

APPENDIX A



Private Sector Housing Enforcement Policy

for the Regulation of Housing Standards

Updated 1 June 2020

CONTENTS

	Page
1. Introduction	3
2. Housing Enforcement Team	4
3. Purpose of the Housing Enforcement Policy	4
4. Principles of Good Enforcement	5
Benefits to the Local Economy	5
Property Inspections and Compliance Visits	6
Advice and Guidance	6
Principles underpinning Enforcement Activity	6
5. Regulation of Private Sector Housing	7
Dealing with Complaints	7
Housing Health and Safety Rating System	7
Houses in Multiple Occupation	8
Overcrowding	11
Empty Properties	12
Illegal Eviction and Harassment	12
Charging for Enforcement	13
Deciding on an Appropriate Sanction	13
6. Options to Regulate and Ensure Compliance	13
Powers of Entry	17
Carrying out Works in Default	17
Revocation of HMO Licences and Approvals	18
Civil Penalties	18
Simple Cautions	19
Prosecution	20
7. Management Orders	20
Interim Management Orders	20
Special Interim Management Orders	21
Final Management Orders	21
8. Rent Repayment Orders	22
9. Compliance with Guidance and Legislation	23

Introduction

- 1.1 Northampton Borough Council is committed to improving standards in private sector housing, bringing empty homes back into use and ensuring that all private rented accommodation is well managed, properly maintained and safe and habitable.
- 1.2 To improve standards in private sector housing, the Council's Housing Enforcement Team will request information, carry out inspections, process licence applications, provide owners and landlords with advice and information, encourage and promote good practice, investigate possible offences and, where appropriate, take enforcement action and prosecute offenders.
- 1.3 The Council has statutory powers and duties to regulate private sector housing and these are assisted by the Housing Health and Safety Rating System (HHSRS), the Mandatory Licensing of Houses in Multiple Occupation and, in designated parts of the borough, the Additional Licensing of Houses in Multiple Occupation.
- 1.4 Although Northampton has some excellent landlords¹, it also has a significant number of criminal, rogue and irresponsible landlords who knowingly rent out accommodation that is unlicensed, substandard and/or unsafe.
- 1.5 The Council regards managing and letting rented housing as a business and expects everyone involved in it to be familiar with their legal obligations. It also believes that it should be the offender (rather than good, responsible landlords or the local council taxpayers) who pays for the cost of housing enforcement, and that no-one who breaks the law should gain a financial advantage over someone who does not.
- 1.6 This approach enjoys widespread support from local landlords who want the Council to create a level playing field for all landlords by dealing robustly with criminal, rogue and irresponsible landlords.
- 1.7 The Council welcomes the action that the Government is taking to crack down on criminal, rogue and irresponsible landlords and it is committed to making full use of its powers to improve standards in Northampton's private rented sector.
- 1.8 Northampton's intelligence-led, targeted approach to housing enforcement – together with its expectation that all members of its Housing Enforcement Team will study for the Advanced Professional Certificate in Investigative Practice or an equal equivalent – means that the Council is well placed to competently detect and investigate possible offences.
- 1.9 This Housing Enforcement Policy describes the Council's approach to enforcement, including serving statutory notices, making orders, issuing financial penalties, carrying out works in default and pursuing enforced sales, compulsory purchase and prosecution. It takes into account the statutory guidance that has been issued by the Government under paragraph 12 of Schedule 13A of the Housing Act 2004.
- 1.10 This Policy replaces the previous Private Sector Housing Enforcement Policy (1 August 2017) and relates to all enforcement action taken on or after 1 June 2020. It should be read in conjunction with the Council's Private Sector Housing Civil Penalties Policy and Private Sector Housing Fees & Charges Policy.

Note ¹ – In this Policy, the term “landlords” also includes “property agents”, “managing agents” and “letting agents” unless otherwise specified

2. Housing Enforcement Team

- 2.1 The Housing Enforcement Team's multi-agency approach to housing enforcement is intelligence-led, risk-based and targeted.
- 2.2 Working closely with other local authorities, HMRC and a diverse range of regulatory and law enforcement services – including the Police, Trading Standards, the Gangmasters & Labour Abuse Authority and the Fire & Rescue Service – the Housing Enforcement Team is responsible for the administration and enforcement of HMO licensing and enforcement of the law relating to housing conditions, overcrowding, illegal eviction, harassment and aspects of public health.
- 2.3 All of the Officers in the Housing Enforcement Team will be fully trained, competent and authorised by Northampton Borough Council. Authorised Officers will carry an Identity Card (displaying their name and photograph) and, where appropriate, a Warrant Card (displaying their name, job title and a list of the legislation in respect of which they are authorised to act).
- 2.4 The Housing Enforcement Team will use all available powers to achieve its objectives, including powers of entry, the power to require a person to produce documents and/or information about their identify and interest in property or land, and the power to require certificates regarding gas and electrical safety.
- 2.5 Although the Housing Enforcement Team will work with owner-occupiers and Registered Providers to ensure that their homes meet minimum standards and are not causing a danger or statutory nuisance to other households in the area, it will prioritise and target resources to raise standards in the private rented sector.

