Middlesbrough
moving forward

Middlesbrough Council
Public Protection Service

Private Sector Housing: Standards and Enforcement

Information for landlords, letting agents and tenants

CONTENTS

1. PURPOSE

This guide provides information on the principles and processes when enforcement action is being considered or taken for breaches of laws relating to private sector housing. It provides a background to the legislation and the guidance on which it is based.

Local authorities have enforcement policies, operating procedures and decision-making processes to ensure consistency of approach to enforcement and for those who may be affected by enforcement to be informed on what to expect from enforcement services. Enforcement policies are developed and applied in line with national standards regarding the conduct of investigations, making enforcement decisions and standards of service.

We aim to raise and maintain good standards in private sector housing, which can be achieved by working with landlords, lettings and managing agents and tenants. However, if housing laws are breached, particularly if serious risks to health or safety exist, or there is a likelihood of significant social, environmental or economic impact, appropriate enforcement action must be taken.

This document should be read alongside the Councils Enforcement Policy

2. INTRODUCTION

Middlesbrough Council has responsibility to keep under review the housing conditions in its area and to take appropriate action to deal with unsatisfactory conditions or poor management in private sector housing.

Approximately 21% of dwellings in Middlesbrough are in the Private Rented Sector. The majority of rental properties are occupied by single family households and there are more than 230 licensed Houses in Multiple Occupation (HMOs). An HMO must have a mandatory licence if it is occupied by five or more people who are from two or more households and who share facilities such as bathrooms, toilets and kitchens. Small HMOs are properties that have less than 5 people living as separate households. Small HMOs are not required to have a mandatory licence although Council's are able to apply additional licensing in designate areas. Currently there are no designated additional licensing schemes for small HMOs in Middlesbrough. Due to the absence of licensing for small HMOs the number of such rental properties is not fully known although there are expected to be several hundred in Middlesbrough.

Certain areas in Middlesbrough have been designated under Selective Landlord Licensing and properties in these areas, which includes small HMOs, must have a selective licence if they are let as private rental accommodation. Selective Landlord Licensing schemes aim to improve standards of accommodation, tackle poor management of properties, reduce anti-social behaviour as part of broader community safety interventions, protect and enhance tenants' rights and support good landlords through tenancy referencing, advice and guidance.

Landlords and lettings agents must be aware of, understand and fulfil their respective rights and responsibilities in order to maintain and improve housing standards. They must ensure their tenants are treated fairly and their legal rights are respected.

Tenants also have responsibilities under landlord and tenant laws. This includes the requirement to take proper care of the properties they rent, to keep them in good condition, to use them appropriately and to report any damages or repairs needed to their landlord, or lettings agent, as soon as possible. Tenants with a written tenancy agreement, most commonly an Assured Shorthold Tenancy, need to abide by any conditions or standards set out in their tenancy agreement.

Once a property is let, the tenant(s) has 'exclusive possession' or 'exclusive occupation' which means the landlord or their agent cannot enter the property, including any part within its curtilage such as gardens, garage and yards, without the tenant's permission. However, there are certain circumstances where access

by the landlord or their agent is necessary in order to keep the property safe. This includes entry to carry out annual gas safety checks, to carry out repairs or to deal with anything else that makes the property unsafe. Any need to enter the property requires advance notification, usually at least 24 hours ahead of any visit and visits must be at reasonable times, which are convenient to the tenant(s).

Landlords and lettings agents should not visit their tenanted properties without giving adequate notice and having the visit agreed with the tenant. Similarly, tenants should not refuse entry to landlords, their agents or tradespersons - such as gas engineers - when such visits are necessary, made at a reasonable time and are pre-arranged, as refusing entry could put the safety of the tenant(s) and potentially other people at risk.

Guidance: Landlord and tenant rights and responsibilities in the private rented sector - GOV.UK (www.gov.uk)

In line with the Council's Enforcement Policy, a stepped approach to enforcement will be taken in most cases. This means that where there is a lower risk of harm or minor breaches of landlord responsibilities, the Council will firstly inform the landlord and/or their agent of any breach and allow a reasonable time period to comply. For general repairs and other low-risk issues, tenants must, in the first instance, report their concerns to their landlord or lettings agent and allow sufficient time for a response and then a reasonable amount of time for the landlord or lettings agent to address their concerns.

The Council will provide tenants with advice on making complaints to their landlord and information on the types of issues that the Council is able to investigate and deal with should a landlord fail to respond or fail to carry out any necessary repairs.

If an informal approach fails to remedy any breaches of law, or if there is a persistent or deliberate failure to comply, act unreasonably or where breaches are likely to cause significant harm, our officers have a range of enforcement options available to achieve compliance and protect those at risk. This will include the use of enforcement notices, issuing of civil financial penalties or prosecution.

3. THE HOUSING ACT 2004

The Housing Act 2004 (the Act) is the primary legislation that sets out the minimum standards for all homes in England and Wales. The Act requires local authorities to assess housing conditions using the Housing Health and Safety Rating System (HHSRS), it requires the licensing of HMOs (as described above) and enables local authorities to designate Selective Landlord Licensing areas where particular conditions are met.

HHSRS is a hazard-based assessment tool that looks at the effect of 29 possible hazards on the health of occupiers and the legislation provides a range of actions for addressing identified hazards. Hazards are categorised as either Category 1 or Category 2. The Council has a duty to take action to address Category 1 hazards through specific enforcement options. In the case of Category 2 hazards the Council has a discretionary power to address such hazards.

In addition to HHSRS HMOs have further specified requirements on standards in the accommodation, fire safety and the management of the property.

Properties in Selective Licensing areas are assessed using HHSRS and any significant findings (Category 1 and/or 2) are reported to the landlord and a timescale is given on any remedial works that are required to improve the property. Similarly, when the Council receives complaints about private rented properties HHSRS is used to assess the problems raised. Advice is given to the person(s) complaining on writing to their landlord to make a record of the concerns and in cases where landlords fail to respond or fail to carry out any necessary repairs, the Council will then take appropriate steps to investigate the concerns and take appropriate enforcement action.

