

Enforcement and Regulatory Policy for Private Sector Housing

April 2020

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2.0	Paragraph 4.8 HMO Licensing	08.01.19		08.01.19
3.0	Addendum COVID-19 added	03.04.20		

ADDENDUM

Policy Update - COVID 19

Following the COVID-19 outbreak the Ministry of Housing, Communities & Local Government (MHCLG) has introduced non-statutory guidance for local authorities on enforcing standards in privately rented properties. This guidance and this addendum updating the Enforcement and Regulatory Policy for Private Sector Housing will form the basis of the Council's approach to delivering our service in the private sector during the COVID-19 outbreak.

There are currently no measures to prevent Local Authorities taking enforcement action in circumstances where there is a serious risk to health and safety. The Private Sector Housing team will continue to deal with the enforcement of standards in the private rented sector and respond to service requests concerning housing conditions that present health and safety risks.

At this time and until further notice, we will prioritise service requests to ensure the most serious risks are addressed. Where a service request is deemed to be low risk we will write to both tenants and landlords and monitor on a case by case basis until concluded.

The Council's focus will be; to support the most vulnerable people and where there are urgent concerns regarding but not limited to; no heating, no hot water, unsafe gas or electric systems, no washing or toilet facilities, fire safety concerns, security issues or where there is a serious problem with the fabric of a building.

Visits and inspections will be restricted to responding to urgent service requests where conditions are deemed to be an imminent danger to health and safety (where it is appropriate to do so and in line with relevant guidance). Where conditions are deemed to require urgent attention or an imminent danger and it is not possible to undertake an inspection then an assessment may be made through video or photographic evidence.

The Council will continue to consider the use of enforcement powers, taking a pragmatic, approach to ensure tenants are kept safe and landlords are supported, basing all our decisions on an assessment of risk and in compliance with legislation.

We will continue to review this policy to meet Government advice and the changing needs caused by the COVID-19 outbreak.

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1.0 Introduction

- 1.1 Stockton on Tees Borough Council ('the Council') is committed to improving the housing conditions and management standards in privately rented and privately owned properties across the borough.
- 1.2 Although Stockton has some excellent landlords there are a number of criminal, rogue and irresponsible landlords who knowingly rent out accommodation that is unlicensed, substandard and/or unsafe.
- 1.3 The Council has statutory powers and duties to regulate private sector housing through enforcement of the Housing Health and Safety Rating System (HHSRS) and Licensing of Houses in Multiple Occupation (HMOs). Other relevant legislation also allows the Council to ensure that private sector homes are safe for residents and neighbourhoods and are of a reasonable standard.
- 1.4 Regulatory actions include:
 - Carrying out inspections
 - Dealing with license applications
 - Service of notices and orders
 - Carrying out work in default
 - Prosecution
 - Civil Penalties
 - Rent Repayment Orders
- 1.5 These duties are carried out by the Private Sector Housing team that forms part of the Housing Service within the wider Economic Growth and Development Services Directorate.

2.0 Policy Aim

- 2.1 This Enforcement policy sets out the Council's approach to delivering our service in the private sector. It is not intended to provide a full breakdown of individual policies and should be read in conjunction with other Private Sector Housing policies, including the House in Multiple Occupation Policy, the Empty Homes Delivery Plan, the Civil Penalties Policy and the Rent Repayment Orders Policy.

3.0 Statutory Regulations and Legislation

- 3.1 Local authorities have statutory duties and discretionary powers to improve standards in the Private Housing Sector. Enforcement action undertaken by the Private Sector Housing team will be discharged in line with the principles of good enforcement set out in the following (details of all legislation used by the Private Sector Housing Team are outlined in Appendix 1):

- Regulators' Code
- The Stockton-on-Tees Borough Council Regulatory Services Enforcement Policy
- Housing Act 2004
- Environmental Protection Act 1990
- Civil Penalties and Rent Repayment Orders under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities
- The Police and Criminal Evidence Act 1984 (as amended)
- Criminal Procedures and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Management of Houses in Multiple Occupation (England) Regulations 2006
- The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

3.2 The Private Sector Housing team will enforce the regulations and legislation efficiently and effectively without imposing unnecessary burdens upon property owners and occupiers.