3. Purpose of the Housing Enforcement Policy

- 3.1 The purpose of the Private Sector Housing Enforcement Policy is to provide transparency and ensure that everyone who is affected by the Council's housing enforcement process understands what action the Council will take and when.
- 3.2 Most importantly, the Housing Enforcement Policy will also ensure that:
 - Tenants of private landlords and registered social landlords live in homes that are free of unacceptable hazards and risks to their health and safety;
 - All Houses in Multiple Occupation are safe and well managed, and all relevant Management Regulations are adhered to;
 - All licensable Houses in Multiple Occupation are licensed, and all licensing conditions are met;
 - Private housing is not left empty for an unreasonable amount of time and/or becomes an eyesore and nuisance to neighbouring properties;

- Privately owned property and land does not present a statutory nuisance to other landowners, and does not directly or indirectly present an unacceptable risk to the occupier, public health, safety or the environment;
- Lettings and property management businesses are registered with a government-approved redress scheme and comply with relevant legislation and codes of practice and
- The Council meets its statutory obligations in relation to private housing.

4. Principles of Good Enforcement

4.1 When discharging its duties in relation to private sector housing, the Council will take into account the principles of good enforcement set out in:

- Part 2 of the Legislative and Regulatory Reform Act 2006; and
- The Regulators' Code

4.2 The Council will also comply with the following when exercising its enforcement powers

- The Human Rights Act 1998
- The Equality Act 2010
- The Police and Criminal Evidence Act 1984 and the Codes of Practice issued under sections 60, 60A and 66.
- The Criminal Procedure and Investigations Act 1996
- The Regulation of Investigatory Powers Act 2000
- The Code for Crown Prosecutors
- Civil Penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities
- Housing Health and Safety Rating System - Enforcement Guidance Housing Act 2004

4.3 The Housing Enforcement Team will enforce the law efficiently and effectively without imposing unnecessary burdens on responsible owners and occupiers. In doing so, it will have regard to the role of inspections, compliance visits and advice and guidance, and the principles underpinning enforcement activity.

Benefits to the Local Economy

4.4 Northampton Borough Council aims to create neighbourhoods of choice: areas where people want to live, bring up their children and work. Maintaining healthy housing and attractive neighbourhoods will benefit the local economy.

Property Inspections and Compliance Visits

- 4.5 The Housing Enforcement Team will undertake proactive property inspections, based on risk and intelligence, and ensure that its resources are targeted at the worst properties first including, for example, licensable Houses in Multiple Occupation that are avoiding Mandatory and Additional HMO licensing.
- 4.6 Officers will target 'eyesore' empty properties and land in order to end the blight the empty properties have of neighbourhoods and increase the supply of housing.
- 4.7 The Housing Enforcement Team will respond to residents' complaints on a risk assessed basis about substandard, unsafe and problematic private housing and adopt an escalating regulatory approach to enforcement.

Advice and Guidance

- 4.8 Wherever possible, the Housing Enforcement Team will work with landlords to resolve problems before escalating the situation to more formal enforcement action.
- 4.9 The Council will provide clear, accessible advice and guidance to make it easier for businesses to understand and meet their responsibilities.
- 4.10 Key information can be found on the Council's website: www.northampton.gov.uk

Principles underpinning Enforcement Action

- 4.11 The Housing Enforcement Team's enforcement activity will be:
 - **Targeted** – Enforcement action will target the properties and people that pose the greatest risk, including the owners and landlords that evade licensing and regulation, and those whose properties cause a nuisance or put people's health and safety at risk.
 - **Proportionate** – Enforcement action will be proportionate and reflect the nature, scale and seriousness of any breach or non-compliance.
 - **Fair and objective** – Enforcement action will be based on the individual circumstances of the case, taking all available facts into account. Officers will carry out investigations with a balanced and open mind.
 - **Transparent** – Enforcement action will be undertaken in accordance with clearly defined policies and procedures that are readily available. All communications will be easy to understand, with clear reasons being given for any enforcement action taken.
 - **Consistent** – Enforcement action will be undertaken by well-trained investigators, and the Housing Enforcement Team will ensure consistency in the interpretation and enforcement of legislation, work with other regulatory agencies and share and develop good practice.

- **Accountable** – Enforcement action will be undertaken in a responsible manner that has a clear purpose. Where appropriate, the Housing Enforcement Team will work closely with landlords, tenants and other stakeholders that have an interest in private sector housing.

5. Regulation of Private Sector Housing

Dealing with Complaints

- 5.1 The Housing Enforcement Team will respond to complaints from tenants and other residents about private housing, prioritising the complaints on the basis of an assessment of the risk and seriousness. If enforcement action is necessary, a variety of regulatory powers may be used to address and resolve the problem.

