Sunderland City Council

Private Sector Housing Enforcement Policy

for the Regulation of Housing Standards, March 2019

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Introduction

This policy is intended to provide guidance for officers, businesses and members of the public on the principles and processes which will apply when enforcement action is considered or taken in relation to Private Sector Housing Standards. It is made to supplement the Sunderland City Council Public Protection and Regulatory Services Enforcement Policy which was approved by Cabinet on 21 March 2018.

Sunderland City Council follows the principles laid down in the Regulators' Compliance Code when investigating complaints, responding to service requests, carrying out inspections, reviewing and granting licences and completing proactive project work.

This enforcement policy will seek to meet the objectives set out in this Code as we aim to prevent and reduce risks to public health, statutory nuisances, anti-social behaviour, environmental crimes, unfair competition and trading which is detrimental to consumers and businesses. It is also the policy of the council to promote awareness and understanding of our regulatory and licensing issues through education and working in partnership with other organisations.

Any departure from this enforcement policy will be exceptional, recorded and the circumstances and reasoning noted.

Note – In this Policy, the term "landlords" also includes "property agents", "managing agents" and "letting agents" unless otherwise specified.

The Private Sector Housing Enforcement Policy has been approved by Cabinet, and includes a number of detailed appendices which will be kept under review as case law develops, new guidance is issued by the Government and legislative changes are made.

The purpose of the appendices to the policy is so that as and when case law develops and Government guidance is updated the appendices can be up dated by way of delegated decision rather than full Cabinet approval, thus giving the flexibility and degree of reactiveness to target housing enforcement at those poor performing duty holders, protecting the residents of Sunderland City Council and providing a level playing field for economic development and growth of business within the City.

Our objectives

To strive to ensure that:

1. Tenants of a private landlord or a Registered Provider (RP) live in homes free of significant risks to their health and safety.
2. All Houses in Multiple Occupation (HMOs) and (if any selective licensing areas under Part III of the Housing Act 2004 are designated) any properties in Sunderland subject to selective licensing are safe, licenced where required and all licensing conditions are met.
3. Privately owned property and land does not present a statutory nuisance to other land owners, or does not directly or indirectly present an unacceptable risk to public health, safety or the environment.
4. We meet our statutory duties as a local housing authority.

Decision making

Enforcement action will be based on risk and we must also have full regard to any statutory duty. Assessment of risk will be based on current legislation and specific guidance.

Enforcement Officers are required to make informed judgements and will be suitably trained for this responsibility. They will decide on appropriate action after considering the criteria within this Policy and any relevant written procedures. A senior officer will give prior approval to all formal action falling outside the scope of this policy.

Where the investigating enforcement officer believes that legal action may be required, evidence will be collected and the case will be reviewed by senior officers before it proceeds.

Any person subject to potential prosecution action will be invited to a formal interview under caution or asked to send to the council written responses to questions under caution for consideration prior to any final decision being made

Principles of good enforcement

When discharging its duties in relation to private sector housing, the Council will follow the principles of good enforcement set out in the following:

- Regulators Compliance Code
- The Police and Criminal Evidence Act 1984 (as amended)
- Criminal Procedures and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities
- The Code for Crown Prosecutors

Principles underpinning enforcement action

Enforcement action taken by officers of Sunderland City Council with responsibility of the regulation of safety within private rented housing enforcement activity will be:

Targeted at properties and people that pose the greatest risk, including those owners and landlords that evade licensing and regulation, and those whose properties cause a nuisance or put people's health and safety at risk.

Proportionate, reflecting the nature, scale and seriousness of any breach or non-compliance.

Fair and objective, based on the individual circumstances of the case, taking all available facts into account.

Transparent, communications will be easy to understand, with clear reasons being given for any enforcement action taken.

Consistent, undertaken by well-trained investigators to ensure consistency in the interpretation and enforcement of legislation. We will work with other regulatory agencies and share and develop good practice.

Accountable, undertaken in a responsible manner that has a clear purpose. If any person is aggrieved by the enforcement of legislation they can register a complaint by:

- Phone: 0191 520 555 and ask for Complaints
- Email: complaints@sunderland.gov.uk
- Writing to us at: Complaints, Civic Centre, Burdon Road, Sunderland SR2 7DN

From time to time we will target our enforcement activity to ensure we meet our objectives effectively and efficiently.

Some examples of ways in which activity may be targeted is set out below (not an exhaustive list):

- Unlicensed properties.
- Poorly managed privately rented properties.
- Private rented property subject to incidences of anti-social behaviour.
- Properties where tenants receive Local Housing Allowance/Housing Benefit/Universal Credit. These tenants are more vulnerable to lower standards of accommodation and can consequently face greater risks to their health safety and welfare.
- Properties poorly or illegally built or converted that may not comply with planning or building regulation requirements.
- Household types such as shared accommodation.
- Properties with a low energy efficiency rating on their Energy Performance Certificate (EPC).
- Construction type – where there is a known issue associated with methods of construction for example precast reinforced concrete.
- Where a style of renting or rental model causes risk to health, safety or welfare, e.g. rent to rent models, where a short-term tenant sub-lets a property creating an unregulated HMO.
- Intelligence led regarding landlords who operate poorly across the authority or neighbouring/regional authorities.
- Targeting priority areas within the City as identified by intelligence led computer modelling.

Dealing with complaints

Council Officers will respond to complaints from tenants and other residents about private housing, prioritising the complaints on the basis of an assessment of the risk and seriousness.

Unless the matter appears to present an imminent risk to health the tenant is expected to contact their landlord first about the problem. Tenants are expected to keep copies of all correspondence with their landlord and this should be made available to the officers on request.

Housing, Health and Safety Rating System (HHSRS)

The HHSRS is set out in Part 1 of the Housing Act 2004. It is a method of assessing how likely it is that the condition of a property will cause an unacceptable hazard to the health of the occupant(s). There are two categories of possible hazards:

- Category 1 hazards represent a serious danger to health and the Council has a duty to take appropriate action to deal with these.
- Category 2 hazards represent a lesser danger and, although it has no duty to take action, the Council will exercise its power to reduce category 2 hazards through appropriate action.

A range of enforcement powers is available under the Act to remove any identified hazards or reduce them to an acceptable level.

Powers of entry

In certain circumstances, powers of entry into a property are exercisable by authorised officers. In general the powers will allow an officer at any reasonable time to;

- Enter a property to carry out an inspection and gather evidence
- Take someone with them

- Take equipment or materials with them
- Take measurements, photographs or make recordings
- Leave recording equipment for later collection
- Take samples of articles or substances; and in some cases to carry out works.

In most cases prior notice must be given to owners and to the occupiers. The notice given depends on the legislation being enforced and can range from 24 hours to 7 days. Notice that powers of entry need to be exercised will normally be in writing or by email but can in some circumstances be given verbally, depending on the relevant statutory provision and the urgency of the situation.

In certain circumstances the powers of entry can be enforced under a warrant. The Police will accompany officers where that is appropriate. It is an offence to obstruct an officer in the course of their duty. Officers exercising their power of entry will carry identification and details of their authorisation to carry out their action.

Enforcement options

Sunderland City Council recognises and affirms the importance of achieving and maintaining consistency in approach to making decisions that concern regulatory enforcement action, including prosecution. To achieve and maintain consistency, relevant guidance and advice is always considered and followed where appropriate.

The council will seek to secure compliance with regulatory legislation through the use of the following courses of action:

- Use of informal action, written guidance, advice and notices
- By refusal, revocation or the attachment of conditions to a licence
- By issuing fixed penalty notices/penalty charge notices
- By using civil legislation where appropriate
- By the use of various management orders
- By the use of statutory notices
- By issuing simple cautions
- By carrying out work in default
- By prosecution
- By the use of civil penalties – see appendix 4
- By the use of Banning Orders – see appendix 5
- By the use of the Rogue Landlord Database – see appendix 6
- By using anti-social behaviour powers, where appropriate and in conjunction with other council teams/partner agencies such as the Police.
- By compulsory purchase or enforced sale, if and when this power can be invoked.

The council in deciding upon enforcement options will also have due regard to statutory guidance, approved codes of practice and relevant industry or good practice guides.

Enforcement decision table

The following table contains some examples of situations where different types of action may be taken. Where a number of examples of general circumstances are given, the relevant action may be taken if any one or more of those circumstances applies. It is important to note that decisions on enforcement action are made, on a case-by-case basis.

ACTION	GENERAL CIRCUMSTANCES
No action	Where formal or informal action may not be necessary or appropriate. In such cases, customers may be directed to other sources of advice and support.
Informal action and advice (including verbal advice and advisory letters)	Where it may be appropriate to deal with the issues through informal action and advice. In such cases, the pre-formal stage of the HHSRS may be followed, with the council working collaboratively with responsible landlords to address and resolve any problems.
Service of Notice requiring repairs or specific legal requirements	Where a person refuses or fails to carry out works through the pre-formal HHSRS process; Where there is a lack of confidence or there is positive intelligence that the responsible individual or company will not respond to a pre-formal approach; Where there is risk to the health, safety and wellbeing of a household or a member of the public (dangerous gas or electrical services; no heating in the winter; no hot water for personal hygiene or to wash and prepare food safely; etc.); Where standards are extremely poor and the responsible individual or company shows little or no awareness of the management regulations or statutory requirements; Where the person has a history of non-compliance with the Council and/or other relevant regulators; Where the person has a record of criminal convictions for failure to comply with the housing requirements (which may include housing management); Where it is necessary to safeguard and protect the occupiers' future health and safety.
Powers to require information and/or documents	Where it is necessary for documents and information to be provided to enable officers to carry out their powers and duties.
Emergency Remedial Action/Emergency Prohibition Order	Where a category 1 hazard exists and there is an imminent risk of serious harm to the health or safety of any occupiers of the premises or any other residential premises

Informal action

Informal action is less likely to be considered when the property of concern is within a targeted or priority area of the city as identified by intelligence or modelling.

Informal action includes:

- Offering advice
- Giving verbal and written warnings

- Negotiating agreements between complainants and other residents or businesses
- The negotiation of specific conditions with licences, and
- The use of informal notices – which may include a warning of straight to enforcement action should the matter recur.

It is generally considered appropriate to take informal action in one or more of the following circumstances:

- The act or omission is not serious enough to warrant formal action.
- From the business'/member of public's past history it can be reasonably expected that informal action will achieve compliance with the law.
- The consequences of non-compliance will not pose a significant risk

Fixed penalty notices/penalty charge notice/monetary penalty

An authorised officer may issue fixed penalty notices where the legislation allows and where there is reason to believe an offence has been committed under specific legislation and there is sufficient evidence to meet any subsequent prosecution. This notice will give the offender the opportunity to avoid prosecution for that offence by the payment of a fixed penalty.

A fixed penalty notice will be issued only where a member of the public has committed the specific offence and is unable to provide a satisfactory explanation or defence. The notice will be issued with verbal and where possible, written advice.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 created the power to issue a penalty charge notice when these regulations were in breach as they are solely civil legislation. This policy has been adopted across Tyne and Wear to provide for a consistent approach. This policy is detailed in Appendix 2 of this document.

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 created a power to issue a monetary penalty to letting agents and property management professionals who fail to join a nationally recognised redress scheme. This policy is detailed in Appendix 8.

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2016 allows authorised officers to apply certain financial penalties where landlords do not bring their privately rented properties up to the legal minimum standard. This policy is detailed in Appendix 9.

Civil Proceedings

Where appropriate, Sunderland City Council will use civil proceedings in the fulfilment of its duties. For example, an injunction may be sought to prevent a business from continuing to breach consumer's rights and causing financial harm.

Management Orders

The making of an interim management order/final management order is a power - and in certain instances, a duty - conferred upon the Council by Part 4 of the Housing Act 2004. Where a HMO is subject to mandatory licensing, or a property is subject to selective licensing, and has not been so licensed, or a licence has been revoked but the revocation is not yet in force, the Council must make an interim management order if it appears to it that there is no reasonable prospect of the property being licensed (or, upon a revocation coming into effect, further licensed) in the near future or that the making of an order is necessary to protect the health and safety or welfare of persons occupying it or persons occupying or having an estate or interest in any premises in the vicinity.

The council has a power to make an interim management order for a HMO that is not subject to mandatory licensing when it is it is necessary to protect the health and safety or welfare of persons occupying it or persons occupying or having an estate or interest in any premises in the vicinity, subject to obtaining authorisation from the appropriate First-tier Tribunal.

An interim management order will be replaced by a final management order if, upon expiry of the interim order, the council is still unable to grant a licence for the premises or, should the premises no longer be required to be licensed, if the council considers that the making of a final order is necessary for the purpose of protecting, on a long term basis, the health, safety or welfare of persons occupying the house, or persons occupying or having an estate or interest in any premises in the vicinity.

Special Interim Management Orders

Where the Council is satisfied that a significant and persistent problem of anti-social behaviour in an area is attributable, in whole or in part, to the anti-social behaviour of an occupier of a private sector HMO or other dwelling and that the landlord is failing to take action to combat the problem, the Council has the power to make a Special Interim Management Order. The making of an order must be authorised by the relevant Tribunal and, when combined with other measures, must be considered likely to lead to a reduction in the problem and be necessary for the purpose of protecting the health and safety or welfare of persons occupying the house or persons occupying or having an estate or interest in any premises in the vicinity of the house.

Empty Dwelling Management Orders (EDMO)

Empty homes represent waste and missed opportunity, as well as restricting housing supply. They can blight communities, attract vandals and squatters and tie up the resources of the Council and the emergency services. A dwelling that is left unoccupied and not maintained will, over time, begin to impact on its surroundings and is at risk from being broken into by vandals and squatters. Neighbouring properties can be affected by the physical decline of a poorly maintained property. The only effective way to reduce the negative impact of an empty dwelling is to secure its occupation. It is therefore of public interest that empty homes are brought back into use. Where reasonable forms of engagement have been attempted with the property owner to bring a property back into use and a valid exemption is not in force the Council may consider the use of an EDMO provided that the property has been empty for at least 2 years.

