



CABINET

30 August 2017

A meeting of the CABINET will be held on Thursday, 7th September, 2017, 6.00 pm
in Committee Room 1 - Marmion House

A G E N D A

NON CONFIDENTIAL

- 1 Apologies for Absence**
- 2 Minutes of the Previous Meeting** (Pages 1 - 4)
- 3 Declarations of Interest**
To receive any declarations of Members' interests (pecuniary and non-pecuniary) in any matters which are to be considered at this meeting.

When Members are declaring a pecuniary or non-pecuniary interest in respect of which they have dispensation, they should specify the nature of such interest. Members should leave the room if they have a pecuniary or non-pecuniary interest in respect of which they do not have a dispensation.
- 4 Question Time:**
To answer questions from members of the public pursuant to Executive Procedure Rule No. 13
- 5 Matters Referred to the Cabinet in Accordance with the Overview and Scrutiny Procedure Rules**
- 6 Annual Report on the Treasury Management Service and Actual Prudential Indicators 2016/17** (Pages 5 - 26)
(The Report of the Portfolio Holder for Assets and Finance)
- 7 Increase Disabled Facilities Grant Budget To Reflect Better Care Fund Allocation** (Pages 27 - 30)
(The Report of the Portfolio Holder for Assets and Finance)

8 Private Sector Housing- Housing Enforcement Policy (Pages 31 - 206)
(Report of the Portfolio Holder for Housing Services)

Yours faithfully

A handwritten signature in black ink, appearing to be 'A. Cook', written over a circular stamp or mark.

Chief Executive

People who have a disability and who would like to attend the meeting should contact Democratic Services on 01827 709264 or e-mail committees@tamworth.gov.uk preferably 24 hours prior to the meeting. We can then endeavour to ensure that any particular requirements you may have are catered for.

To Councillors: D Cook, R Pritchard, S Claymore, S Doyle, J Goodall and M Thurgood.



MINUTES OF A MEETING OF THE CABINET HELD ON 17th AUGUST 2017

PRESENT: Councillors D Cook (Chair), S Claymore, S Doyle, J Goodall and M Thurgood

The following officers were present: John Wheatley (Executive Director Corporate Services), Andrew Barratt (Corporate Director Growth, Assets and Environment) and Tina Mustafa (Head of Landlord Services)

15 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor R Pritchard

16 MINUTES OF THE PREVIOUS MEETING

The minutes of the meeting held on 20 July 2017 were approved and signed as a correct record.

(Moved by Councillor S Claymore and seconded by Councillor S Doyle)

17 DECLARATIONS OF INTEREST

There were no Declarations of Interest.

18 QUESTION TIME:

None

19 MATTERS REFERRED TO THE CABINET IN ACCORDANCE WITH THE OVERVIEW AND SCRUTINY PROCEDURE RULES

None

20 QUARTER ONE 2017/18 PERFORMANCE REPORT

The Leader of the Council provided Members with a performance and financial health-check.

RESOLVED: That Members endorsed the contents of the report

(Moved by Councillor D Cook and seconded by Councillor M Thurgood)

21 **INSTALLATION OF FIRE SPRINKLER SYSTEMS TO LEASEHOLD FLATS AND FLATS AT ERINGDEN**

The Portfolio Holder for Housing seeking approval for the waiving of standing orders to allow fire sprinklers to be installed in Leasehold flats within the High Rise Blocks and Flats at Eringden at no cost to the Leaseholder. Also to extend the installation of fire sprinklers to the flats located at Eringden and setting out proposals for the execution and funding of routine planned fixed electrical installation checks and also setting out budget virements to be used to fund the installation of fire sprinklers.

RESOLVED: That Members approved

- 1 the waiving of financial standing orders allowing for the installation of sprinklers in Leasehold flats at no cost to the Leaseholder;
- 2 an extension to the fire sprinkler installation programme to include the flats at Eringden as detailed in option 3 (Sprinklers) and elsewhere within the report;
- 3 option two (Electrical Routine Testing PIR) and budgets to allow routine checks to be completed on electrical installations and consider including an additional £306kpa during the medium term financial budget setting process to fund a cyclical 5-yearly programme;
- 4 the identified budget virements to allow the sprinkler installation programme to be fully funded – a budget increase of £1,301,240 vired from savings of £918,840 from CR4014 High Rise Lifts and £442,030 from CR5016 General High Rise Works;
- 5 the inviting of competitive tenders through the in-tend system and delegate authority to enter into contract to the Corporate Director (Growth, Assets and Environment) in conjunction with the Portfolio Holder (Housing) upon completion of the tender process;

- 6 an annual increase in the Housing Revenue Account repairs budget of £3,500 to cover the cost of servicing and maintenance of the sprinklers; and
- 7 that thanks be conveyed to all of the Team and Partners involved in the report

(Moved by Councillor M Thurgood and seconded by Councillor S Doyle)

22 GRANTS TO VOLUNTARY ORGANISATIONS (SMALL GRANTS SCHEME)/LOCAL ARTS GRANT SCHEME/SPORTS GRANTS SCHEME

The Portfolio Holder for Communities and Wellbeing informed Members of the Small Grants, Arts Grants and Sport Grants awards made during 2016/17

RESOLVED: That Members endorsed the outturn of the Cabinet (Grants) Sub-Committee

(Moved by Councillor S Doyle and seconded by Councillor D Cook)

23 RELEASE OF CAPITAL CONTINGENCY FUNDING

The Portfolio Holder for Environment and Culture requested that Members approve the release of £60k from Capital contingency to the general fund Capital programme as approved by full Council on 21st February 2017, to build a new play area within Tamworth.

