

Corporate Enforcement Policy

Newark and Sherwood District Council

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- 1.0** Introduction
- 1.1** Newark & Sherwood District Council's (referred to as the 'Council') Enforcement Policy is the overarching document under which the Council carries out its enforcement investigations and action. All staff employed and contracted by the Council are expected to follow this policy.
- 1.2** Whilst this policy seeks to explain key themes and general principles, members of the public and businesses are advised that detailed service-specific enforcement arrangements exist including those in the schedule to this policy.
- 1.3** The Council is committed to maintaining and developing good enforcement policies and procedures and carrying out enforcement functions in an equitable, practical, and consistent manner, which helps to promote a thriving economy.
- 1.4** The purpose of this policy is to secure an efficient and effective approach to all Council regulatory inspection and enforcement functions and improve compliance with legislation whilst minimising the burden on businesses, individuals, organisations, and the Council. This Policy is written with reference to the Regulators Code.
- 1.5** The Regulators' Code came into statutory effect on 6 April 2014 under the Legislative and Regulatory Reform Act 2006 and provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate.
- 1.6** The regulators and regulatory functions to which the Regulators' Code applies are specified in the legislative and Regulatory Reform (Regulatory Functions) Order 2007, as amended in 2009, 2010 and 2014. Nearly all regulators, including local authorities and fire and rescue authorities, must have regard to it when developing policies and procedures that guide their regulatory activities.
- 1.7** In certain instances, the Council may conclude that a specific provision of the Code or Policy is either not applicable or is outweighed by another consideration. The Council will ensure that any decision to depart from the Code or Policy will be properly reasoned, documented, and based on material evidence.
- 1.8** This policy explains the approach adopted when carrying out the Council's duty to enforce a wide range of legislation or it decides to use its discretion to take enforcement action and is written in general terms to accommodate this.
- 1.9** The Council will endeavour to serve residents, businesses, and consumers by working with the business community to ensure healthy, fair, and safe trading, and a thriving economy. The Council will take particular care to help compliance focused small businesses, individuals, voluntary and community organisations to meet their legal obligations at minimal or proportionate cost.

- 1.10** The Council recognise that the public have a responsibility as guardians of their own community and locally decided remedies are encouraged to build stronger communities. This extends to providing authority for enforcement, on request and subject to controls, to Town and Parish Councils and other agencies, where appropriate.
- 1.11** When the Council takes enforcement action, it will take account of national priorities alongside local priorities that exist at the time of any intervention, investigation, or offence.
- 1.12** Enforcement interventions may be targeted according to Council, neighbourhood or area priorities.

2.0 Scope

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

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

- Environmental Health (food safety, health and safety, environmental protection, public health and nuisance)
- Planning, Development and Building Control
- Private Sector Housing
- Council Housing Services – the delivery of core landlord functions including managing ASB and other breaches of tenancy
- Licensing (alcohol, hackney carriage and private hire vehicles, gambling, street trading and caravan site licensing)
- Council Tax and Benefit
- Environmental services including, but not limited to fly- tipping, littering and waste offences;
- Anti-social behaviour and other Community Protection

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

- 2.3** This policy provides an overarching framework for Council employees, contractors, and hosted services to operate within but is also designed to provide those people who may be affected by regulatory decisions (members of the public, commercial businesses or voluntary organisations)

3.0 Compliance with the Primary Authority Principle

- 3.1** The Regulatory Enforcement and Sanctions Act 2008 introduced Primary Authority Partnerships. A Primary Authority is a local authority registered by The Office for Product

Safety and Standards (OPSS), as having responsibility for providing advice and guidance to a particular business or organisation where this business is subject to regulation by more than one local authority.

3.2 We will give due consideration to any business, that wishes to enter into a Primary Authority Partnership arrangement with Newark & Sherwood District Council. We are committed to communicating with other Primary Authorities at an early stage whenever the circumstances require it.

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

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

4.0 Standards

4.1 All officers engaged in enforcement functions are appropriately trained and authorised.

4.2 The Council expects that residents and businesses will act on its officer's advice when given. If a resident or business operator chooses not to act on advice given, an enforcement intervention should be expected.

4.3 Council tenants are expected to abide by the terms and conditions as set out in the Council's Tenancy Agreement (issued at the commencement of all tenancies)

4.4 Enforcement action relies upon sufficient evidence to prove or support action being taken. The Council cannot act formally in any case where there is insufficient evidence. In such cases, information will be used for intelligence purposes and may be used to support informal action.

4.5 In cases where there is an imminent risk to health or the environment, enforcement action may be taken before the right of challenge can be heard.

4.6 Section 19 of this policy provides details on how to appeal or challenge an enforcement decision and Section 27 of this policy provides details of the Council's complaints procedure.

5.0 Openness

5.1 The Council will provide information and advice in plain language and will seek to explain clearly how it undertakes its work. The Council will discuss general issues, individual compliance failures or problems with anyone experiencing difficulties on request.

- 5.2** A business or individual, will be notified of intended enforcement action as soon as is feasible, unless this could hamper an investigation or pose a safety risk to those concerned, the environment or the general public.

6.0 Helpfulness

- 6.1** The Council believes prevention is better than cure and therefore encourages businesses and others to seek advice to assist with compliance. The Council provides a range of chargeable complementary services including Primary Authority partnerships to help with this.

- 6.2** In correspondence, the Council will identify named contacts for service-related queries or complaints. Written correspondence will contain a unique reference number which can be quoted when contacting the Council.

- 6.3** The Council makes businesses and customers aware of the enforcement policy and changes to the enforcement policy during site visits, through correspondence and consultation processes, and can be provided a printed copy of this policy on request. The enforcement policy will be made available on the Council website.

7.0 Proportionality

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

8.0 Vulnerability

- 8.1** A person may be identified as vulnerable for many reasons and can become vulnerable at any stage of an enforcement investigation. Vulnerability is defined as a person who, by characteristics and/or circumstances, is unable to act or respond appropriately to the normal enforcement investigation procedures, or for the same reason is unreasonably affected by them.

- 8.2** The Council recognises that vulnerability can come in many forms, and it can also be multi-layered. Vulnerability can also be temporary, permanent or come in a series of episodes and anyone at any time could potentially be identified as vulnerable.

- 8.3** The Council recognises that consideration should be given to individuals who are vulnerable at the beginning and throughout any enforcement investigation procedure. A vulnerability/equality act/public safety quality assessment will be undertaken by the case officer once it becomes apparent that either the complainant or alleged offender may be

identified vulnerable or who may be being treated less favourably as a result of a protected characteristic. Consideration will be given when an individual has been identified as vulnerable and appropriate steps taken based on the circumstances and situation. Determination of vulnerability does not mean enforcement action won't be taken. However, a person's vulnerability will be considered as part of the process.

9.0 Consistency

- 9.1** The Council will carry out its duties in a fair, equitable and consistent manner. Whilst officers are expected to exercise judgement in individual cases, the Council has arrangements in place to promote consistency, including effective liaison arrangements with other authorities and enforcement agencies which may have a shared enforcement role.
- 9.2** All investigations are undertaken in accordance with legal requirements and relevant government guidance.
- 9.3** The Council maintains management systems to monitor the quality and nature of enforcement activity undertaken to ensure, as far as is practicable, uniformity, consistency in approach and a quality service in general.
- 9.4** The Council ensures that where supplementary decision-making policies and tools exist, for example, the Health and Safety Executive's (HSE) Enforcement Policy and Enforcement Management Model (EMM). They are used;
- to provide a framework for making consistent enforcement decisions
 - to monitor the fairness and consistency of inspector's enforcement decisions in line with the policy to assist offenders in their understanding of the principles which inspectors follow when deciding on a particular course of action.

10.0 Levels of enforcement action

- 10.1** The Council takes an incremental approach to non-compliances which may amount to contraventions of legislation. In most cases, before formal enforcement action is taken, the Council will provide an opportunity to the individual to discuss the circumstances of the case and take these into account when deciding on the most suitable approach. However, this will not apply when immediate action is required to prevent or respond to a serious breach, or where to do so is likely to defeat the purpose of the proposed enforcement action. When an officer is investigating possible criminal offences, any discussion of the case may need to be by way of formal interview, in accordance with the Police and Criminal Evidence Act 1984.
- 10.2** The Council has a power to institute proceedings under various legislation. Section 222 of the Local Government Act 1972 provides a wide power to institute proceedings where it considers it expedient for the promotion of the interests of the inhabitants of its area.

10.3 Each case is unique and must be considered on its own facts and merits. The Council will use its discretion when deciding whether to take enforcement action.

10.4 For council housing tenants the focus is on support, prevention and engagement before enforcement in line with the Council's tenancy agreement where sanctions are clearly set out.

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

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

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

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

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

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

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

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

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

11.0 Statutory (legal) notices

- 11.1** Many Acts of Parliament enforced by the Council allow for, or require the service of statutory notices, which require a person, business or organisation to comply with specific legal requirements within a specified time period. Where a formal notice is served, the method for appealing against the notice will be provided in writing at the same time.
- 11.2** The notice will explain what legislation applies, how to comply with the notice and the consequences of not complying with a notice.
- 11.3** In general, failure of a person to comply with a properly written and served statutory notice makes the person or business named in the notice (the recipient of the notice) liable to prosecution or further alternative legal action. In some cases, the Council can and will carry out works to comply with the notice and recover the cost to the Council from the recipient(s) of the notice. In some circumstances and where the legislation allows, a legal charge may be placed on property owned by the recipient of the notice without further notice to them.
- 11.4** In some circumstances both prosecution and carrying out works in default to comply with the notice may be appropriate.

12.0 Written undertakings and enforcement orders

- 12.1** Where an individual or organisation persistently fails to comply with the law, the Council may seek a written undertaking from that person that they will cease the action. In such circumstances, and as a proportionate measure, the Council may decide that no further formal action will be taken unless the agreement is breached.
- 12.2** In cases where an individual or organisation has breached an undertaking or has refused to provide a written undertaking to cease an action, or committed a relevant offence, an application to a court or tribunal may be made for an enforcement, repayment or banning order, or for other formal action in accordance with the relevant legal provisions.

13.0 Injunctions and other civil actions

- 13.1** In certain circumstances the Council may consider it necessary or expedient to seek an injunction to restrain or compel behaviour or activity. Injunctions are orders of the court, breach of which are punishable as a contempt of court by imprisonment or a fine.
- 13.2** The Council can also apply for Criminal Behaviour Orders upon conviction of criminal offences. Such criminal offence may or may not be related to the behaviour to be managed by the Criminal Behaviour Order.
- 13.3** As an alternative to an injunction order the Council may accept a written undertaking.

14.0 Fixed Penalty Notices

- 14.1** A Fixed Penalty Notice may be used as a means of dealing with an offence instead of a prosecution. Certain offences such as littering, dog fouling and smoking in prohibited places are subject to Fixed Penalty Notices and they enable the offender to avoid a criminal record. Fixed Penalty Notices can also be issued to companies where they fail to comply with permit or other statutory requirements.
- 14.2** The Council will comply with any relevant guidance on the use of Fixed Penalty Notices. This includes:
- a) There must be sufficient evidence for a realistic prospect of conviction.
 - b) The offence is not too serious and is of a nature suitable for being dealt with by a Fixed Penalty Notice.
- 14.3** The Council follows specific guidance on issuing Fixed Penalty Notices to juveniles. A Fixed Penalty Notice issued to a juvenile aged 10-15 years must be issued in front of his or her parent or legal guardian. The procedure for issuing Fixed Penalty Notices to young people aged 16 and 17 is the same as for adults.
- 14.4** Where there is doubt as to whether an offender is aged 16 or 17, the procedure for issuing Juvenile Fixed Penalty Notices to persons aged between 10 to 15-year olds will be followed.
- 14.5** A Fixed Penalty Notice will not be issued to a juvenile between 10 and 17 years of age for a first offence.
- 14.6** A Fixed Penalty Notice may only be issued to a juvenile for a second (or subsequent) offence and then only if it is considered an appropriate course of action after the case has been referred to the Youth Offending Team and considered for an alternative appropriate intervention.
- 14.7** Where an adult recipient (i.e., a person 18 years of age or above) does not pay the penalty offered, or is a repeat offender, there will be a presumption that prosecution will follow or alternative enforcement action in relation to the actual offence.