Housing, Health and Safety Rating System (HHSRS)

- 5.2 The HHSRS is set out in Part 1 of the Housing Act 2004. It is a risk-based assessment that is used to determine the level of risk (from 29 defined hazards) that residential property poses to the health and safety of the occupants and visitors.
- 5.3 There are two categories of possible hazards:
- **Category 1 hazards** represent a serious risk to health and safety. The Council has a legal duty to take appropriate action to deal with these.
 - **Category 2 hazards** represent a lesser risk and, although it has no legal duty to take action, the Council will exercise its power to reduce category 2 hazards where appropriate.
- 5.4 In most cases, the Council will follow a pre-formal process in which it will seek to work with landlords to reduce hazards. However, it will avoid actions that may encourage owners, landlords and agents to be non-compliant, such as carrying out costly works in default where it may be difficult for the Council to recover its costs.
- 5.5 When considering what action should be taken in relation to Category 2 hazards, the Council will have regard to national guidance and take into account whether or not there are also any Category 1 hazards present. It will also consider the presence of two or more Category 2 hazards which, when taken together, amount to neglect of the property or disregard for the tenant's health, safety and wellbeing.
- 5.6 Where the responsible person has a history of disregarding previous enforcement advice or action, formal enforcement action may need to be taken.
- 5.7 Reasonable charges will be made for any formal enforcement action that the Council takes under Part 1 of the Housing Act 2004, as provided for by section 49 of that Act. (see separate Private Sector Housing Fees & Charges Policy for further information).

Houses in Multiple Occupation (HMOs)

- 5.8 In Northampton, there are many hundreds of Houses in Multiple Occupation: properties that are occupied by more than one household that share facilities.
- 5.9 As HMOs are higher risk than single family homes, the conditions, facilities and management are regulated. Some HMOs are subject to licensing:
- **Mandatory HMO Licensing** – An HMO licence is required for HMOs (situated anywhere in the Northampton Borough) that are occupied by 5 or more persons where there is some sharing of facilities and comprise 2 or more households.
 - **Additional HMO Licensing** – An HMO licence is required for HMOs that are situated in the Additional HMO area, are occupied by at least 3 persons who are sharing facilities and comprise 2 or more households or are self-contained units that are not compliant with Building Regulations 1991 or later.
- 5.10 The HMO licensing regime includes arrangements for assessing the suitability of the premises for the number of occupants, including the adequacy of the amenities. It also provides for the assessment of the fitness of a person to be the licence holder and the potential management arrangements of the premises.
- 5.11 It is a criminal offence if a person controlling or managing a licensable HMO does not have the required licence. Failure to comply with any condition attached to a licence is also an offence. The Council will consider all available enforcement options when dealing with unlicensed HMOs and breaches of the licence conditions.

Licensable HMOs operating without a licence

- 5.12 The Council has an intelligence-led, targeted approach to housing enforcement and the identification of licensable HMOs that are operating without a licence. It will vigorously pursue anyone who is controlling or managing a licensable HMO without a licence and, where appropriate, it will prosecute them or impose a civil penalty.
- 5.13 Consideration will be given to any representations that are received from landlords in relation to exceptional circumstances that may have resulted in a 'duly made' HMO licence application not being submitted on time.
- 5.14 If a landlord responds quickly to the Council's notification that an HMO requires an HMO licence and they co-operate fully with the Council to ensure that the HMO is licensed as soon as practicable, the Council may decide (at its sole discretion) not to prosecute the landlord or impose a civil penalty. Each case will be determined on its individual merits and circumstances.
- 5.15 Where a licensable HMO is operating without a licence, any eviction notice that is served on the tenants under Section 21 of the Housing Act 1988 will be invalid. Such notices will continue to be invalid for as long as the HMO remains unlicensed.
- 5.16 The Council will provide tenants with information and advice on how and when they can apply to the First Tier Tribunal for a rent repayment order.

Renewal of HMO licences

- 5.17 It is the responsibility of the landlord to ensure that their HMO licence is renewed on time. Failure to do so will result in the loss of any 'early bird' discount and may result in prosecution or the imposition of a civil penalty.
- 5.18 Where a licensable HMO is operating without a licence, any eviction notice that is served on the tenants under Section 21 of the Housing Act 1988 will be invalid. Such notices will continue to be invalid for as long as the HMO remains unlicensed.
- 5.19 The Council will provide tenants with information and advice on how and when they can apply to the First Tier Tribunal for a rent repayment order.

HMO licence fees

- 5.20 The Council charges fees for licensing HMOs.
- 5.21 The HMO licence fees cover the administration and enforcement of the licensing schemes and are subject to regular review. For further information, please refer to the Private Sector Housing Fees & Charges Policy.

Duration of HMO licences

- 5.22 HMO licences will normally be granted for the full 5-year period.
- 5.23 The length of the HMO licence may be reduced, from 5 years to an appropriate lesser period, where any of the following apply:
- Where building control and/or planning consent is required before the property can be used as an HMO;
 - Where there are concerns that the proposed management arrangements may not be satisfactory and evidence is required to show that management is satisfactory before a longer licence period can be agreed;
 - Where it is necessary to remove any advantage that the applicant might gain over those licence holders who applied at the appropriate time.
 - Where a scheme, for example, an additional or selective HMO licensing requirement, is time limited by law.
- 5.24 Following the expiry of an HMO licence, a new application and fee will be required.

