

(CCC) Housing Act 2004 Section 62- Temporary exemption from HMO licensing

The Housing Act 2004 requires local housing authorities to determine applications made for temporary exemption notices (TEN) and either issue a TEN under section 62(2) or issue a notice without delay, refusing to grant a TEN under Sec 62(6) with a right of appeal to the First-tier Tribunal (Property Chamber). Local housing authorities cannot simply ignore applications as Parliament has not given powers not to determine an application.

Housing Act section 232 requires that every local housing authority must establish and maintain a register including all temporary exemption notices served by them under section 62 that are in force.

Please provide the following information for temporary exemption notice applications received by Cambridge City Council between January- December 2019 with the responses to the numbered questions provided in the corresponding numbered row

1. The number of Temporary Exemption Notice (TEN) applications received by Cambridge City Council in each calendar month

2019 - 1x January, 1x February, 1x March, 2x May & 1x July.

2. The number of TEN applications granted for each calendar month

2019 - 1x January, 1x March, 2x May & 1x July 2019

3. For granted TENs provide the dates when the information was published on the Cambridge City Council public register

All information relating to TENs is currently retained on the Environmental Health database system.

4. The number of TEN applications formally refused under section 62(6) where a notice was served

None between January and December 2019.

5. The number of TEN applications received and not granted where no formal response was provided in the form of a notice required under 62(6) and no details placed on a public register

1 - as stated in response to question 3 all information relating to TENs is currently retained on the Environmental Health database system.

A process is currently being created within Environmental Health to ensure that all required information relating to TENs is included onto our public register moving forward. Thank you for bringing this to our attention.

I am seeking assurances that the correct legal procedure is followed by Cambridge City Council enforcement officers and enforcement is fair, open and transparent, please also send me a copy of the HMO licensing enforcement policy as I cannot find it on the

FOI Ref

Response sent

7252

9 Jun 2020

Council website. This request is very much in the public interest as publicly funded authorities must be seen to comply with the Housing Act 2004.

Thank you for your request for information above, which we have dealt with under the terms of the Freedom of Information Act 2000. Please find our responses annotated against your questions as well as a copy of the document you have requested within 'Attached Documents'.

We aim to provide a high quality service to you and hope that you are satisfied with this response. If you have any further questions please do not hesitate to contact us.

Further queries on this matter should be directed to foi@cambridge.gov.uk

**ENFORCEMENT POLICY ANNEX AND SERVICE
STANDARDS:**

ENVIRONMENTAL HEALTH RESIDENTIAL TEAM



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Residential Team Enforcement Standards

1.0 Introduction

The quality of the home has a substantial impact on health and a warm, dry and secure home is associated with better health. In addition to these basic housing requirements, other factors that help to improve well-being include the neighbourhood, security of tenure and freedom from anti-social behaviour. The Building Research Establishment (BRE¹) has calculated that overall poor housing costs the NHS at least £1.4 billion per year.

The Residential Team work to ensure that residents have a safe and suitable place to rent that contributes to their wellbeing and that no person living in, working in, or visiting the area suffers significant adverse health effects or nuisance from noise, defective drainage, accumulations, or pests.

A number of statutory duties are associated with the role of the Residential Team, in general these are, but are not limited to:

- Keeping the housing conditions within Cambridge City under review with a view to identifying any action that may need to be taken under various specified pieces of legislation.
- Inspection of any residential premises in their district with a view to determining whether any category 1 or 2 hazards exist on those premises.
- Inspect the local authority area from time to time to detect statutory nuisances, investigate complaints of statutory nuisance and in prescribed circumstances take enforcement action.
- To consider licence applications in relation to;
 - i) Houses in Multiple Occupation
 - ii) Caravan sites

To fulfil these duties the Residential Team investigate service requests, undertake proactive work, provide advice and take enforcement action where necessary relating to:

- Poor housing conditions.
- Statutory nuisance arising from residential premises.
- Drainage, accumulations and filthy and verminous properties.
- The condition of empty properties and bringing them back into use.
- The House in Multiple Occupation (HMO) Mandatory Licensing Scheme.
- The Caravan Site Licensing Scheme

¹ The cost of poor housing to the NHS, Simon Nicol, Mike Roys, Helen Garrett, BRE [2015]

2.0 Service Standards

We will normally respond to all service requests by:

- 1) Contacting the complainant, via contact details provided, advising who will be dealing with their case, the process, legal position and possible outcomes.
- 2) We will gather evidence as necessary and consider this in line with the Council's Enforcement Policy.
- 3) Wherever possible all parties will be kept informed of the action being taken and the process ahead.
- 4) Where appropriate, contact will be confirmed in writing and information/publications provided to both tenant and landlords.