Achieving compliance

The Housing Health and Safety Rating System: Enforcement Guidance 80597-ODPM-housing (publishing.service.gov.uk) sets out that local authorities should adopt approaches to enforcement that are fair, practical and consistent. Before deciding on the use of enforcement options set out in the Housing Act 2004 the local authority should take account of the circumstances and views of tenants, landlords and owners, as well as consider, where applicable, the views of relevant bodies including Social Services, tenancy support services, appropriate health professional and others whose knowledge or guidance needs to be sought to ensure that enforcement action does not itself cause detriment to those who it seeks to protect.

In the vast majority of cases the Council will take a graduated approach to enforcement, based on the principle that anyone likely to be subject to formal enforcement action should receive clear explanation of what they need to do to comply with housing standards and have an opportunity to resolve difficulties before formal action is taken. This enables owners / landlords (or other responsible persons) to be informed of any repairs or other improvements needed and appropriate timescales to start / complete works are given. Where an owner or landlord agrees to take the action required by the authority, and where there would be no reasonable grounds to believe otherwise, it will usually be considered appropriate to wait before serving an enforcement notice.

If suitable and sufficient remedial works are not arranged, carried out or completed to a satisfactory standard and within the given timescales then enforcement would progress and appropriate powers under the Housing Act 2004, or other associated legislation would be used.

Taking a graduated approach may not be the most appropriate course of action where there is a high risk to the health or safety of the occupant(s) or others, and/or where there are concerns that the landlord, or other responsible person(s), will not co-operate; has a history of poor management of their properties; has been subject to enforcement or legal sanctions or has lacked in their co-operation with the Authority. Similarly, if compliance and improvement in housing standards is not expected to be achieved through informal approaches, or where the current occupants of a property are vulnerable, or where there are occupancy factors that appear to increase risks to safety, such as through overcrowding or through the existence of unsafe and imminent dangers, then more formal enforcement action will be taken as the first course of action.

Enforcement options

After every assessment of housing conditions (using HHSRS), an informal letter / report of findings will be provided to the landlord, or other responsible persons, which will set out any repairs, servicing or other works that are needed and a timescale in which they should be completed or commenced, if applicable. If all significant matters are addressed, then no further action will be taken.

Hazard Awareness Notices will be issued to notify the landlord and their tenants of the existence of hazards that do not present a significant risk to health or safety due to their nature or where the risk from the hazard is mitigated by the knowledge and longstanding nature of the occupancy. Hazard Awareness Notices do not require works to be carried out and do not carry an offence of non-compliance.

Improvement Notices require the recipient to carry out certain works within a specified period. Improvement Notices are the most appropriate and practical remedy for most hazards. They give the landlord or other relevant recipient an opportunity to address deficiencies in housing standards and no further enforcement action would be taken if the requirements of the Improvement Notice are met.

An Improvement Notice served in respect of a Category 1 Hazard requires works that will either remove the hazard entirely or reduce its effect so that it ceases to be a Category 1 hazard. Improvement Notice served in respect of a Category 2 Hazard require works that will remove the hazard or reduce it to an appropriate degree.

Suspended Improvement Notices provide the Council with a power to suspend an Improvement Notice once served where it is reasonable in the circumstances to do so, for example, where there is a need to obtain planning permission (or other appropriate consent) that is required before repairs and/or improvements can be undertaken.

When deciding whether it is appropriate to suspend an Improvement Notice, the Council will have regard to the level of risk presented by the hazard(s), the response or otherwise of the landlord or owner, and any other relevant circumstances (e.g. whether the vulnerable age group is present). Suspended Improvement Notices will be reviewed on an ongoing basis.

Guidance on complying with Improvement Notices

If a person (which includes a registered company, charity or partnership) served with an Improvement Notice fails to comply with the Notice, they commit an offence which could lead to a substantial fine if convicted in a Court of Law or a civil financial penalty up to £30,000 issued by the Council.

An appeal against the service or content of an Improvement Notice can be made to First Tier Tribunal (see Schedule 1 to the Act). If an appeal is not made, the requirements of the notice will stand and must be complied with.

In any proceedings for an offence, it is a defence to show that there was a 'reasonable excuse' for failing to comply. Reasonable excuse is not specifically defined in law but is generally accepted as 'on a balance of probabilities' compliance was not possible.

If a person served with an Improvement Notice finds that they are not able to comply with the Notice, for reasons that may include difficulty accessing to the property, a lack of a specialist tradespersons or the availability of particular materials needed for the work, or works that have started may be taking longer than expected to complete, they may apply to the Council to vary or revoke the Notice. Taking such steps and keeping the Council informed of any difficulties complying with the Notice are important to prevent, if applicable, any breach of the Notice and subsequent enforcement sanctions being taken.

If access to a property to carry out works required in the Improvement Notice is not possible because the tenant or other person is preventing entry, then the reasons for this must be carefully considered. It is not usual for a tenant to directly refuse entry to stop works being carried out that would improve their living conditions and/or ensure the safety of the property (such as annual gas safety check) without good reason. If the defence of reasonable excuse is to be used on the grounds of a tenant preventing entry, the Council would, as part of its decision making, consider the following:

- Where reasonable steps taken to arrange for the remedial measures to be carried out. Has the landlord or other responsible person discussed with the tenant the works needed and whether there are any implications for the tenant (such as temporary alternative accommodation if necessary). Was the date and time when works were to be carried out agreed with the tenant together with the likely duration of the works, and, if applicable, details of who will visit to carry out the works.

- Did the tenant directly refuse entry to their accommodation and if so has the tenant given a reason for this. If the tenant is refusing entry this should be brought to the attention of the Council as soon as possible. Where appropriate the Council will make enquiries with the tenant regarding their alleged refusal to allow entry.

- Has the tenant been unable to allow entry, for reasons other than a direct refusal of entry, for example, did a tradesperson attend outside of the agreed appointment and the tenant was not home or not able at that time to allow entry; was the tenant worried about privacy, safety or security; was the tenant unable to allow entry due to being incapacitated such as illness and if so was an alternative appointment offered and accepted.
- Has there been an appropriate level of written communication between landlord and tenant, such as emails and/or appointment letters confirming the arrangements and that both parties have agreed to those arrangements. It would not be considered reasonable to give the excuse that access was denied or prevented based on one visit by the landlord or tradesperson. Where several attempts have been made to attend agreed appointments and there is sufficient documentation of this, which should include correspondence with the tenant by the landlord or their agent, this must be brought to the Council's attention before the expiry of the Notice so that the matter can be considered further and, if applicable, the Notice can be varied, suspended or revoked.