The 'fit and proper person' test

- 5.25 In deciding to grant an HMO licence, the Council must be satisfied that the proposed licence holder is a fit and proper person to be the licence holder, the proposed manager of the HMO is a fit and proper person to be the manager of the HMO, and everyone involved in the management of the property are fit and proper persons to be involved in its management.

- 5.26 This requirement is to ensure that those responsible for operating the licence and managing the HMO are of sufficient integrity and good character to be involved in the management of the residential property and as such they do not pose a risk to the welfare or safety of persons occupying the property.
- 5.27 The licence holder and the manager can be two different people. Where this is the case, a decision must be made for each individual about whether they are a fit and proper person. When making this decision, the Council will take into account their fitness to hold the licence or to manage the property.
- 5.28 When considering whether a person is ‘fit and proper’, the Council will consider each case on its merits and must have regard to whether the applicant has:
- Previous convictions involving fraud or other dishonesty, violence, drugs or sexual offences;
 - Practised unlawful discrimination on the grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying out of any business
 - Contravened any provision of housing or landlord and tenant law; and
 - Acted otherwise than in accordance with an approved code of practice with regard to the management of HMOs or of excepted accommodation.
- 5.29 When considering whether a person is ‘fit and proper’, the Council must also have regard (among other things) to the following:
- The nature of any convictions and the relevance of those convictions to the management of the HMO (Convictions relating to fraud, running unlicensed HMOs or violence, for example, may affect someone’s ‘fit and proper’ status, and a conviction based on the existence of a Category 1 hazard would give an indication of an applicant’s approach to health and safety in a property).
 - The weight of any convictions. (An administrative breach of the HMO Management Regulations, such as not displaying the Code of Good Management Practice, is unlikely to affect a person’s ‘fit and proper’ status).
- 5.30 The Council is entitled to take into account other factors in so far as they are relevant to the fitness and propriety of the relevant person. It would not normally consider a landlord with a criminal record for unlawful evictions and harassment of tenants to be ‘fit and proper’ person.
- 5.31 Although discretion may be appropriate if an offence is isolated and there are mitigating circumstances, multiple offences – or a series of offences over a period of time – are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which should be taken into account. A particularly serious view may be taken where the victim is vulnerable.

5.32 A person's "fit and proper" status may be reviewed at any time. Removal of the status may lead to a refusal and/or revocation of the HMO licence(s).

HMO Management Regulations

5.33 The HMO Management Regulations place requirements on landlords and managers of HMOs to maintain and manage the HMOs they run.

5.34 The Regulations also place requirements on occupiers of HMOs to not obstruct or interfere with the management and maintenance of the HMO.

5.35 There are two sets of Regulations:

- The Management of Houses in Multiple Occupation (England) Regulations 2006
- The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007.

5.36 Although both sets cover the same requirements, they relate to different types of HMOs. The Regulations cover the following:

- Duty of the manager to provide information to occupier.
- Duty of the manager to take safety measures.
- Duty of the manager to maintain water supply and drainage.
- Duty of the manager to supply and maintain gas and electricity.
- Duty of the manager to maintain common parts, fixtures, fittings and appliances.
- Duty of the manager to maintain living accommodation.
- Duty to provide waste disposal facilities.
- Duties of occupiers of HMOs.

5.37 Breaching any of the Regulations is an offence under section 234 of the Housing Act 2004, which carries an unlimited fine or the imposition of a civil penalty of up to £30,000 for each breach.

5.38 If the HMO is licensed, the Council will inform the landlord and/or manager of the breaches of the HMO Management Regulations and provide them with a reasonable amount of time (usually 10 days) to remedy the breaches. Formal enforcement action will then be considered if the breaches are not remedied.

Overcrowding

5.39 Overcrowding is a difficult issue to deal with because, unlike other hazards, there is often very little that the landlord can do to resolve the problem unless the tenant has moved other people into the accommodation since the start of the tenancy.

5.40 In cases of severe overcrowding, the Council will explore the housing options available to the tenant, including a move to alternative accommodation.

- 5.41 When a tenancy expires, the Housing Enforcement Team may require the landlord to reduce or limit the number of people living in the property when it is re-let.

Empty Properties

- 5.42 There is a high demand for accommodation in Northampton. As well as being a wasted source of housing, empty properties can be an eyesore, damage adjoining properties, blight neighbourhoods and attract anti-social behaviour.
- 5.43 The Council will identify, risk assess and prioritise long-term, problematic and nuisance empty properties, using the full range of informal and formal action (including enforced sales and compulsory purchase) to bring them back into use.