2.1 Poor Housing Conditions and Public Health

- 5) Where there is an imminent risk to the occupiers/visitors we will aim to contact the complainant ideally on the same working day but where this is not possible by the end of the next working day. For all other cases we will aim to contact the complainant within three working days.
- 2) Where the case requires and it is appropriate we will aim to contact the landlord to inform them of the complaint, ascertain what actions they are undertaking and any additional information they might provide.
- 3) Following this initial contact, a risk assessment should be undertaken and if appropriate a visit made to the property as necessary in line with this assessment. An opportunity will be given for the person responsible for the property to attend.
- 4) We will then consider the correct course of action, whether formal or informal, in line with any legal requirements and our Enforcement Policy.
- 5) In severe cases (where re-housing is required) the Housing Needs and Advice Teams will be contacted to determine re-housing options and availability should the person(s) responsible for the property be unable to re-house the occupier(s)
- 6) Service requests relating to accumulations of waste in terms of City Homes properties will be passed to the appropriate Housing Officer to respond to in the first instance.

2.2 Illegal Eviction & Harassment

- 1) For illegal eviction cases we will aim to contact the complainant ideally on the same working day but where this is not possible by the end of the next working day.
- 2) For harassment cases we will aim to contact the complainant within three working days.

- 3) Where the case requires and it is appropriate we will aim to contact the landlord to progress the case as soon as is practicable and in line with the severity of the case.
- 4) In the case of illegal eviction we will also liaise with the Housing Needs and Advice Teams to determine rehousing options and availability.
- 5) We will give advice and attempt to mediate between landlord and tenant. We will not be responsible for the tenant regaining possession.
- 6) Rights, duties and expectations will be explained and co-operation sought to resolve matters amicably prior to consideration of enforcement action.

2.3 Houses in Multiple Occupation (HMOs)

- 1) We will inspect all properties which require a licence or renewal of a licence during the course of the licence term.
- 2) We will maintain a database of identified HMOs and undertake risk assessments on them.
- 3) We will prioritise HMOs which are considered to be high risk.
- 4) We will work with landlords and owners of properties to ensure HMOs meet with both statutory requirements and the council's standards. Where landlords do not meet these standards or licence their property where necessary formal action will be instigated in accordance with the enforcement policy.
- 5) Where concerns are raised about a property that is reported to be an HMO we will aim to contact the complainant within three working days to obtain additional information and advise them of the next steps.

2.4 Interim Management Orders (IMO's)

- 1) The Council must make an IMO in respect of a licensable HMO which is not licensed if it is satisfied that there is no reasonable prospect of the property being licensed in the near future or it is necessary to protect the health, safety or welfare of occupiers of the property or properties in the vicinity.
- 2) An IMO is in force for 12 months and allows the Council to manage the property with all the rights of a landlord and to collect rent and expend it on work to the property.
- 3) An IMO ceases to have effect if a licence is granted. There are provisions to vary, revoke and appeal against an IMO.

2.5 Final Management Orders (FMO's)

- 1) The Council must make an FMO where, on expiry of an IMO, the property is required to be licensed but the Council considers it is still unable to grant a licence.
- 2) A FMO is similar to an IMO in that the Council continues to manage the property with all the rights of the landlord, but they must be reviewed from time to time.
- 3) There are provisions for varying, revoking and appealing the making of a FMO.

2.6 HMO Licensing

- 1) Where requested (or deemed necessary) we will aim to send out an application pack within 3 working days.
- 2) Upon receipt, the application will be assessed, where incomplete they will be returned to the applicant requesting this additional information.
- 3) Where able we will offer our assistance to the applicant in making their application (a charge may apply to recover costs for this assistance).
- 4) The application will be processed within a reasonable time period of 6 weeks of a full and satisfactory application being submitted and the licence or refusal issued within 7 days of the date of making the decision.
- 5) A two part fee will be charged. The fee on application covers the cost of administration. The application will not be considered complete until the fee is received. The fee on grant of licence covers the cost of overall management and enforcement of the licence. The final licence will not be granted without receipt of this fee.