RESOLVED: Members approved the release of £60k of capital contingency which has been made available only for financial year 2017/18, for the purpose of building a new play area; and authorised the Corporate Director Growth, Assets and Environment in consultation with the Portfolio Holder for Environment and Culture to enter into contract with the most economically viable and environmentally suitable tendered quotation received in order to achieve the project outcomes.

(Moved by Councillor J Goodall and seconded by Councillor S Doyle)

Leader

CABINET

7 SEPTEMBER 2017

COUNCIL

12 SEPTEMBER 2017

REPORT OF THE PORTFOLIO HOLDER FOR ASSETS AND FINANCE

ANNUAL REPORT ON THE TREASURY MANAGEMENT SERVICE AND ACTUAL PRUDENTIAL INDICATORS 2016/17

PURPOSE

The Annual Treasury report is a requirement of the Council's reporting procedures. It covers the Treasury activity for 2016/17, and the actual Prudential Indicators for 2016/17.

The report meets the requirements of both the CIPFA Code of Practice on Treasury Management and the CIPFA Prudential Code for Capital Finance in Local Authorities. The Council is required to comply with both Codes in accordance with Regulations issued under the Local Government Act 2003. It also provides an opportunity to review the approved Treasury Management Strategy for the current year and enables Members to consider and approve any issues identified that require amendment.

RECOMMENDATIONS

That Cabinet ask Council to;

- 1. Approve the actual 2016/17 Prudential Indicators within the report and shown at Appendix 1; and**
- 2. Accept the Treasury Management Stewardship Report for 2016/17.**

EXECUTIVE SUMMARY

This report covers Treasury operations for the year ended 31st March 2017 and summarises:

- the Council's Treasury position as at 31st March 2017; and
- Performance Measurement

The key points raised for 2016/17 are

1. The Council's Capital Expenditure and Financing 2016/17
2. The Council's Overall Borrowing Need
3. Treasury Position as at 31st March 2017
4. The Strategy for 2016/17
5. The Economy and Interest Rates
6. Borrowing Rates in 2016/17
7. Borrowing Outturn for 2016/17

8. Investment Rates in 2016/17
9. Investment Outturn for 2016/17
10. Performance Measurement
11. Icelandic Bank Defaults

The Treasury Function has achieved the following favourable results:

- The Council has complied with the professional codes, statutes and guidance;
- There are no issues to report regarding non-compliance with the approved prudential indicators;
- Excluding the Icelandic investments (currently identified 'at risk') the Council maintained an average investment balance externally invested of £51.8m and achieved an average return of 0.6% (budgeted at £28.3m and an average return of 1.25%).
- This result compares favourably with the Council's own Benchmarks of the average 7 day and the 3 month LIBID rates for 2016/17 of 0.2% and 0.32% respectively, and is not significantly different from the CIPFA Treasury Benchmarking Club (23 LA members) average rate of 0.8%.;
- The closing weighted average internal rate on borrowing has reduced in year to 4.26% (4.38% for 2015/16);
- The Treasury Management Function has achieved an outturn investment income of £288k compared to a budget of £362k as a result of the continued low interest rate environment.

During 2016/17 the Council complied with its legislative and regulatory requirements.

The Executive Director Corporate Services confirms that there was no overall increase in borrowing within the year and the Authorised Limit was not breached. On two occasions during 2016/17 the approved counterparty limits within the Annual Investment Strategy were exceeded:

- The first occurred on 5th August 2016 when a payment was received late in the day (preventing potential investment opportunity), resulting in £1.029m being held within the Lloyds Bank account overnight, which exceeded the approved limit of £1m by £29k.
- The second occurred on 30th December 2016 where early payments of business rates and council tax income resulted in £1.4m being held in the Lloyds Bank account, exceeding the approved limit by £0.4m for 4 days over the bank holiday weekend.

At 31st March 2017, the Council's external debt was £63.060m (£65.060m at 31st March 2016) and its external investments totalled £50.119m (£39.715m at 31st March 2016) – including interest credited. This excludes £1.092m Icelandic Banking sector deposits (plus accrued interest at claim date) that was 'At Risk' at the year end (£1.323m at the 31st March 2016).

RESOURCE IMPLICATIONS

There are no financial implications or staffing implications arising directly from the report.

LEGAL/RISK IMPLICATIONS

The Council is aware of the risks of passive management of the Treasury Portfolio and with the support of Capita Asset Services, the Council's current Treasury advisers, has proactively managed its debt and investments over this very difficult year.

SUSTAINABILITY IMPLICATIONS

None

REPORT AUTHOR

If Members would like further information or clarification prior to the meeting please contact Stefan Garner, telephone 01827 709242 or email stefan-garner@tamworth.gov.uk

LIST OF BACKGROUND PAPERS

- Local Government Act 2003;
- Statutory Instruments: 2003 No 3146 & 2007 No 573;
- CIPFA Code of Practice on Treasury Management in Public Services;
- Treasury Management Strategy & Prudential Indicators (Council 23rd February 2016);
- Treasury Management Mid-Year Review 2016/17 (Council 13th December 2016);
- Treasury Outturn Report 2015/16 (Council 13th September 2016);
- CIPFA Treasury Benchmarking Club Report 2016;
- Treasury Management Strategy 2017/18 (Council 21st February 2017).

APPENDICES

Appendix 1 – Prudential and Treasury Indicators

Appendix 2 – Investment Performance Graph (CIPFA)

Appendix 3 – Borrowing and Investment Rates

Annual Treasury Management Review 2016/17

This Council is required by regulations issued under the Local Government Act 2003 to produce an annual treasury management review of activities and the actual prudential and treasury indicators for 2016/17. This report meets the requirements of both the CIPFA Code of Practice on Treasury Management (the Code) and the CIPFA Prudential Code for Capital Finance in Local Authorities (the Prudential Code).