Illegal eviction and harassment

- 5.44 The Council is committed to enforcing tenants' rights under the Protection from Eviction Act 1977, and its Tenancy Relations Officer will work proactively to prevent illegal evictions and harassment, reinstate tenants who have been evicted illegally and, where tenants are unable to return, investigate alleged offences.
- 5.45 Depending on their tenant's security of tenure, most landlords are normally required to give notice and obtain a court order for possession after the notice has expired.
- 5.46 Illegal eviction occurs when the tenant is unlawfully prevented from entering all or part of their accommodation. Examples include:
- The use of violence (or threats of violence) to force the tenant to leave;
 - Preventing the tenant from entering accommodation they have the right to occupy;
 - Changing the locks while the tenant is out; and
 - Evicting a tenant before the proper legal procedures have been followed.
- 5.47 Harassment occurs when a landlord (or someone acting on their behalf) does something that is likely to interfere with the tenant's peace and enjoyment or persistently withdraws or withholds services that the tenant reasonably requires for the occupation of the premises in the knowledge that this is likely to cause them to leave the property or refrain from exercising their tenancy rights. Examples include:
- Forcing the tenant to sign agreements which take away their legal rights;
 - Removing or restricting essential services such as hot water or heating, or failing to pay bills in order that these services are cut off;
 - Constant visits to the property (especially if late at night or without warning);
 - Entering the accommodation when the tenant is not there, or without the tenant's permission; and
 - The use of violence or threats of violence.

- 5.48 The Tenancy Relations Officer will work closely with the Police and the Council's Housing Advice & Options Team to investigate and prosecute offences of illegal eviction and harassment. They will also provide tenants with help and support in applying for injunctions, compensation and rent repayment orders.

Charging for Enforcement

- 5.49 The Housing Act 2004 allows local housing authorities to make a reasonable charge to recover administrative and other expenses incurred when taking certain enforcement action. Other legislation allows them to recover the cost of Officers' time and expenses incurred when determining what works need to be carried out as works in default.
- 5.50 The Housing Enforcement Team will recover all costs and fees when formal action is taken and it is satisfied that it is reasonable for the responsible person to bear the cost. The full costs (Officers' time, expert reports and overheads, etc) will be charged and, in some cases – where it is reasonable and proportionate – the enforced sale of the property will be considered in order to recover costs.

Deciding on an Appropriate Sanction

- 5.51 The criminal standard of proof is required to be met in order to justify either the imposition of a civil penalty or a prosecution in the Magistrates' Court for a relevant housing offence. This means that, before taking formal action, the Council needs to satisfy itself beyond reasonable doubt that, if the case were to be prosecuted in the Magistrates' Court, a person's conduct amounted to a relevant housing offence described in Paragraphs 6.13 of this Housing Enforcement Policy.
- 5.52 To achieve a conviction in' Court, the Council must be able to prove beyond reasonable doubt that a relevant housing offence has been committed by the accused. The same principle applies in respect of civil penalties issued in accordance with section 249A and Schedule 13A of the Housing Act 2004 so, where a civil penalty is imposed and an appeal is subsequently made to the First-Tier Tribunal Property Chamber, the Council will need to be able to prove to the Tribunal that the relevant housing offence has been committed beyond a reasonable doubt.
- 5.53 Prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. However, that does not mean that civil penalties may not be issued in cases where serious offences may have been committed and the Council believes that the most disruptive sanction to impose on a criminal, rogue or irresponsible landlord is a financial penalty (or penalties if there have been several breaches) rather than prosecution.

6. Options to Regulate and Ensure Compliance

- 6.1 The following table contains some examples of situations where different types of action may be taken. Decisions are made, however, on a case-by-case basis.

ACTION	GENERAL CIRCUMSTANCES
No Action	<ul style="list-style-type: none"> Where formal action may not be appropriate. <p>In such cases, customers may be directed to other sources of advice and support.</p>
Informal Action and Advice includes verbal advice and advisory letters	<ul style="list-style-type: none"> Where it may be appropriate to deal with the issues through informal action and advice. <p>In such cases, the pre-formal stage of the HHSRS may be followed, with the Council working collaboratively with responsible landlords to address and resolve any problems.</p>
Service of Notice requiring repairs or specific legal requirements	<ul style="list-style-type: none"> Where a person refuses or fails to carry out works through the pre-formal HHSRS process; Where there is a lack of confidence or there is positive intelligence that the responsible individual or company will not respond to a pre-formal approach; Where there is risk to the health, safety and wellbeing of a household or a member of the public (dangerous gas or electrical services; no heating in the winter; no hot water for personal hygiene or to wash and prepare food safely; etc); Where standards are extremely poor and the responsible individual or company shows little or no awareness of the management regulations or statutory requirements; Where the person has a history of non-compliance with the Council and/or other relevant regulators; Where the person has a record of criminal convictions for failure to comply with the housing requirements (which may include housing management); Where it is necessary to safeguard and protect the occupiers' future health and safety; and/or Where it is necessary to bring an empty property back into use and informal requests either fail or are not appropriate.
Powers of Entry (for more information, see Paragraphs 6.2 - 6.5 below)	<ul style="list-style-type: none"> Where it is necessary to carry out a statutory duty or power; Where it is necessary to investigate an offence; Where it is necessary to prevent the obstruction of Officers; and/or Where it is necessary to protect the health and safety of any person, or to protect the environment, without delay.
Powers to Require Information and/or Documents	<ul style="list-style-type: none"> Where it is necessary for information to be provided to enable Officers to carry out their powers and duties; Where it is necessary for documents to be provided to enable Officers to carry out their powers and duties under the Housing Act 2004;