Advice and guidance

3.3 The Private Sector Housing Team will provide general information, advice and guidance to assist owner occupiers, landlords and tenants to understand and meet their responsibilities. This will normally be done through the Council's website: www.stockton.gov.uk/environmentandhousing

Our approach

3.4 In the first instance the Private Sector Housing Team will generally seek to resolve issues informally, the Council believes that this approach facilitates a swifter resolution to repairs/improvement issues when compared to the formal route.

3.5 This process gives landlords the opportunity to resolve matters and helps reduce the burden that can arise from having to take formal enforcement action. The formal route will be pursued if little or no progress has been made using the informal route.

3.6 If there is a history of non-compliance by a landlord or an owner or if the condition of the property presents a serious risk of harm or an imminent risk of serious harm to the health and safety to occupiers or visitors or matters are deemed to be an emergency then the Private Sector Housing Team may take formal enforcement action.

3.7 Appendix 2 provides a summary of the process undertaken by the Private Sector Housing Team to respond to complaints regarding housing conditions and bring about improvements in sub-standard housing.

When we will take enforcement action

- **Targeted:** Enforcement action will target the properties and people that pose the greatest risk, including the owners and landlords that evade licensing and regulation; those whose properties cause a nuisance or put people's health and safety at risk, or where a landlord has a history of not complying with informal requests to undertake work or non-compliance with statutory notices.
- **Proportionate:** Actions will be taken in proportion to reflect the nature, scale and seriousness of any breach or non-compliance (for example carrying out costly works in default where it would be difficult for the Council to recover its costs).
- **Fair and Objective:** Enforcement action will be based on the individual circumstances of the case, taking all available facts into account.
- **Transparent:** The Council will ensure its policies are clearly defined and readily available. As far as is reasonably practicable all communications will provide full details and clear reasons for any enforcement action being taken against a person.
- **Consistent:** Private Sector Housing Officers will be fully trained to ensure consistency in the interpretation and enforcement of legislation and will liaise with other Council departments, the Fire Authority and Cleveland Police wherever necessary.
- **Accountable:** The Private Sector Housing team will consult with landlords, tenants and other stakeholders with an interest in private sector housing wherever possible and appropriate.

4.0 Role of the Council in dealing with Private Sector Housing

- 4.1 This section outlines the main functions that the Council performs to enforce and regulate relevant legislation.

Inspections and other visits

- 4.2 The Council has a statutory duty to keep housing conditions in the private sector under review. Inspections will be carried out in response to complaints from tenants as well as targeted inspections of properties that have been identified as having conditions deemed to be a risk in terms of danger to the health and safety of occupants.
- 4.3 Inspections will also be undertaken where it appears the actions of poor landlords have contributed to the blight and decline of communities.
- 4.4 Alongside the duty to keep housing conditions under review the Private Sector Housing Team will also investigate any instances of Statutory Nuisance which ought to be dealt with under the Environmental Protection Act 1990.
- 4.5 The Private Sector Housing Team will also carry out visits to investigate any allegations of harassment and illegal eviction.

Dealing with Requests for Service

- 4.6 The Private Sector Housing Team will respond to complaints from tenants and other residents regarding problematic private properties and allegations of harassment and illegal eviction, taking appropriate enforcement actions in line with the relevant legislation and regulations.

Houses in Multiple Occupation

- 4.7 Houses in Multiple Occupation (HMOs) can be broadly defined as houses in which, three or more unrelated occupants, forming two or more households share facilities.
- 4.8 There are many houses in Stockton-on-Tees in which more than one household share facilities. As HMOs are higher risk than single family homes, the conditions, facilities and management are regulated, with some HMOs subject to licensing:
- Mandatory HMO Licensing – a licence is required in HMOs that consist are occupied by five or more persons, in two or more households sharing the facilities. Further details can be found in the Council's HMO Policy

Overcrowding

- 4.9 Overcrowding can be a difficult issue for the Council to address as unlike any other hazard it is not feasible to ask the landlord to add another room to a property in the same way they may be asked to repair a roof for example.
- 4.10 Instances of overcrowding will be dealt with and remedies will be required to be implemented by a landlord wherever practicable. However where this is not possible cases will be referred to the Council's Homelessness and Housing Solutions Team who will provide support to the household to find alternative suitable accommodation to prevent homelessness.