During 2016/17 the minimum reporting requirements were complied with:

- an annual treasury strategy in advance of the year (Council 23rd February 2016)
- a mid-year (minimum) treasury update report (Council 13th December 2016)
- an annual review following the end of the year describing the activity compared to the strategy (this report)

In addition, Cabinet has received quarterly Treasury management updates as part of the Financial Healthcheck Reports.

The regulatory environment places responsibility on members for the review and scrutiny of treasury management policy and activities. This report is, therefore, important in that respect, as it provides details of the outturn position for treasury activities and highlights compliance with the Council's policies previously approved by members.

This Council also confirms that it has complied with the requirement under the Code to give scrutiny to all of the above Treasury Management Reports by the Audit and Governance Committee. Member training on Treasury Management issues was most recently undertaken in October 2015, but will also be provided as and when required in order to support members' scrutiny role.

During 2016/17, the Council complied with its legislative and regulatory requirements. The key actual prudential and treasury indicators detailing the impact of capital expenditure activities during the year, with comparators, are as follows.

Prudential & Treasury Indicators	2015/16	2016/17	2016/17
	Actual £m	Estimate £m	Actual £m
Capital Expenditure			
Non HRA	0.631	4.535	1.408
HRA	5.512	10.217	7.351
Total	6.143	14.752	8.759
Capital Financing Requirement			
Non HRA	1.001	0.665	0.943
HRA	68.041	70.283	68.041
Total	69.042	70.948	68.984
Gross Borrowing			
External Debt	65.060	67.302	63.060
Investments			
Less than 1 year	39.715	35.195	51.211
Total	39.715	35.195	51.211
Net Borrowing	25.345	32.107	11.849

It should be noted that **£12.306m** of scheme spend has been re-profiled into 2017/18 (also including re-profiling from previous years) which has increased investment balances.

The Executive Director Corporate Services confirms that there was no overall increase in borrowing in year and the statutory borrowing limit (the authorised limit) was not breached.

The financial year 2016/17 again continued to be a challenging environment, namely low investment returns with limited investment opportunities.

1. The Council's Capital Expenditure and Financing 2016/17

The Council undertakes capital expenditure on long-term assets. These activities may either be:

- Financed immediately through the application of capital or revenue resources (capital receipts, capital grants, revenue contributions etc.), which has no resultant impact on the Council's borrowing need; or
- If insufficient financing is available, or a decision is taken not to apply internal funds, then borrowing would be needed (unfinanced capital expenditure).

The actual capital expenditure forms one of the required prudential indicators. The table below shows the actual capital expenditure and how this was financed.

General Fund	2015/16 Actual £m	2016/17 Estimate £m	2016/17 Actual £m
Capital Expenditure	0.631	4.535	1.408
Financed in year	0.631	4.535	1.408
Unfinanced capital expenditure	-	-	-
HRA	2015/16 Actual £m	2016/17 Estimate £m	2016/17 Actual £m
Capital Expenditure	5.512	10.217	7.351
Financed in year	5.512	7.975	7.351
Unfinanced capital expenditure	-	2.242	-

2. The Council's Overall Borrowing Need

The Council's underlying need to borrow for capital expenditure is termed the Capital Financing Requirement (CFR). This figure is a gauge of the Council's indebtedness. The CFR results from the capital activity of the Council and resources used to pay for the capital spend. It represents the 2016/17 unfinanced capital expenditure (see above table), and prior years' net or unfinanced capital expenditure which has not yet been paid for by revenue or other resources.

Part of the Council's treasury activities is to address the funding requirements for this borrowing need. Depending on the capital expenditure programme, the treasury service organises the Council's cash position to ensure that sufficient cash is available to meet the capital plans and cash flow requirements. This may be sourced through borrowing from external bodies (such as the Government, through the Public Works Loan Board [PWLB] or the money markets), or utilising temporary cash resources within the Council.

Reducing the CFR – the Council's (non HRA) underlying borrowing need (CFR) is not allowed to rise indefinitely. Statutory controls are in place to ensure that capital assets are broadly charged to revenue over the life of the asset. The Council is required to make an annual revenue charge, called the Minimum Revenue Provision (MRP), to reduce the CFR. This is effectively a repayment of the non-Housing Revenue Account (HRA) borrowing need (there is no statutory requirement to reduce the HRA CFR). This differs from the treasury management arrangements which ensure that cash is available to meet capital commitments. External debt can also be borrowed or repaid at any time, but this does not change the CFR.

The total CFR can also be reduced by:

- the application of additional capital financing resources (such as unapplied capital receipts); or
- charging more than the statutory revenue charge (MRP) each year through a Voluntary Revenue Provision (VRP).

The Council's 2016/17 MRP Policy (as required by CLG Guidance) was approved as part of the Treasury Management Strategy Report for 2016/17 on 23rd February 2016.

The Council's CFR for General Fund and the HRA for the year are shown below, and represent a key prudential indicator.

CFR: General Fund	31st March 2016 Actual £m	31st March 2017 Budget £m	31st March 2017 Actual £m
Opening balance	1.242	0.700	1.001
Less MRP/VRP	(0.241)	(0.035)	(0.058)
Closing balance	1.001	0.665	0.943

CFR: HRA	31st March 2016 Actual £m	31st March 2017 Budget £m	31st March 2017 Actual £m
Opening balance	68.041	68.041	68.041
Add unfinanced capital expenditure (as above)	-	2.242	-
Closing balance	68.041	70.283	68.041

Planned unfinanced HRA capital expenditure relates to the HRA Regeneration of Tinkers Green and Kerria.