ACTION	GENERAL CIRCUMSTANCES (continued)
Powers to Require Information and/or Documents (continued)	<ul style="list-style-type: none"> • Where it is necessary for electrical certificates, gas safety certificates and fire risk assessments to be provided in relation to HMOs; • Where it is necessary for insurance documents and energy performance certificates to be provided in relation to privately rented properties; and/or • Where it is necessary for any person with an interest in a property to provide details about its ownership and occupation, etc.

ACTION	EMERGENCY SITUATIONS
Emergency Remedial Action / Emergency Prohibition Order	<ul style="list-style-type: none"> • Where there is an imminent risk of serious harm to the health and safety of any occupiers of the premises or any other residential premises
Works in Default for failing to comply with a Notice (for more information, see Paragraphs 6.6 - 6.9 below)	<ul style="list-style-type: none"> • Where works are required – in accordance with a Notice – to address a serious hazard, but these are not carried out within the permitted time. <p>In such cases, these works may be carried out by the Council, as works in default, prior to any prosecution.</p>
Injunctive Action (for more information, see Paragraph 6.10 below)	<ul style="list-style-type: none"> • Where the situation is dangerous and/or there is significant public detriment, and the offenders have repeatedly been found guilty of similar offences; and/or • Where it is necessary to prevent further offences and/or the harassment of tenants, witnesses or other people.
Revocation of HMO Licenses and Approvals (for more information, see Paragraph 6.11 below)	<ul style="list-style-type: none"> • Where the Manager is not a “fit and proper person”; and/or • Where there are serious breaches of the licensing conditions and/or serious management offences.

ACTION	EMERGENCY SITUATIONS (continued)
<p>Civil Penalties (for more information, see paragraphs 6.12 – 6.19 below)</p>	<ul style="list-style-type: none"> • Where an individual or company has endangered the health, safety or wellbeing of occupiers, visitors or members of the general public; • Where an individual or company has deliberately, negligently or persistently breached their legal obligations, especially where the economic advantages of breaking the law are substantial and, compared to them, those businesses that comply with the law are disadvantaged; • Where an individual or company has deliberately or persistently ignored written warnings or formal notices / orders or no reasonable progress has been made in relation to the carrying out of the requirements; • Where the alternative means of achieving compliance (works in default, for example) are considered inappropriate; • Where the defendant has assaulted or obstructed an Officer in the course of their duties or provided false information.
<p>Simple Caution (for more information, see Paragraphs 6.20 - 6.22 below)</p>	<ul style="list-style-type: none"> • Where an offence is less serious and the person who has committed the offence has admitted their guilt. <p>In such cases, a Simple Caution may be offered (as an alternative to Court or Civil Penalty action, and on the understanding that the Council's costs will be paid by the offender) where it is likely that they will heed a warning about their behaviour and the legal consequences if they commit further offences.</p>
<p>Prosecution (for more information, see Paragraphs 6.23 – 6.26 below)</p>	<ul style="list-style-type: none"> • Where the offence is not covered by applying a Civil Penalty. • Where the case also involves offences applied by other agencies i.e. Trading Standards, Northampton Fire and Rescue Service etc. as well as Private Sector Housing Offences and the case is multi agency set of prosecutions heard on the same day. • Where an individual or company has endangered the health, safety or wellbeing of occupiers, visitors or members of the general public. • Where an individual or company has deliberately, negligently or persistently breached their legal obligations, especially where the economic advantages of breaking the law are substantial and, compared to them, those businesses that comply with the law are disadvantaged. • Where an individual or company has deliberately or persistently ignored written warnings or formal notices / orders or no reasonable progress has been made in relation to the carrying out of the requirements; • Where the alternative means of achieving compliance (works in default, for example) are considered inappropriate; • Where a simple caution is considered inappropriate or the defendant has refused to accept a simple caution; and/or • Where the defendant has assaulted or obstructed an Officer in the course of their duties or provided false information.

Powers of Entry

- 6.2 In certain circumstances, Powers of Entry into a property are provided to authorised Officers in accordance with the legislation. In general, the powers will allow an Officer at any reasonable time to:
- Enter a property to carry out an inspection
 - Take any appropriate persons with them
 - Take equipment or materials with them
 - Take measurements, photographs or make recordings
 - Take samples of articles or substances
 - Sometimes carry out works
- 6.3 In many cases, prior notice will be given to owners and to occupiers. Although the notice will normally be given in writing or by e-mail, it may sometimes be given verbally, depending on the relevant statutory notice. The amount of notice given will depend on the legislation being enforced and can range from 24 hours to 7 days.
- 6.4 Powers of Entry can (and, in some circumstances, will) be enforced with a Warrant, obtained from a Magistrate. Police and/or other regulatory agencies – including but not limited to Planning Enforcement, the Immigration Service, the Fire Service, the Gangmasters & Labour Abuse Authority and Trading Standards.
- 6.5 It is an offence to obstruct an Officer in the course of their duty. Officers exercising their Power of Entry will carry identification and details of their authorisation to carry out their action.