If after serving an interim empty dwelling management order the Council considers that there are no steps it can appropriately take under the order to ensure that the property becomes occupied, it will either make a final empty property management order, or revoke the order without taking any further action

Statutory notices

A wide range of legislation contains provisions for the use of statutory notices, which legally require the execution of works, the removal of statutory nuisances or the protection of public health and/or safety. Only officers specifically authorised are permitted to serve statutory notices.

Notices will normally be served where:

- informal action has not achieved the desired effect,
- there is a lack of confidence that the individual/company will respond to an informal approach,
- there is a history of non-compliance with informal action,
- standards are generally poor with little management awareness of statutory requirements,
- the consequences of non-compliance could be potentially serious to the health and safety of the public

Realistic time limits will be attached to notices and wherever possible these will be agreed in advance with the person or business on which they are served. In some circumstances, requests for extension of time can be made. These should be made in writing to the officer issuing the notice, prior to the expiry date, explaining the reason for the request.

Statutory notices may also be served in conjunction with prosecutions. Accompanying every notice served will be notes explaining the appeal procedure, schedules where appropriate and each notice will include officer contact details.

Having regard to statutory powers, and where the law allows, a charge will apply to statutory notices. All charges will be levied on the person upon whom the notice is served and will be made at a level fixed within the Council's agreed charges having regard to a written record assessing costs reasonably incurred. In all cases the Council will instigate debt recovery action.

Where a notice is not complied with by the expiry date, a prosecution may be considered appropriate. In these circumstances a case file will be prepared and passed to senior management and the Council in house legal team for a decision as to whether prosecution or some other form of enforcement action is appropriate.

Work in default

In some circumstances, failure to comply with a notice may result in the City Council arranging for the necessary works to comply with the notice to be carried out (work in default), in addition to or instead of a prosecution or administration of a simple caution. The cost to the owner will usually be more than if the owner carries out the works themselves as they will be charged for officer time on visits, carrying out schedules of work and any other reasonable costs incurred by the local authority.

The council will actively pursue the recovery of such costs. Enforced sale of empty properties will be considered where appropriate in line with the Law of Property Act 1925 and where eligible costs have been incurred, for example following works undertaken by the Council to an empty home upon the owners default. Until cleared all expenses recoverable by the Council will be registered as a financial charge in the Local Land Charges Register. Until recovered, the expenses will accrue compound interest.

Simple Cautions

The use of Simple Cautions is advocated by the Home Office in situations where there is evidence of a criminal offence but the public interest does not require a prosecution.

It may be used for cases involving first time, low-level offences where a Simple Caution can meet the public interest. Decisions to issue Simple Cautions must be made in accordance with the Director of Public Prosecutions' Guidance on Charging

Before a Simple Caution is offered to an offender, it is important to try to establish:

- The views of the victim about the offence,
- The nature and extent of any harm or loss, and its significance, relative to the victim's circumstances
- Whether the offender has made any form of reparation or paid compensation

A Simple Caution must be accepted in writing by the offender (or suitably authorised officer of a limited company which is the alleged offender), who is then provided with a copy of the caution. A second copy is held as the official record. Failure by an offender to accept a Simple Caution leaves the authority with an option to instigate legal proceedings instead.

Simple Cautions are viewed as valuable enforcement tools because they can be cited in court the same way as previous convictions can after a trial and upon sentencing or if a guilty plea is entered, if the same person or organisation commits similar offences at some future date and typically both save officer time and reduce the burden placed upon the court system. It is important to note that a Simple Caution is spent as soon as they are administered.

Prosecutions

Prosecution will normally be reserved where one or more of the following circumstances apply:

- It is warranted by virtue of 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 offender
- There have been repeated breaches of legal requirements and it appears that business proprietors or members of the public are neither willing nor able to deal adequately with the causes of the offence.
- There has been a reckless disregard for the safety and health of people, or where a particular contravention has caused serious public alarm.
- There has been failure to comply with a legal notice or a repetition of a breach that was subject to a Simple Caution, or failure to pay a fixed penalty notice within the permitted payment period;
- There has been a blatant disregard for the law;
- 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 course of their duties. Where inspectors are assaulted we will seek prosecution of offenders.

In all cases, alleged offenders will be invited to attend an interview under caution or, in appropriate cases, to submit written responses to written questions put to them under caution.

Civil penalties

Civil penalties were introduced by the Housing and Panning Act 2016 as an alternative to prosecutions for certain offences under the Housing Act 2004. Appendix 3 of this Policy details the approach Sunderland will take towards the use of civil penalties as an alternative to prosecutions.

The standard of proof required in both a prosecution and use of civil penalty is the criminal standard of beyond all reasonable doubt. Before issuing a civil penalty or commencing a prosecution, due regard will be given to the Code for Crown Prosecutor. A breach of the rules or regulations covering safety standards within the home will, in almost all cases, justify a decision that the commencement of proceedings or the issuing of a civil penalty is in the public interest.

Sunderland City Council reserves the right to issue a Civil Penalty in lieu of prosecution whenever this is considered to be appropriate and this decision will be made by a Senior Manager on a case by case basis. It is envisaged that the most serious cases where significant and very serious harm or death being caused as a result of blatant disregard to the law would be put forward for prosecution, but the merits of each case would still need to be considered with the potential for a Civil Penalty still being issued in these circumstances.

This area of the law is relatively new and lessons are still being learnt as the suite of case law and tribunal decisions grows. Appendix 3 of this policy will therefore be kept under review and updated as appropriate. Sunderland City Council will adopt a logical and methodical, open and transparent approach as to how Civil Penalties are calculated. The Council has looked at the approaches other local authorities across the Country and has sought to identify best practice and go forward with a policy on Civil Penalties that has already been the subject of scrutiny by the First Tier Tribunal.

With this in mind the policy adopted is based upon work undertaken by Nottingham City Council and Sunderland expresses its thanks for the support that Nottingham City Council has given as they lead the way nationally with their stance on Civil Penalties. This approach will also have the benefit of giving regional consistency as other North East local authorities have based, or are in the process of basing, their Civil Penalty policies on the Nottingham Model.

The Tenant Fee Act 2019 has also introduced civil penalties for dealing with landlords and managing agents who charge prohibited fees. This legislation became law on the 1 June 2019. Appendix 10 details the policy Sunderland City Council will operate to.

Rent Repayment Orders

A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent.

The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed.

Rent repayment orders have now been extended through the Housing and Planning Act 2016 to cover a much wider range of offences, described below:

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

Rent repayment orders can be granted to either the tenant or the local housing authority. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent basis.

A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty.

The Council must consider a rent repayment order after a person is the subject of a successful civil penalty and in most cases the Council will subsequently make an application for a rent repayment order to recover monies paid through Housing Benefit or through the housing element of Universal Credit.

The Council may offer advice, guidance and support to assist tenants to apply for a rent repayment order if the tenant has paid the rent themselves.

Licensing

Houses in multiple occupation (HMOs)

In Sunderland, there are several hundred HMOs. An HMO is a property that is occupied by at least 3 people in more than 1 household that share facilities.

As HMOs are higher risk than single family homes, the conditions, facilities and management are regulated. Some HMOs are subject to licensing:

- Mandatory HMO Licensing
- Additional HMO Licensing (not currently applied in Sunderland)
- Other HMO's which do not currently require a licence are subject to the Management of Houses in Multiple Occupation (England) Regulations 2006 and The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007.

Fees are payable for the processing and issuing of a licence and these are subject to change. Current fees are detailed in Appendix 1. They are considered to be compliant with the legislation and current case law and will be kept under review to ensure that they continue to be so.

Selective Licensing

Sunderland currently does not have any active Selective Licensing schemes/areas of the city, however this wull be kept under review. The aim of a Selective Licensing area or scheme is to promote good management of privately rented properties within a designated area. A licence is required for each privately rented dwelling in the designated area.

The HMO and selective licensing regimes include arrangements for assessing the suitability of the premises for the number of occupants, including the adequacy of the amenities. They also provide for the assessment of the fitness of a person to be the licence holder and the potential management arrangements of the premises.

It is a criminal offence if a person controlling or managing an HMO or privately renting a property in a selective licensing area does not have the required licence. Failure to comply with any condition attached to a licence is also an offence. The Council will consider all available enforcement options in accordance with this Policy when dealing with unlicensed properties and breaches of the licence conditions.

Subject to the provisions of this Policy, the Council will vigorously pursue anyone who is controlling or managing a property without a licence and, where appropriate, it will impose civil penalties on them or pursue their prosecution.

Duration of Licences

Licences will normally be granted for the full five-year period. The length of the licence may be reduced from five years to a lesser period where the Council considers this is appropriate. Some examples of this may be: -

- Where other legislation requires regulation of the property, e.g. where planning consent is required for its use.
- Where there are concerns that the proposed management arrangements may not be satisfactory and evidence is required that management is satisfactory before allowing a longer licence period to be granted.
- In the case of delayed applications, to remove any advantage gained over those licence holders who applied at the appropriate time.
- Where a scheme is time limited by law.

The detailed policy in relation to shorter licence duration is detailed in Appendix 7.

Enforced Sales

If a charge has been recorded in the Local Land Charges register and it is statutorily a priority charge, the council may opt to recover the debt by way of an enforced sale of the charged property.

The criteria for carrying out an enforced sale would be:

- The total debt on the property should normally exceed £500
- The property is vacant and has been empty for more than 2 years.
- The necessary enforcement notices and documents have been served.

Upon disposal of the property the Council will recover all of its debts and costs from the sale proceeds. The balance will be paid to the owner or, in the case of an unknown/missing owner, held by the Council for 12 years until it is claimed.

Publicity and sharing of evidence

We will endeavour to secure media representation at hearings in the Courts when prosecuting of offenders, with the aim of drawing the public's attention to the court case. Thereafter we will publicise any conviction, which could serve to draw attention to the need to comply with the law or, deter anyone tempted to act in a similar manner. Details of such cases will also be published on our website.

The Council will share intelligence and evidence, secured in the ordinary course of our business, with other statutory enforcement bodies and relevant partners in accordance with our duties under Crime and Disorder Act 1988, section 17A.

Appendix 1
Fees & Charges

Houses in Multiple Occupation

Application for a standard 5 bedroom (5 person) licence by proposed licence holder.	£866
Charge levied for every additional person/bed space above the standard 6 per person/room	£16.46
Variation of an existing licence, e.g. change in occupancy levels or change in manager.	No Charge
Change in permanent home or business address of licence holder.	No Charge

Cost to undertake work in default of statutory notice

This is the cost to the Authority to undertake the necessary work including officer and administration time in arranging the contractor/work, service of the various notices/demands for payment and invoicing, registering a local land registry charge incurring interest as specified at either the national rate or other rate set by Sunderland City Council, which continues to accrue until the moneys are recovered

Charges for Notices

Section 49 of the Housing Act 2004 gives local authorities the power to make a reasonable charge to recover certain expenses incurred by them when taking enforcement action under the Act. This includes service of statutory notices to remove hazards under sections 11, 12, 20, 21, 40 and 43 of the Act.

Hazard Awareness Notice	£396.38
Improvement Notice	£396.38
Prohibition and Emergency Prohibition Order	£396.38
Emergency Remedial Action Notice	£396.38 plus the cost of the work
Multiple Notices	£396.38 plus any incidental costs

Appendix 2: The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

1. Statement of Principles

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduces the following requirements for all tenanted premises during any period beginning on or after 1st October 2015 when the premises are occupied under the tenancy—

- a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation;
- a carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
- checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

2. Enforcement

Where the Local Housing Authority has reasonable grounds to believe that

- there are no or an insufficient number of smoke alarms or carbon monoxide detectors in the property as required by the regulations or;
- The smoke alarms or carbon monoxide detectors were not working at the start of a tenancy or licence.
- Then the Authority shall serve on the landlord, in a method prescribed by the Regulations, a Remedial Notice detailing the actions the landlord must take to comply with the Regulations.
- If after 28 days the landlord has not complied with the Remedial Notice, a Penalty Charge shall be levied through a penalty charge notice.

3. Level of Penalty Charge

The Penalty Charge shall be set at £1,000 for the first offence, reduced to £750 if paid within a 14 day period. It will cover the cost of all works in default, officer time, recovery costs, legal costs, an administration fee and a fine.

Should the landlord not comply with future Remedial Notices then the fine shall be set accordingly :

Second offence - £2,000, Third offence - £3,000, Fourth offence - £4,000, Fifth or More offence - £5,000

No discount will be given for prompt payment after the first occasion.

4. Recovery of penalty charge

The local housing authority may recover the penalty charge as laid out in the Regulations.

5. Appeals in relation to a penalty charge notice

The landlord can request in writing, in a period that must not be less than 28 days beginning with the day on which the penalty notice was served, that the local housing authority review the penalty charge notice.

The local housing authority must consider any representation and decide whether to confirm, vary or withdraw the penalty charge notice. A landlord who is served with a notice confirming or varying a penalty charge notice may appeal to the First-tier Tribunal against the local housing authority's decision.

Appendix 3 Sunderland City Council Civil Penalty Policy under the Housing and Planning Act 2016

Section 1 - Introduction & Overview

1.1 Introduction

This document is produced following the guidance issued by the Department for Communities and Local Government (DCLG) in relation to the use of Civil Penalties under the Housing Act 2004 (as amended by the Housing and Planning Act 2016).

Sunderland City Council's policy is based on the work undertaken by Nottingham City Council on the use of Civil Penalties. The policy developed by Nottingham has been tested by, and has successfully withstood, a number of challenges to date and meets the requirements of DCLG Guidance.