Borrowing activity is constrained by prudential indicators for net borrowing and the CFR, and by the authorised limit.

Gross borrowing and the CFR - in order to ensure that borrowing levels are prudent over the medium term and only for a capital purpose, the Council should ensure that its gross external borrowing does not, except in the short term, exceed the total of the capital financing requirement in the preceding year (2016/17) plus the estimates of any additional capital financing requirement for the current (2017/18) and next two financial years. This essentially means that the Council is not borrowing to support revenue expenditure. This indicator allows the Council some flexibility to borrow in advance of its immediate capital needs in 2016/17. The table below highlights the Council's gross borrowing position against the CFR. The Council has complied with this prudential indicator.

Gross borrowing and the CFR	31st March 2016 Actual £m	31st March 2017 Budget £m	31st March 2017 Actual £m
Gross borrowing position	65.060	67.302	63.060
CFR	69.042	70.948	68.984

The Authorised Limit - the authorised limit is the “affordable borrowing limit” required by s3 of the Local Government Act 2003. Once this has been set, the Council does not have the power to borrow above this level. The table below demonstrates that during 2016/17 the Council has maintained gross borrowing within its authorised limit.

The Operational Boundary – the operational boundary is the expected borrowing position of the Council during the year. Periods where the actual position is either below or over the boundary is acceptable subject to the authorised limit not being breached.

Actual Financing Costs as a Proportion of Net Revenue Stream - this indicator identifies the trend in the cost of capital (borrowing and other long term obligation costs net of investment income) against the net revenue stream.

Borrowing Limits	GF £m	HRA £m	Total £m
Authorised limit	12.705	79.407	92.112
Maximum gross borrowing position	-	65.060	65.060
Operational boundary	-	65.060	65.060
Average gross borrowing position	-	64.825	64.825
Budgeted financing costs as a proportion of net revenue stream %	(4.91)	34.48	29.58
Actual financing costs as a proportion of net revenue stream %	(3.49)	37.84	34.35

3. Treasury Position as at 31 March 2017

The Council’s debt and investment position is organised by the treasury management service in order to ensure adequate liquidity for revenue and capital activities, security for investments and to manage risks within all treasury management activities. Procedures and controls to achieve these objectives are well established both through member reporting detailed in the summary, and through officer activity detailed in the Council’s Treasury Management Practices. At the beginning and the end of 2016/17 the Council’s treasury (excluding borrowing by PFI and finance leases) position was as follows:

General Fund	31st March 2016 Principal £m	Rate/ Return %	Average Life yrs	31st March 2017 Principal £m	Rate/ Return %	Average Life yrs
Total debt	-	-	-	-	-	-
CFR	1.001	-	-	0.943	-	-
Over / (under) borrowing	(1.001)	-	-	(0.943)	-	-
Investments:						
- in house	20.110	0.68	-	25.010	0.60	-
Total investments	20.110	0.68	-	25.010	0.60	-

HRA	31st March 2016 Principal £m	Rate/ Return %	Average Life yrs	31st March 2017 Principal £m	Rate/ Return %	Average Life yrs
Fixed rate funding:						
-PWLB	65.060	4.29	37.09	63.060	4.26	34.59
Total debt	65.060	4.29	37.09	63.060	4.26	34.59
CFR	68.041	-	-	68.041	-	-
Over / (under) borrowing	(2.981)	-	-	(4.981)	-	-
Investments:						
- in house	19.605	0.68	-	26.201	0.60	-
Total investments	19.605	0.68	-	26.201	0.60	-

Maturity Structures

Debt - The maturity structure of the debt portfolio was as follows:

Duration	31st March 2016 Actual £m	2016/17 original limits %	31st March 2017 Actual £m
Under 12 months	2	20	-
12 months and within 24 months	-	20	-
24 months and within 5 years	-	25	-
5 years and within 10 years	-	75	-
10 years and within 20 years	3	100	5
20 years and within 30 years	2		-
30 years and within 40 years	21		22
40 years and within 50 years	37		36

Investments - All investments held by the Council were invested for less than one year.

The exposure to fixed and variable rates (based on net debt) was as follows:

Rate Type	31st March 2016 Actual £m	2016/17 Original Limits £m	31st March 2017 Actual £m
Fixed rate - principal	25.345	45.068	33.242
Variable rate - interest	-	6.618	-

4. The Strategy for 2016/17

The expectation for interest rates within the treasury management strategy for 2016/17 anticipated low but rising Bank Rate, (starting in Quarter 4 of 2016), and gradual rises in medium and longer term fixed borrowing rates during 2016/17. Variable, or short-term rates, were expected to be the cheaper form of borrowing over the period. Continued uncertainty in the aftermath of the 2008 financial crisis promoted a cautious approach, whereby investments would continue to be dominated by low counterparty risk considerations, resulting in relatively low returns compared to borrowing rates.

In this scenario, the treasury strategy was to postpone additional / increased borrowing to avoid the cost of holding higher levels of investments and to reduce counterparty risk.

During 2016/17 there was major volatility in PWLB rates, with rates falling during Quarters 1 and 2 to reach historically very low levels in July and August, before rising significantly during Quarter 3, and then partially easing back towards the end of the year.