It is the responsibility of the person served with an Improvement Notice to ensure they comply with its requirements and they should contact the Council to seek a variation or revocation of the Notice if they find they are not able, or not likely to be able, to comply with the Notice. Such an application cannot be made after the date of due compliance with the Notice and the defence of reasonable excuse is unlikely to be accepted if an application to vary or revoke a Notice has not been made. Similarly, if the Council has not been informed of any genuine difficulties complying with the Notice and has not been able to consider a variation, suspension or revocation of the Notice before the due compliance date, then the reasonable excuse defence is unlikely to be considered valid.

Prohibition Orders can be used in respect of both Category 1 and Category 2 hazards for all or part of a dwelling and are likely to be used if repair and/or improvement appear inappropriate on grounds of practicality or excessive cost (i.e. the cost is unrealistic in terms of the benefit to be derived).

Prohibition Orders can prohibit specific uses (Section 22 (4)(b) Housing Act 2004); this option may be employed to prevent occupation by particular descriptions of persons, for example premises with steep staircases or uneven floors which make them particularly hazardous to elderly occupants and premises with open staircase risers or widely spaced balustrades that make them particularly unsuitable for infants.

Suspended Prohibition Orders provide the Council with the power to suspend a Prohibition Order once served. The Council will consider this course of action where it is reasonable in the circumstances to do so. Suspended Prohibition Orders will be reviewed on an ongoing basis.

Emergency Prohibition Orders may be served where one or more Category 1 hazards exist and involve imminent risk of serious harm to health or safety to occupiers of a property or to any other residential premises.

Breaching a prohibition order is an offence which may result in a fine upon summary conviction.

Emergency Remedial Action may be taken where the Council is satisfied that a Category 1 hazard exists, and that the hazard poses an imminent risk of serious harm to health or safety, and that immediate action is necessary in order to remove the imminent risk. The Council will recover all expenses incurred in removing the imminent risk from the landlord or other responsible person.

Rent Repayment Orders (RROs) can be sought from the First-tier Tribunal (Property Chamber) under sections 96 and 97 of the Housing Act 2004. A landlord who operates an unlicensed HMO or unlicensed property in a Selective Licensing area can be subject to a Rent Repayment Order (RRO) that requires repayment of all rents received by the landlord over a period of up to 12 months. Both local authorities and tenants can apply for RROs. Local authorities may seek a RRO where a tenant's rent has been paid through Housing Benefit and tenants can seek their own RRO for payments made directly to their landlord.

RROs may also be sought in respect of the following offences:

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

Interim Management Orders (IMOs) transfer the management of a residential property to the Council for a period of up to twelve months. The circumstances in which an order can be made are discussed below. In particular, the IMO allows the Council possession of the property against the immediate landlord, and subject to existing rights to occupy can do anything in relation to the property which could have been done by the landlord, including repairs, collecting rents etc.: spend monies received through rents and other charges for carrying out its responsibility of management, including the administration of the property; and create new tenancies (with the consent of the landlord).

Under an IMO the Council must pay to the relevant landlord (that is the person(s) who immediately before the order was made was entitled to the rent for the property) any surplus of income over expenditure (and any interest on such sum) accrued during the period in which the IMO is in force. It must also keep full accounts of income and expenditure in respect of the house and make such accounts available to the relevant person.

The Council **must** take enforcement action in respect of a licensable property (which means an HMO subject to Part 2, or other residential property subject to Part 3) by making an IMO if the property ought to be licensed, but is not, and the Council considers there is no reasonable prospect of it granting a licence in the near future; and/or it is necessary to make an IMO to protect the health, safety or welfare of persons occupying the house, or persons occupying or having an estate or interest in any premises in the vicinity.

Final Management Orders (FMOs) can be sought from the First Tier Tribunal (Residential Property) which can last for up to five years. The Council must adopt a management scheme for a property subject to an FMO. The scheme must set out how the Council intends to manage the house. In particular, the management scheme must include:

- The amount of rent it will seek to obtain whilst the order is in force,
- Details of any works which the Council intends to undertake in relation to the property, and the estimate of the costs of carrying out those works,
- Provision as to the payment of any surpluses of income over expenditure to the relevant landlord, from time to time,
- In general terms how the authority intends to address the matters that caused the Council to make the order.

The Council must also keep full accounts of income and expenditure in respect of the house and make such accounts available to the relevant landlord.

Temporary Exemption Notices (TENs) may be served where a landlord is or will shortly be taking steps to make a property non-licensable. A TEN can only be granted for a maximum period of three months but in exceptional circumstances a second TEN can be served for a further three-month period. A TEN will be considered where the owner of the property states in writing that steps are being taken to make the property non-licensable within 3 months.

Houses in Multiple Occupation (HMOs)

Part 2 of the Housing Act 2004 requires the mandatory licensing of certain types of HMO. Licensing aims to ensure that HMOs are safe for the occupants and visitors and they are properly managed. HMOs with 5 or more occupants who do not form a single household require a licence and it is the responsibility of the person having control of or managing the property to apply for a licence.

The Housing Act 2004 sets out a number of licensing-related offences which carry a fine upon conviction or financial penalty (see Section 4), including:

- operating an unlicensed HMO;
- allowing an HMO to be occupied by more persons than a licence allows;
- breach of licence condition;
- supplying incorrect information in a licence application

Under current legislation many HMOs do not require a licence. These include houses containing self-contained flats and smaller HMOs. Many of these still pose a significant degree of risk to occupants and/or have a history of being poorly managed. The Council will regulate such HMOs through enforcement of the Management of Houses in Multiple Occupation (England) Regulations 2006 and Part 1 of the Housing Act 2004 (use of HHSRS and enforcement measures)

The Management of Houses in Multiple Occupation (England) Regulations 2006 require the person having control of the house to ensure that:

- all services, furnishings, fixtures and fittings are maintained in good, sound, and clean condition
- the structure is kept in good order
- all communal areas of the interior are regularly cleaned and redecorated as necessary
- all yards, boundary walls, fences, gardens and outbuildings are maintained in a safe and tidy condition,
- satisfactory arrangements for the disposal of refuse and litter have been made,
- at the commencement of all tenancies the lettings are clean, in a satisfactory state of repair and decoration, and comply in all respects with these standards,
- all staircases and multiple steps should be provided with suitable handrails,
- all tenants should fulfil their tenancy obligations.