15.0 Revocation, suspension and withdrawal of licences and permits

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

16.0 Forfeiture

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

17.0 Alternative sanctions

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

18.0 Simple cautions

18.1 As an alternative to prosecution, in appropriate circumstances a simple caution may be considered in accordance with the guidelines relevant to the cautioning of adult offenders. The issuing of a caution is subject to the individual's admission of the offence.

18.2 A simple caution is not a criminal conviction but will form part of an offender's criminal record and may be referred to in any subsequent proceedings.

18.3 For a simple caution to be issued the following are required:

- sufficient evidence to provide a realistic prospect of conviction and in the public interest to caution
- a reliable admission by the offender
- the offender must be over 18 years of age

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

19.0 Prosecutions

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

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

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

- The prevalence of the type of offence the need for a suitable deterrent
- The risk of danger or injury to the public
- Significant impact in the environment and/or community

- The failure to comply with a statutory notice or respond to advice about legal requirements
- The disregard of legal requirements for financial reward Significant financial loss, potential or actual, to a third-party A history of similar offences
- Persistent breaches of legislation
- Where fraud, gross negligence or guilty knowledge is a factor Minor breaches of several statutes

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

19.5 The length of any investigation will be proportionate to the complexity and extent of material under examination and the time constraint set out in the applicable legislation.

19.6 The Council will aim to maximise its effectiveness by working with other authorities and other agencies, sharing intelligence where it is lawful to do so and mounting joint operations where that would bring benefits.

19.7 Other agencies include:

- Nottinghamshire Police
- Environment Agency
- Health and Safety Executive
- Food Standards Agency
- Nottinghamshire Fire and Rescue Service
- HM Revenue and Customs
- DEFRA / APHA
- National Crime Agency
- Department for Work and Pensions
- Registered Social Landlords
- DVLA
- DVSA
- Other local authorities

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

19.8 Where there has been a work-related death, or there is a strong likelihood of work-related death, the Council will liaise and work jointly with the Police, Coroner and the Crown Prosecution Service in accordance with the joint Work-Related Death Protocol.

19.9 After prosecution, the Council may consider preventative action to protect the public from further harm. This can include adding a name to a national prohibited person/rogue landlord data base, or similar, to prevent trading. Appeals, challenges and making representation about an enforcement decision.

- 19.10** Appeals, challenges and making representation about an enforcement decision are different to complaints about an officer or a service area and will be dealt with under the Council's complaints process or through its human resourcing team.
- 19.11** Where an appeal process exists, guidance on how to appeal will be provided at the time of enforcement action.
- 20.0** **Proceeds of Crime**
- 20.1** In appropriate cases, an application will be made under the provisions of the Proceeds of Crime Act 2002 for confiscation of assets to recover the financial benefit an offender has obtained during the course of their criminal conduct.
- 20.2** Advice should be sought from the Accredited Financial Investigator at an early stage of a criminal investigation so that the Financial Investigation can be progressed without delay.
- 20.3** Notice of the application to proceed to confiscation must be made after a conviction has been secured but prior to sentencing.
- 21.0** **Charges and costs**
- 21.1** Certain enforcement activities incur a charge. Any charges made are to recover costs, not to make a profit. Some charges are set by statute; others are determined by the Council.
- 21.2** When setting fees and charges the authority must be able to demonstrate they are fair, reasonable, transparent, and consistent.
- 21.3** In certain exceptional cases the Council has discretion to consider the personal circumstances of the recipient of the charge for enforcement action. Fees and charges are set annually and can be viewed on the Council website.
- 21.4** Where possible the fee must be paid before receipt of the service.
- 21.5** Where appropriate, the Council will seek to recover from the offender or perpetrator the reasonable cost it incurs in pursuing a particular enforcement route including prosecution, injunctive action or appeal.
- 22.0** **Enforcement in local authority-run establishments**
- 22.1** Where the Council is the Enforcing Authority for its own premises, steps are taken to ensure that enforcement decisions are free from any conflict of interest.
- 22.2** Serious breaches of law are brought to the attention of the relevant Assistant Director, Director and Chief Executive without undue delay.

23.0 Gathering evidence

- 23.1** Regulatory bodies are empowered to gather evidence by various means, this can include overt methods i.e., where the subject is aware or where appropriate, covert methods, where the subject is unaware.
- 23.2** The Regulation of Investigatory Powers Act 2000 (“RIPA”) and the Investigatory Powers Act 2016 provide a framework for public bodies, including local authorities, to use ‘covert surveillance’ to gather information about individuals without their knowledge for the purposes of undertaking statutory functions in connection with the prevention or detection of crime. For more information, the Council has adopted a RIPA policy which sets out how it will use such investigation techniques. A copy can be found here [Current-RIPA-Policy-and-Procedure-2025.pdf](#)
- 23.3** Council officers carrying out enforcement duties may not always conduct their duties in Council issue uniform, but they will always carry their council identification
- 23.4** For example, in areas of concern where high levels of littering and dog fouling have been reported, it may be necessary for plain clothed enforcement officers to undertake patrols. This will only occur when residents in the area have been made aware of in advance by one or more of the following methods: Letter / leaflet; community notice board; local newspaper; on street signage or other locally agreed method.
- 23.5** The types of police powers used by uniformed community/neighbourhood safety wardens include the requiring of persons under 18 to surrender alcohol and powers to request names and addresses of persons acting in an anti-social manner together with the associated power to issue a Fixed Penalty Notice for failing to comply.
- 23.6** During an investigation, we may gather one or more of the following:
- Paper records
 - Computer records including social media
 - Photographs
 - CCTV and information from personal observations Body camera footage
 - Drones
 - Samples (food, water, environmental, faecal, pests) Counterfeit goods
 - Witness statements Test purchases Invoices
 - Dangerous equipment
 - Noise monitoring equipment / recordings Plans / sketches
 - Information available on social networking websites and other open-source data Communications data
 - Information from other agencies such as the Police or Health and Safety Executive

This list is not exhaustive.

- 23.7** Material may be retained so long as is necessary in all the circumstances. The Council considers each case on its own individual facts at each stage of the investigation and prosecution. Retention periods are documented through each team's information asset register. In certain circumstances, where there is a potential risk to health, the Council may seek to destroy equipment that has been seized. This would include, for example, the destruction of tattooing and body piercing equipment used by an unlawful operator, to prevent the spread of blood borne disease.
- 23.8** Failure to assist an investigation and / or obstruct an officer is an offence under many pieces of legislation. The Council expects co-operation and will take action in the event of non-co-operation. If an individual fails to give their personal details during an investigation, this may be considered an additional offence.
- 23.9** In gathering evidence, the Council routinely undertake recorded investigative interviews under caution in accordance with the rules set out in the Police and Criminal Evidence Act 1984 and associated Codes of Practice. The aim of the interview is to obtain an honest and accurate account about the matter under investigation and allows the individual or business the opportunity to convey their version of events as part of an investigation.
- 23.10** Attendance in person at an interview under caution is expected on the grounds of gathering best evidence and efficiency of the investigation process. This process assists the individual or business in the 'right to a fair trial' in accordance with the Human Rights Act 1998.
- 23.11** An individual is entitled to be legally represented at the interview.
- 23.12** Information on the conduct of the interview and rights of an individual or business will be explained before the interview in accordance with the Codes of Practice.
- 23.13** In some circumstances a caution may be issued on site if the officer believes an offence has been committed and questions need to be asked at that time. The officer will then record, normally in a pocket notebook, contemporaneous notes of the following conversation and request a signature in this pocket notebook entry.
- 24.0** **Equality and diversity**
- 24.1** Procedures developed under this policy and the policy itself are subject to an Equality Analysis to ensure that all aspects of Equality, Inclusion and Diversity are considered in its production
- 24.2** All Equality Analyses are subject to regular review to ensure a continuing commitment to being inclusive and are available on the Council's Website.
- 24.3** This policy and service standard documents can be provided in other formats such as audio, large print, on CD or can be translated on request.

- 24.4** Officers will visit customers with an access need where this is necessary.
- 24.5** Translation services are available to support investigations and, pictures and taped interviews can be used as an alternative to written exchanges where a need is identified.
- 25.0** **Protection of human rights**
- 25.1** This policy and all associated enforcement decisions take into account the provisions of the Human Rights Act 1998. In particular:
- The right to a fair trial (article 6)
 - The right to respect for private and family life, home and correspondence (article 8)
- 26.0** **General principles of officer conduct**
- 26.1** In addition to the principles set out in this policy, officers will be professional and courteous.
- 26.2** Officers will, as the circumstances allow, announce who they are and in what capacity they are acting. However, there may be occasions when officers legitimately delay identifying themselves until a later stage of the investigation.
- 26.3** Officers will carry and show their identity card or authorisation as appropriate.
- 26.4** Officers must be fair, independent and objective and must not let any views about ethnic or national origin, sex, religious beliefs, sexual orientation or political views, influence decisions. They must not be affected by improper or undue pressure from any source. Authorised officers will act in the interests of justice.
- 26.5** Certain officers within the council wear body worn cameras and lone working safety devices.
- 26.6** The Council looks to use technology available to it including the use of drones. Where possible, individuals are advised if drones are being used as part of the Council's investigations/to collate evidence but it is not always appropriate to do this.
- 27.0** **Complaints, compliments, and suggestions**
- 27.1** If you are not happy with the service you have received, in the first instance you can raise this with the Business Manager of the relevant service area. If the Council's response about the service fails to resolve the matter, you may lodge a formal complaint. The issue will then be investigated through the Council's Complaints and Customer Feedback procedure.
- 27.2** Details of the Council's Customer Complaints and Feedback Policy can be found here:

[Customer complaints and feedback | Newark & Sherwood District Council](#)

This is the link to make a complaint online:

[Contact Details | Customer Complaints | Newark and Sherwood District Council](#)

To make complaint by an alternative method, submit a compliment or make a suggestion:

Email: comments@newark-sherwooddc.gov.uk

Telephone: 01636 650 000

In writing to: Newark & Sherwood District Council, Castle House, Great North Road, Newark, NG24 1BY

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

28.0 Review of this enforcement policy

28.1 Changes to this policy will be considered annually, and a formal review process will be carried out every five years.

29.0	Enforcement Policy Schedule: Environmental Crime
29.1	Introduction This schedule sits as part of the Council’s Enforcement Policy and contains further detail to set out the approach to dealing specifically with environmental crime. It should be noted that the Council operates a Zero tolerance policy in respect of environmental crime.
29.2	Specific Offences Environmental crime relates to the following offences; • Public Space Protection Orders ○ Fouling ○ Dogs on leads ○ Exclusion of dogs from designated areas ○ Prohibition of Fires ○ Unauthorized Vehicles – in designated areas ○ Fly Tipping • Domestic waste offences failing to present household waste in accordance with the council’s waste collection policies without reasonable excuse. • Commercial Waste Offences • Waste Transfer Offences • Waste storage offences • Offences pertaining to the deposit of waste on unauthorised land, including the permitting of waste to be deposited • Failure to comply with Community Protection Notice Graffiti • Fly Tipping • Abandoning a Vehicle • Nuisance Parking
29.3	Community Protection Notice Warning Letter (CPNW) Where verbal warnings or other informal interventions have not worked or are unlikely to work and the offender’s behaviour meets the criteria for a CPN Newark & Sherwood District Council will serve a Community Protection Notice Warning Letter.
29.4	Community Protection Notice (CPN) If an offender continues to engage in the conduct described in the CPNW, they will be served with a formal Community Protection Notice (CPN). Breach of a CPN is a criminal offence and an individual can be prosecuted and/or works in default may be carried out.
29.5	Publicity