2.7 Caravan Site Licensing

- 1) Where requested (or deemed necessary) we will aim to send out an application pack within 3 working days.
- 2) Upon receipt, the application will be assessed, where incomplete they will be returned to the applicant requesting additional information.
- 3) Where able we will offer our assistance to the applicant in making their application (a charge may apply to recover costs for this assistance).
- 4) The application will be processed within a reasonable time period of 6 weeks of a full and satisfactory application being submitted and the licence or refusal issued within 7 days of the date of making the decision.
- 5) A fee will be charged on application. The application will not be considered complete until the fee is received.

2.8 Empty Properties

- 1) We will inspect all properties known or reported to be long term empty.
- 2) We will set up and maintain a database of identified empty properties and undertake inspections of them.
- 3) We will work with owners of empty properties to ensure that they are brought back into use and where the owner is unable or unwilling to do so take enforcement action in accordance with the enforcement policy.
- 4) Where a property is reported to be an empty property we will aim to contact the complainant within three working days to obtain additional information and advise them of the next steps.

2.9 Statutory nuisance

- 1) Where a service request is received regarding a statutory nuisance that is in existence at the time of the call we will aim to contact the complainant within 30 minutes.
- 2) Where the complaint has not been reported to the Council previously the complainant will normally be informed that we will write to the alleged source to inform them of the complaint and to give them an opportunity to modify their behavior as well as advising them that the situation is being monitored.
- 3) Where the complaint has been reported to the Council previously (within the last six months) and the alleged nuisance is still ongoing we will attempt to visit to witness the alleged nuisance.
- 4) If a nuisance is witnessed we will consider the correct course of action, whether formal or informal, in line with any legal requirements and our Enforcement Policy.
- 5) Where appropriate any landlord / manager of the property will be informed of any service requests relating to nuisances arising from their tenant(s) in order that they may consider taking action in relation to the anti-social behavior. It may also where appropriate be necessary to inform other agencies and Council departments.

2.10 Requests for Immigration Inspections

- 1) We will aim to respond to requests for inspections by contacting the requestor within three working days but certainly within seven working days.
- 2) We will explain the procedure and what documents will be required to be produced and that a fee will be charged reflective of the costs.
- 3) We will inspect the property with the person requesting the inspection by arrangement and advise of our findings.
- 4) Within 7 days of the inspection (and upon receipt of the fee) we will produce the required documentation and send it to the relevant body and send a copy to the person requesting service.

3.0 Housing Health & Safety Rating System (HHSRS)

HHSRS is the current method of assessing risks to the health and safety of occupiers posed by poor or substandard housing. The system has 29 specific hazards which if present are banded as Category 1 or Category 2 (depending on the risk of harm to occupiers / visitors).

The Council has a duty to take appropriate enforcement action where Category 1 hazards are found and a power to take action where Category 2 hazards are present.

The decision of whether to take action under HHSRS is a three-stage process:

- 1) Determine if hazards are present and assess the hazard ratings under the HHSRS;
- 2) Determine whether the Council has a duty or power to take action; and
- 3) Determine the most appropriate course of action to deal with the hazard, having regard to Statutory Enforcement Guidance and the Council's Enforcement Policy.

Where a specified hazard exists, the formal courses of action available to the Council are:

- Service of an Improvement Notice;
- Prohibition Order;
- Service of a Suspended Improvement Notice/Prohibition Order
- Emergency Remedial Action¹;
- Hazard Awareness Notice;
- Demolition Order²;
- Declaration of a Clearance Area²;

¹ Not available for Category Two hazards

² Available for Category Two hazards only in prescribed circumstances.

The Enforcement Guidance Housing 2004 Act ('the Act') states that the action chosen must be *the most appropriate course of action in relation to the hazard in all the circumstances* and sets out the general factors relevant to the decision. In deciding the most appropriate course of action consideration will normally be given to the views of owners, landlords and tenants. It may also be appropriate to consider the regeneration and renewal programmes and approved Housing Strategy for the City. Every notice or order must specify why that course of enforcement action was taken over the other options and must also clearly state what is required to remedy the hazard, and when remedial work has to be completed, the possible consequences of non-compliance and any appeal process.

