held to account

Private Sector Housing Legislation

Statutory Notices, Orders and Directions

A Statutory Notice, Order or Direction will be the first formal sanction issued by the Council. If there is non-compliance to this, proceedings may commence for prosecution. The Statutory Notices, Orders and Directions detailed below may be appropriate in any of the circumstances listed or combination thereof:

Local Government (Miscellaneous Provision) Act 1982 Protection of Buildings

Section 29 of this Act enables a local authority to carry out work to effectively secure an unoccupied building or where the occupier is temporarily absent from it against unauthorised entry or to prevent it from becoming a danger to public health.

A local authority may serve a notice that they propose to undertake work or may carry out work immediately in urgent circumstances. In each case the cost of the work is recharged on the owner of the property.

Housing Act 2004, Part 1- Housing Conditions

Part 1 of the Housing Act 2004 made significant changes to how houses are inspected and expanded the range of enforcement powers available to Officers. All properties are inspected to identify the presence of hazards. There are 29 hazard categories. A risk rating system the Housing Health and Safety Rating System (HHSRS) is used to determine if the hazards in the property are Category 1 or Category 2. Every local authority has a duty to

deal with Category 1 hazards when they have been identified. North Northants Council will also deal with Category 2 hazards, taking enforcement action where appropriate.

North Northants Council has also adopted Section 49 of the Housing Act 2004, which allows a local authority to charge for the service of enforcement notices under the Act. The charge for the service of a notice is based on the time spent by the Officer in preparing and serving the notice, as a result there is no fixed cost. Hazard Awareness Notices, which do not carry a requirement for completion and therefore will not be liable for prosecution or for works in default to be undertaken, have not been included in this charging regime.

The range of Notices that are provided in the Housing Act include the following, all of which can be used for Category 1 or Category 2 hazards or combined if both hazards are present:

- Hazard Awareness Notices (Section 28 and 29)
- Improvement Notices (Section 11 and Section 12)
- Prohibition Orders (Section 20 and 21)

The Act also gives a local authority emergency powers, these include:

- Emergency Remedial Action Notice (Section 41)
- Emergency Prohibition Order (section 43)

All appeals for Housing Act 2004 notices are now heard by the Lands Property Tribunal. Details of how to appeal are contained in the notes that will accompany the notice.

Housing Act 2004, Part 2 - Licensing of Houses in Multiple Occupation

Part 2 of the Housing Act 2004 deals with the Licensing of Houses in Multiple Occupation (HMOs) and this section is used to licence those properties that require mandatory licensing and if there are significant contravention(s) of legislation; there is a lack of confidence in the successful outcome of an informal approach, there is a history of non-compliance with informal action and standards are generally poor with little management awareness of statutory requirements.

The consequence of non-compliance could be potentially serious to public health. Effective action is needed to be taken quickly in order to remedy conditions which are serious or deteriorating.

The Management of Houses in Multiple Occupation (England) Regulations 2006 and the Licensing and Management of Houses in Multiple Occupation Regulations 2007 places certain legal duties on individuals that manage properties, including provisions around fire safety, electrical safety and water supply.

Housing Act 2004, Part 4 - Chapter 1 - Interim and Final Management Orders – Houses in Multiple Occupation

This would be used if there is no reasonable prospect of a property being licensed in the near future or the consequence of non-compliance could be potentially serious to the health and safety of any occupants or visitors to the premises.

Housing Act 2004, Part 4 - Chapter 2 - Interim and Final Empty Dwelling Management Orders

The Council would use this power if the dwelling is wholly unoccupied; and there is no reasonable chance that it will be occupied in the near future. There is a lack of confidence in the successful outcome of an informal approach. There is a history of non-compliance with informal action.

Housing Act 2004 – Section 139 Overcrowding notices (HMOs only)

The Council will assess for overcrowding under Part X of the Housing Act 1985 and under HHSRS. The Council will serve a notice under this section where:

- There are significant contravention(s) of legislation;
- There is a lack of confidence in the successful outcome of an informal approach;
- There is a history of non-compliance with informal action;
- The consequence of non-compliance could be potentially serious to public health;
- Effective action is needed to be taken quickly in order to remedy conditions which are serious or deteriorating.

Housing Act 1985, Sections 265 - Demolition Orders (As amended by Section 46 of the Housing Act 2004)

Action under this legislation is considered if the dwelling contains one of more Category 1 hazards; repair of the dwelling is not a financially viable option and there is a lack of confidence in the owner satisfactorily resolving the problem and there is not a Management Order in place under Chapter 1 or 2 of Part 4 of the Housing Act 2004.