	The Council takes a positive approach to publicising enforcement work and recognises the significant impact of such publicity. The aim of this publicity is to raise the profile of the offences, increase confidence from the public and deter future offenders. The Council will also periodically publish performance information on FPN's and other enforcement action through the Councils reporting mechanisms. This section should be read in conjunction with the Council's Enforcement policy
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30.0	Enforcement Policy Schedule: Community Safety in respect of Anti-Social Behaviour
30.1	Introduction This schedule sits as part of the Council’s Enforcement Policy and contains further detail to set out the community safety functions in respect of the Anti-Social behaviour, Crime and Policing Act 2014 (the Act). This schedule should be read in conjunction with the broader Enforcement Policy. Each of the powers has a specific test, set out in the Act that must be met if a formal notice or sanction is required. The choice of enforcement options will depend on the type of anti-social behaviour being committed, the evidence demonstrating that the test for each power has been met and whether there is a realistic chance of securing a conviction if a notice has been breached by the offender. Range of enforcement options The range of enforcement options is set out below: • No action • Informal interventions • Applying for a Civil Injunction • Issuing a Community Protection Notice Warning (in the case of the Community Protection Notice power) • Serving a Community Protection Notice (CPN) • Applying for a Criminal Behaviour Order (CBO) • Prosecution for the breach of a CPN or CBO • Closure Notice/Order
30.2	No action All complaints about ASB will be fully investigated. In some cases, officers can give advice to a complainant, which may involve trying to talk issues through with their neighbours or the people causing the problem. Sometimes perpetrators of ASB do not realise that their behaviours are causing a problem. If things can be corrected or resolved through advice, then Newark & Sherwood District Council may consider taking no enforcement action. Detailed records will still be made even if no action is taken.
30.3	Informal interventions Where advice appears not to work and a firmer intervention could help resolve a conflict, Newark & Sherwood District Council will look towards informal interventions. The use of

	informal interventions will depend on the circumstances of the case. In the case of a verbal warning, this would be used to warn an offender that a formal Community Protection Warning letter (for the CPN power) would be issued to them if they do not stop what they are doing. The consequences of not adhering to the warning letter would result in a formal CPN being issued. If available, mediation might be considered as a way of getting the parties to try and resolve their differences.
30.4	Applying for a Civil Injunction The injunction, under Part 1 of the Anti-Social Behaviour, Crime and Policing Act 2014 is a civil power that can be applied for to deal with anti-social behaviour. The injunction can offer fast and effective protection for victims and communities and set a standard of behaviour for perpetrators, stopping the person's behaviour from escalating. The Council will consider seeking an exclusion from locations where the statutory test is met, and will consider applying for a power of arrest. In any case, the Council will seek to recover its costs for making the application.
30.5	Community Protection Notice Warning Letter (CPNW) Where verbal warnings or other informal interventions have not worked or are unlikely to work and the offender's behaviour meets the test for the CPN power, Newark & Sherwood District Council will consider issuing a formal Community Protection Notice Warning Letter.
30.6	Community Protection Notice (CPN) If an offender fails to comply with a Community Protection Notice Warning Letter, they will be served with a formal Community Protection Notice (CPN). Breach of a CPN will constitute a criminal offence.
30.7	Applying for a Criminal Behaviour Order (CBO) Where a perpetrator of ASB is within the court system and received a conviction for any criminal offence a criminal behaviour order can be applied for and issued following the conviction. A CBO can last between 12 months and 3 years if you are under 18. If you are over 18, the maximum amount of time can be unlimited. consider an application for a criminal behaviour order This section must be read in conjunction with the rest of the Council's Enforcement policy
30.8	ASB Case Review

	The ASB Case Review gives victims and communities the right to request a review of their anti-social behaviour complaints. It was introduced by the Anti-Social Behaviour Crime and Policing Act 2014 and brings agencies together to take a joined-up, problem-solving approach to finding a solution. If a ASB Case Review submission meets certain requirement, a review will be undertaken by the local Community Safety Partnership (CSP). This means agencies will meet to: • share information • review what action has been taken • decide whether additional actions are possible • provide victims and witnesses with a comprehensive action plan for how the problem will be addressed Any victim of anti-social behaviour (ASB) or person acting on behalf of the victim, such as a carer or family member, MP, councillor or professional person can use the ASB case review. The victim could be an individual, business or community group. We'll act on your case review request if: • you have reported three times in the last six months separate but related, anti-social incidents to agencies and the problem persists. • you are aware that other people in the local community have reported separate, but not related, anti-social incidents to agencies in the last six months and the problem persists. The review will be started if five or more individuals have made separate, but related reports over a six month period. There are certain situations where a case review will not be enacted, including when you have reported ASB and have: • been given a timetable for response which has not expired - in this case you'll be advised to contact the agency you're working with to discuss what is happening • have received a service but are unhappy with the conduct of a particular agency- in this case you'll be advised to submit a complaint under the agency's complaint procedures.
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31.0	Enforcement Policy Schedule: Planning and Development
31.1	This schedule sits as part of the Council's Enforcement Policy and contains further detail to set out the functions of Planning Enforcement. This schedule should be read in conjunction with the broader Enforcement Policy.
31.2	Local Performance Targets • All letters or emails received that suggest a breach of planning control may have taken place will be acknowledged within 5 working days • A site inspection will be carried out in line with the prioritisation scheme at Section 33.3 of this document • Within 20 working days of an acknowledgement, we will contact the complainant to explain our findings, and what action is proposed. • Where a formal notice is served, we will let the complainant know within 5 working days of service of the notice. Because of the potential complexity of some enforcement cases, it is difficult to prescribe timescales beyond acknowledging an enquiry and making the initial site visit. However, we will keep the complainant updated at regular intervals and key stages throughout the life of the case and they are always welcome to discuss the matter with the investigating officer. Whilst it is difficult to prescribe timescales, the planning enforcement service will seek to deliver appropriate outcomes that are both robust and as timely as possible.
31.3	The Enforcement Process Enforcement officers deal with enquiries from residents, Councillors and Town and Parish Councils. However, we are also contacted by a range of internal and external stakeholders and aim to provide an equitable service to all. We are also pro-actively monitoring compliance with some planning permissions that have been granted, including checking that planning conditions are being complied with. See the tables below which help to determine how we pro-actively monitor potential situations of high risk. When we receive a planning enforcement enquiry, we will acknowledge it and inform the complainant of the name and contact details of the case officer within 5 days of receipt. We will let the local Councillors know about any significant cases and when formal enforcement action is taken. Enforcement cases are confidential, and we do not disclose the identity of the person who has reported their concerns to us. However, in rare cases we may need to reveal the identity of a complainant to support the Council's case if we take formal enforcement action and there is a subsequent appeal. We may also need to reveal a complainant's identity to the court if a breach of planning legislation leads to a prosecution. The only other time that we would disclose a complainant's identity is if the matter has been raised by a Councillor of either a Parish, Newark Town Council or Newark &

Sherwood District Council in their official capacity as an elected representative of the community. We do not normally investigate anonymous enquiries, to avoid the risk of vexatious complaints. However, if the complaint appears to be of a serious nature, we will make initial enquiries to judge whether further action is required. Information on persistent, vexatious and inappropriate complainants can be found in the Council's customer Feedback and Complaints Policy. The Planning Enforcement service will also not investigate enquiries relating to a non-planning matter. Frequently encountered examples of this are: disputes over land ownership and boundaries, restrictive covenants and legal agreements, moral and ethical concerns, commercial competition and private interests. The course of an enforcement case can be very varied but, generally, it will have three main parts as follows:	
1.	Desktop investigation The investigating officer will check the planning history of the site, planning policy considerations and review relevant legislation, case law and any other pertinent information. This process informs what needs to be checked on site to establish if the subject of the enquiry amounts to a breach of planning control. Sometimes the complainant may be asked to complete diary sheets or provide other information to substantiate their allegation. This can be necessary to provide officers with reasonable grounds upon which to commence their investigation.
2.	Site visit The investigating officer will adopt a considerate and sensitive approach, recognising that there may be no breach of planning control, or that any breach was carried out quite unintentionally. Once on site, the officer will identify themselves and the reason for their visit and, where possible, obtain the identity of the

		person who owns or is otherwise responsible for the site. If the officer has reasonable grounds for suspecting a criminal offence has been committed, they will have regard to the provisions of the Police and Criminal Evidence Act in relation to cautioning suspected offenders and gathering evidence. Where unauthorised development is found or suspected, photographs and any necessary measurements will be taken along with a written description of the development and any other relevant information. Section 196A and B of the Town and Country Planning Act 1990 provide authorised officers with the power to enter land and buildings (having first given 24 hours in the case of a building used as a dwelling house) including using force under warrant if necessary. It is an offence to wilfully obstruct an authorized officer seeking access to land in the course of their duties. All the councils planning enforcement officer are authorized officers and will use these powers if there are reasonable grounds to do so.	
	3.	Next steps If the site visit confirms that a breach of planning control has not occurred, the officer will close the file and update the complainant accordingly. In the case of an alleged unauthorised use, the case officer will make a maximum of three visits to the site and if no evidence of a breach of planning control is found the case will be closed and the complainant informed. It is important to note that planning enforcement powers are discretionary, and the Council can only take formal action when it is expedient to do so. This means that when deciding to take action we take into account national and local planning policy and other material considerations, including the effect	

		on a business, the harm to the amenity of neighbours and the public interest. It is unlikely to be expedient to take enforcement action against a breach of planning control that is minor or technical in nature and does not in the Council's view, cause any harm. Sometimes, it may be appropriate in these cases to invite an application for retrospective planning permission. When this is the case, an application will be requested, the enforcement case will be closed and there will be no further monitoring. If a significant breach of planning control is confirmed the most appropriate course of action will normally be to seek a negotiated resolution with the developer. Where the development appears to be in accordance with the relevant planning policies, or any harm may be remedied by compliance with planning conditions, it may be appropriate for the developer to make an application for retrospective planning permission. If this is the case consideration of formal enforcement action would normally be held in abeyance pending the outcome of the application. Sometimes only the reversion or alteration of an unauthorised development will remedy the harm arising from it. In such cases, officers will usually seek to have the necessary works carried out without the need for formal enforcement action. Formal enforcement action will usually be appropriate in the case of unauthorised development that causes significant, immediate or irreparable harm to the environment or amenity, or when it is clear that a harmful breach of planning control will not be remedied by way of negotiation. The Council will always use its enforcement powers when it is appropriate to do so.	
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To enable the most effective use of Council resources the following priorities are followed when we investigate breaches of planning control:

Category	Example Breaches
A - High Priority Requiring urgent action Site visit within 1 working day	Any unauthorised development which causes immediate, irreparable and serious harm to the neighbourhood. Any non-compliance with a condition or legal agreement, which is causing immediate or serious harm to the environment or public safety. Unauthorised works to a listed building or Scheduled Ancient Monument, tree protected by Tree Preservation Orders or trees within Conservation Areas. Unauthorised demolition of all or part of a building within a Conservation Area. Breaches of conditions attached to planning permissions which have serious safety issues. Other breaches where any delay may allow the situation to deteriorate significantly or make it more difficult to remedy.
B - Medium Priority Site visit within 10 working days	Breaches contrary to policies in the development plan. Breaches that cause an ongoing disturbance to neighbours and the character of the area. Unauthorised and inappropriate residential extensions or alterations.
C - Low Priority Site visit within 15 working days	Breaches relating to untidy land. Technical breaches of planning control where there appears to be no significant harm being caused. Unauthorised display of adverts. Temporary breaches which are likely to resolve themselves.