Where there are concerns about a vulnerable person, it may also be appropriate to consult other agencies involved with the care for that person who can potentially offer support.

For **Category 1** hazards the Council will carry out its statutory duty to remedy all such hazards identified and take the appropriate enforcement action where necessary.

HHSRS is designed to deal with all relevant hazards which arise from deficiencies in and around the home. Therefore, even minor category 2 hazards need not go un-addressed if the Council considers that it is appropriate in all the circumstances to take action in relation to those hazards. For Category 2 hazards the Council will generally take action according to risk, additional factors that will be taken into account when deciding whether to take formal action are (but are not limited to):

- The vulnerability of the occupier to the hazard present.
- The presence of multiple category 2 hazards.

3.1 Option Appraisal

Typical reasons why one enforcement option may be chosen over another are considered below. Although it is possible to take two different types of enforcement action in relation to the same property it is not possible to take more than one action for the same hazard. However if the option chosen has not achieved the desired outcome the Council may consider another course of action (or the same action again).

The Act places a duty on the local authority to set out a statement of reasons for their decision to take a particular course of action which must accompany the notice or order.

Hazard Awareness Notice

Draws the attention of the person responsible for the works of the desirability of remedial action although the person responsible is under no legal obligation to remove or reduce the hazard. It may be considered to be the most appropriate course of action in relation to the hazard where:

- The occupier is aware of the risks posed by the hazard(s) but expressed a desire to remain in the property and for the works not to be undertaken
- The property is occupied solely by the owner and his/her immediate family and there is no imminent risk associated with the hazards identified.
- In cases relating to overcrowding –
- Where the family have no desire to move e.g. due to local care arrangements and the occupiers are not at serious risk or
- Where overcrowding has been caused by a natural/invited increase in family size *and* occupiers are not at serious risk.

Improvement Notice

Requires the relevant person to undertake works to the property prescribed by the Notice. It could be considered to be the most appropriate course of action in relation to the hazard where:

- Once the improvements are completed it can be expected that the risk of harm associated with the hazards within the property will be reduced to an acceptable level and the works can take place whilst the property is occupied; and
- The cost of the works are not disproportionate having regard to the risk posed by the hazard(s) and the value of the property (including potential rent levels); and
- The tenant has expressed a desire to remain in the property and for the works to be undertaken to improve their living conditions.

Prohibition Order

Prohibits the whole or part of a dwelling to all or some of the occupants (or restricts the number of permitted occupants). It could be considered to be the most appropriate course of action in relation to the hazard where:

- The cost of the improvement works is likely to be prohibitive, bearing in mind the value of the property; or
- The landlord is unable to bear the cost of the refurbishment and the property is vacant; or
- The extent of the works is such that undertaking remedial action is likely to be a lengthy process and/or it would not be possible to complete whilst the property is occupied.

Emergency Remedial Action

Involves undertaking works to the property prescribed by the Council in default of the owner (which may be undertaken without prior service of notice) and is only available in relation to Category one hazards. It could be considered to be the most appropriate course of action in relation to the hazard where:

- The hazard presents an imminent risk of serious harm to the health and safety of any of the occupiers; and
- Once the improvements are completed it can be expected that the level of risk of harm associated with hazard(s) within the property will be reduced to an acceptable level and the works can take place whilst the property is occupied; and
- The cost of the works are not disproportionate having regard to the risk posed by the hazard(s) and the value of the property (including potential rent levels); and
- The tenant has also expressed a desire to remain in the property and for the works to be undertaken to improve their living conditions.

Emergency Prohibition Order

Immediately prohibits the use of the whole or part of a dwelling to all or some of the occupants (or restricts the number of permitted occupants) and is only available in relation to Category one hazards. It could be considered to be the most appropriate course of action in relation to the hazard where:

- The hazard presents an imminent risk of serious harm to the health and safety of any of the occupiers; or
- The cost of the improvement works is likely to be prohibitive, bearing in mind the reduction in risk and the value of the property; or
- The extent of the works is such that undertaking emergency remedial action is likely to be a lengthy process exposing the occupier to an unacceptable risk; or
- Due to the nature of the hazard the Council do not consider any works are appropriate and practical in relation to the hazard(s) found at the property

Suspended Improvement Notice or Prohibition Order

This would involve no actions until a trigger event occurs, typically a change of tenancy or a defined period of time. A suspended notice is required to be reviewed at intervals of no greater than 12 months from the date of service. It could be considered to be the most appropriate course of action in relation to the hazard where:

- The tenants are aware of the hazards within the dwelling and have expressed a desire to remain in residence at the property without the disturbance of the works; or
- The works required to remove or reduce the hazards to an acceptable level cannot be completed with the tenants in place and the occupier is currently unwilling/unable to vacate the premises; or
- The tenant is not in imminent risk and does not want to leave until a suitable property in a suitable location has been found.