Housing Act 1985 – Part 10 Overcrowding

The standards for determining if a property (not HMO) is statutorily overcrowded were not updated in the Housing Act 2004 and Part 10 of the 1985 Act is still in force. If a property is found to be overcrowded by the standards applied under section 325 and section 326 of the Housing Act 1985 both the occupier and the landlord/owner will be issued with a notice requiring both parties to take reasonable steps to resolve the overcrowding problem. For tenants this can mean actively seeking a larger property, through the bidding process for social housing or private rented sector, for landlords/owners assisting the tenants to find a larger property, allowing them to leave their tenancies early or if necessary instigating eviction proceedings.

Environmental Protection Act 1990 – Section 80 Nuisances

The Council will consider serving Notices under this section where:

- There are significant contravention(s) of legislation;
- There is a lack of confidence in the successful outcome of an informal approach;
- There is a history of non-compliance with informal action;
- The standards are generally poor with little management awareness of statutory requirements;
- The consequence of non-compliance could be potentially serious to public health;
- Effective action is needed to be taken quickly in order to remedy conditions which are serious or deteriorating.

Protection from Eviction Act 1977

Section 1 of the Protection from Eviction Act 1977 affords protection to a tenant [and his/her household] from being forced / threatened to give up the occupation of the premises or any part thereof; or from not being able to exercise any right or pursuing any remedy in respect of the premises or part thereof.

The Council will investigate all such allegations and where there is sufficient evidence will prosecute the offender for harassing or evicting the tenant(s) unlawfully and where it is considered necessary and appropriate will re-instate evicted tenants back into the property.

Public Health Act 1936 – Filthy and Verminous Premises

Section 83 of the Public Health act 1936 gives Councils the power to deal with those properties that are considered to be filthy and/or verminous. [Properties that are in an unwholesome state within due to waste accumulations which may additionally have vermin – mice/rats/cockroaches].

The Council can serve an enforcement notice on the owner/occupier, compelling them to cleanse the property and should they fail to do so the Council can obtain a warrant to enter the property and carry out the work itself.

The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014

This legislation requires all companies that operate as either letting agents or property management agents to be a member of a Government approved Redress Scheme. Where it is understood that a company is not a member of the scheme the Council will investigate and determine whether they are a member.

If, a person has failed to register to be a member of a scheme, a notice of intent to impose a fine will be served by the Council. The fine is set at £5,000. If after 28 days no appeal has been lodged and they are still not a member of a scheme a final notice imposing the fine will be issued.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Private sector landlords [single family dwellings] are required from 1 October 2015 to have at least one smoke alarm installed on every storey of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire, wood burning stove). After that, the landlord must make sure the alarms are in working order at the start of each new tenancy.

The requirements will be enforced by local authorities who can impose a fine of up to £5,000 where a landlord fails to comply with a remedial notice.

Housing and Planning Act 2016 - Civil Penalties

A civil penalty is a financial penalty imposed by a Local Authority on an individual or organisation as an alternative to prosecution for certain offences under the Housing Act 2004. In determining the level of penalty, a civil penalty matrix is applied. North Northamptonshire Council has developed a 4-tier assessment process (referred to as the matrix) in accordance with the Housing and Planning Act 2016. Case officers will use the matrix to determine the level of financial penalty. This is illustrated and explained in Appendix 2.

The offences a civil penalty can be issued for include:

- Failure to comply with an Improvement Notice (Section 30)
- Offences in relation to the licensing of Houses in Multiple Occupation (Section 72)
- Offences in relation to selective licensing of houses under Part 3 of the Act (section 95)
- Offences of contravention of an overcrowding notice (Section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (Section 234) – a penalty can be issued for **each separate** breach

Housing and Planning Act 2016 - Banning Orders

A Local Authority can apply to the First-tier Tribunal for a Banning Order for a person [includes bodies corporate] who has been convicted of a banning order offence. Banning Order offences include,