		Matters where an initial assessment indicates it may be “permitted development” or recommended for approval if a regularising application were submitted.	
31.5	Forms of action The Council has a range of enforcement powers that it can use to investigate and tackle unauthorised development and officers will always consider which is the most appropriate according to the circumstances of each case. A brief overview of the various notices and legal powers are set out below:		
31.6	Planning Contravention Notice (PCN) This is served on landowners, operators or other relevant people to obtain information about a suspected breach of planning control. The information provided is used to decide whether further action is required. Failure to reply to the notice could lead to a fine upon conviction.		
31.7	Breach of Condition Notice (BCN) This is issued where there has been a breach of a condition attached to a planning permission. The BCN will set out the necessary remedial action to ensure compliance with the condition(s) being breached. There is no right of appeal to the Secretary of State and failure to comply could result in prosecution and a fine for each offence.		
31.8	Community Protection Notice Warning Letter (CPNW) Where verbal warnings or other informal interventions have not worked or are unlikely to work and the offender’s behaviour meets the test for the CPN power, Newark & Sherwood District Council will consider issuing a formal Community Protection Notice Warning Letter.		
31.9	Community Protection Notice (CPN) If an offender fails to comply with a Community Protection Notice Warning Letter, they will be served with a formal Community Protection Notice (CPN). Breach of a CPN will constitute a criminal offence.		
31.10	Enforcement Notice This is used when a serious breach of planning control has occurred. The Notice does not come into effect until at least 28 days after its date of issue. A person served with an Enforcement Notice can appeal to the Secretary of State during this period. The effect of the appeal is to suspend the Notice. The appeal is usually determined by an independent Planning Inspector. If the appeal is dismissed or no appeal is made, then failure to comply		

	with the requirements of the Notice is a criminal offence, punishable by a fine on conviction.
31.11	Stop Notice This can be issued with or following an Enforcement Notice in order to require a particularly harmful activity to cease before the Enforcement Notice comes into effect. There is no right of appeal, but the Council may have to pay compensation if the associated Enforcement Notice is, on appeal, quashed on legal or planning grounds. Non-compliance with the Stop Notice is an offence, punishable by a fine.
31.12	Temporary Stop Notice If the breach of planning control is causing significant environmental effects, a Temporary Stop Notice can be served. This requires the unauthorised activity to cease immediately for a period of no more than 28 days.
31.13	Injunction An Injunction is a Court Order requiring the defendant to either refrain from doing a specific act or requiring the defendant to carry out a specific act. It is therefore used to prevent or stop harmful activity or force remedial measures to be carried out. This is the most serious action that the Council can take; therefore, it will only be taken as a last resort where no other effective means of enforcement remain. Failure to comply with the terms of an injunction is contempt of court, which is punishable by imprisonment. Therefore, the Court is only likely to grant an Injunction in the most serious of cases.
31.14	Direct Action If a person fails to comply with the requirements of a notice the Council can enter the land and undertake works in compliance with a Notice. The cost is then charged to the landowner but would have to be borne by the Council in the short term until the money is collected. Direct action may be pursued at any time after the compliance period of a Notice has passed. The costs of direct action will be recovered from the person subject to the original notice. A charge will be placed on the land to which it relates (usually without notice to the recipient of the notice) and the Council will consider forced sale proceedings should the debtor fail to pay the monies outstanding.
31.15	Decision Making Planning enforcement is a discretionary power and we take action if it is “expedient” to do so. This means that when deciding whether to act the enforcement team will take into account national and local planning policy and other material considerations, including the effect on a business, the harm to the amenity of neighbours and the public interest.

	It is not a criminal offence to carry out development without planning permission, except for works to listed buildings, protected trees and the display of unauthorised advertisements. If a breach can be remedied by imposing planning conditions or with minor changes, the enforcement team will request submission of a retrospective planning application. The Government advises that enforcement action should not just be taken because development has taken place without planning permission. In situations where there is limited harm and the only reason that an application has been requested is to regularise the development (e.g., where a structure is marginally bigger than that allowed under permitted development rights) the enforcement team will close the case and will not monitor whether an application has been submitted. If a planning application has been submitted to remedy a breach, we will usually delay enforcement action; however, there will be cases when it will not be appropriate to do so. For example, where enforcement action may not be possible after legal time periods have elapsed, or an application has been submitted contrary to advice that there is no reasonable prospect of planning permission being granted.
31.16	Appeals Some formal notices that the Council may serve are liable to appeal. If an appeal is made, we will inform the original complainant, local Councillors and the Town or Parish Council along with any residents we feel are affected by the development and explain how they can make their representations to the Planning Inspectorate. Further information on enforcement appeals for those who have been served with a notice and other interested parties is available online.
31.17	Other Enforcement Powers Prosecution In certain circumstances, the Council can instigate prosecution proceedings, without first having to serve a notice. These instances include: • Unauthorised works to a Listed Building • Unauthorised display of an advertisement • Damage to a tree covered by a Tree Preservation Order or within a Conservation Area • Damage to safeguarded hedgerows. It is also an offence to be in breach of the requirements of the various planning notices that the Council can serve. In the case of any prosecution, evidence will be gathered and stored in accordance with the Policy and Criminal Evidence Act 1984 and full consideration given to the evidential and public interest tests within the Code for Crown Prosecutors.

	To prevent the most serious of planning breaches the Council may apply to the County or High Court for an Injunction.
31.18	Listed Buildings It is an offence under Section 9 of the Act to carry out unauthorised works to a Listed Building. The owner of a Listed Building or persons who have carried out the works may be prosecuted by the Council irrespective of whether consent is later obtained or the unauthorised works are later made satisfactory. A person found guilty of an offence may be liable to a fine and/or a term of imprisonment of up to two years. There is no time limit for the Council to pursue action against unauthorised works to a Listed Building. A Listed Building Enforcement Notice may be served requiring remedial works to the building within a certain time period. There is a right of appeal to the Secretary of State, but failure to comply with the Notice is an offence, which is liable to a fine.
31.19	Advertisements The display of advertisements/signs is controlled under the Town and Country Planning (Control of Advertisements) Regulations 2007 (as amended) They are divided into three main groups: • Those that are ‘expressly excluded from planning control • Those which have ‘deemed consent’ whereby the Council’s consent is not required • Those for which the Council’s consent is always needed provided the advertisement falls within certain categories. It is an offence to display an advertisement without the necessary consent, but in most cases the Council’s initial course of action will be to request the cessation of the display or invite an application for consent. However, in the case of a particularly flagrant or repeated offence the Council may decide that it is appropriate to take the matter straight to Court. Similarly, the display of an advertisement after consent has been refused (subject to any appeal) could result in a prosecution being brought.
31.20	Protected Trees Under Section 198 of the Town and Country Planning Act 1990 the Council has the right to make provision for the preservation of trees by issuing a Tree Preservation Order (TPO). Any unauthorised works to protected trees is an offence under Section 210 of the Act. It is an offence to cut down, uproot, or wilfully destroy a protected tree, or wilfully damage, top or lop a protected tree in such a manner as to be likely to destroy it. The offence is liable,

	on summary conviction, to a fine of up to £20,000 and on indictment to a further fine. The Council may also serve a Tree Replacement Notice requiring a protected tree has been removed unlawfully. Most established trees in Conservation Areas are similarly protected, under Sections 211 and 212 of the Act and the same penalties for these offences apply. Consent is not required for the following works to protected trees: • Works to trees that are dying, dead or have become dangerous. • Works to trees authorised by the grant of planning permission. • Works to trees cultivated for the production of fruit where such work is in the interests of that business or trade. The Council encourages all owners of trees covered by a Preservation Order to consult the Council before undertaking works on the tree(s).
31.21	Monitoring (Waste and Minerals) Section 19 of The Waste (England and Wales) Regulations 2011 makes it a duty that where a planning authority has planning functions in relation to establishments or undertakings carrying out disposal or recovery of waste, the planning authority must ensure that appropriate periodic inspections of those establishments or undertakings are made. Provision is also made in legislation to allow the Council, as a Minerals & Waste Planning Authority, to charge for monitoring visits to mining sites and landfill sites under The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012. Therefore, the Council will seek to prioritise the monitoring and enforcement of sites that are monitored under The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 and under The Waste (England and Wales) Regulations 2011. Before each monitoring year the Council will assess the frequency that sites should be monitored, based upon the following criteria: 1. The size of the site. 2. The number and the complexity of conditions. 3. The number of issues requiring monitoring. 4. The stage of development at the site. 5. Whether the operator has ISO 14001 or EMAS accreditation. 6. The progressive nature of working/restoration. 7. The number of breaches of planning control observed. 8. The number of complaints received for a site, which have proven to be justified. In practice using these criteria active minerals and landfill sites would be likely to be subject of between 2-4 visits per year, and sites for the

	recovery, transfer and recycling of waste are likely to be the subject of 1-2 visits per year.
31.22	Joint working Quite often, cases that are presented as a planning enforcement matter can in fact involve other regulatory services within the Council or external partners and may not necessarily be directly a planning enforcement matter. Where this is the case, officers across the relevant different teams and/or agencies will discuss the query to establish the most appropriate advice that may be help the customer in establishing how best to proceed. This section must be read in conjunction with the rest of the Council's Enforcement policy.

32.0	Enforcement Policy Schedule: Private Sector Housing
32.1	Introduction The Private Sector Housing team principally deals with the following areas of work in carrying out its regulatory and enforcement functions: Inspections: Where there is a statutory duty to do so, or in cases where the local authority considers that it is appropriate, an inspection will be conducted by Officers. Hazard assessments: Using the Housing Health and Safety Rating System (HHSRS) Officers will assess the likelihood of a hazard in a property to cause a risk to health. A range of enforcement powers are available under the Housing Act 2004 to remove or reduce any hazards identified to an acceptable level. Houses in Multiple Occupation (HMOs): HMOs are houses (and flats) in which the occupants share facilities. Officers will inspect HMOs to ensure they meet health and safety requirements. Mandatory HMO licensing: Current legislation requires HMOs to be licensed which have five or more occupants comprising of two or more-family units, who share basic amenities such as washing and cooking facilities. The Council will take steps to ensure that properties that require a licence are licensed and take enforcement action against landlords of unlicensed properties. Empty properties: At any one time, there are multiple vacant properties within Newark & Sherwood District Council. Properties which remain empty for long periods of time can attract vandalism, crime, and other problems affecting the whole community. In partnership with officers from across the Council, the Private Sector Housing Team will work to provide assistance to owners of empty properties to bring them back into use. Overcrowding: When we identify severe cases of overcrowding, we will work with the Council's Housing Options team to ensure customers receive advice and assistance regarding re-housing. Unlike other hazards formal enforcement action may not bring about the most appropriate solution to the housing problem. Rogue landlords: The Government has introduced several initiatives to crack down on landlords who knowingly flout their obligations by renting out unsafe and substandard accommodation to tenants. These include protections for tenants against retaliatory eviction, banning orders, and civil penalties. The Council will use these initiatives to tackle rogue landlords within Newark & Sherwood District Council where appropriate and work with Housing Options to re-house tenants. Smoke and Carbon Monoxide alarms: For properties deemed single family dwellings private sector landlords are required to have at least one smoke alarm installed and

	maintained on every floor of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance. Gas and electrical installations: There are specific requirements set down in law pertaining to safety standards for the use of gas and electricity within privately rented accommodation, which include the production of documents to tenants as a matter of course upon commencement of a new 'assured shorthold tenancy' and to Local Housing Authorities when requested. The Council will investigate complaints from tenants in relation to the lack of documentation being provided to tenants at the commencement of their tenancy or issues associated with gas / electrical installations.
32.2	Approach to enforcement in private sector housing The type of enforcement taken will vary according to the legislation being applied. In some cases, taking enforcement action is a statutory duty, provided certain criteria are met. In some circumstances officers may use informal action to offer advice, information and assistance to aid compliance with housing related legislation, working with landlords and residents. However, robust action will be taken to deal with housing contraventions. Where failure to comply is of a serious nature, officers will use the full range of enforcement options available to them under the relevant legislation to achieve compliance to protect those at risk. In the most serious contraventions possible action will include prosecution. The type of enforcement action pursued is always considered on a case-by-case basis, based on its own merits. Following consideration of the specific circumstances of the case the most appropriate enforcement option will be applied accordingly. In every case enforcement seeks to: • Promote and achieve sustained compliance with the law • Ensure that landlords take action to deal immediately with serious risks Ensure that landlords who breach legislative requirements are held to account
32.3	Private Sector Housing Legislation Statutory Notices, Orders and Directions A Statutory Notice, Order or Direction will be the first formal sanction issued by the Council. If there is non-compliance to this, proceedings may commence for prosecution. The Statutory Notices, Orders and Directions detailed below may be appropriate in any of the circumstances listed or combination thereof: Local Government (Miscellaneous Provision) Act 1982 Protection of Buildings