Empty homes

- 4.11 Empty homes are not just a wasted resource. Neighbours of empty homes can be badly affected by the physical, social and environmental problems associated with empty homes including deteriorating housing conditions, accumulations of rubbish, vandalism and anti-social behaviour. They also represent a potential housing resource that is currently under utilise as well as a loss of revenue to the Council.
- 4.12 For more information please refer to the Council's Empty Homes Delivery Plan that outlines the Council's approach to dealing with empty homes.

Harassment and Illegal Evictions

- 4.13 The Council is aware that there are a small number of private landlords or lettings agents operating within the Borough who do not conduct themselves within the requirements of legislation relating the private sector accommodation. These landlords and agents sometimes resort to using harassment and/or illegal eviction to force tenants to leave their properties.

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- 4.14 Illegal eviction can often be prevented through mediation with the landlord. The Council favours this approach unless there are other mitigating factors such as violence, which would deem it unsuitable.
- 4.15 On occasions where a landlord continues to harass or illegally evict a tenant despite being advised that they may be committing a criminal offence the Council will take action in line with relevant legislation.

Dealing with different tenures

- 4.16 The Council understands that different tenures need to be dealt with in different ways to meet their needs. The Council's approach is set out below:
- **Owner Occupiers:** In certain circumstances the Council can take action against owner occupiers without their consent including, but not limited to the following situations:
 - The property condition problem adversely affects someone else/impacts on an adjoining property;
 - Where tenants are also living in the property;
 - Where there is a danger to the health and safety of the public or visitors to the property;
 - To protect the health and safety of a vulnerable or elderly owner occupier, if all other means of resolution have been exhausted.
 - **Private Landlords and Tenants:** On receipt of Requests for Service the Council will generally seek the views of tenants and landlords before taking any enforcement action and will take into account any applicable representations; however there may be times, such as in an emergency, where this may not be possible.

The Council aims to engage proactively with landlords through a process of support and encouragement and will seek to utilise informal approaches to alleviate problems wherever possible before progressing formal action.

The Council provides a wide range of assistance to help landlords comply with their legal responsibilities. Further details can be found on the Council's website www.stockton.gov.uk/environmentandhousing

- **Leaseholders:** where the Council has received complaints from leaseholders requesting assistance in taking action against another leaseholder or freeholder, the Council's assistance will be limited to:
 - Category 1 and high Category 2 hazards identified under the Housing Health and Safety Rating System where a leasehold flat is tenanted;
 - Contraventions of the HMO Regulations, which may necessitate action being taken against the leaseholder themselves;
 - Statutory nuisances, serious or emergency situations affecting common parts of or multiple flats in a leasehold block.
 - In other situations it may be appropriate to refer the leaseholder to other advice services provided by the Council, Leasehold Advisory Service or a Solicitor who specializes in leasehold law.

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5.0 Regulatory and Legislation Compliance Options

5.1 The tables below outline the enforcement options available to the Private Sector Housing Team. The actions listed are not exhaustive and the Private Sector Housing Team will continue to make decisions on a case by case basis.

General circumstances

Action	General Circumstances
No Action	<ul style="list-style-type: none"> Where formal action may not be necessary, a referral to other sources of advice may be made.
Informal Action/Advice	<ul style="list-style-type: none"> Where circumstance dictates it may be appropriate to deal with problems initially by way of informal action or advice. For example, notifying a responsible person that action is required prior to taking formal action. Where a responsible person agrees to take the action required by the Local Authority.
Service of Notice (requiring repairs or specific legal requirements)	<ul style="list-style-type: none"> Where there is a risk to health, safety and wellbeing of a household or the public. A landlord has a history of non-compliance with statutory notices or has failed to respond to requests to work informally with the Local Authority. Standards are poor with little management awareness of statutory requirements There is a record of criminal convictions for failure to comply with housing related offences in the last 5 years, or a caution has been issued in the last 2 years It is necessary to safeguard and protect health and safety in the future To bring an empty property back into use when informal requests to do so have failed
Powers of Entry	<ul style="list-style-type: none"> To protect the health and safety of any person or to protect the environment without delay To investigate an offence To prevent the obstruction of Officers To carry out a statutory duty or power
Powers to Require Documents	<p>Authorised officers have the power to require:</p> <ul style="list-style-type: none"> Documents to be provided to enable them to carry out their powers and duties under the Housing Act 2004 Electrical and gas safety certificated in relation to HMOs Any person with an interest in a property to provide details about its ownership or occupation