5. The Economy and Interest Rates

The two major landmark events that had a significant influence on financial markets in the 2016/17 financial year were the UK EU referendum on 23rd June and the election of President Trump in the USA on 9th November. The first event had an immediate impact in terms of market expectations of when the first increase in Bank Rate would happen, pushing it back from Quarter 3 2018 to Quarter 4 2019. At its 4th August meeting, the Monetary Policy Committee (MPC) cut Bank Rate from 0.5% to 0.25% and the Bank of England's Inflation Report produced forecasts warning of a major shock to economic activity in the UK, which would cause economic growth to fall almost to zero in the second half of 2016. The MPC also warned that it would be considering cutting Bank Rate again towards the end of 2016 in order to support growth. In addition, it restarted quantitative easing with purchases of £60bn of gilts and £10bn of corporate bonds, and also introduced the Term Funding Scheme whereby potentially £100bn of cheap financing was made available to banks.

In the second half of 2016, the UK economy confounded the Bank's pessimistic forecasts of August. After a disappointing Quarter 1 of only +0.2% GDP growth, the three subsequent Quarters of 2016 came in at +0.6%, +0.5% and +0.7% to produce an annual growth for 2016 overall, compared to 2015, of no less than 1.8%, which was very nearly the fastest rate of growth of any of the G7 countries. Needless to say, this meant that the MPC did not cut Bank Rate again after August but, since then, inflation has risen rapidly due to the effects of the sharp devaluation of sterling after the referendum. By the end of March 2017, sterling was 17% down against the dollar but had not fallen as far against the euro. In February 2017, the latest CPI inflation figure had risen to 2.3%, above the MPC's inflation target of 2%. However, the MPC's view was that it would look through near term supply side driven inflation, (i.e. not raise Bank Rate), caused by sterling's devaluation, despite forecasting that inflation would reach nearly 3% during 2017 and 2018. This outlook, however, is dependent on domestically generated inflation, (i.e. wage inflation), continuing to remain subdued despite the fact that unemployment is at historically very low levels and is on a downward trend. Market expectations for the first increase in Bank Rate moved forward to Quarter 3 2018 by the end of March 2017 in response to increasing concerns around inflation.

USA. Quarterly growth in the US has been very volatile during 2016 but a strong performance since mid-2016, and strongly rising inflation, prompted the Fed into raising rates in December 2016 and March 2017. The US is the first major western country to start on a progressive upswing in rates. Overall growth in 2016 was 1.6%.

EU. The EU is furthest away from an upswing in rates; the European Central Bank (ECB) has cut rates into negative territory, provided huge tranches of cheap financing and been doing major quantitative easing purchases of debt during 2016/17 in order to boost growth from consistently weak levels, and to get inflation up from near zero towards its target of 2%. These purchases have resulted in depressed bond yields in the EU, but, towards the end of 2016, yields rose, probably due at least in part to rising political concerns around the positive prospects for populist parties and impending general elections in 2017 in the Netherlands, France and Germany. The action taken by the ECB has resulted in economic growth improving significantly in the eurozone to an overall figure of 1.7% for 2016, with Germany achieving a rate of 1.9% as the fastest growing G7 country.

On the other hand, President Trump's election and promise of fiscal stimulus, which are likely to increase growth and inflationary pressures in the US, have resulted in Treasury yields rising sharply since his election. Gilt yields in the UK have been caught between these two influences and the result is that the gap in yield between US treasuries and UK gilts has widened sharply during 2016/17 due to market perceptions that the UK is still likely to be two years behind the US in starting on an upswing in rates despite a track record of four years of strong growth.

Japan struggled to stimulate consistent significant growth with GDP averaging only 1.0% in 2016 with current indications pointing to a similar figure for 2017. It is also struggling to get inflation up to its target of 2%, only achieving an average of -0.1% in 2016, despite huge monetary and fiscal stimulus, though this is currently expected to increase to around 1% in 2017. It is also making little progress on fundamental reform of the economy.

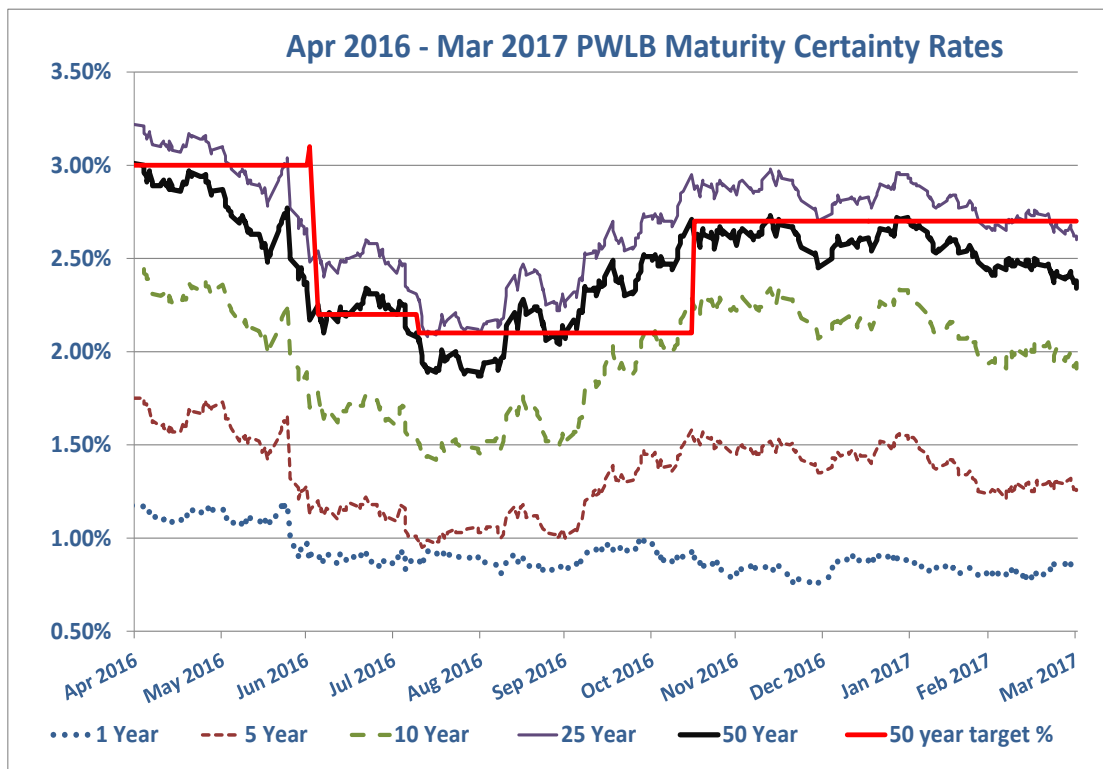
China and emerging market countries. At the start of 2016, there were considerable fears that China's economic growth could be heading towards a hard landing, which could then destabilise some emerging market countries particularly exposed to a Chinese economic slowdown and / or to the effects of a major reduction in revenue from low oil prices. These fears have largely subsided and oil prices have partially recovered so, overall, world growth prospects have improved during the year.