As such Sunderland City Council acknowledges the work of Nottingham City Council and expresses its thanks to that Authority for the support and advice offered to Sunderland when adopting the policy and use of the civil penalty calculation tools.

This document stands alongside the Sunderland City Council – Private Sector Housing Enforcement Policy, as published by Sunderland City Council and is an appendix to that policy, which will be kept under review as the law in this area develops.

In this document, the term "landlord" will be used to refer to the "owner", "person having control", "person managing" or "licence holder", as defined under the Housing Act 2004 ("the 2004 Act"). For the purposes of this Civil Penalty Policy only, the term "landlord" will also be used to refer to tenants of houses in multiple occupation (HMOs) who have committed offences under section 234 of the Housing Act 2004. The term "the Council" will be used to refer to Sunderland City Council in its capacity as a Local Housing Authority.

1.2 What is a civil penalty?

A civil penalty is a financial penalty of up to £30,000 which can be imposed on a landlord as an alternative to prosecution for specific offences under the 2004 Act. The amount of penalty is determined by the Council in each case. Section 2 sets out how the Council will determine the appropriate level of civil penalty.

The Council considers that the most likely recipients of civil penalty notices will be those persons who are involved in the owning or managing private rented properties. However, the Council does have the power to impose them on tenants of Houses in Multiple Occupation, for offences under section 234 of the Housing Act 2004, and will consider doing so where it is deemed appropriate.

1.3 What offences can civil penalties be imposed for?

A civil penalty can be considered as an alternative to prosecution for any of the following offences under the 2004 Act:

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of HMOs (section 72);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95);
- Failure to comply with an overcrowding notice (section 139(7));
- Failure to comply with management regulations in respect of HMOs (section 234).

1.4 What is the legal basis for imposing a civil penalty?

Section 249A and Schedule 13A of the Housing Act 2004 (as amended by the Housing and Planning Act 2016) enables the Council to impose a civil penalty as an alternative to prosecution for specific offences under the 2004 Act.

1.5 What is the burden of proof for a civil penalty?

The same criminal standard of proof is required for a civil penalty as for a criminal prosecution. This means that before a civil penalty can be imposed, the Council must be satisfied beyond reasonable doubt that the landlord committed the offence(s) and that if the matter were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.

In determining whether there is sufficient evidence to secure a conviction, the council will have regard to the Sunderland City Council – Private Sector Housing Enforcement Policy and the Crown Prosecution Service Code for Crown Prosecutors, published by the Director of Public Prosecutions. The finding that there is a realistic prospect of conviction is based on an objective assessment of the evidence, including whether the evidence is admissible, reliable and credible and the impact of any available defence.

1.6 What must be done before a Civil Penalty can be considered?

The council must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against the landlord and that the public interest will be properly served by imposing a civil penalty. The following questions should be considered:

- Does the council have sufficient evidence to prove beyond reasonable doubt that the offence was committed by the landlord in question?
- Is the public interest properly served by imposing a Civil Penalty on the landlord in respect of the offence?
- Has the evidence been reviewed by the appropriate senior colleague at the council?
- Has the evidence been reviewed by the council's legal services?
- Are there any reasons why a prosecution may be more appropriate than a civil penalty? I.e. the offence is particularly serious and the landlord has committed similar offences in the past and/or a banning order should be considered.

1.7 When will the Council consider civil penalties an enforcement option?

The council will consider Civil Penalties for all landlords that are in breach of one or more of the sections of the 2004 Act listed in section 1.3. Enforcement action will be considered on a case-by-case basis in line with the Sunderland City Council – Private Sector Housing Enforcement Policy.

1.8 The Totality Principle

Where a landlord has committed multiple offences, and a civil penalty could be imposed for each one, consideration should be given to whether it is just and proportionate to impose a penalty for each offence – subject always to the proviso that by virtue of section 249A(3) of the 2004 Act, only one financial penalty may be imposed on a person in respect of the same conduct.

When calculating the penalty amounts for multiple offences, there will inevitably be a cumulative effect and care should be taken to ensure that the total amount being imposed is just and proportionate to the offences involved.

Having regard to the above considerations, a decision should be made about whether a civil penalty should be imposed for each offence and, if not, which offences should be pursued. Where a single more serious offence can be considered to encompass several other less serious offences, this is the offence that will normally be considered for the civil penalty. Deciding not to impose a civil penalty for some of the offences does not mean that other enforcement options, such as issuing a simple caution, cannot be pursued for those offences.

Section 2 – Determining the Civil Penalty Amount

2.1 Overview

The Council has the power to impose a civil penalty of up to £30,000; this section sets out how the council will determine the appropriate level of civil penalty in each particular case. The actual amount levied in each case should reflect the severity of the offence and take into account the landlord's income and track record.

The civil penalty will be made up of two distinct components. The first is the penalty calculation; this is where the severity of the offence, the landlord's track record and the landlord's income are considered. The second considers the amount of financial benefit, if any, which the landlord obtained from committing the offence. These two components are added together to determine the final penalty amount that will be imposed on the landlord.

This process is broken down into four main stages:

- Stage 1 determines the penalty band for the offence. Each penalty band has a starting amount and a maximum amount.
- Stage 2 determines how much will be added to the penalty amount as a result of the landlord's income and track record.
- Stage 3 is where the figures from stage 2 are added to the penalty band from stage 1. The total amount at this stage cannot go above the maximum amount for the particular penalty band.
- Stage 4 considers any financial benefit that the landlord may have obtained from committing the offence. This amount will be added to the figure from stage 3.

The council reserves the right to use any appropriate calculation tools which reflect the levels set out in the policy.

Stage 1 – Determining the Penalty Band

2.2 Stage 1 Overview

This stage considers the landlord's culpability for the offence and the seriousness of harm risked to the tenants or visitors to the property.

A higher penalty will appropriate where the landlord has a history of failing to comply with their obligations and/or their actions were deliberate. Landlords are running a business and are expected to be aware of their legal obligations. There are four steps to this process and each step is set out below.

2.3 Step 1: Culpability

Table 1 sets out the four levels of culpability that will be considered: each level has accompanying examples of the behaviours that could constitute that particular level. The behaviour of the landlord should be compared to this table to determine the appropriate level of culpability. This exercise will be repeated for each offence that is being considered as the landlord's culpability may vary between offences. Table 1 is taken from Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline effective from the 1st February 2016 as a model template.

Table 1 - Levels of Culpability

Very high	Deliberate breach of or flagrant disregard for the law
High	Offender fell far short of their legal duties; for example, by: - failing to put in place measures that are recognised legal requirements or regulations; - ignoring warnings raised by the local Council, tenants or others; - failing to make appropriate changes after being made aware of risks, breaches or offences; - allowing risks, breaches or offences to continue over a long period of time. Serious and/or systemic failure by the person or organisation to comply with legal duties.
Medium	Offender fell short of their legal duties in a manner that falls between descriptions in 'high' and 'low' culpability categories. Systems were in place to manage risk or comply with legal duties but these were not sufficiently adhered to or implemented.
Low	Offender did not fall far short of their legal duties; for example, because: - significant efforts were made to address the risk, breaches or offences, although they were inadequate on this occasion; - they have offered a reasonable defence for why they were unaware of the risk, breach or offence. Failings were minor and occurred as an isolated incident

2.4 Assessing a landlord's culpability

When assessing culpability, consider all of the evidence gathered as part of the investigation into the offence and identify any aggravating or mitigating factors which may be relevant to the assessment of culpability.

Aggravating factors could include:

- Previous convictions for similar offence/s, having regard to the time elapsed since the conviction
- Motivated by financial gain
- Obstruction of the investigation
- Deliberate concealment of the activity/evidence
- Number of items of non-compliance – greater the number the greater the potential aggravating factor
- Record of letting substandard accommodation i.e. record of having to take enforcement action previously whether complied with or not
- Record of poor management/inadequate management provision
- Lack of a tenancy agreement/rent paid in cash
- Evidence of threatening behaviour/harassment of the tenant.

Section 2.12 below provides further guidance regarding when it is appropriate to consider past enforcement action taken against the landlord.

Mitigating factors could include:

- Cooperation with the investigation e.g. turns up for the PACE interview
- Voluntary steps taken to address issues e.g. submits a prompt licence application
- Willingness to undertake training
- Level of tenant culpability
- Willingness to join recognised landlord accreditation scheme
- Evidence of health reasons preventing reasonable compliance – mental health, unforeseen health issues, emergency health concerns
- Vulnerable individual(s) (owners not tenants) where their vulnerability is linked to the commission of the offence
- Good character i.e. no previous convictions and/or exemplary conduct

Using these factors, consider each category of culpability in the table 1 and identify the one that the landlord's behaviour falls within; where a landlord's behaviour could meet more than one of the categories, choose the highest one of those met.

2.5 Step 2: Seriousness of Harm Risk

Table 2 separates the seriousness of harm risked into three levels and each one has an accompanying description to illustrate what would constitute that level of harm risked.

The harm risked by the offence should be compared to the table to determine the appropriate level. This exercise will be repeated for each offence that is being considered as the seriousness of harm risked can vary between offences.

When using the table to determine the appropriate level, consideration should be given to the worst possible harm outcomes that could reasonably occur as a result of the landlord committing the offence. This means that even if some harm has already come to tenants or visitors to the property, consideration should still be given to whether there was the potential for even greater harm to have occurred.

Table 2 - Seriousness of Harm Risked

Level A	The seriousness of harm risked would meet the guidance for Class I and Class II harm outcomes in the Housing Health and Safety Rating System.
Level B	The seriousness of harm risked would meet the guidance for Class III and Class IV harm outcomes in the 'Housing Health and Safety Rating System.
Level C	All other cases not falling within Level A or Level B (e.g. where an offence occurred but the level of harm to the tenants or visitors does not meet the descriptions for Level A or Level B).

Further information about the classes of harm under the Housing Health and Safety Rating System can be found in the Office of the Deputy Prime Minister: London (2006), Housing Health and Safety Rating System Operating Guidance, page 47.

2.6 Step 3: Penalty Levels

Using the already determined level of culpability and the seriousness of harm risked, find the appropriate penalty level (1 – 5+) in Table 3.

Table 3 - Penalty Levels

Seriousness of Harm Risked	**Culpability**			
	Very high	High	Medium	Low
Level A	5+	5	4	3
Level B	5	4	3	2
Level C	4	3	2	1

2.7 Step 4: Penalty Bands

Table 4 - Penalty Bands

Penalty Level	Penalty Band
1	£600 - £1,200
2	£1,200 - £3,000
3	£3,000 - £6,000
4	£6,000 - £15,000
5/5+	£15,000 - £30,000

Compare the penalty level from Step 3 to table 4 and this will give the penalty band for the offence. This penalty band determines both the starting amount and the upper limit for the penalty calculation. This approach has been based upon the guidance's to Magistrate's court fines and the banding of those levels.

Stage 2 – Considering the landlord's income and track record

2.8 Stage 2 Overview

There are two elements to consider in stage 2: the landlord's income and the landlord's track record. Each of these will affect the penalty calculation and further details are set out below.

2.9 The landlord's finances

Although the council is permitted to consider all of a landlord's income and assets when calculating a civil penalty, full financial investigations will normally only be considered for the more serious offences.

For penalties that fall within bands 5 and 5+, a financial investigation of the landlord will be usually carried out and all sources of income received by the landlord can be considered as 'relevant income' for the purpose calculating the civil penalty. Specifically, the average weekly income of the landlord for the 12 months preceding the date of the offence will be used.

For penalties that fall within bands 1 to 4, the landlord's income will still be considered but the 'relevant income' will normally be limited to the income that the landlord received in relation to the property where the offence occurred.

For property owners, this will be the weekly rental income, as declared on the tenancy agreements, for the property where offence occurred and at the time the offence occurred.

For property agents, the relevant income will be any fees they received for the management of the property, as stated on the management contract between the agent and the other parties to the contract. Where the fees include VAT or any other charges, the gross amount of the fees will be used.

IMPORTANT: although the council will not normally consider carrying out a full financial investigation where the offence falls within penalty bands 1 to 4, the Council does reserve the right to do so where it considers it reasonable and proportionate to the circumstances.

2.10 How is the increase as a result of the landlord's income calculated?

This is a two-step process with step 1 determining what counts as relevant weekly income and step 2 determining what percentage of this relevant weekly income should be added to the penalty amount. These steps are set out in more detail below.

Table 5 - Defining relevant weekly income

Penalty Level	Relevant Weekly Income
1	Gross rental income or management fees for the property where the offence occurred
2	
3	
4	
5/5+	All income for the offender (carry out a financial assessment)

Step 1 - take the penalty band, as determined in Stage 1, and compare it to Table 5: this will state what can be considered as relevant weekly income for the offence.

Table 6 - % of relevant weekly income

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

Step 2 - take the penalty band, as determined in Stage 1, and compare it to Table 6. This will give the percentage of the landlord's relevant weekly income will be added to the civil penalty.

2.11 What if tenancy agreements or management contracts are not available?

Tenancy agreements and property management contracts can be requested using the council's existing powers under section 235 of the Housing Act 2004 and this should be done where copies are not already available.

In cases where the landlord is not forthcoming with this information or documentation, an estimate of the average weekly income will be used instead and it will be for the landlord to make representations against this estimated figure if they deem it to be too high.

Representations against estimated incomes will only be accepted where sufficient evidence of the landlord's income is provided to support these claims. Estimates of average weekly income will be calculated on a case by case basis but they will generally be based on an assessment of similar sized rental properties in the same area as the property to which the offence relates.

IMPORTANT – the council will not normally consider a landlord's assets but does reserve the right to consider assets in any cases where the Council considers it reasonable and proportionate to do so. Each of these cases will be dealt with on a case by case basis.