- Protection from Eviction Act 1977, section 1(2), (3) and (3A) - unlawful eviction and harassment of occupier.
- Criminal Law Act 1977, section 6(1) - violence for securing entry.
- Housing Act 2004, section 30(1) - failing to comply with an improvement notice, section 32(1) - failing to comply with a prohibition order, section 72(1), (2) and (3) - offences in relation to licensing of Houses in Multiple Occupation, section 95(1) and (2) - offences in relation to licensing of houses under Part 3, section 139(7) - contravention of an overcrowding notice, section 234(3) - failure to comply with management regulations in respect of Houses in Multiple Occupation, section 238(1) - false or misleading information.
- Regulatory Reform (Fire Safety) Order 2005, Article 32(1) and (2) - fire safety offences.
- Health and Safety at Work etc. Act 1974, section 33(1) (c) - where a person contravenes any requirement specified in regulation 36 of the Gas Safety (Installation and Use) Regulations 1998(9), gas safety offences - duties on landlords.
- Immigration Act 2014, section 33A (1) and (10) - residential tenancies – landlord offences, section 33B (2) and (4) - residential tenancies – agent offences.
- Fraud Act 2006, section 1(1) – fraud, section 6(1) - possession etc. of articles for use in frauds, section 7(1) - making or supplying articles for use in frauds, section 9(1) - participating in fraudulent business carried on by sole trader etc., section 11(1) - obtaining services dishonestly, section 12(2) - liability of company officers for offences by company.
- Criminal Justice Act 2003, Schedule 15 - specified violent and sexual offences.
- Misuse of Drugs Act 1971, section 8 - occupiers etc. of premises to be punishable for permitting certain activities to take place there, section 9 - prohibition of certain activities relating to opium, section 9A(1) and (3) - prohibition of supply etc. of articles for administering or preparing controlled drugs, section 18(1), (2), (3) and (4) - miscellaneous offences, section 19 - attempts etc. to commit offences, section 20 - assisting in or inducing commission outside United Kingdom of offence punishable under a corresponding law, section 21 - offences by corporations
- Proceeds of Crime Act 2002, section 327 - concealing etc. criminal property, section 328 – arrangements, section 329 - acquisition, use and possession.
- Protection from Harassment Act 1997, section 2 - offence of harassment, section 2A Offence of stalking.
- Anti-social Behaviour, Crime and Policing Act 2014, section 30- breach of criminal behaviour order, section 48 - failure to comply with a community protection notice.
- Criminal Damage Act 1971, section 1(1)- destroying or damaging property, section 2 Threats to destroy or damage property, section 3 - possessing anything with intent to destroy or damage property.

- Theft Act 1968, section 7 - theft, section 9 – burglary, section 21- blackmail, section 2 -handling stolen goods.

The First-tier Tribunal can ban a person from the following activities:

1. Letting housing in England
2. Engaging in letting agency work
3. Engaging in property management work or
4. Doing two or more of those things

Any Banning Order granted must be added to the Rogue Landlord database.

Housing and Planning Act 2016 - Rent Repayment Orders

A Rent Repayment Order is an order made by the First-tier Tribunal requiring a landlord/agent to repay a specified amount of rent to either the tenant or to the local authority if housing benefit has been paid. A local authority can impose a civil penalty, or prosecuted and apply for a rent repayment order for the following situations:-

- Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004;
- Failure to comply with a Prohibition Order under section 32 of the Housing Act 2004;
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.

The maximum repayment order to be recovered is capped at 12 months. A tenant can apply for a rent repayment order and does not have to follow the same process. Where a tenant approaches North Northants Council to assist them in seeking the order, this will be considered on a case by case basis.

Retaliatory Eviction and the Deregulation Act 2015

Section 33 of the Deregulation Act 2015 created a protection for tenants against the service of a section 21 notice by their landlord(s) [retaliatory eviction] under the following circumstances,

A section 21 notice given in relation to an assured shorthold tenancy of a dwelling-house in England is invalid where—

- a) before the section 21 notice was given, the tenant made a complaint in writing to the landlord regarding the condition of the dwelling-house at the time of the complaint,
- b) the landlord—
 - i) did not provide a response to the complaint within 14 days beginning with the day on which the complaint was given,
 - ii) provided a response to the complaint that was not an adequate response, or
 - iii) gave a section 21 notice in relation to the dwelling-house following the complaint,
- c. the tenant then made a complaint to the relevant local housing authority about the same, or substantially the same, subject matter as the complaint to the landlord,
- d. the relevant local housing authority served a relevant notice in relation to the dwelling-house in response to the complaint, and

- e. if the section 21 notice was not given before the tenant's complaint to the local housing authority, it was given before the service of the relevant notice.

The Private Sector Housing team is committed to working with tenants of private landlords to prevent retaliatory eviction. Retaliatory eviction is where a tenant makes a legitimate complaint to their landlord about the condition of their property and, in response, instead of making the repair, their landlord serves them with an eviction notice.

From 1st October 2015, where a tenant makes a genuine complaint about the condition of their property that has not been addressed by their landlord, their complaint has been verified by a local authority inspection, and the local authority has served either an improvement notice or a notice of emergency remedial action, a landlord cannot evict that tenant for 6 months from the date of the service of the notice. The landlord is also required to ensure that the repairs are completed.