Equity markets. The result of the referendum, and the consequent devaluation of sterling, boosted the shares of many FTSE 100 companies which had major earnings which were not denominated in sterling. The overall trend since then has been steeply upwards and received further momentum after Donald Trump was elected President as he had promised a major fiscal stimulus to boost the US economy and growth rate.

6. Borrowing Rates in 2016/17

PWLB certainty maturity borrowing rates

During 2016/17, PWLB rates fell from April to June and then gaining fresh downward impetus after the referendum and Bank Rate cut, before staging a partial recovery through to December and then falling slightly through to the end of March. The graphs and table for PWLB rates below and in **Appendix 3**, show, for a selection of maturity periods, the average borrowing rates, the high and low points in rates, spreads and individual rates at the start and the end of the financial year.



7. Borrowing Outturn for 2016/17

Treasury Borrowing

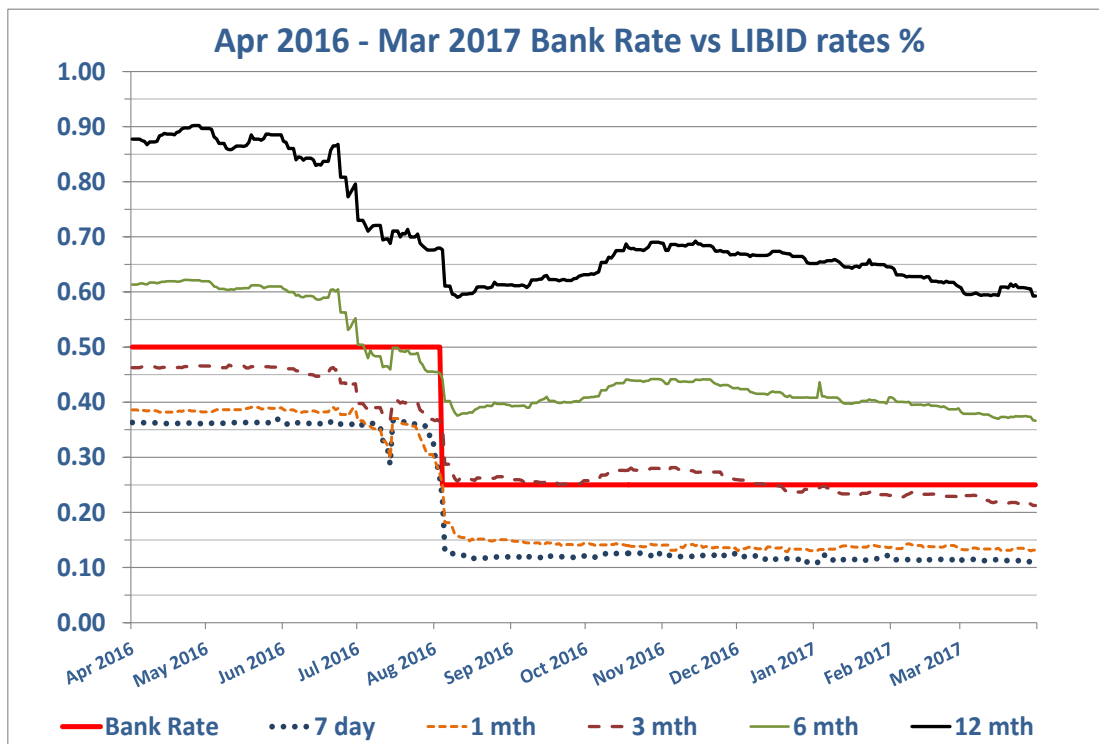
No additional borrowing was undertaken due to investment concerns, both counterparty risk and low investment returns. £2m of maturing debt was not replaced in February 2017.

Rescheduling

No rescheduling was done during the year as the average 1% differential between PWLB new borrowing rates and premature repayment rates made rescheduling unviable.

8. Investment Rates in 2016/17

After the EU referendum, Bank Rate was cut from 0.5% to 0.25% on 4th August and remained at that level for the rest of the year. Market expectations as to the timing of the start of monetary tightening started the year at Quarter 3 2018, but then moved back to around the end of 2019 in early August before finishing the year back at Quarter 3 2018. Deposit rates continued into the start of 2016/17 at previous depressed levels but then fell during the first two Quarters and fell even further after the 4th August MPC meeting resulted in a large tranche of cheap financing being made available to the banking sector by the Bank of England. Rates made a weak recovery towards the end of 2016 but then fell to fresh lows in March 2017.