	Section 29 of this Act enables a local authority to carry out work to effectively secure an unoccupied building or where the occupier is temporarily absent from it against unauthorised entry or to prevent it from becoming a danger to public health. A local authority may serve a notice that they propose to undertake work or may carry out work immediately in urgent circumstances. In each case the cost of the work is recharged on the owner of the property. Housing Act 2004, Part 1- Housing Conditions Part 1 of the Housing Act 2004 made significant changes to how houses are inspected and expanded the range of enforcement powers available to Officers. All properties are inspected to identify the presence of hazards. There are 29 hazard categories. A risk rating system the Housing Health and Safety Rating System (HHSRS) is used to determine if the hazards in the property are Category 1 or Category 2. Every local authority has a duty to deal with Category 1 hazards when they have been identified. Newark & Sherwood District Council will also deal with Category 2 hazards, taking enforcement action where appropriate. Newark & Sherwood District Council has also adopted Section 49 of the Housing Act 2004, which allows a local authority to charge for the service of enforcement notices under the Act. The charge for the service of a notice is based on the time spent by the Officer in preparing and serving the notice, as a result there is no fixed cost. Hazard Awareness Notices, which do not carry a requirement for completion and therefore will not be liable for prosecution or for works in default to be undertaken, have not been included in this charging regime. The range of Notices that are provided in the Housing Act include the following, all of which can be used for Category 1 or Category 2 hazards or combined if both hazards are present: • Hazard Awareness Notices (Section 28 and 29) • Improvement Notices (Section 11 and Section 12) • Prohibition Orders (Section 20 and 21) The Act also gives a local authority emergency powers, these include: • Emergency Remedial Action Notice (Section 41) • Emergency Prohibition Order (section 43) All appeals for Housing Act 2004 notices are now heard by the Lands Property Tribunal. Details of how to appeal are contained in the notes that will accompany the notice. Housing Act 2004, Part 2 - Licensing of Houses in Multiple Occupation
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	Part 2 of the Housing Act 2004 deals with the Licensing of Houses in Multiple Occupation (HMOs). An HMO needs to be licensed if there are five or more tenants living in the property, who are not all from one 'household' (for example, a family) but share facilities such as a toilet, a bathroom or a kitchen. It is sometimes called a 'house share'. The Management of Houses in Multiple Occupation (England) Regulations 2006 and the Licensing and Management of Houses in Multiple Occupation Regulations 2007 places certain legal duties on individuals that manage properties, including provisions around fire safety and water supply. Housing Act 2004, Part 4 - Chapter 1 - Interim and Final Management Orders Houses in Multiple Occupation This would be used if there is no reasonable prospect of a property being licensed soon or the consequence of non-compliance could be potentially serious to the health and safety of any occupants or visitors to the premises. Housing Act 2004, Part 4 - Chapter 2 - Interim and Final Empty Dwelling Management Orders The Council would consider use of this power if the following criteria are met: • the residential dwelling is wholly unoccupied for at least 2 years • The dwelling has been causing a nuisance to the community • there is no reasonable chance that it will be occupied in the near future • there is a lack of confidence in the successful outcome of an informal approach • there is a history of non-compliance with informal action. Housing Act 2004 Section 139 Overcrowding notices (HMOs only) The Council will assess for overcrowding under Part X of the Housing Act 1985 and under HHSRS. The Council will serve a notice under section 139 only for HMOs that are not licensed or subject to an Interim Management Order or Final Management Order. The Council will give 7 days' notice to all relevant persons (including occupiers) of its intentions and consider their representations. Housing Act 1985, Sections 265 - Demolition Orders (As amended by Section 46 of the Housing Act 2004) Action under this legislation is considered if the dwelling contains one of more Category 1 hazards; repair of the dwelling is not a financially viable option and there is a lack of
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	confidence in the owner satisfactorily resolving the problem and there is not a Management Order in place under Chapter 1 or 2 of Part 4 of the Housing Act 2004. Housing Act 1985 Part 10 Overcrowding The standards for determining if a property (not HMO) is statutorily overcrowded were not updated in the Housing Act 2004 and Part 10 of the 1985 Act is still in force. If a property is found to be overcrowded by the standards applied under section 325 and section 326 of the Housing Act 1985, both the occupier and the landlord/owner will be issued with a notice requiring both parties to take reasonable steps to resolve the overcrowding problem. For tenants this can mean actively seeking a larger property, through the bidding process for social housing or private rented sector. For landlords/owners this may require them to assist the tenants to find a larger property, allowing them to leave their tenancies early or if necessary, instigating eviction proceedings. Environmental Protection Act 1990 Section 80 Nuisances The Council shall serve an abatement notice under this section where it is satisfied that a statutory noise nuisance exists or is likely to occur or recur. A noise abatement notice for example requires that the noise reduces or stops by prohibiting its occurrence or recurrence. Statutory Nuisances are specific nuisances that have been listed within the Environmental Protection Act 1990 under section 79 and includes any premises in such a state as to be prejudicial to health or a nuisance. The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 This legislation requires all companies that operate as either letting agents or property management agents to be a member of a Government approved Redress Scheme. Where it is understood that a company is not a member of the scheme the Council will investigate and determine whether they are a member. If, a person has failed to register to be a member of a scheme, a notice of intent to impose a fine will be served by the Council. The fine is set at £5,000. If after 28 days no appeal has been lodged and they are still not a member of a scheme a final notice imposing the fine will be issued. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
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	Private sector landlords [single family dwellings] are required from 1 October 2015 to have at least one smoke alarm installed on every floor of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g., a coal fire, wood burning stove). After that, the landlord must make sure the alarms are in working order at the start of each new tenancy. The requirements will be enforced by local authorities who can impose a fine of up to £5,000 where a landlord fails to comply with a remedial notice. Housing and Planning Act 2016 - Civil Penalties A civil penalty is a financial penalty imposed by a Local Authority on an individual or organisation as an alternative to prosecution for certain offences under the Housing Act 2004. In determining the level of penalty, a civil penalty matrix is applied. Newark & Sherwood District Council has developed a 4-tier assessment process (referred to as the matrix) in accordance with the Housing and Planning Act 2016. Case officers will use the matrix to determine the level of financial penalty. This is illustrated and explained in Appendix 2. The offences under the Housing Act 2004 that a civil penalty can be issued for include: • Failure to comply with an Improvement Notice (Section 30) • Offences in relation to the licensing of Houses in Multiple Occupation (Section 72) • Offences in relation to selective licensing of houses under Part 3 of the Act (section 95) • Offences of contravention of an overcrowding notice (Section 139) • Failure to comply with management regulations in respect of Houses in Multiple Occupation (Section 234) a penalty can be issued for each separate breach Housing and Planning Act 2016 - Banning Orders A Local Authority can apply to the First-tier Tribunal for a Banning Order for a person [includes bodies corporate] who has been convicted of a banning order offence. Banning Order offences include, • Protection from Eviction Act 1977, section 1(2), (3) and (3A) - unlawful eviction and harassment of occupier. • Criminal Law Act 1977, section 6(1) - violence for securing entry. • Housing Act 2004, section 30(1) - failing to comply with an improvement notice, section 32(1) - failing to comply with a prohibition order, section 72(1), (2) and (3) - offences in relation to licensing of Houses in Multiple Occupation, section 95(1) and (2) - offences in relation to licensing of houses under Part 3, section 139(7) - contravention of an overcrowding notice, section 234(3) - failure to comply with
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	management regulations in respect of Houses in Multiple Occupation, section 238(1) - false or misleading information. • Regulatory Reform (Fire Safety) Order 2005, Section 32(1) and (2) - fire safety offences. • Health and Safety at Work etc. Act 1974, section 33(1) (c) - where a person contravenes any requirement specified in regulation 36 of the Gas Safety (Installation and Use) Regulations 1998(9), gas safety offences - duties on landlords. • Immigration Act 2014, section 33A (1) and (10) - residential tenancies landlord offences, section 33B (2) and (4) - residential tenancies agent offences. • Fraud Act 2006, section 1(1) fraud, section 6(1) - possession etc. of articles for use in frauds, section 7(1) - making or supplying articles for use in frauds, section 9(1) - participating in fraudulent business carried on by sole trader etc., section 11(1) - obtaining services dishonestly, section 12(2) - liability of company officers for offences by company. • Criminal Justice Act 2003, Schedule 15 - specified violent and sexual offences. • Misuse of Drugs Act 1971, section 8 - occupiers etc. of premises to be punishable for permitting certain activities to take place there, section 9 - prohibition of certain activities relating to opium, section 9A(1) and (3) - prohibition of supply etc. of articles for administering or preparing controlled drugs, section 18(1), (2), (3) and (4) - miscellaneous offences, section 19 - attempts etc. to commit offences, section 20 - assisting in or inducing commission outside United Kingdom of offence punishable under a corresponding law, section 21 - offences by corporations • Proceeds of Crime Act 2002, section 327 - concealing etc. criminal property, section 328 arrangements, section 329 - acquisition, use and possession. • Protection from Harassment Act 1997, section 2 - offence of harassment, section 2A Offence of stalking. • Anti-social Behaviour, Crime and Policing Act 2014, section 30- breach of criminal behaviour order, section 48 - failure to comply with a community protection notice. • Criminal Damage Act 1971, section 1(1)- destroying or damaging property, section 2 Threats to destroy or damage property, section 3 - possessing anything with intent to destroy or damage property. • Theft Act 1968, section 7 - theft, section 9 burglary, section 21- blackmail, section 22 -handling stolen goods. The First-tier Tribunal can ban a person from the following activities: 1. Letting housing in England 2. Engaging in letting agency work 3. Engaging in property management work or 4. Doing two or more of those things Any Banning Order granted must be added to the Rogue Landlord database.
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Housing and Planning Act 2016 - Rent Repayment Orders

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

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

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

Retaliatory Eviction and the Deregulation Act 2015

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

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

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

4. the relevant local housing authority served a relevant notice in relation to the dwelling- house in response to the complaint, and
5. if the section 21 notice was not given before the tenant's complaint to the local housing authority, it was given before the service of the relevant notice.

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

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

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

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

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

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

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

Should officers become aware that a property with a substandard EPC rating is being advertised contrary to the regulations, they will in the first instance contact the agent or