HMOs have one of the highest incidents of deaths caused by fire in any type of housing. It is therefore essential that HMOs have adequate means of escape in the event of a fire and have adequate fire precautions in place and maintained. The level of fire protection and detection required is determined by a fire safety risk assessment carried out in line with the Regulatory Reform (Fire Safety) Order 2005

Guidance: Fire safety risk assessment: sleeping accommodation - GOV.UK (www.gov.uk)
guidance-on-fire-safety-provisions-for-certain-types-of-existing-housing.pdf (cieh.org)

Selective Landlord Licensing (SLL)

Part 3 of the Housing Act 2004 gives local authorities the power to introduce selective licensing of privately rented homes to tackle problems in their areas, or any part or parts of them, caused by:

- low housing demand (or is likely to become such an area),
- a significant and persistent problem caused by anti-social behaviour,
- poor housing conditions,
- high levels of migration,

- high level of deprivation,
- high levels of crime.

The Council has a duty to grant a licence to the 'appropriate person' which, in most instances, will be the owner of the property. However, in some circumstances it may be a leaseholder or a managing agent who will hold the licence. It is the owner's responsibility to ensure that an application for a Licence is made for each of their properties the SLL area. Joint owners cannot jointly apply to hold a licence and must therefore decide which of them wishes to be the licence holder prior to application.

The proposed Licence Holder must have the power to:

- Collect rental income
- Set up and terminate tenancies
- Access all parts of the dwelling (where the tenants have agreed and/or been given reasonable notice)
- Authorise repairs and maintenance to the property

A Selective Landlord Licence is not transferable. Where a property changes ownership the new landlord must make an application for a licence, if they wish to continue to let the property. A repayment of the licence fee cannot be made for any un-expired period of the licence, and a full fee will be required from the new applicant. In a case where the Licence holder changes but the owner doesn't we will review these case by case as who out of all the persons reasonably available to be the licence holder in respect of the house, the most appropriate person to be the licence holder;

There are criminal offences under selective licensing relating to failure to comply with the licensing requirements:

- It is a criminal offence to manage or have control of a property which is required to be licensed under Part 3 and is not so licensed.
- Where a licence holder, or person who has agreed to be bound by the licence, then breaches a condition of a licence without a reasonable excuse.
- A person commits an offence if they knowingly supply any information in respect of Part 3 licensing to the Council or another person which is false or misleading or is reckless as to whether it is false or misleading.

Where a designation is made, landlords who rent out properties, occupied under a tenancy or licence, are required to obtain a licence for each property from the Council, unless:

- Subject to a Prohibition Order, under Section 20 of the Housing Act 2004, that has not been suspended.
- Business premises.
- Houses in Multiple Occupation (HMO) that require a statutory HMO licence.
- Tenancies for agricultural land/holdings.
- Controlled by a local housing authority, Police authority, Fire and Rescue authority or a Health Service body.
- Occupied solely by students undertaking a full-time course of further or higher education, and where the person managing or in control of it is the educational establishment.
- Tenancies granted for more than 21 years and the agreement does not allow the landlord to end the tenancy earlier than the term of the lease (the property must be occupied by the original person who was granted the tenancy or members of their family).
- The tenant is a member of the landlord's family. (The house must be the occupier's main residence. The person granting the occupancy must be the freeholder or leaseholder, which is for

- a period of more than 21 years. This lease must not contain a provision allowing the landlord to end the tenancy earlier than the term of the lease);
- Tenancies or licences granted for the occupancy of a holiday home.
- Accommodation that the occupier shares with the landlord or licensor or a member of the landlord or licensor's family
- A licence is not required where a statutory exemption applies or where the property is rented out by a registered provider of social housing.

SLL schemes may be made for up to 5 years. Licensable HMOs in a SLL area do not require a separate SLL licence but small HMOs (ones with less that than 5 occupants who do not form a single household but share facilities i.e. bathroom, kitchen, toilet) do require a SLL licence.

4. GAS AND ELECTRICAL SAFETY

Gas supplies and any appliances provided by a landlord must be in a safe condition, fitted and repaired by Gas Safe registered engineers and be checked every 12 months by a Gas Safe registered engineer. After inspecting the gas installation, the engineer gives the landlord (or agent) a gas safety record (gas safety certificate) and a copy of this record must be given to tenants at the start of a new tenancy and within 28 days of each yearly gas safety check.

Landlords and licence holders are required to produce a copy of the current gas safety certificate when requested by the Council. It is a breach of licensing conditions and a breach of HMO management regulations to fail to provide the gas safety certificate and anyone committing this offence can be subject to prosecution or be issued with a Civil Penalty of up to £30,000

Offences under the Gas Safety (Installation and Use) Regulations 1998 are enforced by the Health and Safety Executive.

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 require landlords ensure that the electrical wiring, sockets, consumer units (fuse boxes) and other fixed electrical parts in rented homes are inspected and tested every 5 years, or more often than this if necessary.

Landlords must give their tenants a report that shows the condition of the property's electrical installations and provide a copy of the report to the Council if requested.

Where the report shows that remedial or further investigative work is necessary, landlords must ensure that work is completed within 28 days or any shorter period if specified as necessary in the report and then supply written confirmation of the completion of works to the tenant and the Council.

5. SMOKE AND CARBON MONOXIDE DETECTION

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (as amended) make it an offence for landlords not to provide smoke and carbon monoxide alarms within their properties in prescribed locations. The requirement is to have at least one smoke alarm installed on every storey of a rented property 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 penalty for non-compliance is to issue a remedial notice requiring a landlord to fit and/or test the alarms within 28 days. If the landlord fails to comply with the notice, the Council can arrange for the alarms to be fitted and/or tested with the occupier's consent. Failure to comply can incur a civil penalty charge on the

landlord of up to £5,000 and the costs incurred by the Council in taking remedial action will be included in the penalty.