9. Investment Outturn for 2016/17

Investment Policy – the Council’s investment policy is governed by CLG guidance, which was been implemented in the annual investment strategy approved by the Council on 23rd February 2016. This policy sets out the approach for choosing investment counterparties, and is based on credit ratings provided by the three main credit rating agencies, supplemented by additional market data (such as rating outlooks, credit default swaps, bank share prices etc).

The investment activity during the year conformed to the approved strategy, and the Council had no liquidity difficulties. However, on two occasions during 2016/17 the approved counterparty limits within the Annual Investment Strategy were exceeded:

- The first occurred on 5th August 2016 when a payment was received late in the day, resulting in £1.029m being held within the Lloyds Bank account overnight, which exceeded the approved limit of £1m by £29k.
- The second occurred on 30th December 2016 resulting from early payments of business rates and council tax income resulting in £1.4m being held in the Lloyds Bank account, exceeding the approved limit by £0.4m for 4 days over the bank holiday weekend.

Resources – the Council’s cash balances comprise revenue and capital resources and cash flow monies. The Council’s core cash resources comprised the following:

Balance Sheet Resources General Fund	31 st March 2016 £m	31 st March 2017 £m
Balances	6.680	6.588
Earmarked Reserves	5.960	5.725
Provisions	1.812	1.905
Usable Capital Receipts	1.369	9.049
Capital Grants Unapplied	0.048	0.048
Total GF	15.869	23.315

Balance Sheet Resources HRA	31 st March 2016 £m	31 st March 2017 £m
Balances	4.724	6.353
Earmarked Reserves	12.746	14.513
Usable Capital Receipts	3.863	3.560
Total HRA	21.333	24.426

Total Authority Resources	37.202	47.741
----------------------------------	---------------	---------------

10. Performance Measurement

One of the key requirements in the Code is the formal introduction of performance measurement relating to investments, debt and capital financing activities. Whilst investment performance criteria have been well developed and universally accepted, debt performance indicators continue to be a more problematic area with the traditional average portfolio rate of interest acting as the main guide (as incorporated in the table in item 3). The Council's performance indicators were set out in the Annual Treasury Management Strategy.

This service had set the following local performance indicator:

- *Average external interest receivable in excess of 3 month LIBID rate;*

Whilst the assumed benchmark for local authorities is the 7 day LIBID rate, a higher target is set for internal performance.

The actual return of 0.6% compared to the average 3 month LIBID of 0.32% (0.28% above target).

CIPFA Benchmarking Club

The Council is a member of the CIPFA Treasury Management Benchmarking Club which is a means to assess our performance for the year against other members (23 participating Authorities). Our average return for the year (as mentioned above) was 0.6% compared to the group average of 0.8% (information from CIPFA Benchmarking Draft Report 2016/17) Combined In-House Investments excluding the impaired investments in Icelandic banks.

This can be analysed further into the following categories:

Category	Average Balance Invested £ m		Average Rates Received %	
	Tamworth Borough Council	CIPFA Benchmarking Club	Tamworth Borough Council	CIPFA Benchmarking Club
Fixed investments up to 30 days Managed in-house	-	1.4	-	0.3
Fixed investments 31 to 90 days Managed in-house	-	3.4	-	0.4
Fixed investments 91 to 364 days Managed in-house	29.0	59.2	0.6	0.7
Fixed investments between 1 year and 3 years Managed in-house	-	27.2	-	1.1
Fixed Investments over 3 years Managed in-house	-	24.9	-	2.9
Notice Accounts	7.5	19	0.7	0.5
Debt Management Office	-	3.2	-	0.2
CDs Gilts and Bonds	3.5	21.6	0.6	1.7
Callable and Structured Deposits	-	41.0	-	1.8
Money Market Funds Constant NAV	11.9	27.8	0.5	0.4
Money Market Funds Variable NAV	-	25.7	-	0.6

All Investments Managed in-house (excluding impaired investments)	51.8	146.1	0.6	0.7
Externally Managed Funds	-	21.6	-	3.8
All Investments (excluding impaired investments)	51.8	149.8	0.6	0.8

Graphs showing a summary of the Authority's investment performance over the year can be found at **Appendix 2**.

11. Icelandic Bank Defaults

The U.K. Government, Local Government Association, administrators and other agencies continued to work throughout 2016/17 in recovering assets and co-ordinating repayments to all UK councils with Icelandic investments.

Heritable Bank plc - Repayments received up to the 31st March 2017 amount to approximately 98% of our claim. Negotiations are currently underway to finalise the affairs of Heritable and there is the potential for a distribution of residual funds.

Kaupthing, Singer and Friedlander Ltd - As at the end of March the Council had received £2.675m against our claim of £3.175m. Current estimates given by the Administrator project a total recovery of 86.5% or approximately £2.747m.

Investments outstanding with the Iceland domiciled bank Glitnir Bank hf have been subject to decisions of the Icelandic Courts. Following the successful outcome of legal test cases in the Icelandic Supreme Court, the Administrators committed to a full repayment. However, due to Icelandic currency restrictions, elements of our deposits held in Icelandic Krone were held back pending changes to Icelandic law. On 27th June 2017, the Council received €1.017m, £0.885m in respect of the repayment of the Icelandic Bank Glitnir deposit held in escrow, following a discounted offer from the Central Bank of Iceland to release the funds, realising a surplus of £208k (due to interest received and exchange rate movements).. This was an opportunity for those Councils with balances to use this as an exit route, in liaison with the LGA – and also to realise the significant exchange rate gains made during the last 2 years. The escrow funds were also no longer receiving interest credits.