Emergency circumstances

Action	Emergency Circumstances
Emergency Remedial Action/Emergency Prohibition Order	<ul style="list-style-type: none"> There is an imminent risk of serious harm to the health and safety of any occupiers of the premises or any other residential premises
Injunctive Action	<ul style="list-style-type: none"> For use in dangerous or significant public detriment or where offenders are repeatedly found guilty of similar offences

Contravention circumstances

Action	Contravention Circumstances
Works in Default for non-compliance with a notice	<ul style="list-style-type: none"> To carry out works required by a notice if they have not been complied with within the permitted time The above may be taken in conjunction with, or followed by prosecution, issuing a Penalty Charge, issuing a Civil Penalty Charge or seeking a Rent Repayment Order
Revocation of licenses and approvals	<ul style="list-style-type: none"> Manager identified as not a 'fit and proper person' There is a breach of licensing conditions or poor standards of management
Formal (Simple) Caution	<ul style="list-style-type: none"> For less serious offences where it is deemed appropriate to warn people about their behaviour and legal consequences if they commit further offences
Penalty Charge	<ul style="list-style-type: none"> For failure to comply with a Remedial Notice under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015
Civil Penalty Charge	As an alternative to prosecution where an individual or company has: <ul style="list-style-type: none"> deliberately, negligently or persistently breached certain legal obligations under the Housing Act 2004
Rent Repayment Order	Where an individual or company has: <ul style="list-style-type: none"> breached certain legal obligations under the Housing Act 2004, the Housing and Planning Act 2016, the Criminal Law Act 1977 or the Protection from Eviction Act 1977
Prosecution	Where an individual or company has: <ul style="list-style-type: none"> deliberately, negligently or persistently breached legal obligations deliberately or persistently ignored written warnings or formal notices/orders or no reasonable progress has been made in carrying out requirements refused to accept the offer of a simple caution assaulted or obstructed and Officer in the course of their duties or provided false information or where Alternative means to achieve compliance are considered inappropriate

6.0 Fees and Charges

- 6.1 Legislation allows the Council to charge for taking certain enforcement action, for undertaking work in default, for licensing and to impose penalty charges for non-compliance with notices or orders.

Taking enforcement action

- 6.2 Where enforcement action is necessary by way of serving a notice or making an order, the Council will use a variety of regulatory powers. Where legislation allows the Council will normally charge the person responsible for the cost of determining whether to take such action and for preparing and serving a notice or making an order. Table 1 provides details of the current charges.
- 6.3 In deciding whether to exercise the powers to make a charge, the Council may consider the circumstances of the person or persons against whom enforcement action is being taken and reserves the right to waive the charge for enforcement action.

Table 1

Action	Fee
Improvement Notice	£323.00
Suspended Improvement Notice	£323.00
Hazard Awareness Notice	£323.00
Prohibition Order	£301.00
Suspended Prohibition Order	£301.00
Emergency Remedial Action	£301.00
Emergency Prohibition Order	£301.00
Demolition Order	£301.00
Review of notices and orders	£301.00

- 6.4 Additional costs that are incurred in obtaining specialist reports and the like which assist in identifying any action to be specified within a notice or order will be added on to the fee.

Work in default

- 6.5 The Council has powers under various legislation to carry out works where a person has been required to undertake work but has failed to do so or where work is required in an emergency.
- 6.6 Where the Council undertakes work, we will seek to recover the full cost of the works, plus a charge of £50 or 10% of the cost of the works, whichever is the higher.
- 6.7 It is not always mandatory for the Council to undertake work and we reserve the right not to do so where the cost of the work is considered to be excessive or there may be difficulties in recovering costs.