Tenants should always report any disrepair or poor conditions that may arise to the landlord as soon as possible. They should put their complaint in writing. In order to rely on the protection against retaliatory eviction that the Deregulation Act 2015 provides, a tenant must approach the landlord in the first instance.

If, after 14 days from the tenant making a complaint, the landlord does not reply, that reply is inadequate, or they respond by issuing a section 21 eviction notice, the tenant should contact the Private Sector Housing Team for assistance.

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 ['MEES' – minimum energy efficient standard]

In March 2015 the government introduced The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 ('the regulations') are designed to improve the standard of privately rented accommodation by imposing a minimum energy efficiency rating for properties within the sector. Properties that are required to have an energy performance certificate (EPC) must achieve a rating of E or above. Properties with ratings of F or G are deemed by the act as 'substandard accommodation' as such from April 2018 landlords with such properties were prohibited from entering into new tenancy agreements.

As of April 2020 the scope of the legislation was expanded to include all privately rented domestic dwellings regardless of when the contract commenced. Qualifying properties may be granted as exemption from the requirement should they meet certain criteria.

Should officers become aware that a property with a substandard EPC rating is being advertised contrary to the regulations, they will in the first instance contact the agent or landlord to discuss this and make them aware of the requirements. Should either party or their associates subsequently let the property whilst it is non-compliant with MEES, a civil penalty may be issued

If a local authority confirms that a property is (or has been) let in breach of the Regulations, they may serve a financial penalty up to 18 months after the breach and/or publish details of the breach for at least 12 months. Local authorities can decide on the level of the penalty, up to maximum limits set by the Regulations.

The maximum penalty amount per property and per breach of the Regulations are,

- up to £2,000 and/or publication penalty for renting out a non-compliant property for less than 3 months

- up to £4,000 and/or publication penalty for renting out a non-compliant property for 3 months or more
- up to £1,000 and/or publication for providing false or misleading information on the PRS Exemptions Register
- up to £2,000 and/or publication for failure to comply with a compliance notice
- The maximum amount you can be fined per property is £5,000 in total.

Rogue Landlord Database

Any landlord who has received a banning order under the Housing and Planning Act 2016, been convicted of a banning order offence or has received 2 or more civil penalties over a 12-month period will be recorded on the database

This section must be read in conjunction with the Council's Joint Enforcement policy AND Appendix 1 and 2 of this policy.

34. APPENDIX 1 – Civil Penalties

Introduction

Civil penalties are intended to be used for those who are in breach of one or more of the above offences. The maximum penalty that can be imposed is £30,000. The amount of penalty imposed is determined by North Northants Council on a case by case basis. In determining the appropriate level of penalty we have regard to the following contained within the statutory guidance below.

The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlord's previous record of offending. Local housing authorities should consider the following factors to help ensure that the civil penalty is set at an appropriate level:

- a) **Severity of the offence** - The more serious the offence, the higher the penalty should be.
- b) **Culpability and track record of the offender** - A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
- c) **The harm caused to the tenant** - This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.
- d) **Punishment of the offender** - A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not fulfilling their responsibilities.
- e) **Deter the offender from repeating the offence** - The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- f) **Deter others from committing similar offences** - While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.
- g) **Remove any financial benefit the offender may have obtained as a result of committing the offence** - The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

The procedure for imposing a Civil Penalty is set out in Schedule 13A Housing Act 2004 and is summarised below:

- The Local Authority must give the person notice of its proposal ('Notice of Intent') to impose a financial penalty; this notice must set out the following:

- a) The amount of the proposed financial penalty
- b) The reasons for proposing the penalty and
- c) Information about the right of the person to make representations

The Notice of Intent must be given no later than 6 months after the local authority has sufficient evidence of the conduct to which the penalty relates or at any time when the conduct is continuing.

A person who has received a Notice of Intent may make written representations to the local authority and this must be done within 28 days of the notice. After 28 days the local authority will determine whether to impose the penalty and for what amount, a final notice will be issued which requires the penalty to be paid within 28 days. This final notice will set out:

- I. The amount of financial penalty
- II. The reasons for imposing the penalty
- III. Information about how to pay the penalty
- IV. The period for payment of the penalty 28 days
- V. Information about rights of appeal
- VI. The consequences of failure to comply with the notice

The Local Authority can withdraw a Notice of Intent or final notice at any time or reduce the amount specified in either the notice of intent or final notice at any time. A person who receives a final notice has a right to appeal to the First-tier Tribunal against the decision to impose the penalty or the amount of penalty. The deadline to pay the penalty imposed on the final notice will be suspended until any appeal has been determined.