	landlord to discuss this and make them aware of the requirements. Should either party or their associates subsequently let the property whilst it is non-compliant with MEES, a civil penalty may be issued If a local authority confirms that a property is (or has been) let in breach of the Regulations, they may serve a financial penalty up to 18 months after the breach and/or publish details of the breach for at least 12 months. Local authorities can decide on the level of the penalty, up to maximum limits set by the Regulations. The maximum penalty amount per property and per breach of the Regulations are, • up to £2,000 and/or publication penalty for renting out a non-compliant property for less than 3 months • up to £4,000 and/or publication penalty for renting out a non-compliant property for 3 months or more • up to £1,000 and/or publication for providing false or misleading information on the PRS Exemptions Register • up to £2,000 and/or publication for failure to comply with a compliance notice • The maximum amount you can be fined per property is £5,000 in total. The Electrical Safety Standards The powers and duties introduced by The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 response to tackling rogue landlords and improving the private rental sector. They require Landlords to ensure that the fixed electrical installations in their properties are inspected and tested at least every 5 years by a competent electrician. The initial inspections need to be carried out before any new tenancy is granted from 1 July 2020, and by 1 April 2021 for existing tenancies. The Regulations introduce measures that are intended to be implemented by landlords from 1 July 2020: • Landlords are required to provide their tenants with electrical safety reports: in the case of new tenants, before they move in; to existing tenants within 28 days of receiving it; and to any prospective tenant within 28 days of their request to view the report; • The Council has the power to demand sight of the report, and the landlord must provide this within 7 days of the request. Failure to do so could result in a penalty charge; • If the Council has reasonable grounds to believe that the landlord is in breach of the Regulations, it also has the power to serve a remedial notice on the landlord to compel them to comply with the Regulations; • Landlords have 28 days to remedy the breach, and if the work is not carried out in time, then the Council has the power to carry out the required works themselves
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	(on providing prior written notice to the landlord) and recover their costs from the landlord; • Landlords failing to provide tenants with an electrical safety report at the start of their tenancies will be in breach of the regulations and may face a civil penalty of up to a maximum of £30,000, with the potential for multiple penalties to be imposed for a continuing failure. • The Civil Penalty Matrix will be used to determine the level of fine under these standards Rogue Landlord Database Any landlord who has received a banning order under the Housing and Planning Act 2016, been convicted of a banning order offence or has received 2 or more civil penalties over a 12-month period will be recorded on the database. Where a prosecution is determined appropriate and is successful we may also consider additional measures linked to the prosecution such as Criminal Behaviour Orders, Proceeds of Crime Act and debt recovery. This section must be read in conjunction with the Council’s Enforcement Policy AND Appendix 1 and 2 of this policy.
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33.0	Enforcement Policy Schedule: Building Control All Building Control functions are managed by East Midlands Building Control (EMBC) this includes any enforcement action required. Contact should be made with EMBC for detailed information. Emergency contact should be made to 0333 003 8132 info@eastmidlandsbc.com
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34.0	Enforcement Policy Schedule: Housing and Tenancy Management This schedule sits as part of the Council’s Enforcement Policy and contains further detail on how Housing Services will enforce breaches of tenancy.
34.1	The Council’s Tenancy Agreement All tenants receive an agreement at the commencement of their tenancy with Newark and Sherwood District Council. The agreement clearly sets out the conditions and responsibilities of both the tenant/s and the Council. Sanctions for breaching any of the tenancy conditions are clear and explained to the tenant/s at the outset of the landlord and tenant relationship.
34.2	The Council’s Good Neighbourhood Management Policy This Good Neighbourhood Management Policy sets out how the Council will work to maintain and enhance neighbourhoods, fostering positive relationships between neighbours and improving quality of living for all. The Policy principles focus on a mediatory and collaborative approach.
34.3	Support and Engagement before Enforcement Whilst occupying their home, a broad range of tenancy management issues arise, the Council’s ambition is to ensure that tenants have clear information about their rights and responsibilities, where we may exercise discretion, the services they can expect to receive from us and the way in which we will respond when there are problems. The Council’s focus will, unless the tenancy breach is severe with a risk of harm to others, be on engagement before enforcement as we recognise that some tenants will experience difficulties and challenges during their tenancy.
34.4	Early Intervention There are a range of early intervention methods that can be used: • Mediation • Informal warning notices • Tenancy breach notices • Good neighbour agreements • Acceptable behaviour contracts • Letters before action • Referrals to support services • Community Protection Warning • Restorative Justice
34.5	Legal Action

	The Council's Housing Services Team has several legal routes available to them by virtue of statute, including Housing Act 1985 (and subsequent amendments), Anti-Social Behaviour Act 2014, Crime and Policing Bill 2025 and other legislation. Some involve a joint working approach with colleagues in Community Safety and Nottinghamshire Police. These include: • Possession Proceedings, some of which will be mandatory • Injunctions; with or without notice • Closure Orders • Community Protection Notices The Council considers the use of legal action, which can result in the loss of someone's home extremely seriously, and as a last resort when all other interventions have failed.
34.6	Publicity The Council takes a positive approach to publicising enforcement work and recognises the significant impact of such publicity. The aim of this publicity is to raise the profile of the offences, increase confidence from the public and deter future offenders. The Council will also periodically publish performance information on actions relating to tenancy enforcement.

35.0	Enforcement Policy Schedule: Environmental Health
35.1	This section must be read in conjunction with the Council’s Enforcement Policy The schedule covers all areas of Environmental Health’s work where enforcement of legislation may be involved, including: - • Food hygiene in food manufacturers, shops, restaurants, pubs, schools, and care homes; • Environmental Protection (dog fouling, land, air and noise pollution etc.); • Public health (filthy properties, accumulations of rubbish, pest infestations etc.); • Health and safety at work in a wide range of commercial workplaces; • Smoke-free laws. The primary objective is to achieve regulatory compliance, and we will seek to do this mainly through advice and education, though we will take formal enforcement action where this is necessary. There are a wide range of tools available, and this policy aims to ensure that a sanction that is appropriate and proportionate to the offence or contravention will be chosen. This policy explains the objectives and methods for achieving compliance and the criteria considered when deciding what is the most appropriate response to a breach of legislation. All decisions will have regard to current statutory guidance and codes of practice, particularly the Regulators’ Code the Code for Crown Prosecutors and human rights legislation
35.2	Scope and meaning of ‘Enforcement’ This Policy applies to all legislation enforced by Environmental Health. ‘Enforcement’ includes all actions taken by officers aimed at ensuring legal compliance. This is not limited to formal enforcement action such as prosecution but includes verbal and written requests to comply with legislation. In certain circumstances we may seek to raise awareness and increase compliance levels by publicising the work of the service, unlawful trade practices or criminal activity. Where appropriate the results of specific enforcement outcomes may also be published including Court cases.
35.3	Notifying Alleged Offenders If we receive information that may lead to enforcement action against a business or individual, we will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety

	risk to those concerned or the public (for example the need for immediate action to close a food business, or prevent the use of a dangerous process/piece of machinery). In some cases, the Council may only notify offenders once the enforcement action has been considered by Legal and information laid at Court. Confidentiality will be maintained and personal information about individuals will only be released to a court or other agency when required and/or in accordance with the Data Protection Act 2018.
35.4	Deciding what level of enforcement action is appropriate A number of factors are considered when determining what enforcement action to take. There are a large number of potential enforcement options. The option chosen varies from no action through to proceedings in court. Examples of the main types of action that may be considered include: • No action; • Informal action and advice (for example a written warning); • Fixed penalty notice; • Formal notices/orders; • Forfeiture proceedings; • Seizure of property; • Compulsory closure; • Taking animals into the Council's possession; • Injunctive actions; • Simple caution; • Prosecution; • Civil penalty & penalty charge notices; • Proceeds of crime applications. Availability of the above options is determined by the legislation applicable and the circumstances of each case; not all options will be available on all occasions. In assessing what enforcement action is necessary and proportionate, consideration will be given to: • The seriousness of compliance failure; • Past performance, compliance history and current practice; • The risks being controlled; • The level of culpability; • The level of harm caused; • Legal, official or professional guidance; • Local priorities of the Council.

Where the law has been contravened, enforcement actions/options will normally be commenced at a low level and escalated until compliance is reached. Exceptions would be where there is a serious risk to public safety or the environment or the offences have been committed deliberately, repeatedly or negligently and/or involve deception. Certain legislation requires that where an offence is witnessed, a notice must be served, for example the Environmental Protection Act 1990 in relation to statutory nuisances.

The Council recognises that Environmental Health also investigate and take enforcement action in relation to offences that are not traditional regulatory offences, for example harassment of tenants or the neglect of pet animals. Due to the level of culpability, it is expected that in some of these cases the starting point will be prosecution.

No Action

In certain circumstances, contraventions of the law may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on our community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade. In such cases, we will advise the offender of the reasons for taking no action.

Informal Action and Advice

For minor breaches of the law, we may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable and take into account the seriousness of the contravention and the implications of the non-compliance. Sometimes we will give recommendations or advice on 'good practice', but we will clearly distinguish between what must be done to comply with the law and what is advice only. Failure to comply could result in an escalation of enforcement action.

Fixed Penalty Notices

Certain offences may be dealt with by Fixed Penalty Notices (FPN) where permitted in legislation. FPNs are recognised as a low-level enforcement tool and avoid a criminal record for the offender. Where legislation permits an offence to be dealt with by way of a FPN, for example littering, dog fouling, or smoking in a smoke free place, the starting point will normally be an FPN. Second and subsequent offences are unlikely to be dealt with by FPN and will normally result in prosecution.

Formal Notice

Certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances demand. In other circumstances, the time allowed will be reasonable and take into account the seriousness of the contravention and the implications of the noncompliance. In some cases, a charge will be made where a notice is served. Where required, notices issued will include details of any applicable appeals procedures.

Some notices allow works to be carried out in default. This means that if a notice is not complied with [a breach of the notice] the Council may carry out any necessary works. Where the law allows, we may then recover our costs from the person/business served with the notice, through the Courts if necessary.

Seizure

Some legislation enables officers to seize property, including goods, equipment, and documents, for example unsafe food, dangerous equipment, equipment that is being used to cause a nuisance or vehicles used to commit waste offences.

Injunctive Actions

In certain circumstances, for example, where offenders are repeatedly found guilty of similar offences, or where it is considered that injunctive action is the most appropriate course of enforcement, then injunctive actions through the courts may be used to deal with repeat offenders or dangerous circumstances.

Simple Caution

A Simple Caution is a means by which the Council deals quickly and simply with less serious offences, both reducing burdens on the court system and reducing the chance of repeat offences. A simple caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction, though a record may be made of the caution.

For a Simple Caution to be issued a number of criteria must be satisfied:

- Sufficient evidence must be available to prove the case;
- The offender must admit the offence;
- It must be in the public interest to use a simple caution;
- The offender must be 18 years or over.

Ministry of Justice Guidance on simple cautions is accessible by visiting:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/708595/cautions-guidance-2015.pdf

The final decision on whether or not to issue a simple caution will be made by the Public Protection Business Manager, or other suitably authorised officer, after receiving appropriate legal advice.

A record of the caution will be kept on file for three years. If the offender commits a further offence, the caution may influence a decision to take a prosecution. If, during the time the caution is in force, the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

Prosecution

The Council will consider all relevant circumstances, having regard to the public interest criteria, which may include:

- the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the suspect;
- there has been a reckless disregard of regulatory requirements;
- there have been repeated breaches giving rise to significant risk, or persistent and significant poor compliance;
- the level of culpability of the suspect and the level of harm caused by the offence;
- there has been a failure to honour voluntary undertakings or comply with statutory notices;
- there has been a repetition of a breach that was subject to a simple caution;
- false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- officers have been intentionally obstructed in the lawful execution of their duties.

This is not an exhaustive list. Where we consider that formal enforcement action is necessary each case will be considered on its own merits.

Certain Housing related offences may be dealt with via Civil Penalty Notices, Management and Rent Repayment Orders, Banning Orders and Rogue Landlord Database entries.

Determining whether a prosecution or simple caution is appropriate and proportionate

We apply the 'Full Code Test' to determine whether a prosecution or caution is appropriate and proportionate. This Test, described in the Code for Crown Prosecutors (2018), consists of two stages:

- (i) the evidential stage; followed by
- (ii) the public interest stage.

A caution or prosecution proceedings will only be progressed when the case has passed both the evidential test and the public interest test.

Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In some

cases, the prosecutor may be satisfied that the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal rather than bringing a prosecution.

Who decides what enforcement action is taken

Decisions about the most appropriate enforcement action to be taken are based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by the Council and/or central government. In the majority of cases, the lead investigating officer will recommend the most appropriate enforcement action for consideration and approval by the relevant authorised officer.

Final decisions about the instigation of legal proceedings will involve consultation between and/or approval from:

- Lead Investigating officer;
- Senior Officer for the relevant team;
- Environmental Health & Licensing Manager or Community Protection Manager;
- Public Protection Business Manager; and
- Legal Advisor

Liaison with other Regulatory Bodies and Enforcement Agencies

Where appropriate, enforcement activities within Environmental Health will be coordinated with those of other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

Where an enforcement matter affects a wide geographical area beyond the Council's boundaries or involves enforcement by one or more other local authorities or organisations all relevant parties will, where appropriate, be informed of the matter as soon as practicable and all enforcement activity coordinated with them.

Environmental Health will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including:

- Government agencies (for example, FSA, HSE, Environment Agency, Border Agency, HMRC, DWP);
- Police forces;
- Fire and rescue authorities;
- Statutory undertakers;
- Other local authorities and public health agencies;

Convictions secured by the Council for recordable offences will be entered onto the Police National Computer (PNC) either automatically or via form NPA03. A recordable offence is one that is imprisonable and includes a wide range of offences that are dealt

with by Environmental Health. Details of such convictions are therefore shared with police forces across the UK and other organisations that have access to the PNC and will be disclosed on Disclosure and Barring Service checks in accordance with the relevant Regulations.

Considering the views of those affected by offences

Environmental Health undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making an enforcement decision.

The Council may, where appropriate, prepare a community impact statement for the court as part of a prosecution. The purpose of a community impact statement is to make the court aware of particular crime trends in the local area and the impact of these on the local community.