2.12 The Landlord's track record

A higher penalty will be appropriate where the landlord has a history of failing to comply with their obligations; as such, the track record of the landlord will be an important factor in determining the final amount of the civil penalty that is imposed. Below are questions that must be asked for each landlord that will receive a civil penalty.

1) Has the landlord had any relevant[1] notices, under Part 1 of the Housing Act 2004, served on them in the last 5 years? If so, how many times have they been subject to such enforcement action in that timeframe?
2) Has the landlord had any civil penalties imposed on them in the last 2 years? If so, how many civil penalties have been imposed on them in that timeframe?
3) Has the landlord accepted any cautions for relevant[1] offences in the last 2 years? If so, how many cautions for relevant offences[1] have they accepted in that timeframe?
4) Has the landlord been sent a letter, in the last 2 years, which informed them that they are now subject to a 'straight to enforcement action' approach?
5) Has the landlord owned or managed a property where the term of an existing licence for the property, under the Housing Act 2004, was reduced due to enforcement action or significant concerns, in the last 2 years?
6) Has the landlord breached any relevant[2] notices, which resulted in works in default being carried out, in the last 2 years? If so, how many times have works in default been carried out under such circumstances in that timeframe?
7) Has the landlord owned or managed a property where a licence for the property, under the Housing Act 2004, was revoked due to enforcement action or significant concerns, in the last 2 years?
8) Has the landlord been prosecuted for any relevant[3] offences in the last 2 years? If so, how many times have such prosecutions taken place in that timeframe?
9) Has the landlord owned or managed a property which was subject to an interim or final management order under the Housing Act 2004 in the last 2 years?

10) Has the Landlord been the subject of a banning order under the Housing and Planning Act 2016 in the last 2 years?

[1] any action under Part 1 other than a 'hazard awareness' notice or a 'clearance area'.

[2] any notices served under any legislation relating to housing, public health or environmental health.

[3] any unspent convictions relating to any provision of any enactment relating to housing, public health, environmental health or landlord and tenant law which led to civil or criminal proceedings resulting in a judgement being made against the offender.

IMPORTANT – question 1 refers to all relevant notices served during the five years: this means that where the offence is failure to comply with an improvement notice, that notice should also be included in the answer to the question

2.13 How is the increase as a result of the Landlord's track record calculated?

Table 7 - Weightings

Category	Weighting
Category 1 (Least serious)	1
Category 2 (Moderately Serious)	5
Category 3 (Very Serious)	10
Category 4 (Most serious)	20

Each of the questions will be placed into one of four categories, based on the seriousness of the offence or enforcement action to which the question refers. Each category of question is given a weighting that increases with the seriousness of the category. Table 7 shows the four categories and the weighting which is applied to each one.

Any questions where the answer is 'no' will have a weighting of zero but 'yes' answers will accrue the weighting for that particular question. E.g. the weighting for a question is 10 and the answer to that question is 'yes' so the score for that particular question will be 10.

For those questions where the number of occasions is relevant, the total weighting for a 'yes' answer will be the weighting for that question multiplied by the number of occasions. E.g. if a question has a weighting of 5 and the landlord has committed the offence 3 times, this will give a total score of 15 for the question. Table 8 shows the category which each of the questions falls within and the subsequent weighting that is applied as a result.

Table 8 - Questions & Weightings

Questions	Weighting for a 'Yes' answer	Multiplied by the number of occasions?
Has the landlord had any relevant[1] notices, under Part 1 of the Housing Act 2004, served on them in the last 5 years?	1	Yes
Has the landlord had any civil penalties imposed on them in the last 2 years?	5	Yes
Has the landlord accepted any cautions for relevant[1] offences in the last 2 years?	10	Yes
Has the landlord been sent a letter, in the last 2 years, which informed them that they are now subject to a 'straight to enforcement action' approach?	5	No
Has the landlord owned or managed a property where the term of an existing licence for the property, under the Housing Act 2004, was reduced due to enforcement action or significant concerns, in the last 2 years?	5	No
Has the landlord breached any relevant[2] notices, which resulted in works in default being carried out, in the last 2 years?	10	Yes
Has the landlord owned or managed a property where a licence for the property, under the Housing Act 2004, was revoked due to enforcement action or significant concerns, in the last 2 years?	10	No
Has the landlord been prosecuted for any relevant[3] offences in the last 2 years?	20	Yes
Has the landlord owned or managed a property which was subject to an interim or final management order under the Housing Act 2004 in the last 2 years?	20	No
Has the landlord been the subject of a banning order under the Housing and Planning Act 2016 in the last 2 years?	20	No

[1] any action under Part 1 other than a 'hazard awareness' notice or a 'clearance area'.

[2] any notices served under any legislation relating to housing, public health or environmental health.

[3] any unspent convictions relating to any provision of any enactment relating to housing, public health, environmental health or landlord and tenant law which led to civil or criminal proceedings resulting in a judgement being made against the offender.

Table 9 - % Increase

Score	%	Score	%
0	0%	21	55%
1	5%	23	60%
3	10%	25	65%
5	15%	27	70%
7	20%	29	75%
9	25%	31	80%
11	30%	33	85%
13	35%	35	90%
15	40%	37	95%
17	45%	39+	100%

Once all the questions have been answered, the weighting for each is totalled and compared to Table 9: this gives the percentage increase that will be applied to the penalty amount. The increase will be a percentage of the starting amount for the penalty band that the offence falls within. E.g. the total score for the questions is 23 and so the corresponding percentage increase in Table 9 will be 60%.

IMPORTANT - the penalty calculation will never be increased past the upper limit of the penalty band: however, where the landlord has a history of non-compliance, it is appropriate to factor this into your assessment of their overall culpability. This could affect your initial assessment of the appropriate penalty level and lead to a higher penalty band being used as the starting point.

Stage 3 – Adding income and track records amounts to the penalty band

2.14 Stage 3 Overview

Stage 1 gives the penalty band for the offence and this determines the starting amount and the upper limit for the penalty calculation. Stage 2 gives the amount that should be added as a result of the landlord's income and the amount that should be added as a result of the landlord's track record.

2.15 How are the figures from stage 1 and stage 2 combined?

To get the amount of the penalty calculation, the two figures from Stage 2 should be added to the starting amount for the penalty band. E.g. if the increase for income is

£500 and the increase due to the landlord's track record is £1000, these two figures are added to the starting amount for the penalty to arrive at the penalty calculation amount.

If the amount calculated, by adding the figures for the landlord's income and track record, is less than the upper limit for the penalty band, then this is the amount that will be used. However, if the amount calculated is greater than the upper limit for the penalty band, then the upper limit will be used instead.

Stage 4 – Financial benefit obtained from committing the offence

2.16 Stage 4 Overview

A guiding principle of civil penalties is that they should remove any financial benefit that the landlord may have obtained as a result of committing the offence. This means that the amount of the civil penalty imposed should never be less than it would have reasonably cost the landlord to comply in the first place.

2.17 How is the financial benefit determined?

Calculating the amount of financial benefit obtained will need to be done on a case by case basis but the table below gives some examples of potential financial benefit for each of the offences.

Offence	Examples of potential financial benefit
Failure to comply with an Improvement Notice (section 30)	The cost of any works that were required to comply with the improvement notice but which have not been removed by works in default.
Offences in relation to licensing of HMOs (section 72)	Rental income whilst the HMO was operating unlicensed or where it was occupied by more than the number of persons authorised by the licence; the cost of complying with any works conditions on the licence; the cost of the licence application fee.
Offences in relation to licensing of houses under Part 3 of the Act (section 95)	Rental income whilst the property was operating unlicensed or where it was occupied by more than the number of persons authorised by the licence; the cost of complying with any works conditions on the licence; the cost of the licence application fee.
Offence of contravention of an overcrowding notice (section 139)	Rental income whilst the property is being occupied in contravention of the overcrowding notice.
Failure to comply with management regulations in respect of HMOs (section 234)	The cost of any works that are required to avoid breaching the regulations.

2.18 How is financial benefit added to the penalty amount?

The council will need to be able to prove that financial benefit was obtained before it can be included in the civil penalty calculation. However, where it can be proven, the amount obtained should be added to the penalty calculation amount from Stage 3 and this will give the final civil penalty amount that will be imposed on the landlord.

IMPORTANT – where the landlord has obtained financial benefit in the form of rental income and this full amount has been added to the total penalty, it will be appropriate to take this into consideration when deciding whether or not to pursue a Rent Repayment Order. For more information on Rent Repayment Orders, see Sunderland City Council – Rent Repayment Orders Guidance.

Section 3 – Imposing a Civil Penalty

3.1 Where is the process for civil penalties set out?

Schedule 13A of the Housing Act 2004 sets out the process which must be followed when imposing a civil penalty.

3.2 Notice of Intent

Before imposing a civil penalty on a landlord, the Council must serve a 'notice of intent' on the landlord in question. This notice must be served within 6 months of the last day on which the Council has evidence of the offence occurring. This notice must contain the following information:

- The amount of the proposed civil penalty;
- The reasons for proposing to impose a civil penalty, and;
- Information about the Landlord's right to make representations to the Council.

3.3 Representations

Any landlord who is in receipt of a notice of intent has the right to make written representations against that notice within 28 days of the date on which the notice was given. Representations can be against any part of the proposed course of action. All representations from landlords will be considered by an appropriate senior officer.

Where a landlord challenges the amount of the civil penalty, it will be for the landlord to provide documentary evidence (e.g. tenancy agreements etc.) to show that the calculation of the penalty amount is incorrect. Where no such supporting evidence is provided, the representation against the amount will not be accepted.

Written responses will be provided to all representations made by the recipients of a notice of intent. No other parties have an automatic right to make representations but if any are received, they will be considered on a case by case basis and responded to where the Council considers it necessary.

3.4 Final Notice

Once the representation period has ended, the council must decide, taking into consideration any representations that were made, whether to impose a civil penalty and the final amount of the civil penalty. The final amount of a civil penalty can be a lower amount than was proposed in the notice of intent but it cannot be a greater amount.

The imposing of a civil penalty involves serving a final notice and this notice must contain the following information:

- The amount of the financial penalty;
- The reasons for imposing the penalty;
- Information about how to pay the penalty;
- The period for payment of the penalty;
- Information about rights of appeal, and;
- The consequences of failure to comply with the notice.

The period of payment for the civil penalty must be 28 days beginning with the day after that on which the notice was given.

3.5 Withdrawing or amending notices

At any time, the Council may withdraw a notice of intent or a final notice or reduce the amount of a civil penalty. This is done by giving notice in writing to the person on whom the notice was served.

Where a civil penalty has been withdrawn, and there is a public interest in doing so, the Council can still pursue a prosecution against the landlord for the conduct for which the penalty was originally imposed. Each case will be considered on a case by case basis.

3.6 Appeals to the Tribunal

If a civil penalty is imposed on a landlord, that Landlord can appeal to the First-tier Tribunal ("the Tribunal") against the decision to impose a penalty or the amount of the penalty. The Tribunal has the power to confirm, vary (increase or reduce) the size of the civil penalty imposed by the Council, or to cancel the civil penalty. Where an appeal has been made, this suspends the civil penalty until the appeal is determined or withdrawn.

3.7 Payment of a Civil Penalty

A civil penalty must be paid within 28 days, beginning with the day after that on which the final notice was given ("the 28 day payment period"), unless that notice is suspended due to an appeal. Details of how to pay the penalty will be provided on the final notice.

3.8 Other consequences of having a Civil Penalty imposed

Where a civil penalty has been imposed on a landlord, this will form a part of our consideration when reviewing licence applications for properties in which they have some involvement. This includes licences under Part 2 or Part 3 of the Housing Act 2004.

Whilst a civil penalty will not automatically preclude us from granting a licence where such persons are involved, the reasons for imposing the penalty and the extent of the person's involvement in the property will be considered.

Where a landlord has two civil penalties imposed on them in a 12 month period, each for a banning order offence, the Council will include their details on the Database of Rogue Landlords and Property Agents.

"Banning order offence" means an offence of a description specified in regulations made by the Secretary of State under Section 14(3) of the Housing and Planning Act 2016.

3.9 Recovering an unpaid civil penalty

It is the policy of the Council to consider all legal options available for the collection of unpaid civil penalties and to pursue unpaid penalties in all cases through the county courts. This action will usually begin at least 35 days after the final notice with the civil penalty amount has not been issued and not paid or appealed. Some of the orders available to the Council through the county courts are as follows:

- A Warrant of Control for amounts up to £5,000;
- A Third Party Debt Order;
- A Charging Order, and;
- Bankruptcy or insolvency.

A certificate, signed by the Chief Finance Officer for the Council and stating that the amount due has not been received by the date of the certificate, will be accepted by the courts as conclusive evidence of the payment due. In addition to this it may also be of a practical benefit to the officer pursuing the debt through the Courts to include a N322a and COT3 court form.

Where a Charging Order has been made, and the amount of the order is over £500, the Council can consider applying for an Order for Sale against the property or asset in question. When considering which properties to apply for a Charging Order against, the Council can consider all properties owned by the Landlord and not just the property to which the offence relates.

Where the civil penalty was appealed and the Council has a tribunal decision, confirming or varying the penalty, the decision will be automatically registered on the Register of Judgments, Orders and Fines, once accepted by the county court.

Inclusion on this Register may make it more difficult for the Landlord to get financial credit.

3.10 Income from Civil Penalties

Any income from Civil Penalties is retained by the Local Housing Authority which imposed the penalty. The Council must spend any income from Civil Penalties on its enforcement functions in relation to the private rented sector. Further details can be found in Statutory Instrument No. 367 of 2017.

Appendix 4
Rent Repayment Orders

1.1. Purpose

Rent Repayment Orders (RROs) can be used as a means to require a landlord to repay a specified amount of rent.

1.2. Legislation

Housing and Planning Act 2016 Part 2, Chapter 4.