6. CIVIL FINANCIAL PENALTIES

The Housing and Planning Act 2016 gives local authorities the power to issue a civil financial penalty as an alternative to prosecution for offences under the Housing Act 2004, namely:

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of Houses in Multiple Occupation (section 72);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95);
- Offences of contravention of an Overcrowding Notice (section 139); and
- Failure to comply with Management Regulations in respect of Houses in Multiple Occupation (section 234).
- Breach of a banning order (section 21 of the Housing and Planning Act 2016)

A civil penalty can be imposed on a landlord or other responsible person for specific offences under the Housing Act 2004 and they range from £600 for minor isolated failings up to a maximum of £30,000 for deliberate breaches or flagrant disregard for the law. The amount of penalty is determined by the Council in line with statutory guidance -
Civil penalties under the Housing and Planning Act 2016 (publishing.service.gov.uk)

Only one penalty can be imposed in respect of the same offence and a civil penalty can only be imposed as an alternative to prosecution. However, a civil penalty can be issued as an alternative to prosecution for each separate breach of the Houses in Multiple Occupation Management Regulations.

Section 234(3) of the Housing Act 2004 provides that a person commits an offence if he fails to comply with a regulation. Therefore, each failure to comply with the regulations constitutes a separate offence for which a civil penalty can be imposed.

The same criminal standard of proof is required for a civil penalty as for a prosecution. This means that the Council must satisfy that if the case was to be prosecuted in a Magistrates' Court there would be a realistic prospect of conviction.

An appeal against the service of a civil penalty or the amount of the penalty can be made to the First Tier Tribunal - Schedule 13A, paragraph 10 of the Housing Act 2004 and Schedule 1, paragraph 10 of the Housing and Planning Act 2016 set out the process for appeal.

If a decision is made to issue a civil penalty as an alternative to prosecution, the recipient will be served with a 'notice of intent' to issue a financial penalty. The recipient then has 28 days to make representations to the Council regarding the issue of the civil penalty and/or the amount of the penalty. Any representation will be carefully considered and a decision will be made to either withdraw the civil penalty, to issue to civil penalty or to issue an amended civil penalty. If a civil penalty is to be pursued a 'final notice' will be served imposing the penalty. On receipt of a final notice the recipient can appeal to the First-tier Tribunal against the decision to impose a penalty and/or the amount of the penalty. The appeal must be made within 28 days of the date the final notice was issued. The final notice is suspended until the appeal is determined or withdrawn.

Civil financial penalties may also be issued for failing to comply with the requirements of a Remedial Notice (Smoke and Carbon Monoxide Alarm Regulations 2015); failure to comply with a requirement under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020; and, failure to comply with Minimum Energy Efficiency Standards Regulations 2020 (renting out a property with an EPC rating of F or G where no permitted exemption exists.)

The Council may also choose to impose a financial penalty on a letting agent or property management business for the following offences:

- failure to be a member of a government approved redress scheme (Redress Schemes Order 2014)
- failure to publicise details of their relevant fees and other required information (section 83-88 Consumer Rights Act 2015)
- Letting Agents (or Landlords) requiring a person to make a 'prohibited payment' in relation to a tenancy agreement (Tenant Fees Act 2019)
- failure to be a member of a Government approved or designated Client Money Protection Scheme. (The Client Money Protection Schemes for Property Agents Regulations 2019)
- failure to comply with transparency requirements of Client Money Protection Scheme (The Client Money Protection Schemes for Property Agents Regulations 2019)

Appendix A provides further detail on the calculation of Civil Penalties.

Database of Rogue Landlords

The "Rogue Landlord Database" is a tool for local authorities in England to keep track of landlords and property agents who have been issued with a banning order and they can make entries on the database where a landlord or property agent has been convicted of a banning order offence or has received 2 or more civil penalties within a 12 month period.

Details held on the database are only available to local authorities and can be used in their enforcement of housing laws.

Banning Orders

Local Authorities have the power to apply to the First Tier Tribunal for a banning order that bans a landlord or property agent from letting housing in England; engaging in English letting agency work; engaging in English property management work; and doing two or more of those things. Breach of a banning order is a criminal offence.

There is no statutory maximum period for a Banning Order but they are issued for a minimum period of 12 months.

The Council may seek a banning order against any landlord or agent who is found to be in serious breach of their legal obligations and who rent out accommodation which is substandard and where previous sanctions, such as a prosecution has not resulted in positive improvements.

Part 5 of the Housing and Planning Act 2016 covers a range of measures including changes to the 'fit and proper person' test applied to landlords who let out licensable properties and allowing arrangements to be put in place to give authorities in England access to information held by approved Tenancy Deposit Schemes with a view to assisting with their private sector enforcement work.

7. POWERS OF ENTRY AND POWER TO REQUIRE INFORMATION

The Council has the power of entry to properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004. Prior to exercising power of entry the Council's private sector housing team must give (at least) 24 hours notice of intended entry to the owner (if known) and the occupier (if any) of the premises.

No such notice is required where entry is to ascertain whether an offence has been committed under Sections 72 (offences in relation to licensing of HMOs), 95 (offences in relation to licensing of houses) or Section 234(3) (offences in relation to HMO Management Regulations).

If admission is refused, premises are unoccupied or prior warning of entry is likely to defeat the purpose of the entry, then a warrant may be granted by a Justice of the Peace on written application. A warrant under this section includes power to enter by force, if necessary.

The Council also has power under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with any purpose connected with the exercise of its functions under Parts 1-4 of the Housing Act 2004, or when investigating whether any offence has been committed under Parts 1-4 of the Housing Act 2004.

The Council also has powers under Section 237 of the Housing Act 2004 to use the information obtained above and Housing Benefit and Council Tax information obtained by the authority to carry out its functions in relation to these parts of the Act.

8. MINIMUM ENERGY EFFICIENCY STANDARDS

The Domestic Minimum Energy Efficiency Standard (MEES) Regulations set a minimum energy efficiency level for domestic private rented properties. The Regulations apply to all domestic private rented properties that are let on specific types of tenancy agreement and legally required to have an Energy Performance Certificate (EPC).