36.0	Enforcement Policy Schedule: Licensing This section must be read in conjunction with the Council’s Enforcement Policy.
	There is an expectation that each council should develop and publish a licensing enforcement strategy setting out how it will exercise its licensing enforcement responsibilities and include details of: • how and to whom a complaint about an alleged non-compliance of licensing legislation; • how the council will deal with alleged non-compliance; and • the timescales for dealing with different types of complaint or non-compliance depending upon their severity. The Licensing Enforcement Schedule should be read in conjunction with the licence specific policies such as the Hackney Carriage and Private Hire Taxi Licensing Policy, Statement of Licensing Policy and Gambling Act - Statement of Principles. Enforcement functions are carried out under the Scheme of Delegation. The Director of Communities & Environment has delegated authority to investigate and to take enforcement proceedings relating to many of the licensing functions unless it is a function reserved to the Licensing Committee. Where applicable, many of these functions are further delegated to officers, according to their qualifications and competency. The objectives and key principles of licensing enforcement The main objectives of this Licensing Enforcement Policy are set out below: • To secure the health, safety and welfare of members of the public who either make use of the licensed activity or who are affected by it in some way; • Improve Animal Welfare; • To deal immediately with serious risks; and • To promote and achieve sustained compliance with the law The Legislative and Regulatory Reform Act 2006 sets out the following regulatory principles: b) regulatory activities should be carried out in a way that is transparent, accountable, proportionate, and consistent; b) regulatory activities should only be targeted at cases in which action is needed. The Council follows the principles of the Central and Local Government Concordat on Good Enforcement (the Concordat) and will apply the principles of the Regulators Code to promote an efficient and effective approach to licensing enforcement and improving the outcomes without imposing unnecessary burdens. The principles of the Regulators Code and Enforcement Concordat are:

Standards: to publish clear standards of service and performance.

Openness – the Council will provide clear information, guidance, and advice in plain language on the rules that we apply so that those whom we regulate can understand what is expected of them and why. Our guidance will reflect guidance and codes of practice issued by Central Government and other relevant bodies.

Helpfulness – the Council will provide help to businesses, voluntary or community groups, and the public to assist them to comply with statutory requirements and encourage them to seek advice and information to reduce the possibility of enforcement action. Applications for licences, registrations, approvals etc. will be dealt with efficiently and promptly and every effort will be made to ensure that, wherever practicable, the Council's enforcement services are effectively coordinated to minimise unnecessary overlaps and time delays.

Accountable – the Council will provide a well-publicised, effective, and easily accessible complaints procedure. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process.

Proportionate – the Council will allow businesses and others to meet their legal obligations and enforcement requirements without unnecessary expense by ensuring that any action we require is proportionate to risk. We will consider the circumstances of the case, the harm or potential harm caused, and the attitude and history of the business or person when considering formal action. Firm action, including prosecution and other legal or enforcement action, will, however, be taken where appropriate against those who disregard or persistently fail to comply with the law and/or the relevant policies.

Consistent – the Council will carry out its duties in a fair, equitable and consistent manner. While Officers are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other enforcement bodies.

Targeted – the Council will prioritise its resources according to risk, through intelligence-led activities, and focused on those least likely to comply with the law. We will focus resources on those whose activities give rise to the most serious risks or where there is supporting information that the activities are or likely to be poorly controlled.

Scope - What we deal with

Environmental Health & Licensing Teams administer a wide range of licenses and permits. These may be mandatory, where the local authority must license certain activities, or adoptive where the Council has elected to control certain businesses, activities, or

individuals through the issue of licenses and the imposition of license conditions. The main purpose of licensing enforcement is to:

- a) Secure the health, safety, and welfare of members of the public who either make use of the licensed activity or who are affected by it in some way;
- b) Deal immediately with serious risks; and
- c) Promote and achieve sustained compliance with the law.

We will not deal with anonymous allegations of breaches of licensing activities unless there is a potential serious or imminent risk to the public or users of a licensed premises. If you give your name, address, or any other details, this will be in the strictest confidence, as far as legislation permits.

Enforcement Priorities

To make the most effective use of available resources, the Council will investigate alleged breaches of license conditions or non-compliance with relevant licensing legislation in accordance with the priorities listed in Table 1 below.

The priorities consider the significance and impact of the alleged offence and assist staff to manage workloads and help to manage customer expectations through the reporting a complaints procedure in Appendix A.

As an investigation of a particular case proceeds, for example after the investigation has commenced, it may become necessary to change the priority level.

Table 1: Enforcement Priorities

Priority	Type of Breach
Priority 1 – Very High	• Incidents that are occurring at the time of the complaint which are resulting in (or may result in) an imminent or serious risk to the health and/or safety of the public. • These must be dealt with immediately and take priority over other work. Examples: • Licensing: Reports of an unlicensed taxi driver with supporting evidence which shows they are currently operating or plying for trade. • Environment: Reports of a permitted premises release of pollution which is ongoing and presents a serious risk of environmental pollution.

Priority 2 – High	Potential incidents that may result in significant harm - Incidents that are, or may have, impacts beyond the local authority's boundary - Incidents where there have been numerous complaints from different sources - Examples: - Licensing: reports of unfit vehicle and/or driver but no supporting evidence. - Licensing: reports of an unlicensed activity being carried out where there is the high risk of public safety implications or high animal welfare concerns, but further investigation is required.
Priority 3 - Medium	- A complaint where the local authority has a mandatory duty to investigate. - Repeated or multiple complaints from more than one source - Examples: - Licensing: reports of a breach of conditions on license such as operating hours but there is medium risk, but further investigation is required. - Licensing: technical offence of an unlicensed activity being carried out where there is medium risk of public safety or animal welfare concerns, but further investigation is required.
Priority 4 - Low	- A potential one-off incident with no history of complaints and no evident risk to public health/safety - A request relating to a matter that is discretionary for the local authority.

Upon receipt of a complaint, as set out in Appendix A, the Council will endeavour to commence the investigation in accordance with the priorities listed in Table 1 and within the timescales detailed in Table 2 (below).

Table 2 – Anticipated site inspection timescales

Priority	Response	Time for initial response
Priority 1 – Very High	Acknowledge receipt of complaint. Pass directly to case officer and notify most senior officer available. Most	Within 1 working day

		appropriate available officer(s) attend and action.	
Priority 2 – High	Acknowledge receipt of complaint. Pass directly to case officer or most appropriate available officer. Officer attends and actions.	Within 2 working days	
Priority 3 – Medium	Acknowledge receipt of complaint and if necessary, send diary sheets and other supporting documents. Commence investigation by phone or visit where appropriate.	Within 3 working days Within 5 working days	
Priority 4 - Low	Acknowledge receipt of complaint and if necessary, send diary sheets and other supporting documents. Commence investigation by phone or visit where appropriate.	Within 5 working days Within 10 working day	

Range of Enforcement Actions

External agencies including Nottinghamshire Police, Nottinghamshire Fire & Rescue Service and Nottinghamshire County Council also have an interest in the enforcement of licensing legislation. Where there is a shared enforcement role, the Council will liaise with the appropriate body to ensure effective coordination.

Enforcement officers must seek to secure compliance with the law. Most of the time this will be conducted informally, by offering information, advice, and support, both verbally and in writing. They may also use formal mechanisms, as set out in law, including the service of notices, suspension of vehicle licences, or ultimately prosecution.

A decision on enforcement action will be taken on its own merits and after full consideration of the implications and consequences of the action. While fair and effective enforcement is essential to the maintenance of law and order, a breach of criminal law may not necessarily result in enforcement action. In arriving at a decision, the Council will consider:

- a) The seriousness of the offence;
- b) The individual or duty holder's past history;
- c) Confidence in management;
- d) The requirements of the legislation;
- e) The consequences of non-compliance; and
- f) The likely effectiveness of the various enforcement options.

Where enforcement is being considered, the options available to the Council vary depending on the licensable activity/premises and the relevant legislation associated with that activity. However, Environmental Health & Licensing Teams can choose one or more of the following options:

Informal Action

- Information/Advice - For minor breaches of the law verbal advice will generally be given to the offender. Officers will clearly identify the contraventions of the law and give advice on how to put them right and include a deadline by which this must be done. Sometimes officers will advise offenders about 'good practice' but will clearly distinguish between what they must do to comply with the law and what is advice only.
- Informal Warnings - For some contraventions officers will send the offender a firm but polite letter clearly identifying the contraventions, giving advice on how to put them right and including a deadline by which this must be done.
- Penalty Points - The Hackney Carriage and Private Hire Licensing Policy 2023 includes a penalty points policy which may be applied when there has been a breach.

Failure to comply with any informal action could result in an escalation of enforcement action. The time allowed must be reasonable but must also consider public safety considerations.

Formal Action – Statutory Action and decision-making may result in:

- the suspension of a licence;
- the revocation of a licence;
- the refusal to grant or vary a licence;
- The closure of the premises in line with the relevant legislation.

To warrant suspension/refusal/variation/revocation of a licence one of the following criteria must apply to the licensed individual or organisation:

- No longer considered a 'fit and proper'* person;
- Deliberately or persistently breached legal obligations, which were likely to cause material loss or harm to others;
- Deliberately or persistently ignored written warnings or formal notices;
- Endangered, to a serious degree, the public safety or well-being of people, animals, or the environment;
- Obstructed an officer undertaking their duties;
- Deliberate or persistent breach of licence conditions or by laws

**Fit and proper*

The Council will only issue licences to applicants that are deemed to be fit and proper. In assessing this, the Council will have regard to the following:

- Criminal record (including convictions, cautions, warnings and reprimands),*
- Factors such as demeanour, general character, non-criminal behaviour, honesty and integrity,*
- Previous conduct (particularly in cases where the applicant holds or has previously held a licence issued by Newark & Sherwood District Council),*
- Business practices demonstrated by the applicant (for example standard of record keeping, compliance with other regulatory requirements, financial practices etc.)*

Subject to the relevant Scheme of Delegation such action will either be an officer decision or be referred to the Licensing Sub-Committee.

Use formal cautions - Enforcement Officers will consider issuing a formal caution as an alternative to prosecution. Where there is a criminal offence, but the public interest does not warrant a prosecution, a formal caution may be an appropriate course of action.

Prosecution - A prosecution will normally ensue where one of the following criteria are met by the individual or organisation: -

- The contravention/breach is a particularly serious one;
- There has been a blatant disregard of the law;
- Previous actions have not had the desired effect.

In cases where prosecution is under consideration, a file containing all the relevant evidence and information will be submitted by the relevant Environmental Health or Licensing Team to Legal Services for a decision to be made in accordance with the Code of Crown Prosecutors.

The Council applies two 'tests' to determine whether a Prosecution or Simple Caution is viable and appropriate and follows guidance set by the Crown Prosecution Service when applying the tests:

The Evidential Test - There must be sufficient evidence to provide a 'realistic prospect of conviction' against any defendant charged.

The Public Interest Test - There may be public interest factors which are in favour of or are against prosecution. These must be considered before a decision regarding the final enforcement action (caution or prosecution) is taken.

Appendix 1 - Civil Penalties

Introduction

The Civil Penalty Matrix has been designed in accordance with the Housing and Planning Act 2016 to determine penalties in line with government guidance. The Matrix will be used to determine penalties for offences as prescribed in the Housing and Planning Act 2016 and any additional Housing Legislation or Regulations not determined by an independent matrix.

The maximum penalty that can be imposed per offence is £30,000. Whereby the legislation or regulations have an upper fine limit of £30,000, the fine will be calculated and the amount pro-rated within the fine limit. The amount of penalty imposed is determined by Newark & Sherwood District Council on a case-by-case basis. In determining the appropriate level of penalty, we have regard to the following contained within the statutory guidance below.

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

- a) **Severity of the offence** - The more serious the offence, the higher the penalty should be.
- b) **Culpability and track record of the offender** - A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
- c) **The harm caused to the tenant** - This is a particularly important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.
- d) **Punishment of the offender** - A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not fulfilling their responsibilities.