3.2 Powers to charge for enforcement action for action under the Housing Act 2004

The Council is entitled to make a reasonable charge as a means of recovering certain expenses incurred in:

- serving an Improvement Notice;
- making a Prohibition Order;
- serving a Hazard Awareness Notice;
- taking Emergency Remedial Action;
- making an Emergency Prohibition Order;
- making a Demolition Order.
- reviewing a suspended Notice or Order.

The expenses are in connection with inspection of the premises, subsequent consideration of action and the service of notices. Where notices are served under the Housing Act 2004 the approved charge will be made. No charge will be made in relation to the service of a Hazard Awareness Notice due to the informal nature of them and the fact that there is no right of appeal against it.

The charge is not punitive in nature but to cover the Council's costs, it may only be waived with agreement of the Team Manager.

3.3 Non Compliance Options (enforcement)

Where persons responsible for a property knowingly fail to comply with the requirements of a statutory notice, the Council will always consider further legal action to secure compliance. In considering what course of action is most appropriate regard will be given to the enforcement policy, seriousness of the offence and any immediate risk posed to the occupiers.

The options available are

- Works in default
- Prosecution of the person responsible for non-compliance
- The issue of a civil penalty
- Simple Caution

Undertaking works in default of the owner is not mutually exclusive to the other options and may be considered the most appropriate response where it is unlikely that the person responsible will undertake the works within a reasonable time frame and the occupiers will be exposed to an unacceptable level of risk.

It may be undertaken with or without the agreement of the person responsible. The need to act with agreement may arise where a serious hazard(s) exists and remedial action is required without undue delay but the owner is not in a position to carry out the works (perhaps due to a lack of funds) but is otherwise willing to undertake the works. In these circumstances the works are undertaken at the expense of the person and should be secured as a charge against the property. Where the works are undertaken without the agreement of the person reasonable expenses may be recovered along with the cost of the works (typically 30% of the cost of the works). Interest² may be charged and the debt should be registered as a charge on the property and recovered in line with Schedule 3 of the Act.

A prosecution may be the most appropriate option where it is in the public interest to do so such as where an offence is particularly serious or where the offender has committed similar offences in the past.

² Typically 8% plus the Bank of England base rate:
<https://www.gov.uk/late-commercial-payments-interest-debt-recovery/charging-interest-commercial-debt>

This does not mean civil penalties should not be used as an alternative to prosecution in cases where relevant housing offences have been committed if it is the most appropriate and effective sanction in a particular case.

¹In this section “relevant housing offence” means

- Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004;
- Failure to comply with a Prohibition Order under section 32 of the Housing Act 2004;
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016;³
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977

4.0 HMO Management Regulations

The Management of Houses in Multiple Occupation (England) Regulations 2006 impose duties on managers of all types of HMOs and must be complied with at all times. The duties that are imposed include (but are not limited to) ensuring the communal areas are kept clean and in good repair at all times and fire safety measures are maintained in good order and repair. A person commits an offence if they fail to comply with any regulation. Where breaches of the regulations have been identified and action is not taken to comply formal action will be taken against the manager in accordance with the Council’s Corporate Enforcement Policy.

The Regulations also impose duties on the occupants to conduct themselves in a way that will not hinder the manager in carrying out his responsibilities and abide by the reasonable instructions of the manager whilst living in the premises.

4.1 Offences in relation to licensing of houses in multiple occupation

It is an offence:

- For a person having control of or managing an HMO which is required to be licensed not to licence.
- Where a licence exists a person having control of or managing an HMO knowingly permits another person to occupy the house and the other person’s occupation results in the house being occupied by more households or persons than is authorised by the licence.
- For a licence holder or a person on whom restrictions or obligations under a licence are imposed to fail to comply with any condition of the licence.