Carrying out Works in Default

- 6.6 The Council has been given powers under the Housing Act 2004 and other legislation to carry out works in default where a person has been required to do works but has failed to do so or carry out emergency remedial action where there is imminent risk to occupants.
- 6.7 In most circumstances, a person will be given notice of the Council's intention to carry out works in default. As soon as the Council has commenced the works, it is an offence for any person to obstruct the Council or any of the contractors or agents that have been employed to carry out the works.
- 6.8 The full cost of the works will be recovered in accordance with the relevant statutory provisions. A Charge will be placed on the property and the debt will be pursued. If interest can be charged while the debt remains unpaid, this will be added to the debt. (For further information, see the Private Sector Housing Fees & Charges Policy).

- 6.9 The Council is not obliged to carry out the works and reserves the right not to do so where the cost of the works is likely to be high or there may be difficulties recovering the costs. Works may be considered to remove serious hazards only.

Revocation of HMO Licences and Approvals

- 6.10 The Council may revoke an HMO licence or the approval of an HMO licence in the following circumstances:

- Breach(es) of license condition(s).
- Where the licence holder and/or the manager are no longer considered fit and proper person(s).
- By agreement with the license holder because, for example, they have disposed of their interest in the property.

Civil Penalties

- 6.11 The power given to local authorities to impose a civil penalty as an alternative to prosecution for certain specified housing offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

- 6.12 Civil penalties are intended to be used against landlords who commit one or more of the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice;
- Offences in relation to the licensing of HMOs;
- Contravention of an overcrowding notice; and
- Failure to comply with the HMO Management Regulations.

- 6.13 Civil penalties are also intended to be used against landlords and managing agents who commit one or more of the following offences:

- Failure to belong to a Redress Scheme for lettings agency work and property management work, under The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014;
- Failure to comply with a remedial notice requiring them to install appropriate smoke and/or carbon monoxide alarms, The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- Failure to comply with the Tenant Fees Act 2019;

- Failure to belong to a client money protection scheme under The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019
 - Failure to inspect and repair electrical systems in private rented accommodation, under The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.
 - Renting in the Private Rented Sector a property with poor energy efficiency ratings, under the Energy Efficiency (Private Rented Property) Regulations 2015
- 6.14 When deciding to apply a civil penalty, the Council must be satisfied that there is sufficient, admissible and reliable evidence to prove before a criminal court that an offence has been committed beyond a reasonable doubt by an identifiable individual, company or officer of that company
- 6.15 Where the Council is satisfied 6.15 is met, the Council will consider the impact and severity of the offences in deciding the most appropriate course of action.
- 6.16 Any decision to apply a civil penalty will be fully considered at a case conference attended by the relevant Officers and either the Housing Enforcement Manager or the Private Sector Housing Manager. Legal advice regarding the sufficiency of the evidence against an individual will also be sought from the Council's in-house legal service prior to a decision being made whether to issue a penalty. If a civil penalty is deemed appropriate, then the Council will fully adhere to the process as set out in section 249A and Schedule 13 of the Housing Act 2004.
- 6.17 In deciding the level of civil penalty that will be applied, the Council will have regard to the Private Sector Housing Civil Penalties Policy and use the 9-stage Civil Penalty Scoring Matrix which will make adjustments to the charge, as appropriate, by taking into account any reasonable aggravating or mitigating factors.
- 6.18 Above all, in determining the level of civil penalty, the Council will ensure that the penalty removes any financial benefit the offender may have obtained as a result of committing the offence. The guiding principle will be to ensure that the offender does not benefit as a result of committing an offence: it should not be cheaper to offend than to ensure that a property is well maintained and properly managed.

Simple Cautions

- 6.19 Where someone has committed an offence or offences and fully accepts responsibility for the offence(s), Officers may offer a Simple Caution where the circumstances suit a Simple Caution rather than a prosecution or civil penalty.
- 6.20 Simple Cautions will be considered where:
- The defendant has admitted their guilt; and
 - The defendant is aged 18 or over; and
 - The defendant agrees to be given a Simple Caution; and
 - Civil Penalties are not appropriate or cannot be applied

6.21 If the defendant agrees to receive a Simple Caution, the Council will seek to recover the costs of the investigation as part of the Simple Caution process. If they do not agree to receive a Simple Caution, they will be prosecuted.

Prosecution

6.22 When deciding whether to prosecute, the Council must take account of the Code for Crown Prosecutors and be satisfied that there is sufficient, admissible and reliable evidence beyond all reasonable doubt that an offence has been committed by an identifiable individual company or representative of that company. It must also be satisfied that there is a realistic prospect of conviction.