Where a person or company fails to pay the civil penalty, the local authority will refer the case to County Court for an Order of that Court. If necessary, county court bailiffs will be instructed to enforce the order and recover the debt as set out in the statutory guidance.

Any income received by a Local Authority from a civil penalty can be retained by the Local Authority provided that it is used to further the local authority's statutory function in relation to their enforcement actions covering the private rented sector as specified in the regulations.

Determining the level of penalty

To determine the level of financial penalty North Northants District Council has developed a 4 tier assessment process (the matrix) in accordance with the Housing and Planning Act 2016.

Case Officers will use the matrix to determine the level of financial penalty.

Verification

An Officer will apply the matrix to each offence; offences will be subjected to a verification process by a senior member of staff to the Case Officer. If the Officers impose a penalty within £1000 of each other, the Case Officer's original penalty will be formalised. If the difference between the Officer's penalties is more than £1000, the penalty will be referred to Senior Officers / Managers for consideration.

Band 1: Severity of offence

The severity of offence has been broken down into three levels. The more serious the offence, the higher the penalty will be:

- **Severity Level 1:** these are low - moderate offences such as failure to display the name and contact details of the licence holder as required under the Management of Houses in Multiple Occupation (England) Regulations 2006 and HMO regulation breaches.
- **Severity Level 2:** these are serious offences such as failing to deal with serious hazards, such as damp and mould.
- **Severity Level 3:** these are severe / extreme offences such as failure to provide adequate fire detection in a HMO / failure to adhere to a notice / operating a HMO without a licence.

Severity Level	1	2	3
Level of penalty	£300	£600	£1200

Band 2: Culpability and harm

Culpability and Harm will be dealt with by two separate assessments; culpability and track record of the offender and the harm caused to the tenant.

Culpability and track record of the offender:

Culpability will consider the record of the offender, previous breaches of their obligations, deliberately avoiding their responsibility as a landlord and being ignorant of relevant facts relating to the operating of their business as a landlord.

Category 1 penalties will only be used for 1st time offences. In cases where multiple breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006 are identified, all penalties will be calculated under Category 1 if it is a first offence.

Category 2 penalties will be used for subsequent offences

Culpability has been separated into three levels:

- **Severity level 1:** these are low offences committed with little fault/mitigating factors, for example because:
 - i. Significant efforts were made to address the risk although they were inadequate on this occasion
 - ii. There was no warning/circumstances indicating a risk
 - iii. Co-operation with the investigation
 - iv. Voluntary steps taken to address issues e.g. submits a licence application
 - v. Willingness to undertake training
 - vi. Willingness to the Council's landlord accreditation scheme (if applicable)
 - vii. Evidence of health reasons preventing reasonable compliance – mental health, unforeseen health issues, emergency health concerns
 - viii. No previous convictions
 - ix. Vulnerable individual(s) where their vulnerability is linked to the commission of the offence.
 - x. Good character and/or exemplary conduct

- **Severity Level 2:** these are medium offences that are committed through act or omission which a person exercising reasonable care would not commit

- **Severity Level 3:** these are very high offences where the offender intentionally breached, or flagrantly disregarded, the law and knew their actions were unlawful

Culpability

Severity Level	1	2	3
Category 1: 1st offence	£300	£600	£1200
category 2: Subsequent offence(s)	£900	£1800	£3600

The harm caused to the tenant

Harm will consider the harm or the potential harm the offence did or could have caused the tenant; the higher the risk of harm, the higher the penalty. This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

Harm has been separated into six levels:

- **Severity Level 0:** these are offences that present no risk of harm

- **Severity Level 1:** these are offences that present a low to moderate risk of harm

- **Severity Level 2:** these are offences that present a serious risk of harm
- **Severity Level 3:** these are offences that present a severe / extreme level of harm and have scored a band C under the Housing and Health Safety Rating System (HHSRS)
- **Severity Level 4:** these are offences that present a severe / extreme level of harm and have scored a band B under the HHSRS
- **Severity Level 5:** these are offences that present a severe / extreme level of harm and have scored a band A under the HHSRS

Harm

Severity Level	0	1	2	3	4	5
Level of Penalty*	£0	£300	£1000	£3000	£5000	£10,000

Band 3: Punishment / Deterrent

Band 3 will consider:

- Punishment of the offender:

A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

- Deter the offender from repeating the offence:

The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

- Deter others from committing similar offences:

While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

Band 3 will give consideration to all 3 components and apply a multiplier to the amount already accrued. The amount of the fine must be sufficient to have a real economic impact

on the offender to act as a sufficient deterrent to reoffend. Furthermore, the penalty must be sufficient to deter others.