1.3. Background

The Housing Act 2004 introduced RROs to require a landlord to repay the rent that had been paid in respect of a property that should have been licensed, but where he had failed to seek such a licence (and had therefore avoided the requirements to ensure that the property was well managed and of a good standard that would have formed part of the licence process).

RROs have now been extended through the Housing and Planning Act 2016 to cover a wider range of offences;

The Housing Act 2004

S.30 - Failure to comply with an Improvement Notice

S.32 - Failure to comply with a Prohibition Order

S.72 - Control or management of an unlicensed HMO

S.95 - Control or management of an unlicensed house in a Selective Licensing designated area

The Housing and Planning Act 2016

S.21 - Breach of a banning order

The Criminal Law Act 1977

S.6 - Using violence to secure entry to a property

The Protection from Eviction Act 1977

S.1 - Illegal eviction or harassment of the occupiers of a property

The offences within section 30 and 32 of The Housing Act 2004 must relate to hazards within the occupied premises let by the landlord, rather than just common parts.

When extended RROs were introduced in April 2017. Ministers made it clear that they expected this power to be used robustly as a way of clamping down on rogue landlords. In the House of Commons, Brandon Lewis MP made the following statement;

'This will enable Council to issue remedy payment orders for up to 12 months. That will give them a resource that it is hoped that they will use'.

1.4. Principles of Rent Repayment Orders

RRO's requiring repayment of rent to either the tenant or the Council, can be granted via application to the First-tier Tribunal. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the Council. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent basis.

A landlord does not have to have been found guilty of an offence through the courts for a RRO to be considered and made. A RRO can also be made against a landlord who has received a Financial Penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty.

The maximum amount of rent that can be recovered is capped at 12 months.

The Council must consider a rent repayment order after a person is the subject of a successful Financial Penalty and in most cases the Council will subsequently make an application for a RRO to recover monies paid through Housing Benefit or through the housing element of Universal Credit.

The Council may offer advice, guidance and support to assist tenants to apply for a RRO if the tenant has paid the rent themselves.

The Council may apply for a RRO at the same time as a tenant if part of the rent paid during the specified period within an application was paid from either housing benefit/universal credit. The tribunal will calculate in applications where universal credit has been paid how much rent will be apportioned to the Council and the tenant.

For those applications where a landlord has not been convicted at court, a criminal standard of proof is required. This means that the First-tier Tribunal must be satisfied beyond reasonable doubt that the landlord has committed the offence, or the landlord has been convicted in the courts of the offence for which the RRO application is being made.

The Council will have regard to the Crown Prosecution Service Code for Crown Prosecutors for this purpose.

If the Council becomes aware that a person has been convicted through the courts of one of the above offences listed above in relation to housing in its area, the Council must also consider applying for a rent repayment order.

Procedure

1.5. Deciding whether to apply for a rent repayment order and for how much

The Council has a duty to consider applying for a RRO when one of the prescribed housing offences has been committed, these are detailed above.

Applications for RRO under these powers will only be considered in relation to an offence which was committed on or after 6th April 2017.

In deciding to make an application for a RRO, the Council will have regard to current guidance given by the Secretary of State.

The Council can impose a Financial Penalty and apply for a RRO for certain offences:

- Failure to comply with an Improvement Notice (section 30)
- Offences in relation to the licensing of House in multiple Occupation (s72(1))
- Offences in relation to the licensing of houses under Part 3 of The Housing Act 2004 (section 95(1)).

1.6. Deciding how much rent to recover

Where a landlord has been convicted of the offence to which the RRO relates – the First-tier Tribunal must order the maximum amount of rent is repaid (max 12 months).

Where a landlord has not been convicted of the offence to which the RRO relates, the following factors will be taken into consideration when deciding how much rent the Council should seek to recover:

a) Punishment of the offender

The government wish for RRO's to have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. Factors that Council will consider are;

– the conduct of the landlord and tenant
– the financial circumstances of the landlord
– if the landlord has been convicted of similar offences

b) Deter the offender from repeating the offence

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

c) Dissuade others from committing similar offences

The imposition of a RRO is in the public domain. The robust and proportionate use of RRO's is likely to help ensure others comply with their responsibilities.

d) Remove any financial benefit the offender may have obtained as a result of commuting the offence

An important element of an RRO is that a landlord is forced to pay rent and thereby loses much, if not all, of the benefit that accrued to them by not complying with their responsibilities.

1.7. Notice of Intended Proceedings

Prior to making an application to the First-tier Tribunal, the Council must issue a Notice of Intended Proceedings to the landlord. The notice may not be given after the end period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

The notice of intended proceedings must:

- Inform the landlord that the Council is proposing to apply for a RRO and explain why.
- State the amount that the Council seeks to recover
- Invite the landlord to make representations within a specified period of no less than 28 days from the date the notice was issued

1.8. Consideration of Representations Received

The Council will consider any representations made during the notice period before deciding to apply for a RRO.

1.9. Rent Repayment Order Application

The Council can make an application if:

- The offence relates to housing in their areas
- They have given the landlord a notice of intended proceedings.

The Council will wait until the notice period has ended before applying for a RRO. The application will include;

- A copy of the Notice of Intended Proceedings
- A copy of the Certificate of Conviction if there has been a conviction
- A copy of the Financial Penalty – Final Notice if one has been served.
- A statement from an Officer detailing whether a Financial Penalty-Final Notice was paid and any appeal outcome
- If there has been no prosecution or Financial Penalty, evidence to satisfy the Tribunal beyond reasonable doubt that the landlord has committed the offence.

1.10. Making of a Rent Repayment Order

The tribunal may make a RRO if satisfied beyond reasonable doubt that a landlord has committed a relevant offence (whether the landlord has been convicted).

1.11. Costs

The Rent Repayment Orders (Supplementary Provisions (England) Regulations 2007 provide that a LHA may apply an amount recovered under a RRO for the purposes of the reimbursement of the Council's administrative and legal costs and expenses.

1.12. Amount of order when satisfied that an offence has been committed

If the offence related to violence for securing entry/eviction/harassment, universal credit (or housing benefit) will be repaid for the period of 12 months ending with the date of the offence.

1.13. Amount of order following conviction

When there has been a conviction or a Financial Penalty (Financial Penalty Final Notice has been served in respect of the offence and; there is no prospect of appeal or any appeal has been determined or withdrawn) the Tribunal must award the maximum payable amount with no discretion.

For other related offences payment will be made for a period, not exceeding 12 months, during which the landlord was committing the offence.

1.14. Rent Repayment Order Recovery

The amount payable to the Council under a RRO is recoverable as a debt.

An amount payable to the Council under a RRO does not when recovered, constitute an amount of universal credit recovered by the Council.

The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017, outline the provisions about how the Council will deal with amounts recovered.

The Council can apply any amount recovered under a RRO in line with the above to meet the costs and expenses (whether administrative or legal) incurred in or associated with carrying out any of its enforcement functions in relation to the private rented sector. Any amounts recovered which is not applied for that purpose must be paid into the consolidated fund.

If the final amount due remains unpaid, the Council can apply for an order for payment by the County Court. The Council should present a certificate signed by the Authority's Chief Finance Officer which states that the amount due has not been received by a specified date. It will not be necessary at this stage to submit to the Court further supporting evidence, the certificate will be treated by the Court of conclusive evidence of that fact.

Any amount payable to the Council will be registered against the property as a legal charge until it has been paid.

1.15. Appeals

A person aggrieved by the decision to award a RRO by the First-tier tribunal may appeal to the Upper Tribunal.

Appendix 5
Banning Order

1.1. Purpose

Banning Orders (BOs) can be used in relation to landlords and property managers who have been convicted of a "banning order offence".

1.2. Legislation

Housing and Planning Act 2016, Part 2, Chapter 2

1.3. Background

A BO is an order by the First-tier Tribunal, following an application from the Council that bans a landlord or property agent (letting agents and property managers as defined in Chapter 6 Part 2 of the Housing and Planning Act 2016) from;

- Letting housing in England
- Engaging in English letting agency work
- Engaging in English property management work, or
- Doing two or more of those things

The Housing and Planning Act 2016 enables the Council to apply to for a BO following conviction of an individual or a company for a "banning order offence", as defined by Regulation (see paragraph 1.4 below).

To make use of BO powers the Council is required to have in place its own policy on when to pursue a BO and to decide which option it wishes to pursue on a case-by-case basis in line with that policy.

This policy takes account of the non-statutory guidance issued by the Government which makes clear that BOs are aimed at rogue landlords who flout their legal obligations and rent out accommodation which is substandard, and which also confirms the Government's expectation that BOs will be used for the most serious offenders.

Whilst there is no statutory maximum period for a BO, it must be for a minimum of 12 months for relevant offences committed on or after 6th April 2018. A BO can be made against a person if that person was a residential landlord or property agent at the time the offence was committed. The First-tier Tribunal will set the banning period but the Council is required to recommend a period as part of an application.

The breach of a BO is a criminal offence.

The power to apply for BOs in appropriate cases is one of a number of enforcement tools available to the Council which include prosecution, carrying out works in default, applying for Rent Repayment Orders and the imposition of Financial Penalties.

1.4. Banning Order Offences

BO offences are listed in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 and are divided into;

- Relevant housing offences (but not when the person has received an absolute/conditional discharge for that offence)
- Immigration Offences
- Serious Criminal Offences (when sentencing has occurred in the Crown Court).

In respect of the relevant offences that fall within the legislation below; BOs can only be sought if the offence is linked to the tenant or other occupier, or the property owned or rented out by the landlord;

- The Fraud Act 2006
- The Criminal Justice Act 2003
- The Misuse of Drugs Act 1971
- The Proceeds of Crime Act 2002
- The Protection from Harassment Act 1997
- The Anti-Social Behaviour, Crime and Policing Act 2014
- The Criminal Damage Act 1971
- The Theft Act 1968

1.5. Banning Order Applications

The Council will have regard to current guidance issued by the Secretary of State in considering an application for a BO.

Procedure

1.6 Determining the appropriate sanction

The Council will consider the following factors when deciding whether to apply for a BO and when recommending the length of any BO;

a) The seriousness of the offence

All BO offences are serious. When considering whether to apply for a banning order the Council will consider the sentence imposed by the Court in respect of the BO offence itself. The more severe the sentence imposed by the Court, the more appropriate it will be for a BO to be made. For example, did the offender receive a maximum or minimum sentence or did the offender receive an absolute or conditional discharge? Such evidence will later be considered by the First-tier Tribunal when determining whether to make, and the appropriate length of a BO.

b) Previous convictions/rogue landlord database

The council will check the rogue landlord database in order to establish whether a landlord has committed other BO offences or has received any financial penalties in relation to BO offences. A longer ban may 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 aware of their legal obligations. For example, in the case of property agents, they are required

to be a member of a redress scheme and any evidence of noncompliance could also be taken into account.

The Council will also consider the likely effect of the BO on the person and anyone else that may be affected by the order and will take into account the following:

c) The harm caused to the tenant

This is a very important factor when determining whether to apply for a BO. The greater the harm or the potential for harm (this may be as perceived by the tenant), the longer the ban should be. BO offences include a wide range of offences, some of which are more directly related to the health and safety of tenants, and could therefore be considered more harmful than other offences (such as fraud)

d) Punishment of the offender

A BO is a severe sanction. The length of the ban should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending. It is, therefore, important that it is set at a high enough level to remove the worst offenders from the sector. It should ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

e) Deterring the offender from repeating the offence

The goal is to prevent any further offending. The length of the ban should prevent the most serious offenders from operating in the sector again or, in certain circumstances; help ensure that the landlord fully complies with all of their legal responsibilities in future. The length of ban should therefore be set at a long enough period such that it is likely to deter the offender from repeating the offence

f) Deterring others from committing similar offences

An important part of deterrence is the realisation that (a) the Council is proactive in applying for BOs where the need to do so exists and (b) that the length of a BO will be set at a high enough level to both punish the offender and deter repeat offending.

Spent convictions as defined under the provisions of the Rehabilitation of Offenders Act 1974 will not be taken into account when determining whether to apply for and/or make a BO.

Having had regard to this policy, a decision to commence the banning order procedure in any case will be confirmed by the Council's Executive Director for the service area delivering private sector housing enforcement and regulation. The Executive Director will also be responsible for considering any representations made by a landlord served with a notice of intention and for the decision to make an application for a BO, including the recommended duration of the ban.

Subject to consideration of relevant guidance issued by the Ministry of Justice and consultation with its legal advisors, the Council will consider publishing details of any successful BO including the names of individual landlords. The Council will also consider making information on a BO available on request by a tenant.

A BO can apply to a body corporate, and both a body corporate and an officer of a body corporate.

1.7. Notice of Intention

Prior to applying for a BO, the Council must issue the landlord/manger with a notice of its intention to do so. The Notice of Intent must be served within 6 months of the landlord being convicted of the offence.

The Notice of Intent must set out;

- That the Council is proposing to apply for a BO
- The reasons for the application
- The length of each proposed ban
- Notice recipients right to make representations

1.8. Appeals

A person receiving the notice of intent can make written representations within 28 days to the Council from the date the notice was issued. The Council will consider any representations received during the 28-day period and then decide whether to pursue a BO.

A landlord may also appeal to the Upper Tribunal against a decision of the First-tier Tribunal to make a BO. An appeal cannot be made unless permission is granted by either the First-tier Tribunal or the Upper Tribunal.

A person against whom a BO is made may apply to the FtT for an order revoking or varying the BO.

1.9 Request for Information

The Council may require a landlord to provide information under Section 19 of the Act to enable them to decide whether to apply for a BO. This could include requiring the landlord to provide information on all the properties that the landlord owns.

It is an offence for a landlord not to comply with this request, unless they can provide a reasonable excuse. It is also an offence for a landlord to provide false and misleading information. The Council will consider exercising its powers in relation to Section 19 if a landlord or agent/manager fails to provide information or the information provided is found to be false or misleading.