6.23 The Code also requires that a decision must also be made as to whether a prosecution would be in the public interest. Where there is evidence, Officers will consider prosecution and, as part of their investigation, they will take into account, amongst other things, the following:

- Any reasonable explanation provided by the individual or company.
- Evidence that the individual or company intends to prevent any recurrence of the problem.
- An individual's state of health.
- The offender's attitude to the offence.

6.24 Any decision to prosecute will initially be considered at a case conference attended by the Officers and either the Housing Enforcement Manager and/or Private Sector Housing Manager. If a prosecution is deemed appropriate, then the case will be fully prepared and referred to the Council's in-house legal service for consideration of the evidence with a view to prosecuting.

6.25 Prosecutions will be brought without unavoidable delay and generally there is a requirement to lay an Information for summary only offences at the Magistrates' Court within six months of the offence being committed. To ensure fair and consistent decisions in relation to prosecutions, any decision to prosecute will take into account the Code for Crown Prosecutors.

7. Management Orders

Interim Management Orders (HMOs)

7.1 If the Council is satisfied that there is no reasonable prospect of a licensable HMO being licensed (with appropriate conditions) in the near future, or if it is necessary to take immediate steps to protect the health, safety or welfare of the occupiers of the property or properties in the vicinity, it must make an Interim Management Order in respect of the HMO. These Orders also enable the Council to take any other appropriate steps to ensure the management of a licensable HMO.

- 7.2 The Council must also make an Interim Order if they have revoked an HMO license, but that revocation has been appealed or not yet come into force and, if it were in force, there will be no reasonable prospect of the house being licensed in the near future or if it would necessary to protect the health, safety or welfare of the occupiers of the property or properties in the vicinity if it were in force.
- 7.3 Although the Council may delegate the management of the HMO to another agency or partner – and there are provisions to vary, revoke and appeal against an Interim Management Order – an Interim Management Order will be in force for 12 months or until an HMO licence is granted if this happens within 12 months.
- 7.4 An Interim Management Order allows the Council to manage the property with many of the rights of a landlord, including the right to collect rent and to use that rent to pay for work to the property.

Special Interim Management Orders (All privately rented dwellings including HMOs)

- 7.5 Where the Council is satisfied that a significant and persistent problem of anti-social behaviour in an area is attributable, in full or in part, to the anti-social behaviour of an occupier of an HMO or other privately rented dwelling and that the landlord is failing to take appropriate action to combat the problem and the making of a Special Interim Order will lead to its reduction or elimination, it can apply to the First Tier Tribunal for a Special Interim Management Order for that dwelling.
- 7.6 The Council must also be satisfied that a Special Interim Order is necessary for protecting the health and safety or welfare of persons occupying, visiting or otherwise engaging in lawful activities in the vicinity of the house before making an application to the Tribunal.
- 7.7 These Orders operate in the same way as Interim Management Orders (see Paragraphs 7.3 – 7.5).

Final Management Orders (HMOs)

- 7.8 If the Council is satisfied (on the expiry of any Interim Management or Special Management Order) that the HMO still requires a licence but it is still not able to grant the HMO a licence, it must make a Final Management Order in order to secure the proper management of the house on a long term basis in accordance with a management scheme.
- 7.9 A Final Management Order is similar to an Interim Management Order in that there are provisions to vary, revoke and appeal against a Final Management Order, the Council may delegate the Management of the HMO to another agency or partner, and the Council continues to manage the property with many of the rights of the landlord. However, it must review the arrangements from time to time but Final Orders may last up to 5 years. If the conditions that led to it being made still apply, then the Council may have to make a new Final Order for another maximum period of 5 years.

8. Rent Repayment Orders

- 8.1 A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent.
- 8.2 The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically the offences in relation to licensing of HMOs.
- 8.3 The Housing and Planning Act 2016 extended rent repayment orders to cover a much wider range of offences, described below:
- 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)
 - Illegal eviction or harassment of the occupiers of a property (under section 1 of the Protection from Eviction Act 1977)
- 8.4 Rent repayment orders can be granted to either the tenant or the local housing authority. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent basis
- 8.5 A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty.
- 8.6 The Council must consider a rent repayment order after a person is the subject of a successful civil penalty and in most cases the Council will subsequently make an application for a rent repayment order to recover monies paid through Housing Benefit or through the housing element of Universal Credit.
- 8.7 The Council will also offer advice, guidance and support to assist tenants to apply for a rent repayment order if the tenant has paid the rent themselves.

9. Compliance with Guidance and Legislation

- 9.1 A wide range of guidance on enforcement has been issued by the Government and other agencies, and the Council will continue to have regard to all relevant statutory guidance when reviewing its policies and procedures and updating as appropriate.
- 9.2 The Council will comply with all relevant legislation, including the Human Rights Act 1998, the Data Protection Act 2018, the Regulation of Investigative Powers Act 2000, the Criminal Procedure and Investigations Act 1996 and the Codes of Practice made under the Police and Criminal Evidence Act 1984.