This band will be applied based upon the size of the portfolio of properties held or managed by the offender; landlords will be required to provide evidence as requested by the Local Authority to determine the portfolio size. If the landlord fails to cooperate with this request Severity level 5 will automatically be applied.

Punishment / deterrent have been separated into five levels:

- **Severity Level 1:** Portfolio 1
- **Severity Level 2:** Portfolio 2 - 5
- **Severity Level 3:** Portfolio 6-14
- **Severity Level 4:** Portfolio 15-100
- **Severity Level 5:** Portfolio 101+

Punishment / Deterrent

Severity Level	1	2	3	4	5
Level of Penalty*	X2	X3	X4	X5	X6

*Severity level: No multiplier will be used in the following circumstances:

- Severity, Culpability and Harm have all scored level one or below and
- If it is a landlord first offence (this includes penalties in other LA areas), and
- The penalty relates to a single offence and not multiple offences.

Band 4: Removal of Financial Gain

This assessment will remove any financial benefit the offender may have obtained **as a result of committing the offence**. The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

Consideration will be given to the total penalty versus the income received during the “offence period”. The “offence period” will commence from the earliest date the landlord was made aware of the offence. The level of penalty will be awarded to ensure the penalty removes the financial gains made by the offender as a result of committing the offence. The landlord will be required to provide evidence as requested by the Local Authority to determine the financial gain. If the landlord fails to cooperate with this request Severity level 5 will automatically be applied.

Removal of financial gain has been separated into five levels:

- **Severity Level 1:** No financial gain
- **Severity Level 2:** Financial gain between £1 - £1000
- **Severity Level 3:** Financial gain between £1001 - £2499

- **Severity Level 4:** Financial gain between £2500 - £4999
- **Severity Level 5:** Financial gain between £5001 - £10000

Severity Level	1	2	3	4	5
Level of penalty	£0	£1000	£2500	£5000	£10000

Worked example:

Failure to comply with an Improvement Notice for a landlord that owns/manages one property and receives £500 per month rent. The breach has lasted for 4 months and it is the first offence:

Band 1: Severity of Offence

Failure to adhere to a Notice – Level 3: **£1,200.00**

Band 2: Culpability and harm

Culpability (is offence) – Level 3: **£1,200.00**

Severity – Level 4: **£5,000.00**

Band 3: Punishment/Deterrent

Severity Level 1: (Portfolio 1) and Level of penalty (x2)

The multiplier will be used as the following does not apply, as Band 1 & 2 are not scored as level one or below.

- *Severity, Culpability and Harm have all scored level one or below and,*
- *It is a landlord's first offence (this includes penalties in other LA areas), and,*
- *The penalty relates to a single offence and not multiple offences.*

Band 4: Removal of Financial Gain

Financial gain – £500 per month in rent (£2,000.00 total over 4 months' breach) = Severity Level 3: **£2,500.00.**

Total: £1,200 + £1200 +£5000 = £7,400

£7,400 x2 for the multiplier = £14,800

£14,800 + £2,500

Grand total = £17,300

35. Appendix 2 - The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

Introduction

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 ('the regulations') are designed to improve the standard of privately rented accommodation by imposing a minimum energy efficiency rating for properties within the sector. Properties that are required to have an energy performance certificate (EPC) must achieve a rating of E or above. Properties with ratings of F or G are deemed by the act as 'substandard accommodation', and from April 2018 landlords with such properties were prohibited from entering into new tenancy agreements.

As of April 2020, the scope of the legislation was expanded to include all privately rented domestic dwellings regardless of when the contract commenced. Qualifying properties may be granted as exemption from the requirement should they meet certain criteria.

The department for Business Energy and Industrial Strategy have produced guidance published in 2017 and updated May 2020;

<https://www.gov.uk/guidance/domestic-private-rented-property-minimum-energy-efficiency-standard-landlord-guidance>

The council had regard to the guidance when preparing the policy for the minimum energy efficiency standards.

Purpose of this schedule

In accordance with Regulations 33 and 44 Local Authorities are responsible for enforcing the minimum energy efficiency standards (MEES) within their area. The purpose of this policy is to describe how officers will enforce the Regulations.