- e) **Deter the offender from repeating the offence** - The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- f) **Deter others from committing similar offences** - While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.
- g) **Remove any financial benefit the offender may have obtained as a result of committing the offence** - The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e., it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

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

Newark & Sherwood District Council must give the person notice of its proposal (Notice of Intent to impose a financial penalty). This notice must set out the following:

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

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

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

- The amount of financial penalty
- The reasons for imposing the penalty
- Information about how to pay the penalty

- The period for payment of the penalty 28 days
- Information about rights of appeal
- The consequences of failure to comply with the notice

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

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

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

Determining the level of penalty

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

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

The following calculation will be used to determine penalties for other offences where the maximum fine is under £30,000:

$\text{Fine Total} \div (30,000 \div \text{Maximum Fine}) = \text{Pro-rated Penalty}$

Verification

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

Band 1: Severity of offence

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

Severity Level 1: these are low - moderate offences such as failure to display the name and contact details of the licence holder as required under the Management of Houses in Multiple Occupation (England) Regulations 2006 or failure to provide tenants with satisfactory electrical certificates

Severity Level 2: these are serious offences such as failing to deal with serious hazards, such as damp and mould.

Severity Level 3: these are severe / extreme offences such as failure to provide adequate fire detection in an HMO / failure to adhere to a notice / operating an HMO without a licence / failure to rectify C1 faults on an electrical report.

Severity Level	1	2	3
Level of penalty	£150	£300	£600

Band 2: Culpability and harm

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

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

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

Category 2 penalties will be used for subsequent offences

Culpability has been separated into three levels:

Severity level 1: these are low offences committed with little fault/mitigating factors, for example because:

1. Significant efforts were made to address the risk although they were inadequate on this occasion
2. There were no warning/circumstances indicating a risk
3. Co-operation with the investigation
4. Voluntary steps taken to address issues e.g., submits a licence application

5. Willingness to undertake training
6. Evidence of health reasons preventing reasonable compliance – mental health, unforeseen health issues, emergency health concerns
7. No previous convictions
8. Vulnerable individual(s) where their vulnerability is linked to the commission of the offence.
9. Good character and/or exemplary conduct

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

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

Culpability

Severity Level	1	2	3
Category 1: 1st offence	£150	£300	£600
Category 2: Subsequent offence(s)	£450	£900	£1,800

The harm caused to the tenant

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

Harm has been separated into six levels:

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

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

Severity Level 2: these are offences that present a serious risk of harm

Severity Level 3: these are offences that present a severe level of harm including hazards that have scored a band C under the Housing and Health Safety Rating System

(HHSRS), multiple C2 faults identified on an electrical report not rectified within 28 days, or other hazards deemed to pose a severe level of harm to potential visitors or occupants.

Severity Level 4: these are offences that present an extreme level of harm including hazards that have scored a band B under the HHSRS, a C1 fault identified on an electrical report not rectified within 28 days, or other hazards deemed to pose an extreme level of harm to potential visitors or occupants.

Severity Level 5: these are offences that present a very severe / extreme level of harm including hazards that have scored a band A under the HHSRS, Multiple C1 fault identified on an electrical report not rectified within 28 days, or other hazards deemed to pose a very extreme/severe level of harm to potential visitors or occupants.

Harm

Severity Level	0	1	2	3	4	5
Level of Penalty*	£0	£150	£500	£1,500	£2,500	£5,000

Band 3: Punishment / Deterrent

Band 3 will consider:

Punishment of the

offender:

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

Deter the offender from repeating the offence:

- The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the

penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

Deter others from committing similar offences:

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

Band 3 will give consideration to all 3 components and apply a multiplier to the amount already accrued. The amount of the fine must be sufficient to have a real economic impact on the offender to act as a sufficient deterrent to reoffend. Furthermore, the penalty must be sufficient to deter others.

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

- **Severity Level 1:** Portfolio 1 – 20
- **Severity Level 2:** Portfolio 21 – 50
- **Severity Level 3:** Portfolio 51 plus

Punishment / Deterrent

Severity Level	1	2	3
Level of Penalty*	X2	X2.5	X3

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

- Severity, Culpability and Harm have all scored level one or below a
- If it is a landlord first offence (this includes penalties in other LA areas), and

- The penalty relates to a single offence and not multiple offences.

Band 4: Removal of Financial Gain

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

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

Removal of financial gain has been separated into five levels:

- **Severity Level 1:** No financial gain
- **Severity Level 2:** Financial gain between £1 - £1000
- **Severity Level 3:** Financial gain between £1001 - £2499
- **Severity Level 4:** Financial gain between £2500 - £4999
- **Severity Level 5:** Financial gain between £5001 - £10000

Severity Level	1	2	3	4	5
Level of penalty	£0	£500	£1,250	£2,500	£5,000

Worked example:

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

Band 1: Severity of Offence

Failure to adhere to a Notice - Level 3: **£600**

Band 2: Culpability and harm

Culpability - Level 3: **£600**

Severity - Level 4: **£2,500**

Band 3:

Punishment/Deterrent

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

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

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

Band 4: Removal of Financial Gain

Financial gain - £500 per month in rent (£2,00.00 total over 4 month's breach) = Severity Level 3: **£1,250**

Total: £600 + £600 + £2,500 = £3,700

£3,700 x2 for the multiplier = £7,400

£7,400 + £1,250

Grand total = £8,65

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

Introduction

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

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

The department for Business Energy and Industrial Strategy (BEIS) have produced [guidance](#) published in 2017 and updated May 2020;

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

Purpose of this schedule

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

Scope of the schedule

The Council actively supports landlords to ensure their properties are of a suitable standard, and the Council's approach to enforcement is set out in the Private Sector Housing Enforcement Policy.

Details of landlord's obligations under the regulations are summarised on the Council's website, in addition to individual advice should guidance or support be required.

Should Officers become aware that a property with a substandard EPC rating is being advertised contrary to the regulations, they will in the first instance contact the agent or landlord to discuss this and make them aware of the requirements in writing. Should

either party or their associates subsequently let the property whilst it is non-compliant with MEES, this will be taken into consideration when calculating a financial penalty.

4. Routinely Officers will verify the current EPC rating of properties where a complaint is received, or in any other case where a property is being reviewed by Officers, and particularly where there is a concern the EPC rating of a property might be F or G.

5. Should a potential breach be identified, Officers will access the National PRS Exemption Register to confirm if the property has a valid exemption. Where it is believed that a landlord has registered false or misleading information, consideration will be given to serving a financial and publication penalty.

6. The Council has discretion over whether to serve Compliance Notices to request information from landlords, to help determine whether a property may be compliant. Officers may serve Compliance Notices where this additional information is required. Should a landlord fail to comply with a Compliance Notice, Officers will consider serving a Penalty Notice. Each case will be considered on its merits and will be discussed with the Private Sector Housing Manager.

7. If offences under the regulations are committed the Council will, where appropriate, serve a Penalty Notice. The guidance below sets out the approach that Officers should use to determine the appropriate penalty.

8. Under Regulation 39, the Local Authority may publish some details of the landlord's breach on a publicly accessible part of the PRS Exemptions Register, and the publishing of this information will be for a minimum of 12 months. This decision to publish will sit with the relevant housing managers.

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

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

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

Financial penalties (Regulation 40)

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

- (a) Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.
- (b) Where the landlord has let a sub-standard property in breach of the regulations for 3 months or more, the Local Authority may impose a financial penalty of up to £4,000 and may impose the publication penalty.
- (c) Where the landlord has registered false or misleading information on the PRS Exemptions Register, the Local Authority may impose a financial penalty of up to £1,000 and may impose the publication penalty.
- (d) Where the landlord has failed to comply with Compliance Notice, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.

A) Penalty Matrix for the Offence of Letting a Substandard Property

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

Section 1 - Financial Impact to Occupants:

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

The Government recently changed the way EPC's are calculated, and as a result, some properties previously found to be non-compliant will have their rating increased when

assessed by the new calculation. Where this is the case, this section of the matrix only, will not be applied.

EPC Rating	Average monthly impact
F	£58
G	£140

Section 2 - Risk of Harms to Occupants:

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

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

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

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

habitable room and is constructed of insulated materials.		
The property does not have thermally efficient windows in all habitable rooms or is constructed of uninsulated materials.	Medium	£100
The heating system within the property is either not sufficient or costly to run. The heating system does not have thermostatic controls and/or programmable timers. OR the property does not have an energy efficient source of hot water.	Low	£50
Other energy improvements are required, or the EPC rating has changed with no works due to new calculation guidance .	Very Low	£25

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

Section 3 - Culpability of Offender:

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

Culpability of offender	Penalty
High (The offender acted in knowledge of the regulations to avoid potential financial cost of between £1000-£3500)	£200
Medium (The offender acted in knowledge of the regulations to avoid potential financial costs of between £1-£1000)	£150

Low (The offender failed to keep up to date with regulations and was unaware of the requirement)	£100
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The following table is used to determine the final penalty against the three sections above and a worked example is provided further below.

Penalty Calculation

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

B) Failure to Comply with a Compliance Notice

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

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

Culpability Potential Harms	High (The offender sought to obstruct further investigation through non-compliance)	Medium (The obstruction was not willful)	Low (The offender has since complied with the notice, but not within the prescribed timeframe)
High Very	£2000	£1500	£1000
High	£1500	£1000	£500
Medium	£1000	£500	£200

Low / Very Low	£500	£250	£100
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Registering False or Misleading Information:

The following matrix has been designed to support Officers in calculating the appropriate financial penalty for registering false or misleading information to the National Exemption Register. The matrix has been designed to take account of the financial cost the offender sought to avoid by committing the offence. As such those that sought the highest financial benefit will receive a higher financial penalty.

Officers may reduce the penalty by up to 50% if it can be proven that the offender acted on false or misleading **professional** advice e.g., that of a letting agent or misleading advice from a professional landlord organisation (excluding web forums, or advice from other informal member organisations or members of the public).

Penalty Level	
High (The offender registered false or misleading information to avoid potential financial cost of between £1000-£3500)	£1000
Medium (The offender registered false or misleading information to avoid potential financial costs of between £1-£1000)	£500
Low (There was no financial gain to the offender)	£250

Worked Example to Assist in Understanding the Matrices

Example 1 - Offence of Letting a Substandard Property

Property Address: Any Street, Any town, Postcode

Name of Offender: Mr. Anonymous

Property Description: The premise is a 3-bedroom terrace house located in Any town, town centre; it is of standard brick-built construction and built circa 1900

EPC Rating: G

Date of EPC: April 2015

Date of Tenancy Commenced: August 15th, 2019

Energy efficiency within the property

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

Case Summary: An Energy Performance Certificate was commissioned in April 2015, and the property awarded a rating of G. On July 1, 2019, the property was purchased by the current owner Mr. Anonymous and on August 15, 2019, Mr. Anonymous let the property to Mrs. Cold on an assured short-term tenancy agreement. The Council became aware of the property in December 2019 when Mrs. Cold made a housing condition complaint due to excess cold. The property is heated by portable electric heaters within each habitable room; it has single glazed wooden framed windows and loft insulation to a depth of 1000mm. Mr. Anonymous had a property portfolio of 4 properties and had been operating as a landlord for 15 years. When contacted Mr.

Anonymous claimed to be unaware of minimum energy efficiency standard, although he was aware that the property had no fixed source of heating nor sufficient insulation.

EPC Rating	Average monthly impact
F	£58

G	£140
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Risk of Harms to Occupants:

Deficiency	Harm Score	Penalty
The property does not have a functioning, fixed source of heating within each habitable room in the property. In addition, it does not have thermally efficient windows in each habitable room, or the property is constructed of uninsulated materials. (See notes below)	Very High	£200
The property does not have a functioning, fixed source of heating, but does have thermally efficient	High	£150
windows in each habitable room and is constructed of insulated materials.		
The property does not have thermally efficient windows in all habitable rooms or is constructed of uninsulated materials.	Medium	£100
The heating system within the property is either not sufficient or costly to run. The heating system does not have thermostatic controls and/or programmable timers. OR the property does not have an energy efficient source of hot water.	Low	£50
Other energy improvements are required, or the EPC rating has changed with no works due to new calculation guidance.	Very Low	£25

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

Culpability of Offender

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

Penalty Calculation

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