5.0 Fit and Proper Person Test

Before granting an HMO Licence the Council must be satisfied that the licence holder, manager and any other person involved in managing the HMO are fit and proper. In deciding whether a person is fit and proper, the Council must have regard, amongst other matters:

- to any previous convictions relating to violence, sexual offences, drugs or fraud;
- whether the person has contravened any laws relating to housing or landlord and tenant issues;
- whether the person has been found guilty of unlawful discrimination practices;
- whether the person has managed HMOs otherwise than in accordance with any Approved Code of Practice.

It is a matter for the Council to determine the relevance of these considerations (or other matters it considers to be relevant) in deciding whether or not the person is fit and proper. It may be a requirement of application that reference is made to the Disclosure and Barring Service (DBS) in relation to the proposed licence holder. The level of disclosure the Council may require is described as 'enhanced disclosure'.

6.0 Temporary exemption from licensing requirement

A person having control of or managing an HMO which is required to be licensed but is not so licensed may apply for temporary exemption from the licensing requirement.

Following receipt of a valid application a temporary exemption notice may be served covering a period of 3 months beginning with the date on which it is served.

In reaching a decision regarding service of a temporary exemption notice the Council will have regard to the Housing Act 2004 and associated guidance.

In line with guidance this provision is not available for avoidance or evasion of licensing, since that would be contrary to the purpose of the Act. Landlords and managers, therefore, need to demonstrate to the council that they are genuinely taking steps to ensure the building will cease to be licensable. Simply a proposal to, or the act of, putting an HMO on the market for sale or reducing the number of occupants will not normally be sufficient for a council to agree to issue a temporary exemption notice.

If the Council decide not to serve a temporary exemption notice they will, without delay, serve on the person concerned a notice informing them of the decision in line with the requirements laid out in the legislation.

7.0 Banning Orders

A banning order is an order made by the First-tier Tribunal, which has the effect of banning a person from:

- letting housing in England;
- engaging in letting agency work that relates to housing in England;
- engaging in property management work that relates to housing in England; or
- doing two or more of those things;
- being involved in a body corporate that carries out activities from which the person is banned

It is an offence to breach a banning order i.e. to undertake or be involved in activities that the person is banned from. A person who is convicted of breaching a banning order under subsection (1) is liable to a term of imprisonment or a fine or both. Where a breach of a banning order continues after conviction the person commits a further offence and is liable on conviction to a fine not exceeding one tenth of the level 2 fine on the standard scale for each day or part of a day on which the breach continues.

The Housing Act 2004 allows Interim and Final Management Orders to be made in cases where a property has been let in breach of a Banning Order. Where a Banning Order has been made against a person they will not be considered as a fit and proper person for the purposes of HMO licensing.

A local housing authority may apply for a banning order against a person who has been convicted of a banning order offence. Where a banning order application is made in relation to a body corporate, the local housing authority must also make an application for a banning order against any officer of the body corporate who was convicted of the same offence as the body corporate. Before applying for a banning order, the authority must give the person in relation to whom it is proposed to make a banning order a notice of intended proceedings, informing them that the authority is proposing to apply for a banning order for a specified period of time and explaining why, and inviting them to make representations during a 'notice period', which must not be less than 28 days.

The authority must consider any representations made during the notice period and wait until this period has ended before applying for a banning order. A notice of intended proceedings must be given within 6 months from the date on which the person is convicted of a banning order offence.

The local housing authority must revoke a licence if:

- a banning order is made against the licence holder.
- a banning order is made against a person who—
 - (a) owns an estate or interest in the house or part of it, and
 - (b) is a lessor or licensor of the house or part.

8.0 Rogue Landlord Database

A local housing authority may make an entry on the rogue landlord database in relation to a person if that person has been convicted of a banning order offence and was a residential landlord or property agent at the time at which the offence was committed. A local authority might, for example, decide to make an entry in the database rather than apply for a banning order in a case where a person's offences are slightly less serious and the local authority considers that monitoring of that person through the database is more appropriate than seeking a banning order at this stage. An entry may also be made if a person has incurred two civil penalties in respect of banning order offences within the last 12 months.

If a banning order has been made against that person a local housing authority has a duty to make an entry and maintain it for the period during which the banning order is in force on the database.