1.10 Role of the First-tier tribunal (FtT)

The FtT has the power to make a BO against a landlord or property agent who has been convicted of a BO offence and who was a residential landlord at the time the offence was committed. They will do so on an application by the Council for the area in which the offence occurred.

The FtT determines the length of the BO following a recommendation from the Council in its application as to the length of ban they are seeking. The minimum duration of a ban is 12 months.

1.11 Factors the FtT will consider when deciding whether to make a banning order

- The seriousness of the offence of which the person has been committed
- Any previous convictions that a person has for a BO offence
- Whether the person is or has at any time been included in the rogue landlord's database; and
- The likely effect of a BO on the person and anyone else that may be affected by the order.

The FtT can also revoke or vary a BO upon application from the person against whom the BO has been made. Examples of variations include adding new exemptions to a ban, varying the banned activities listed on the order, varying the length of the ban and varying existing exceptions to a ban. The Council cannot vary or revoke a BO.

1.12 Enforcement and Impact

A landlord subject to a BO is prevented from:

- Letting housing in England
- Engaging in English letting agency work
- Engaging in English property management work, or
- Doing two or more of those things

A landlord subject to a BO is also unable to hold a licence for a House in Multiple Occupation (HMO) and their property may also be subject to a management order.

1.13 Consequences of Banning Orders

A person who breaches a banning order commits an offence.

The council can consider two options on the identification of a breach:

- Prosecution (liable on conviction to imprisonment for a period not exceeding 51 weeks or to a fine or both)
- Financial Penalty

When a person is convicted of breaching a BO and the breach continues after conviction, the person commits a further offence and is liable on further conviction to a fine not exceeding 1/10 of level 2 on the standard scale or part of a day on which the breach continues.

If the Council chooses to impose a Financial Penalty in respect of a breach then the person may not be convicted of that offence. If the person has been convicted of an offence for the same conduct, or criminal proceedings for that offence been instituted against that person and the proceedings have not been concluded then the Council may not impose a Financial Penalty.

1.14 Financial Penalty for Breach of a Banning Order

The Council may impose a Financial Penalty on a person if satisfied, beyond reasonable doubt, that the persons conduct amounts to a breach of a BO.

Only one Financial Penalty may be imposed in respect of the same conduct unless the breach continues for more than 6 months, when a further Financial Penalty can be imposed for each additional 6 month period for the whole or part of which the breach continues,

The Council will determine the amount of the Financial Penalty in accordance with Section 2 of this Policy, and any current guidance made by the Secretary of State.

1.15 Banning Order Publicity

The Government encourages local housing authorities to publish details of successful BOs, including the names of individual landlord's and businesses, at a local level. Details of a BO will also be made available to a tenant upon request. The Council shall seek legal advice and consider local circumstances when determining whether a BO will be publicised.

1.16 Other Impacts of Banning Orders

A landlord is unable to transfer their property/ies to certain persons whilst a BO is in force. A prohibited person is:

- A person associated with the landlord (including family members, spouses and financial partners)
- A business partner of the landlord
- A person associated with a business partner of the landlord
- A business partner of a person associated with the landlord
- A body corporate of which the landlord or person mentioned above is an officer
- A body corporate in which the landlord has a shareholding or other financial interest; or
- In the case where a landlord is a body corporate, any body corporate that has an officer in common with the landlord.

A BO does not invalidate a tenancy agreement held by the occupiers in the property regardless of whether the agreement was issued before or after the BO was made. This is to ensure an occupier of the property does not lose their rights under the terms and conditions of their tenancy agreement.

1.17 Management Orders

The Council will consider the use of management orders (MO) for properties affected by BOs if deemed necessary. A MO enables the Council to take over the management of a privately rented property in place of the landlord. A MO ensures that health and safety of occupiers and persons living or owning property nearby are protected, or ensures that a property is still available to rent. The ability of the Council to take over the management of a private rented home under certain circumstances was created by Part 4 of the Housing Act 2004.

Appendix 6
Database of Rogue Landlords and Property Agents

1.1 Purpose

This section of the Policy details how the Council will use the database of rogue landlords. The database is a new tool for local housing authorities in England to keep track of offences committed by rogue landlords and property agents. The database is operated by the Secretary of State for Housing, Communities and Local Government, but local housing authorities in England have responsibility for maintaining its content.

The new requirements permit the Council to add entries to the database. The Council can also view all entries on the database including those made by other local housing authorities to help keep track of known rogues', especially those operating across council boundaries to allow local housing authorities to target their enforcement activities on individuals and organisations who knowingly flout their legal obligations.

Legislation

Housing and Planning Act 2016, Part 2, Chapter 3

1.2 Use of information in the database

The Council may only use the information obtained from the database:

- For purposes connected with its functions under The Housing Act 2004
- For the purposes of a criminal investigation or proceedings relating to a banning order offence
- For the purposes of an investigation or proceedings relating to a contravention of the law relating to housing or landlord and tenant.
- For the purposes of promoting compliance with the law relating to housing or landlord and tenant by any person in the database, or
- For statistical or research purposes

1.3 Making an entry

Government guidance has been produced to assist the Council in deciding whether to make an entry onto the database and to provide practical guidance so that the database can be used effectively.

Under section 29 of the Act the Council must make an entry on the database for a person or organisation that has received a Banning Order following an application by the Council and no entry was made under section 30 before the banning order was made, on the basis of a conviction for the offence to which the banning order relates.

An entry made under section 29 must be maintained for the period for which the banning order has effect and must then be removed

Under section 30 of the Act, the Council may make an entry on the database for a person or organisation who has been convicted of a banning order offence that was committed at a time when they were a registered landlord or property agent; and/or

Who has received two or more Financial Penalties in respect of a banning order offence within a period of 12 months committed at a time when the person was a residential landlord or property agent.

1.4 Deciding whether to make an entry under Section 30

The Council will always consider whether it would be appropriate to make an entry on to the database when a landlord has been convicted of a banning order offence or received two or more Financial Penalties over a 12-month period.

The database is designed to be a tool which will help local housing authorities to keep track of rogue landlords and focus their enforcement action on individuals and organisations who knowingly flout their legal obligation. The more comprehensive the information on the database, the more useful it will be to the Council. Such information will also encourage joint working between local housing authorities who will be able to establish whether rogue landlords operate across their local housing authority areas.

The Council is required to have regard to the following criteria when deciding whether to make an entry in the database under section 30;

a) The severity of the offence – The more serous the offence, the stronger the justification for including the offence on the database

b) Mitigating factors – where a less serious offence has been committed and/or there are mitigating factors, the Council may decide not to make an entry on the database. Mitigating factors could include personal issues, for example, health problems or a recent bereavement. The Council will decide on a case by case basis whether mitigating factors are strong enough to justify a decision not to record a person's details on the database.

c) Culpability and serial offending – when an offender has a history of failing to comply with their obligations. Where there is a clear history of knowingly committing banning order offences and/or non-compliance, the stronger the justification for making an entry on the database. Conversely where it is a first offence and/or where it is relatively minor, the Council may decide that it is not appropriate to record a person's information on the database.

d) Deter the offender from repeating the offence – the goal is to prevent landlords and property agents who have failed to comply with their legal responsibilities, repeating the offence. An important part of deterrence is the realisation by the offender that the Council has the tools and is proactive in recording details of rogue landlord and property agents, and, that they will be unable to simply move from one local authority area to another.

e) Deter others from committing similar offences - Knowing they may be included on the database if they are convicted of a banning order offence or receive multiple financial penalties, may deter some landlord's from committing banning order offences in the first place.

1.5 Deciding how long a database entry under Section 30 should last

The Council will have regard to the following criteria when deciding the period to specify in a decision notice:

a) Severity of offence – the severity of the offence and related factors, such as whether there have been several offences over a period of time will be considered. Where an offence is particularly serious and/or there have been several previous offences; and/or the offences) have been committed over a period of time, then the decision notice may specify a longer period of time. When one or more of those factors are absent, it may be appropriate to specify a shorter period.

b) Mitigating factors – these could include a genuine one-off mistake, personal issues such as ill health or a recent bereavement. When this is the case, the Council may decide to specify a shorter period in the decision notice

c) Culpability and serial offending – a track record of serial offending or when the offender knew, or ought to have known, that they were in breach of their responsibilities may suggest a longer time period would be appropriate

d) Deter the offender from repeating the same offence – the data should be retained on the database for a reasonable time period so that it is a genuine deterrent to further offences.

1.6 Procedure for database entries under Section 30

The Council may make an entry onto the database if a person or organisation;

- Has been convicted of a banning order offence and the offence was committed at a time when the person was a residential landlord's or property agent
- Has within a period of 12 months, received a financial penalty in respect of a banning order offence committed at a time when the person was a residential landlord or a property agent. A financial penalty can and will only be taken into consideration if the period for appealing the penalty has expired and any appeal has been finally determined or withdrawn.

An entry made under section 30 must be maintained for the period specified in the decision notice as described below before the entry was made (or that period as has been reduced in accordance with section 36) and must then be removed at the end of that period.

1.7 Section 30 Database Entry - Decision Notice

Prior to making an entry on the database in respect of a person under s30, the Council must issue a decision notice. The decision notice must be issued within 6 months, beginning with the day on which a person was convicted of the banning order offence to which the notice relates, or, received the second of the financial penalties to which the notice relates.

The decision notice must;

- Explain that the authority has decided to make the entry in the database after the end of the period of 21 days beginning with the day on which the notice is given ("the notice period"), and
- Specify the period for which the persons entry will be maintained, which must be at least two years beginning with the day on which the entry is made.
- Summarise the notice recipients appeal rights

An entry on to the database will then be made once the notice period has ended and there is no appeal received.

The Council will take reasonable steps to keep information on the database up to date.

1.8 Appeals

A person receiving a decision notice may appeal to the First-tier Tribunal against;

- The decision to make the entry in the database in respect of the person, or
- The decisions as to the period for which the person's entry is to be maintained.

An appeal must be made before the end of the notice period specified in the decision notice, however the Tribunal may allow an appeal to be made to it after the end of the notice period if satisfied that there is good reason for the persons failure to appeal within the period (and for any subsequent delay).

The Tribunal may confirm, vary or cancel the decision notice upon appeal.

If an appeal is received within the notice period then the Council will not make an entry in the database until;

- The appeal has been determined or withdrawn, and
- There is no possibility of further appeal (ignoring the possibility of an appeal out of time)

1.19 Removing or Variation of an Entry

An entry made in the database may be removed or varied;

If an entry was made based on one or more conviction all of which are overturned on appeal, the Council must remove the entry.

The Council may remove an entry or reduce the period for which the entry must be maintained under the following circumstances:

If the entry was made on the basis of;

- more than one conviction and some of them (but not all) have been overturned on appeal
- one or more convictions that have become spent (for the purposes of the Rehabilitation of Offenders Act 1974).
- that the person has received two or more financial penalties and at least one year has elapsed since the entry was made

The Council also have the power under the above circumstances to;

- remove an entry before the end of the two-year period
- reduce the period for which an entry must be maintained to less than the two-year period.

1.10 Receipt and consideration of requests to remove entries or reduce entry time periods

The Council will receive requests in writing from a person in respect of whom an entry is made in the database under section 30 to remove and entry or reduce the period for which the entry must be maintained.

1.11 Request Decision notice

On receipt of a request in writing the Council must:

- decide whether to comply with the request, and
- give the person notice of its decision

If the Council decide not to comply with the request the decision notice must include the reasons for the decision and a summary of the persons rights of appeal.

1.12 Appeals against a decision not to comply with a request

Appeal by a person given a notice confirming that the Council has decided not to comply with the request can be made to the First-tier Tribunal within 21 days beginning on the day on which the notice was given. On appeal the Tribunal may order the Council to remove the entry or reduce the period for which the entry is maintained.

1.13 Power to Require Information

Under Section 35 of the Act the Council may require a person to provide specified information for the purpose of enabling them to decide whether to make an entry in the database in respect of the person.

The Council may require from a person that they have made an entry about or are proposing to make an entry about, any information needed to complete the person's entry or keep it up to date.

It is an offence, on conviction with a fine, for a person to fail to comply with a section 35 requirement, unless the person has a reasonable excuse for the failure.

It is also an offence for the person to provide information that is false or misleading if the person knows that the information is false or misleading or is reckless as to whether it is false or misleading.

Appendix 7
Shorter Licence Terms - Premises operating without the benefit of appropriate planning consent

Purpose

1.1 Licences issued by Council under the Housing Act 2004 Part 2 and 3 for privately rented properties subject to licensing are for terms of 5 years or less. This section of the Housing Enforcement Policy is to outline the reasons and situations when the Council may choose to issue a shorter licence.

1.2 In its capacity as local planning authority Sunderland City Council has imposed what is known as an Article 4 Direction which took effect in December 2013. This currently has an impact on the Barnes, Hendon, Millfield, St. Michael's and St. Peter's Wards of the City. The effect of the Article 4 Direction is that planning permission is required to change the use of a dwelling house (a family house/single occupancy privately rented house) to HMO accommodation occupied by up to six persons. A larger capacity HMO would require planning permission in any event.

1.3 The Housing Act 2004 requires persons who manage or control Part 2 or Part 3 houses to apply for the relevant licence. The Housing Act 2004 has to consider the suitability of the property and the proposed licence holder to manage and is quite narrow in its approach. If a property does not have the correct planning classification or use, then this in its self is not a reason under the Housing Act not to issue a licence.

1.4 As identified in the recent case of Waltham Forest v Khan [2017] UKUT 153 (LC) the Upper Tribunal held that it is not an improper use of the power that the Council have to impose a shorter licence to allow an application for the correct planning permission to be submitted and dealt with under planning law, while not criminalising a landlord for operating a property without the correct licence under the Housing Act 2004. It would thus be Sunderland City Council Policy to issue a shorter licence of 18 months in respect of an HMO to allow the licence holder/owner to apply for permission for the correct change of use for the property.