Licensing

- 6.8 The Housing Act 2004 allows the Council to charge a fee for licensing Houses in Multiple Occupation and since the inception of mandatory HMO Licensing in April 2006 the Council have been subsidising delivery of the licensing scheme. Following a corporate review of HMO licence fees in April 2010, the Council introduced a new charge of £250 per unit of accommodation for a licensable HMO (discounted to £200 per unit of accommodation for members of the Landlord Accreditation Scheme). Once a licence has been granted the licence fee is non-refundable. Whilst the fees have been adjusted and are more realistic of the costs involved in operating the scheme, it still remains subsidised by the Council.

Penalty Charge

- 6.9 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 placed a duty on landlords to ensure certain requirements are met in respect of smoke and carbon monoxide alarms.
- 6.10 Where a landlord is found to have failed to meet these requirements then the Council may serve a Remedial Action Notice. Failure to comply with such a Notice the Council may impose a Penalty Charge of up to £5,000.
- 6.11 The Penalty Charge shall be set at £1,000 for the first offence but this will be reduced by 25% to £750 if paid within a 14 day period. Should the Landlord not comply with future Remedial Notices then the fine shall be set as detailed below:
- | <u>Offence</u> | <u>Charge</u> |
|---------------------|---------------|
| Second | £2,000 |
| Subsequent offences | £5,000 |
- No discount will be given for prompt payment after the first occasion
- 6.12 The Council have produced a Statement of Principals relating to this Penalty Charge, and full details can be found on the Councils website at www.stockton.gov.uk

Civil Penalties

- 6.13 The Council can impose a Civil Penalty of up to £30,000 for certain specified housing offences.
- 6.14 A Civil Penalty will be issued where the Council believes that the most disruptive sanction to impose on a criminal, rogue or irresponsible landlord is a financial penalty (or penalties if there are several breaches), rather than prosecution.
- 6.15 In order to ensure that the Civil Penalty is set at an appropriate level, the Council will take in to account the factors identified in statutory guidance set out by the Government and full details of the Council's approach to Civil Penalties, can be found in the Council's Civil Penalty policy.

Rent Repayment Orders

- 6.16 The Council will consider on a case by case basis applying for a Rent Repayment Order if it becomes aware that a person who is a landlord commits a certain specified offence for which a Rent Repayment Order can be sought.
- 6.17 When determining how much rent to recover the Council will take in to account the factors identified in statutory guidance set out by the Government and full details of the Council's approach to Rent Repayment Orders, can be found in the Council's Rent Repayment Order policy.

7.0 Guidance

- 7.1 There is a wide range of guidance available from the government and other sources that the Council will consider when formulating and revising its policies and procedures. Private Sector Housing officers will follow the Council's policies and procedures and take the relevant guidance into account on a case by case basis.

8.0 Review

- 8.1 The policy is subject to change and will be reviewed periodically, in line with changes in legislation, Government guidance and Council policy. Minor changes to this policy may be required from time to time, and will be undertaken with the authorization of the Director of Economic Growth and Development.

9.0 Complaints and Redress

- 9.1 If you have any complaints about this policy we will investigate your complaint and will look carefully at the issue you have raised.
- 9.2 Please forward any complaints regarding this policy to the Private Sector Housing team via email privatesectorhousing@stockton.gov.uk or via telephone 01642 527797.
- 9.3 We will respond to a complaint as quickly as possible. Generally this will be within 10 working days.

10.0 Contact

Private Sector Housing
Economic Growth and Development Services
Stockton-on-Tees Borough Council
16 Church Road
Stockton-on-Tees. TS18 1TX
Tel: 01642 527797
Email: privatesectorhousing@stockton.gov.uk

APPENDIX 1 – AVAILABLE LEGISLATION

Housing Act 2004

Housing Act 1985

Housing and Planning Act 2016

Environmental Protection Act 1990

Building Act 1984

Local Government (Miscellaneous Provisions) Act 1982

Local Government (Miscellaneous Provisions) Act 1976

Local Government Act 1972

Local Land Charges Act 1975

Law of Property Act 1925

Public Health Act 1961

Public Health Act 1936

Prevention of Damage by Pests Act 1949

Caravan Sites and Control of Development Act 1960

Protection from Eviction Act 1977

Protection from Harassment Act 1997

The Energy Act 2013

Coronavirus Act 2020

and any amending or replacement legislation or Statutory Instruments, Regulations, Bylaws or Orders associated with or made under these enactments.

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APPENDIX 2 – SUMMARY OF OUR APPROACH