An entry in the database is required to be maintained for the period set out in the local authority's decision notice and then removed at the end of that period or, as the case may be, any reduced period. The Secretary of State has published guidance setting out criteria to which local housing authorities must have regard when deciding whether to include a person in the database and how long their entry must be maintained for.

9.0 Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Where the Local Housing Authority has reasonable grounds to believe that:

- There are no/or 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.

The Council must 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 the Local Authority must issue a penalty charge levied through a Penalty Charge Notice (PCN).

Where the Council is satisfied that a Landlord has not complied with a specification described in the remedial notice in the required timescale and consent is given by the occupier, the Council will arrange for remedial works to be undertaken in default of the Landlord. This work in default will be undertaken within 28 days of the Council being satisfied of the breach. In most circumstances, battery operated alarms will be installed as a quick and immediate response. The amount of penalty is currently being charged at local housing allowance level but in any case must not exceed the maximum fine level of £5000. A 50% reduction will be offered if the fine is paid within 14 days.

10.0 Redress Scheme

Persons who engage in letting agency work or property management work must belong to a redress scheme that has been approved by the Secretary of State or that has been designated as a government administered redress scheme. It excludes persons who engage in certain types of activity from the requirement to belong to such a scheme. This will mean that tenants and landlords dealing with agents in the private rented sector and leaseholders and freeholders dealing with agents in the residential leasehold sector will be able to complain to an independent person about the service they have received.

The Council can impose a fine of up to £5,000 where a lettings agent or property manager who should have joined a scheme has not done so.

The Council will give written notice of their intention to impose a penalty setting out the reasons and the amount of the penalty. The lettings agent or property manager will have 28 days to make written representations or objections to the authority, starting from the day after the date the notice of intent was sent.

At the end of the 28 day period the Council will decide, having taken into account any representations received, whether to impose the fine and, if so, must issue a final notice to the lettings agent or property manager giving at least 28 days for payment to be made.

11.0 The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017

A rent repayment order can be applied for whether or not a landlord has been convicted of a qualifying offence. The local authority may apply for, or assist the tenant in applying for a rent repayment order. 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 rent repayment order application is being made.

12.0 Formal action in relation to Statutory Nuisance

Powers to seize noise making equipment will normally occur where:

- a clear and severe breach of an abatement notice has taken place or it is believed that it is about to take place,
- where it is thought the only way to secure compliance with a Notice is by undertaking a seizure of the noise making equipment.
- previous history or other information in our possession indicates a repeat incident is likely to occur;
- We will inform all interested parties of the effect of the seizure, the legal basis for such action, the processes involved in such action and any rights they have to reclaim their equipment. These matters will normally be confirmed at the time of the seizure or as soon as practicable after such action and, in any event, not later than one working day after taking the action.

Seizure is a form of works in default and the Council will normally seek to recover its costs in undertaking this action where the equipment is reclaimed.

Where a seizure has taken place and the evidential test is passed it is expected that a prosecution will follow and forfeiture of the noise making equipment applied for.

13.0 Enforcement Options for Empty Properties

A range of powers exist to help tackle the problems caused by empty properties and bring them back into use. The main enforcement options include

Enforced Sale

Enforced sale to recover debt by forcing the sale of a property. Where a property has debts (owed to the Council) secured against it as a local land charge or caution with the Land Registry.

Compulsory Purchase

Where there is a compelling case in the public interest for a property to be compulsorily purchased, and where other methods of returning the property to use have been tried and have failed. The process is not without financial risk and the Council should first attempt to acquire the land through negotiation and seek approval from the Executive Councillor.

Empty Dwelling Management Orders (EDMO's)

The Housing Act 2004 introduces two types of management order in relation to empty dwellings "interim EDMOs" and "final EDMOs". The purpose of an interim EDMO is to enable a LHA to take steps to secure occupation of an empty dwelling with the consent of the owner. A final EDMO is made in succession to an interim EDMO (or a previous final EDMO) for the purpose of securing that a dwelling becomes and remains occupied, whether or not the owner of the dwelling consents. An interim EDMO does not have to be followed by a final EDMO. However, a final EDMO can only be made following an interim EDMO or a previous final EDMO.

13.1 Unsecured buildings

Where an empty property is found to be open to unauthorised access the Council can require the owner to board up a property to prevent such access and if necessary to carry out the work in default of the owner.