Scope of the schedule

1. The Council actively supports landlords to ensure their properties are of a suitable standard, and the Council's approach to enforcement is set out in the Private Sector Housing Enforcement Policy.
2. Details of landlord's obligations under the regulations are summarised on the Council's website, in addition to individual advice from officers should further guidance or support be required.
3. Should officers become aware that a property with a substandard EPC rating is being advertised contrary to the regulations, they will in the first instance contact the agent or landlord to discuss this and make them aware of the requirements in writing. Should either party or their associates subsequently let the property whilst it is non-compliant with MEES, this will be taken into consideration when calculating a financial penalty.
4. Routinely officers will verify the current EPC rating of properties where a complaint is received, or in any other case where a property is being reviewed by officers, and particularly where there is a concern the EPC rating of a property might be F or G.
5. Should a potential breach be identified, officers will access the National PRS Exemption Register to confirm if the property has a valid exemption. Where it is believed that a landlord has registered false or misleading information, consideration will be given to serving a financial and publication penalty.
6. The Council has discretion over whether to serve Compliance Notices to request information from landlords, to help determine whether a property may be compliant. Officers may serve Compliance Notices where this additional information is required. Should a landlord fail to comply with a Compliance Notice, officers will consider serving a Penalty Notice. Each case will be considered on its merits and will be discussed with the Private Sector Housing Manager.
7. If offences under the regulations are committed the Council will, where appropriate, serve a Penalty Notice. The guidance below sets out the approach that officers should use to determine the appropriate penalty.
8. Under Regulation 39, the Local Authority may publish some details of the landlords breach on a publicly accessible part of the PRS Exemptions Register, and the publishing of

this information will be for a minimum of 12 months. This decision to publish will sit with the relevant housing managers.

9. The Landlord has the right to ask for a Penalty Notice to be reviewed under Regulation 42. Any request for review must be submitted to the Council within one calendar month of the Penalty Notice being served. Requests for review after the prescribed time will be considered at the Council's discretion. Requests for review will be discussed by the case officer and the Private Sector Housing Manager. Concerned parties also have other standard rights of redress, initially through the Councils complaints procedure.

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 - Guidance for Determining the Level of Financial Penalty

The maximum level of penalty varies on the type of breach under the Regulations.

Financial penalties (Regulation 40)

Where the Local Authority decides to impose a financial penalty, they have the discretion to decide on the amount of the penalty, up to maximum limits set by the Regulations. The maximum penalties are as follows:

(a) Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.

(b) Where the landlord has let a sub-standard property in breach of the regulations for 3 months or more, the Local Authority may impose a financial penalty of up to £4,000 and may impose the publication penalty.

(c) Where the landlord has registered false or misleading information on the PRS Exemptions Register, the Local Authority may impose a financial penalty of up to £1,000 and may impose the publication penalty.

(d) Where the landlord has failed to comply with compliance notice, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.

Penalty Matrix for the Offence of Letting a Substandard Property

The following matrix is composed of 3 sections designed to consider the potential financial impact to the occupants, the potential risk of harms (under HHSRS) and culpability of the landlord. The penalty will be determined and then multiplied by the total full months of occupancy (part months are not to be included in the calculation). The final penalty cannot exceed that permitted and will be capped at either £2,000 or £4,000.

Financial Impact to Occupants:

There is a direct financial impact to tenants who reside in properties that are not energy efficient; this section of the matrix has been designed to hold the landlord of such properties accountable. The Government has identified the financial impact to tenants who reside in properties that are not energy efficient. These figures have been published in the Government's 'The Domestic Private Property Minimum Standard Guidance' and have

been used to assess the average energy costs of F and G rated properties as compared to E rated.

The Government recently changed the way EPC's are calculated, and as a result, some properties previously found to be non-compliant will have their rating increased when assessed by the new calculation. Where this is the case, this section of the matrix only, will not be applied.

EPC Rating	Average monthly impact
F	58
G	140

Risk of Harms to Occupants:

Tenants who experience high energy bills may not have the financial resources to sufficiently heat their homes and pay for other necessities. As a result, tenants in properties that are not energy efficient are more likely to restrict their energy consumption and experience hazards associated with excess cold, personal hygiene and food safety.

This section of the matrix holds landlords accountable for the potential harms to tenants. The Housing Health and Safety Ratings System (HHSRS) has been referenced to determine harm level.

Landlords who obtain subsequent certificates calculated under the new system with an E or above rating will still be held accountable under this section. At the point of contracting with tenants, the landlord would not have known the property rating would subsequently be increased and would be considered to have acted with indifference to the potential harms of letting a property that at the time was believed to be not energy efficient.