Subject to certain exemptions, private landlords may not let properties that have an EPC rating of F or G. If the Council believes that a landlord has failed to fulfil their obligations under the MEES regulations, a Compliance Notice would be served and if a breach is confirmed, the landlord may be issued with a civil penalty up to £5,000 for each substandard property they let.

Guidance: Domestic private rented property: minimum energy efficiency standard - landlord guidance - GOV.UK (www.gov.uk)

9. TENANTS' RIGHTS, FEES AND ENDING A TENANCY

Tenants' Rights

Tenants in private rented properties have rights, including the right to:

- live in a property that is safe and in a good state of repair
- live in a property that meets minimum energy efficiency standards
- live in a property undisturbed
- be protected from unlawful eviction

At the start of a tenancy tenants must be given the following;

• **Gas safety certificate -** If the property has a gas supply and uses gas appliances then there is a requirement to provide the tenant with a copy of a gas safety certificate at the start of the tenancy and ensure that the certificate is renewed every twelve months. Penalties for failure to provide a current gas safety certificate can range from a fine to imprisonment.

• **Details of the deposit protection scheme used -** If the property is let on an assured shorthold tenancy (AST) then as a landlord, there is a legal requirement to hold any deposit in one of the Government approved tenancy deposit schemes. There are three such schemes in operation being; The Deposit Protection Service (DPS), the Tenancy Deposit Scheme (TDS) and MyDeposits. Tenants need to be provided with details of the scheme within 30 days of paying the deposit. At the end of the rental period, deposits should be returned to tenants within 10 days.

• **Energy Performance Certificate (EPC) -** An energy performance certificate (EPC) is required to market a property for rent and should be provided to the tenant. The EPC provides information on the energy

efficiency of the property and what the estimated energy costs are likely to be. EPC ratings are classified as A (most efficient) to G (least efficient). Any property that has a rating of F and G cannot legally be let.

- **How to rent checklist**

The "how to rent checklist" is issued by the Government and provides detailed information on the process of renting in the Private Rental Sector.

Guidance: https://www.gov.uk/government/publications/how-to-rent

- **Contact details -** A landlord is legally obliged to provide a tenant with their contact details including their name and address and contact number.

Tenant Fees

The Tenant Fees Act 2019 aims to protect tenants and consumers from unfair charges and prohibits landlords, lettings and property management agents from charging fees other than for prescribed services.

Fees that are permitted include the rent; a refundable deposit capped at no more than 5 weeks rent if the annual rent is less than £50,000, and 6 weeks if the annual rent is more than £50,000; a deposit to reserve a property capped at no more than one weeks rent; a default fee under the terms of the tenancy agreement (for example replacing lost keys or for late payment of rent); fees of up to £50 for the administration of changes to tenancy agreements requested by the tenant; and payments associated with early termination of a tenancy when requested by the tenant, which must not exceed the loss of income from early termination.

Guidance: Tenant Fees Act - GOV.UK (www.gov.uk)

Ending a Tenancy

Assured shorthold tenancies (ASTs) can be ended by giving the tenant(s) a written notice (known as a Section 21 (a no-fault eviction) or a Section 8 (breach of the terms of the tenancy). See guidance for more information on lawfully taking possession of a tenanted property -
Evicting tenants in England: Section 21 and Section 8 notices - GOV.UK (www.gov.uk)

Until a tenant surrenders their tenancy and returns their keys to the property to the landlord, or a Court Order of Possession is served and effected by Court appointed bailiffs, the tenant has full legal right to remain in the property.

Any person who unlawfully deprives the tenant(s) of any premises of their occupation of the premises or any part thereof, or attempts to do so, shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the tenant(s) had ceased to reside in the premises.

Any person who causes the residential occupier of any premises to give up the occupation of the premises or any part thereof; or to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof acts to interfere with the peace or comfort of the residential occupier or members of their household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, shall be guilty of an offence.
Any person convicted for unlawful eviction, harassment or other unlawful interference under the Protection from Eviction Act 1977 shall be liable on conviction to a fine or to a term of imprisonment not exceeding 2 years, or to both.

10. EMPTY AND INSECURE PROPERTIES

The Local Government (Miscellaneous Provisions) Act 1982 empowers Local Authorities to deal with privately owned buildings that are vacant and have become insecure. Houses that become vacant can be a target for crime and anti-social behaviour and a potential danger to passers-by and anyone who enters them if there is any serious disrepair such as broken windows, damaged gas pipes, unsafe electrics.

The Council will seek to secure such buildings firstly by bringing the matter to the owner's attention. The Council may service Notice on the owner requiring works to secure the building to be carried out within a specified time, or where the contacting the landlord is not possible or the landlord cannot be identified, the Council may carry out works without giving Notice, particularly where the property is causing a risk to public health. Any costs incurred by the Council will be recovered from the owner of the property.

11. HOUSING AND STATUTORY NUISANCE

If a property is unsafe, is causing or is likely to cause a nuisance to the those in the locality, there are several legislative tools available to the Council to ensure that the condition of the property is improved or the actions of landlords or tenants, which cause nuisance, are abated.

Section 79 of the Environmental Protection Act 1990 lists 'Statutory Nuisances', including;

- any premises is such a state as to be prejudicial to health or a nuisance
- smoke emitted from premises so as to be prejudicial to health or a nuisance
- fumes of gases emitted from premises so as to be prejudicial to health or a nuisance
- artificial light emitted from premises so as to be prejudicial to health or a nuisance
- noise emitted from premises so as to be prejudicial to health or a nuisance
- any accumulation or deposit which is prejudicial to health or a nuisance

If the officers of the Council investigating a nuisance, whether at a private address, private rented property or a social rented property, are satisfied that a statutory nuisance exists they must serve an abatement notice on the person(s) responsible for the statutory nuisance, which may be the owner and/or occupier of the premises. An abatement notice sets out the actions that must be taken to prevent further nuisance or remove matters that are prejudicial to health (disease causing). Failing to comply with an Abatement Notice is an offence, punishable by a fine up to £5,000

12. ENFORCEMENT POLICY

The Council's Regulatory Services Enforcement Policy recognises and affirms the importance of achieving and maintaining consistency in approach to making decisions that concern regulatory enforcement action. The Policy sets out the range of enforcement options it can take and the circumstances that would result in an enforcement action or sanction.