1.5 If at the end of the licence the landlord has been refused planning permission or has failed to apply for permission but makes an application to renew the licence then the Council will determine the application on its merits in order to preserve the safety of occupants and will not refuse the application as a means of penalising an applicant for failure to regularise the planning position. However, in the event of a licence being granted, the licencee would remain in breach of planning law and would be subject to the usual process of enforcement under that legislation. Additionally, if the property owner fails to reapply for a renewal of the HMO licence and the property continues to operate both without planning permission and as an unlicensed HMO, the property owner would be committing a further offence and would be liable to prosecution or civil penalty under the Housing Act.

1.6 It is important to note that if a licence application under the Housing Act 2004 is successful and granted by Sunderland Council this does not grant or give the required consent that may be required from Sunderland City Council in terms of planning permission and/or Building Regulations approval. Nor shall it be taken as any indication of the views of the Council as local planning authority as to the merits or otherwise of any planning application or other planning issues in relation to the property in question.

Appendix 8
The Redress Schemes for Lettings Agency Work and Property Management Work

Introduction

From October 2014 it has been a legal requirement for all lettings agents and property managers in England to join one of two Government-approved redress schemes.

This requirement will mean that tenants and landlords with agents in the private rented sector and leaseholders and freeholders dealing with property managers in the residential sector will be able to complain to an independent person about the service they have received. Ultimately the requirement to belong to a redress scheme will help weed out bad agents and property managers and drive up standards.

Sunderland City Council can now impose a fine of up to £5,000 where it is satisfied, on the balance of probability that someone is engaged in letting or management work and is required to be a member of a redress scheme, but has not joined one of the two government approved redress scheme.

These two redress schemes are: -

- Property Redress Scheme (www.theprs.co.uk)
- The Property Ombudsman (www.tpos.co.uk)

Each scheme will publish a list of members on their respective websites so it will be possible to check whether a lettings agent or property manager has joined one of the schemes.

The meaning of "letting agency work"

Lettings agency work is things done by an agent in the course of a business in response to instructions from:

- a private rented sector landlord who wants to find a tenant: or
- a tenant who wants to find a property in the private rented sector.

It applies where the tenancy is an assured tenancy under the Housing Act 1988 (the most common type of tenancy) except where the landlord is a private registered provider of social housing or the tenancy is a long lease.

Lettings agency work does not include the following things when done by a person who only does these things:

- publishing advertisements or providing information;
- providing a way for landlords or tenants to make direct contact with each other in response to an advertisement or information provided;
- providing a way for landlords or tenants to continue to communicate directly with each other.

It also does not include things done by a local authority, for example, where the authority helps people to find tenancies in the private rented sector because a local authority is already a member of the Housing Ombudsman Scheme.

The intention is that all "high street" and web based letting agents, and other organisations, including charities, which carry out lettings agency work in the course of a business will be subject to the duty to belong to an approved redress scheme.

Employers who find homes for their employers or contractors; higher and further education authorities and legal professionals are excluded from the requirement.

The meaning of "property managers work"

Property management work means things done by a person in the course of a business in response to instructions from another person who wants to arrange services, repairs, maintenance, improvement, or insurance or to deal with any other aspect of the management of residential premises.

However, it does not include things done by, amongst others, registered providers of social housing, that is, housing associations and local authorities who are social landlords, as these organisations are already required to belong to the Housing Ombudsman Scheme.

For there to be property management work, the premises must consist of, or contain:

a) a dwelling-house let under a long lease - "long lease" includes leases granted for more than 21 years, leases granted under the right to buy, and shared ownership leases;

b) an assured tenancy under the Housing Act 1988; or c) a protected tenancy under the Rent Act 1977.

Property management work would arise where a landlord instructed an agent to manage a house let to a tenant in the private rented sector. It would also arise where one person instructs another to manage a block of flats (often with responsibility for the common areas, corridors, stairwells etc.) that contains flats let under a long lease or let to assured or protected tenants.

The legislation will apply to people who in the course of their business manage properties, for example, high street and web based agents, agents managing leasehold blocks and other organisations who manage property on behalf of the landlord or freeholder.

The requirement to belong to a redress scheme does not apply to Managers of common hold land, student accommodation and refuge homes; receivers and insolvency practitioners; authorities where Part 3 of the Local Government Act 1974 applies; right to manage companies; legal professionals and property managers instructed by local authorities and social landlords.

The meaning of "in the course of business"

The requirement to belong to a redress scheme only applies to agents carrying out lettings or property management work 'in the course of business'. The requirement will therefore not apply to 'informal' arrangements where a person is helping out rather than being paid for a role which is their usual line of work. Some examples of 'informal arrangements' which would not come under the definition of 'in the course of business' are set out below:

- someone looking after the letting or management of a rented property or properties on behalf of a family member or friend who owns the property/properties, where the person is helping out and doesn't get paid or only gets a thank you gift;
- a friend who helps a landlord with the maintenance or decoration of their rented properties on an ad hoc basis;
- a person who works as a handyman or decorator who is employed by a landlord to repair or decorate their rented property or properties when needed;
- a landlord who looks after another landlord's property or properties whilst they are away and doesn't get paid for it;

- a joint landlord who manages the property or properties on behalf of the other joint landlords

Whilst it is not possible to cover all eventualities in this note one of the key issues to consider when deciding what could be considered an 'informal arrangement' is whether the person doing the letting or property management work is helping out an individual as opposed to offering their services to anyone who wants to use and pay for them.

Penalty for breach of requirement to belong to a redress scheme

The expectation is that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances, such that the fine is not appropriate to the scale or turnover of the business or that the maximum could put the business at risk of closure. It will be up to the enforcement authority to decide what such circumstances might be, taking into account any representations the lettings agent or property manager makes during the 28 day period following the authority's notice of intention to issue a fine.

The enforcement authority can impose further penalties if a lettings agent or property manager continues to fail to join a redress scheme despite having previously had a penalty imposed. There is no limit to the number of penalties that may be imposed on an individual lettings agent or property manager, so further penalties can be applied if they continue to be in breach of the legislation.

The penalty fines received by the enforcement authority may be used by the authority for any of its functions.

Where an enforcement authority intends to impose a penalty they must follow the process set out below.

Enforcement process:

Step 1: Notice of Intent

The enforcement authority must give written notice of their intention to impose a penalty, setting out:

i. the reasons for the penalty;

ii. the amount of the penalty; and

iii. that there is a 28 day period to make written representations or objections, starting from the day after the date on which the notice of intent was sent.

This written notice must be served within 6 months of the date on which the enforcement authority is in the position to issue the fine (have gathered sufficient evidence and satisfied any internal requirements that a fine is appropriate).

The enforcement authority may withdraw the notice of intent or reduce the amount specified in the notice at any time by giving notice in writing.

Step 2: Representations and Objections

The person who the notice of intent was served on has 28 days starting from the day after the date the notice of intent was sent to make written representations and objections to the enforcement authority in relation to the proposed fine.

Step 3: Final Notice

At the end of the 28 day period the enforcement authority must decide, having taken into account any representations received, whether to impose the fine and, if so, must give at least 28 days for payment to be made. When imposing a fine, the enforcement authority must issue a final notice in writing which explains:

i. why the fine is being imposed;

ii. the amount to be paid;

iii. how payment may be made;

iv. the consequences of failing to pay; that there is a right to appeal against the penalty to the First-tier Tribunal and that any appeal must be made within 28 days after the imposition of the fine

It is up to each local authority to decide who should serve the notice. The enforcement authority may withdraw the final notice or reduce the amount specified in the notice at any time by giving notice in writing.

Step 4: Appeals

If an appeal is lodged the fine cannot be enforced until the appeal is disposed of. Appeals can be made on the grounds that:

i. the decision to impose a fine was based on a factual error or was wrong in law;

ii. the amount of the fine is unreasonable; or

iii. that the decision was unreasonable for any other reason.

The First-tier Tribunal may agree with the enforcement authority's notice to issue a penalty or may decide to quash or vary the notice and fine.

Appeals will be heard by the General Regulatory Chamber, further details on the appeals procedure can be found at the following link:

http://hmctsformfinder.justice.gov.uk/courtfinder/forms/policy-makers-guidance-eng.pdf

Step 5: Recovery of the penalty

If the lettings agent or property manager does not pay the fine within the period specified the authority can recover the fine with the permission of the court as if payable under a court order. Where proceedings are necessary for the recovery of the fine, a certificate signed by the enforcement authority's chief finance officer stating that the amount due has not been received by a date stated on the certificate will be taken as conclusive evidence that the fine has not been paid.

Appendix 9
Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2016

1. Introduction

1.1 On 1 April 2016 the Energy Efficiency (Private Rented Property) (England and Wales) Regulations came into force to improve the energy efficiency of privately rented property. They enable a tenant of a domestic property to request their landlord's consent for energy efficiency improvements to be made to the property and place a duty on the landlord not to unreasonably refuse such works. In any case where a tenant has served a tenant's request and the landlord has failed in their duty, the tenant may apply to the First-tier Tribunal for its consent to make the improvements.

1.2 The Regulations also require domestic private rented properties to have a minimum Energy Performance Certificate (EPC) rating of E. From 1st April 2018, landlords are prohibited from granting new tenancies for properties with an EPC rating below E, nor may they renew or extend existing tenancies (which includes tenancies that become statutory periodic tenancies following the end of a fixed term shorthold).

1.3 From 1 April 2020, the restriction on landlords letting out sub-E rated properties is extended to cover all existing tenancies for properties in scope of the regulations.

1.4 These provisions will not apply if the landlord is unable to obtain funding to cover the whole cost of the works to bring the property up to an E rating or above; or all improvements that could be reasonably undertaken have been undertaken and the property remains under an E rating. However, if either of these exemptions applies, the landlord must register the exemptions on the Government's PRS Exemption Register.

1.5 The Government is currently consulting on whether the 'full cost' exemption should be replaced by a 'maximum cost' exemption. Current expectation is that the Regulations will be amended in due course so that landlords will have to fund improvements up to a specified value before an exemption can be registered.

1.6 Local authorities must enforce compliance. The Council can make use of the national EPC register to direct and assist this work and will also be able to make use of data provided as part of its recent Stock Modelling exercise and report.

1.7 Non-compliant landlords can be made subject to a financial penalty of up to £5,000 for offences including failure to obey a Compliance Notice requiring information, failure to register a property on the PRS Exemption Register, or registering false information (table 1).

1.8 The authority may also publish details of the breaches on the PRS Exemption Register for 12 months or for any greater period of time as it sees fit (table 1).

Table 1 – maximum and minimum penalties

Offences	Maximum Financial Penalty	Total Maximum Financial Penalty per Property per Breach	Minimum Publication Penalty
Letting a sub-standard property for less than 3 months	£2,000	£5,000	1 year
Letting a sub-standard property for more than 3 months	£4,000		
Registered false or misleading information	£1,000		
Failure to comply with compliance notice	£2,000		

1.9 The process for issuing a financial penalty notice is set out at the end of this appendix. The landlord can request a review but then has the right to make an appeal against a penalty the First-tier Tribunal which can uphold or quash the penalty.

1.10 Where the local authority decides to impose a financial penalty, it has the discretion to decide on the amount of the penalty up to the maximum limits set by the Regulations. The Government has made clear that it expects local authorities to impose maximum penalties for beaches, although there is flexibility to consider mitigating circumstances when setting penalty levels.

1.11 In deciding whether to impose a penalty, officers will take into consideration the Council's Enforcement Policy.

1.12 When a fine is issued it will be issued at the maximum permitted levels applicable to the relevant breach(s) and maximum total permitted fine; with a 25% discount for paying the total fine within 14 days of the penalty notice issue.

Table 2 – Applicable Penalties and Publication Periods

Failure	Financial Penalty	Publication Notice Period
Let a sub-standard property less than 3 months	£2,000	None
Let a sub-standard property more than 3 months	£4,000	1 year
Registered false or misleading information	£1,000	1 year
Failed to comply with compliance notice (for information)	£2,000	2 years
Failed to comply with compliance notice (to register on the PRS Exemption Register.	£2,000	2 years
Maximum Total Fine/Publication *	£5,000	3 years
Failed to take the action required by a penalty notice within the period specified and a second penalty notice issued.	£2,000	3 years from date of last penalty notice served.

*Further breaches may result in additional penalties

1.13 The Government has introduced financial penalties as a means of preventing landlords from profiting from non-compliance with legislation and to ensure compliant landlords are not disadvantaged. It is important that the penalties for not complying are sufficiently substantial to persuade a landlord to carry out their duties without the need for enforcement.

1.14 The penalty fees outlined in this report are intended to provide sufficient incentive for landlords to comply.

1.15 Chasing payment for unpaid fines can be resource intensive and expensive; it is proposed that fines paid within 14 days of the penalty notice issue will be reduced by 25% to incentivise early payment.

Compliance Notice

1.16 An enforcement authority may, on or after 1 April 2018, serve a "compliance notice" on a landlord where the landlord appears to it to be, at any time within the last 12 months, in breach of one or more of the following - (a) regulation 23 and (b) regulation 27. The authority may vary or revoke the order at any time in writing.

Penalty Notice

1.17 An enforcement authority may, on or after 1 April 2018, serve a "penalty notice" on a landlord where it is satisfied that the landlord has been at any time within the last 18 months in breach of one or more of the following - (a) regulation 23 (Prohibition on letting a substandard property), (b) regulation 27 (Prohibition on letting substandard non-domestic property) or (c) regulation 37(4)(a) (Compliance with a Compliance Notice), impose a financial penalty, a publication penalty, or both. The notice must specify any action the enforcement authority requires the landlord to take to remedy the breach and the period within which

such action must be taken. If the landlord fails to take the action required by a penalty notice within the period specified in that penalty notice the enforcement authority may issue a further penalty notice.