Deficiency	Harm Score	Penalty
The property does not have a functioning, fixed source of heating within each habitable room in the property. In addition, it does not have thermally efficient windows in each habitable room or the property is constructed of uninsulated materials. (See notes below)	Very High	£200
The property does not have a functioning, fixed source of heating, but does have thermally efficient windows in each habitable room and is constructed of insulated materials.	High	£150
The property does not have thermally efficient windows in all habitable rooms or is constructed of uninsulated materials.	Medium	£100
The heating system within the property is either not sufficient or costly to run. The heating system does not have thermostatic controls and/or programmable timers. OR the property does not have an energy efficient source of hot water.	Low	£50

Other energy improvements are required or the EPC rating has changed with no works due to new calculation guidance	Very Low	£25
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- *Plug in electric heaters designed as supplementary heating are not considered to be a fixed source of heating.*
- *Habitable rooms refers to rooms likely to be occupied for extended periods of time, i.e. living and bedrooms.*

Culpability of Offender:

When calculating the culpability of the landlord / offender, officers will consider the financial impact the landlord / offender sought to avoid in not complying with the regulations.

Culpability of offender	Penalty
High (The offender acted in knowledge of the regulations to avoid potential financial cost of between £1000-£3500)	£200
Medium (The offender acted in knowledge of the regulations to avoid potential financial costs of between £1-£1000)	£150
Low (The offender failed to keep up to date with regulations and was unaware of the requirement)	£100

Penalty Calculation

Financial Impact to Occupants	Risk of Harms to Occupants	Culpability of Offender	Total	Months of occupancy	Penalty (Total x Occupancy)	Final Penalty (capped to max)

Failure to Comply with a Compliance Notice

The following matrix has been designed to support officers in determining the financial penalty for non-compliance with a Compliance Notice.

Officers should use Section 2 of the Penalty Matrix for the Offence of Renting a Substandard Property when determining harm. Should the landlord fail to provide a valid EPC and/or obstruct officers from entering the property for the purpose of inspecting the heating system, it will be assumed to be deficient.

Heating System	No fixed source of heating, the property is currently heated by portable plug in electric heaters.
Windows	Single glazed wooden framed windows throughout, the wooden frames are rotten and in poor condition
Construction of the property	Brick built under slate roof
Water Heating system	Electric immersion heater, no insulation, thermostat controls or timers
Insulation	1000mm loft insulation

Case Summary: An Energy Performance Certificate was commissioned in April 2015 and the property awarded a rating of G. On July 1st 2019 the property was purchased by the current owner Mr. Anonymous and on August 15th 2019 Mr. Anonymous let the property to Mrs. Cold on an assured short term tenancy agreement. The Council became aware of the property in December 2019 when Mrs. Cold made a housing condition complaint due to excess cold. The property is heated by portable electric heaters within each habitable room, it has single glazed wooden framed windows and loft insulation to a depth of 1000mm. Mr. Anonymous had a property portfolio of 4 properties and had been operating as a landlord for 15 years. When contacted Mr. Anonymous claimed to be unaware of minimum energy efficiency standard, although he was aware that the property had no fixed source of heating nor sufficient insulation.

EPC Rating	Average monthly impact
F	58
G	140

Risk of Harms to Occupants:

Deficiency	Harm Score	Penalty
The property does not have a functioning, fixed source of heating within each habitable room in the property. In addition, it does not have thermally efficient windows in each habitable room or the property is constructed of uninsulated materials. (See notes below)	Very High	£200
The property does not have a functioning, fixed source of heating, but does have thermally efficient windows in each habitable room and is constructed of insulated materials.	High	£150
The property does not have thermally efficient windows in all habitable rooms or is constructed of uninsulated materials.	Medium	£100

The heating system within the property is either not sufficient or costly to run. The heating system does not have thermostatic controls and/or programmable timers. OR the property does not have an energy efficient source of hot water.	Low	£50
Other energy improvements are required or the EPC rating has changed with no works due to new calculation guidance.	Very Low	£25

- *Plug in electric heaters designed as supplementary heating are not considered to be a fixed source of heating.*
- *Habitable rooms refers to rooms likely to be occupied for extend periods of time, i.e. living and bedrooms.*

Culpability of Offender

Culpability of offender	
High (The offender acted in knowledge of the regulations to avoid potential financial cost of between £1000-£3500)	£200
Medium (The offender acted in knowledge of the regulations to avoid potential financial costs of between £1-£1000)	£150
Low (The offender failed to keep up to date with regulations and was unaware of the requirement)	£100

Penalty Calculation

Financial Impact to Occupants	Risk of Harms to Occupants	Culpability of Offender	Total	Months of occupancy	Penalty (Total x Occupancy)	Final Penalty (capped to max)
£140	£200	£100	£440	9	£3960	£3960