Each case of a breach of housing and housing-related law is carefully assessed to identify and apply the appropriate enforcement action or sanction and a decision on enforcement will depend on the nature, severity and harm caused by the breach.

Once satisfied that the conduct of a landlord, letting agent, management agent or any other 'responsible person' amounts to an offence, a decision will be made on a case-by-case basis whether to prosecute or issue a civil financial penalty. The level of civil penalty will be determined in line with the Council's policy on the use of Civil Penalties. Where a person issued with a civil penalty fails to pay the whole or any part of a civil penalty, including after any appeal has been determined, the amount to be paid will be recovered through order from the County or High Court an all costs incurred in seeking an Order will also be recovered.

A copy of the enforcement policy is available on request from the Public Protection Service, Middlesbrough Council, PO BOX 500, Middlesbrough, TS1 9FT

APPENDIX A: CIVIL PENALTIES

A civil penalty is a financial penalty imposed on a landlord or other responsible person for specific offences under the Housing Act 2004 ("the 2004 Act") and under other specific legislation relevant to private sector lettings. Civil penalties are an alternative to prosecution and penalties ranges from £600 for minor and isolated breaches up to a maximum of £30,000 for deliberate or flagrant disregard for the law.

Civil penalties can be issued for the following Housing Act 2004 breaches:

- failure to comply with an Improvement Notice
- offences in relation to the licensing of Houses in Multiple Occupation (HMOs)
- offences in relation to licensing of homes included in Selective Landlord Licensing
- failure to comply with an overcrowding notice
- failure to comply with management regulations in respect of HMOs

Legislation: see section 126 and Schedule 9 of the Housing and Planning Act 2016: and Schedule 13A of the Housing Act 2004

Before issuing a civil penalty, the Council must be satisfied beyond reasonable doubt that the landlord, or other relevant person, has committed a specified offence and that if the matter were to be prosecuted in the Magistrates' Court, there would be a realistic prospect of conviction.

Determining the Civil Penalty Amount

There are multiple factors that are taken into consideration before issuing a civil penalty. These include the following;

- the benefits of taking such action to the tenant(s), the community and the local authority
- the severity of the offence (level of harm to the tenant or others affected)
- the level of culpability and the track record of the offender. A higher penalty will be appropriate where the offender has a history of failing to comply with their legal obligations; their actions were deliberate; they knew or ought to have known that they were in breach of the law.
- whether a civil penalty provides a suitable and sufficient level of punishment - a civil penalty is not as an easy or lesser option compared to prosecution, it must be proportionate and reflect the severity of the offence, resulting in a financial penalty that has a real economic impact on the offender and demonstrates the consequences of not complying with law.
- whether a civil penalty will deter further or repeat offending and deter others from committing similar offences.
- Whether a civil penalty will remove any financial benefit the offender may have obtained as a result of committing the offence.

Authority to serve a Civil Penalty

The Council has adopted the powers provided to it under sections 23 and 126 and schedule 9 of the Housing and Planning Act 2016. Only officers who are deemed competent and duly authorised may carry out inspection and enforcement activities under housing law. Enforcement decisions, including the prosecution of offences or the issuing of a civil penalties, will be taken in accordance with the Council's Scheme of Delegation, Enforcement Policy and relevant statutory and non-statutory guidelines.

Issuing a Civil Penalty

A notice of intention to issue a civil penalty is served on the landlord, or other responsible person, and sets out 1) the amount of the fixed penalty; 2) the reasons for the penalty, and 3) information about the recipients right to make representations.

The notice of intent must be served no later than six months after the offence occurred and gives the recipient 28 days to make written representation to the Council. Any representation made will be considered by the Head of Service or their authorised deputy and a decision on the issuing of the civil penalty and/or the amount of penalty will be made.

If the decision made is to issue a civil penalty is made, and after making any adjustment to the amount of the penalty, if applicable, a 'final' Civil Penalty Notice will be served.

The Final Notice will set out;

- The amount of the financial penalty
- The reasons for the penalty
- Information on how to pay
- The period in which payment must be made, which will be (at least) 28 days
- Right of appeal
- The consequences of failure to comply with the notice

The recipient has the right to appeal to the First Tier Tribunal. During the appeal period the requirement to pay the penalty is suspended until the appeal has been determined or withdrawn.

Calculation of the penalty amount

There are four stages to determining the amount of the civil penalty to be imposed.

<u>1: Determine the Penalty Band</u>

<u>Culpability</u>

The penalty band is based upon the offender's culpability for the offence and the severity of harm.

When assessing culpability, the evidence gathered as part of the investigation together with any aggravating or mitigating factors will be carefully considered. This will include the findings of inspections, housing standards assessments and any interviews with offenders and tenant(s). The offender's history of compliance and any previous warnings or enforcement actions will be included in the culpability assessment.

There are four levels of culpability (shown in the following). Each offence will be considered separately, and culpability determined for each offence.

Level of culpability	Examples of offences applicable
Very High	Deliberate breach or a flagrant disregard of the law, including repeat offending.
High	Offender fell far short of their legal duties or there is serious and systemic failure to comply with their legal duties, for example: • Failure to put in place measures or carry out works that are recognised legal requirements or compliance with regulations such as fire safety requirements and effective maintenance of gas or electrical installations.

	• Allowing risks to continue over a long period of time. • Ignoring legal notices requiring action to be taken to protect tenants and others from serious detriment or risk of serious injury.
Medium	Systems are in place to manage risk but have not been adhered to or implemented sufficiently.
Low	Offender fell short of their legal responsibility, for example: • Significant effort was made to address the risks, breaches or offences but measures taken were inadequate. • They have offered a reasonable defence as to why they were unaware of the failure, for example: out of the country, in hospital etc. • Failings were minor and occurred as an isolated incident.

Severity of harm

The risk of harm is separated into three levels and applied to each breach or offence.