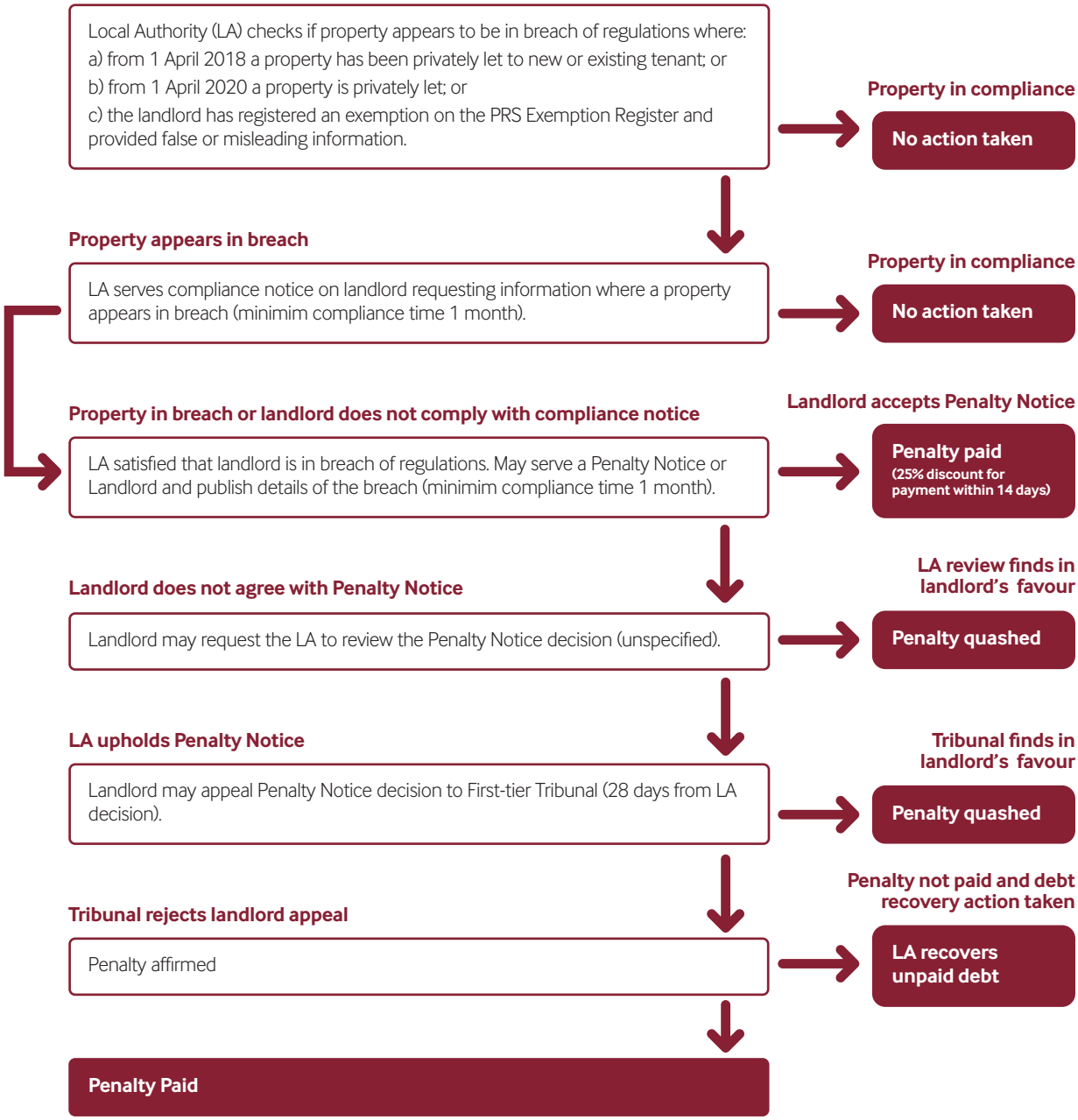
Appeal

1.18 A landlord may, within the period specified under regulation 38(2)(h)(ii), serve notice on the enforcement authority requesting a review of its decision to serve a penalty notice. If, after a review, a penalty notice is confirmed by the enforcement authority, the landlord may appeal to the First-tier Tribunal.

Debt

1.19 The amount of an unpaid financial penalty is recoverable from the landlord as a debt owed to the enforcement authority unless the notice has been withdrawn or quashed.

Compliance and enforcement flow process



Appendix 10
The Tenant Fees Act 2019

Introduction

The Tenant Fees Act 2019, came into force on the 1 June 2019 and bans apply to all assured shorthold tenancies, tenancies of student accommodation and licences to occupy housing in the private rented sector in England.

The majority of tenancies in the private rented sector are by default assured shorthold tenancies. In this policy 'tenant' includes licensees and any persons acting on behalf of a tenant or licensee or guaranteeing the rent.

Assured shorthold tenancy

A tenancy is likely to be an assured shorthold tenancy if all the following apply:

- the property is rented privately
- the tenancy started on or after 28 February 1997
- the property is the person's main accommodation
- the landlord doesn't live in the property

A licence to occupy

A licence is personal permission for someone to occupy accommodation. A licence can be fixed term or periodic.

The main instances where you might have a licence rather than a tenancy agreement are where:

- there is no intention to enter into a legal relationship
- there is no right to exclusive occupation

Fees that are not banned

A Landlord cannot require a tenant (or anyone acting on their behalf or guaranteeing their rent) to make certain payments in connection with a tenancy. A landlord cannot require a tenant to enter a contract with a third party or make a loan in connection with a tenancy.

The only payments to be charged in connection with a tenancy are:

- the rent;
- a refundable tenancy deposit capped at no more than five weeks' rent, where the annual rental income is below £50,000 and six weeks' rent for properties with an annual rental income of £50,000 or more
- a refundable holding deposit (to reserve a property) capped at no more than one week's rent
- payments to change the tenancy when requested by the tenant capped at £50, or reasonable costs incurred if higher
- payments associated with early termination of the tenancy, when requested by the tenant
- payments in respect of utilities, communication services and council tax and

- default fees required under a tenancy agreement (such as for replacing a lost key or late rent payment fine), limited to the landlord or agent's reasonable costs which must be evidenced in writing

If the fee charged is not on this list, it is a prohibited payment and should not be charged. A prohibited payment is a payment outlawed under the ban.

A landlord cannot evict a tenant using the section 21 eviction procedure until any unlawfully charged fee has been repaid or any unlawfully retained holding deposit has been returned.

In the legislation "in connection with a tenancy" is defined as requirements:

- in consideration of, or in consideration of arranging for, the grant, renewal, continuance, variation, assignment, novation or termination of a tenancy
- on entry into a tenancy agreement, or an agreement relating to a tenancy with a letting agent, containing provisions requiring the tenant to do any of those things
- pursuant to a provision of a tenancy agreement, or pursuant to an agreement relating to a tenancy with a letting agent, which requires or purports to require the person to do any of those things in the event of an act or default of the person or if the tenancy is varied, assigned, novated or terminated; and
- as a result of an act or default related to the tenancy unless pursuant to, or for breach of, a tenancy agreement, or an agreement relating to a tenancy with a letting agent; and
- in consideration of providing a reference for a former tenant

Enforcement

Both Local Housing Authorities and Trading Standards authorities have a duty to enforce the ban.

The Act also makes provision for tenants and other relevant persons to be able to recover unlawfully charged fees through the First-tier Tribunal and prevents landlords from recovering possession of their property via the section 21 eviction 1988 procedure until they have repaid any unlawfully charged fees.

The Secretary of State can arrange for a Lead Enforcement Authority whose duty it is to oversee the operation of the tenant fees ban and any other relevant letting agency legislation. The Secretary of State may himself act as Lead Enforcement Authority.

A landlord should keep any evidence of payments that they have requested a tenant to make; this could be:

- tenancy or pre-tenancy agreements
- any other relevant paperwork
- receipts and invoices
- bank statements
- correspondence from the tenant – emails, letters, texts
- notes that you made at the time or shortly after any conversation with a tenant

Financial penalties and convictions

A breach of the legislation will usually be a civil offence with a financial penalty of up to £5,000, but if a breach is committed within 5 years of the imposition of a financial penalty or conviction for a previous breach will be a criminal offence. The penalty for the criminal offence, which is a banning order offence under the Housing and Planning Act 2016, is an unlimited fine.

Where the offence is committed, local authorities may impose a financial penalty of up to £30,000 as an alternative to prosecution. In such a case, local authorities will have discretion whether to prosecute or impose a

financial penalty. Where a financial penalty is imposed this does not amount to a criminal conviction.

A breach of the requirement to repay the holding deposit is a civil offence and will be subject to a financial penalty of up to £5,000.

Possible scenarios that breach the ban

Each request a landlord makes for a prohibited payment is a breach. For example, the following would be considered multiple breaches:

- charging different tenants under different tenancy agreements prohibited fees
- charging one tenant multiple prohibited fees for different services at different times
- charging one tenant multiple prohibited fees for different services at the same time
- charging one tenant one total prohibited fee which is made up of different separate prohibited requirements to make a payment e.g. £200 requested for arranging the tenancy and doing a reference check = multiple breaches.

Where a Landlord is being fined for multiple breaches at once, and they have not previously been fined, the financial penalty for each of these breaches is limited to up to £5,000 each.

Decision process to impose a financial penalty as an alternative to prosecution

Sunderland City Council will for first offences issue a civil financial penalty. Each case will be considered on a case by case basis and on the aggravating and mitigating factors of each case. Sunderland City Council must have regard to statutory enforcement guidance issued by the Lead Enforcement Authority or Secretary of State.

Factors to be taken into account when deciding the appropriate level of financial penalty

Sunderland City Council has discretion when determining the appropriate level of financial penalty sanction within the limitations set out by the Act, uo to £5,000 for the first offence and then up to £30,00 for additional or multiple breaches of the ban by a duty holder.

The actual amount levied in any particular cases should be fair and proportionate reflecting the severity of the offence as well as taking in to account the landlord or agent's previous record of offending.

As such an approach similar to that of the Civil Penalties available under the Housing Act 2004 will be developed by Sunderland City Council as statutory guidance is up dated and this will be integrated into this policy in due course.

This means that the civil penalty will contain an element of deterrent, punishment and to remove the financial benefit that the landlord or the duty holder has tried to obtain and reflects the circumstances of that landlord.

With these principles in mind the following example is offered as to how Sunderland City Council using a case by case basis would level a financial penality for breach of the ban.

Notice of Intent

A notice of intent will be sent to the landlord/duty holder specifying the following information: -

(a) the date on which the notice of intent is served,

(b) the amount of the proposed financial penalty,

(c) the reasons for proposing to impose the penalty, and

(d) information about the right to make representations

Representation

The landlord/duty holder has a right to make representations to Sunderland City Council about the financial penalty that has been imposed within a period of 28 days.

During this representation period if the landlord make a repayment in full of the banned fee to the tenant the Council would be prepared to half the degree of financial penalty that is to be levied to the poor performing landlord, but this does not apply to good or indifferent landlords as the fee has already been repaid and this has already been reflected in the starting point.

The landlord or duty holder may also give financial reasons why they may not be able to afford the level of the fee suggested by the Council. The Council will consider this representation, but supporting documentary evidence to support the claim of financial hardship must be submitted to the council at the point of representation.

Should insufficient documentary evidence be submitted the Council reserves the right to disregard these grounds of reducing the financial penalty.

Should other aggravating factors come to light during the process of representation the Council reserves the right to remove the suggestion of halving the suggested financial penalty if the fees have been returned to the tenant.

Final notice

Where the landlord repays the fee to the tenant and offers no evidence to suggest that they would be unable to afford the financial penalty. The council will issue a final notice and must specify the following information therein:

- the date on which the final notice is served,
- the amount of the financial penalty,
- the reasons for imposing the penalty,
- information about how to pay the penalty,
- the period for payment of the penalty,
- information about rights of appeal, and
- the consequences of failure to comply with the notice.

Compensation to the tenant

A tenant is entitled be repaid the sum of any unlawfully charged fees as well as any interest owed.

Appeals process

Landlords will be able to appeal to the First-tier Tribunal if they have been issued with a financial penalty in relation to the ban. An appeal against a financial penalty must be brought within 28 days from the day after the final notice was served. Landlords may appeal against the decision to impose a penalty or the amount of the penalty.

Recovering the financial penalty from a landlord

If a landlord fails to pay the whole or any part of a civil penalty the Local Authority can make application to a County Court for the whole or part of the financial penalty owed to them.

In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which is signed by the chief finance officer of the authority which imposed the penalty, and states that the amount due has not been received by a date specified in the certificate, is evidence of that fact.

A county court can make a judgment for the landlord to pay the financial penalty. Once a CCJ is obtained the Local Authority can make application for a charging order to attach to the landlords assets to recover the moneys owed, which could ultimately result in the enforced sale of the landlords rental or home property.

The database of rogue landlords and property agents

If a landlord receives two or more financial penalties within a 12 month period, at a time when they were a landlord or agent, a local housing authority has discretion to include you on the database of rogue landlords and property agents. An offence under the Tenant Fees Act 2018 is a banning order offence under the Housing and Planning Act 2016.

A landlord convicted of an offence under the ban, this will be a banning order offence under the Housing and Planning Act 2016. Local authorities have discretion to include convictions for banning order offences to the database. If a landlord has been convicted of a banning order offence, the local housing authority can apply to the First-tier Tribunal for a banning order. Local authorities are under a duty to record details of banning orders on the database.

Banning order

If a landlord is convicted of an offence under the ban, the local housing authority may wish to consider applying for a banning order against the landlord. Banning orders will be reserved for the most serious offenders.

Sunderland
City Council

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