Level A - Meeting the guidance for Class I and Class II harm outcomes of the Housing Health and Safety Rating System (HHSRS)

Level B - Meeting the guidance for Class III and IV harm outcomes of HHSRS

Level C- All other cases not falling within Level A or B above (eg. where an offence occurred but the level of harm does not meet the descriptions above)

Once the level of culpability and severity of harm outcomes the appropriate penalty levels can be identified:

	Very high culpability	High Culpability	Medium Culpability	Low Culpability
Level A	5+	5	4	3
Level B	5	4	3	2
Level C	4	3	2	1

Penalty Bands

If the penalty band is 5/5+ further consideration will be given to determine if prosecution is a more appropriate course of action. If such action is not considered necessary, then the Penalty Level will apply.

Penalty Level	Penalty Band
1	£600 - £1200
2	£1200 - £3000
3	£3000 - £6000
4	£6000 - £15,000
5/5+	£15,000 - £30,000

2. Consider the Offender's Income

A full review the offender's income will only be considered reasonable and proportionate for very serious offences - those at penalty band level 5/5+. For other penalty bands the offenders income will be considered but will normally be limited to the income received in relation to the property where the offence occurred.

For property owners the income will be the weekly rental income and for property agents the income will be any fees received for the management of the property. Where the fees include VAT or any other charges, the gross amount of the fees will be used.

Calculation

To determine what percentage of the income should be added to the penalty amount, the penalty level (1-5/5+) will be used and the corresponding % increase to the weekly income applied.

Penalty level	% of relevant weekly income
1	50%
2	100%
3	150%
4	250%
5	400%
5+	600%

In cases where the offender is not forthcoming with this information or documentation, an estimate of the average weekly income will be used, and it will be for the offender to make representations against this estimated figure if they deem it to be too high. Estimates of average weekly income will be calculated on a case by case basis but will generally be based on an assessment of similar sized rental properties in the same area as the property to which the offence relates.

3. Review the Offender's Track Record

The track record of the landlord or other person subject to a penalty charge is an important factor in determining the final amount of the CPN. A higher penalty will be appropriate where there is a history of non-compliance.

The following questions will be used to determine any extra amounts to the penalty. The response to each question will be placed into one of four categories and a weighting added. When the answer to a question is 'No' a zero weighting will be given. For questions where the number of occasions is relevant, the total weighting for a 'yes' answer will be the question multiplied by the number of occasions. E.g. if a question has a weighting of 5 and the offender has committed the offence 3 times, this will give a total score of 15 for the question.

Questions and number of occasions	*Weighting for a Yes answer	Multiply by the number of occasions
Has the offender been served any relevant notices in the last two years under Part 1 of the Housing Act 2004, were they complied with or was enforcement action taken?	1	yes
Has the offender had any Civil penalties imposed on them in the last two years?	5	yes
Has the offender accepted any cautions for relevant offences over the last two years?	10	yes
Has the offender been sent any letters in the last two years informing them that they would be liable to enforcement action if found to be breaching relevant laws?	10	yes
Has the offender owned or managed a property where the term of an existing license, under the Housing Act 2004, was reduced due to enforcement action or significant concerns in the last two years.	5	no
Has the offender breached relevant notices which resulted in works in default being carried out in the last two years?	10	yes
Has the offender owned or managed a property where a license has been revoked, during the last two years, due to enforcement action or significant concerns.	10	no
Has the offender been prosecuted for any relevant offences in the last two years?	20	yes
Has the offender owned or managed a property which has been subject to an interim or final management order under the Housing Act 2004 in the last two years?	20	no
Has the offender been subject to a Banning Order under the Housing and Planning Act 2016 in the last two years?	20	No

**Weightings- 1=least serious, 5=moderately serious, 10=very serious, 20=most serious*

Once all the questions have been answered, the weighting for each is totaled and compared to the % increase table below.

Score	0	1	3	5	7	9	11	13	15	17	21	23	25	27	29	31	33	34	37	39+
%	0	5	10	15	20	25	30	35	40	45	50	55	60	65	70	75	80	85	90	100

The two figures from stages 2 and 3 are added to the starting point and if the final amount is less that the upper level for the penalty band then this is the penalty. If the amount is higher than the top of the band then the top of the band is used as the penalty.

4. Calculate the Financial Benefit Gained from the Offending

The guiding principle of Civil Penalties is that they should remove any financial benefit that has been gained by the offender. This means that the penalty should never be less than it would have reasonably cost the offender to comply in the first instance. There must be clear proof that financial benefit was obtained but where it can be proven, in monetary terms, the amount of benefit will be added to the final penalty amount. If works in default have been carried out the cost of these will be taken into account as a financial benefit for the offence.

Payment of Civil Penalties

Payment of Civil Penalties is made directly to the Council. An invoice that gives details on how payments can be made will be issued with a Civil Penalty Notice. Where payments in full are not made by the stated time, the Council will recover the amounts due, plus any further costs incurred in recovering the penalty amount. The Council is able to recover penalty amounts and costs through County Court proceedings, such as to seek;

- A Warrant of Control for amounts below £5,000
- A Third-Party Debt Order
- A Charging Order
- Bankruptcy or Insolvency Order

Civil penalties can be issued as alternative to prosecution under a number of laws relating to private sector housing. The decision-making process and the administration of civil penalties is the same as described above, however, the method for calculating the amount of penalty and the value of a penalty are subject to the provisions in the relevant legislation and approved Council process

Other legislation with Civil Penalties

- failing to comply with the requirements of a Remedial Notice under the Smoke and Carbon Monoxide Alarm Regulations 2015
- failure to comply with a requirement under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
- failure to comply with Minimum Energy Efficiency Standards Regulations 2020 (renting out a property with an EPC rating of F or G where no permitted exemption exists.)
- failure to be a member of a government approved redress scheme (Redress Schemes Order 2014)
- failure to publicise details of their relevant fees and other required information (section 83-88 Consumer Rights Act 2015)
- failure to be a member of a Government approved or designated Client Money Protection Scheme. (The Client Money Protection Schemes for Property Agents Regulations 2019)
- failure to comply with transparency requirements of Client Money Protection Scheme (The Client Money Protection Schemes for Property Agents Regulations 2019)