At 31st March 2017, the Authority had the following investments 'at risk' in Icelandic banks;

Bank	Original Deposit £m	Accrued Interest £m	Total Claim £m	Exchange Rate/ Escrow Adjustments £m	Repayments Received @ 31/03/2017 £m	Balance Outstanding £m	Anticipated Recovery %
Glitnir	3.000	0.232	3.232	0.343	2.554	1.021	100
Kaupthing Singer & Friedlander	3.000	0.175	3.175	-	2.675	0.500	86.5
Heritable	1.500	0.005	1.505	-	1.475	0.030	98
Total	7.500	0.412	7.912	0.343	6.704	1.551	94.35

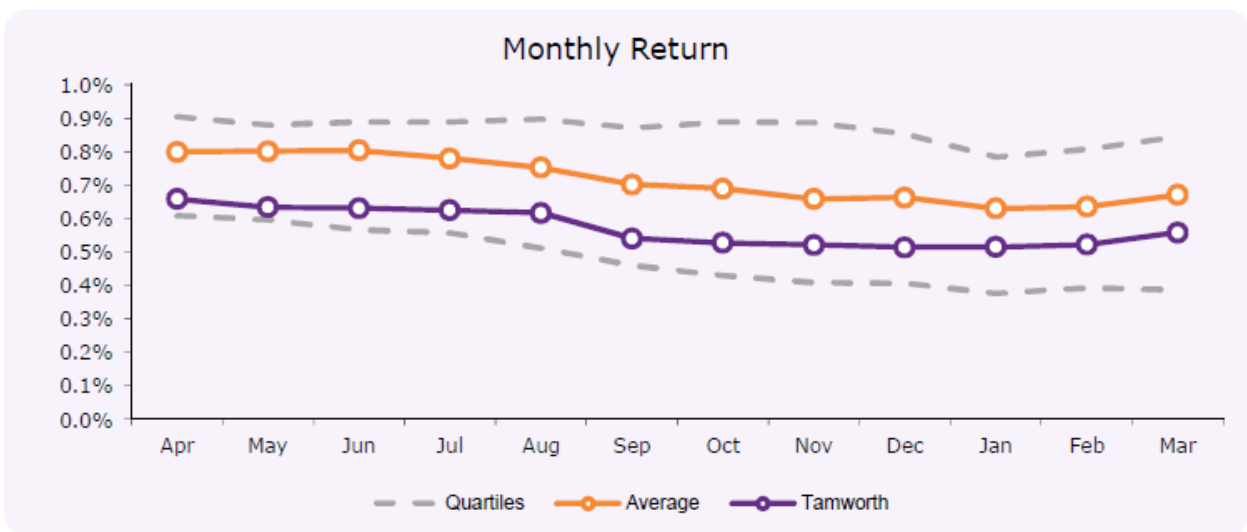
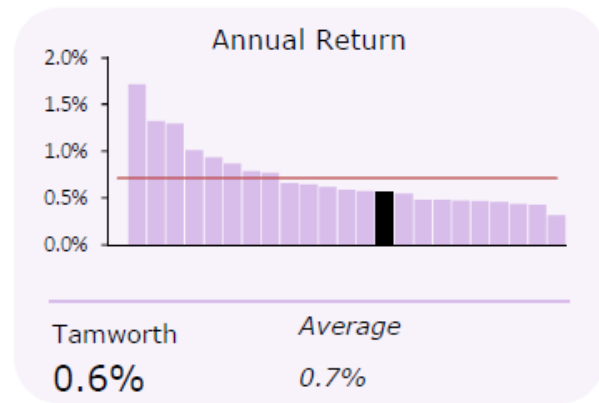
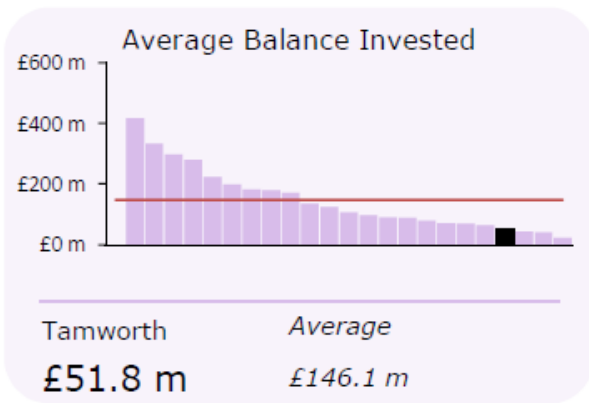
PRUDENTIAL AND TREASURY INDICATORS

APPENDIX 1

1. PRUDENTIAL INDICATORS	2015/16	2016/17	2016/17
Extract from budget and rent setting report	Actual	Original	Actual
Capital Expenditure	£m	£m	£m
Non - HRA	0.631	6.152	1.408
HRA	5.512	17.061	7.351
TOTAL	6.143	23.213	8.759
Ratio of financing costs to net revenue stream	%	%	%
Non - HRA	0.04	(4.91)	(3.49)
HRA	25.04	34.48	37.84
Gross borrowing requirement HRA	£m	£m	£m
brought forward 1 April	65.060	65.060	63.060
carried forward 31 March	65.060	67.302	63.060
in year borrowing requirement	-	2.242	-
Gross debt	£m	£m	£m
carried forward 31 March	65.060	67.302	63.060
Capital Financing Requirement	£m	£m	£m
Non – HRA	1.001	0.665	0.943
HRA	68.041	70.283	68.041
TOTAL	69.042	70.948	68.984
Annual change in Capital Financing Requirement	£m	£m	£m
Non – HRA	(0.241)	(0.035)	(0.058)
HRA	-	-	-
TOTAL	(0.241)	(0.035)	(0.058)
Incremental impact of capital investment decisions	£ p	£ p	£ p
Increase in council tax (band D) per annum	(0.36)	0.76	0.76
Increase in average housing rent per week	(0.01)	-	-

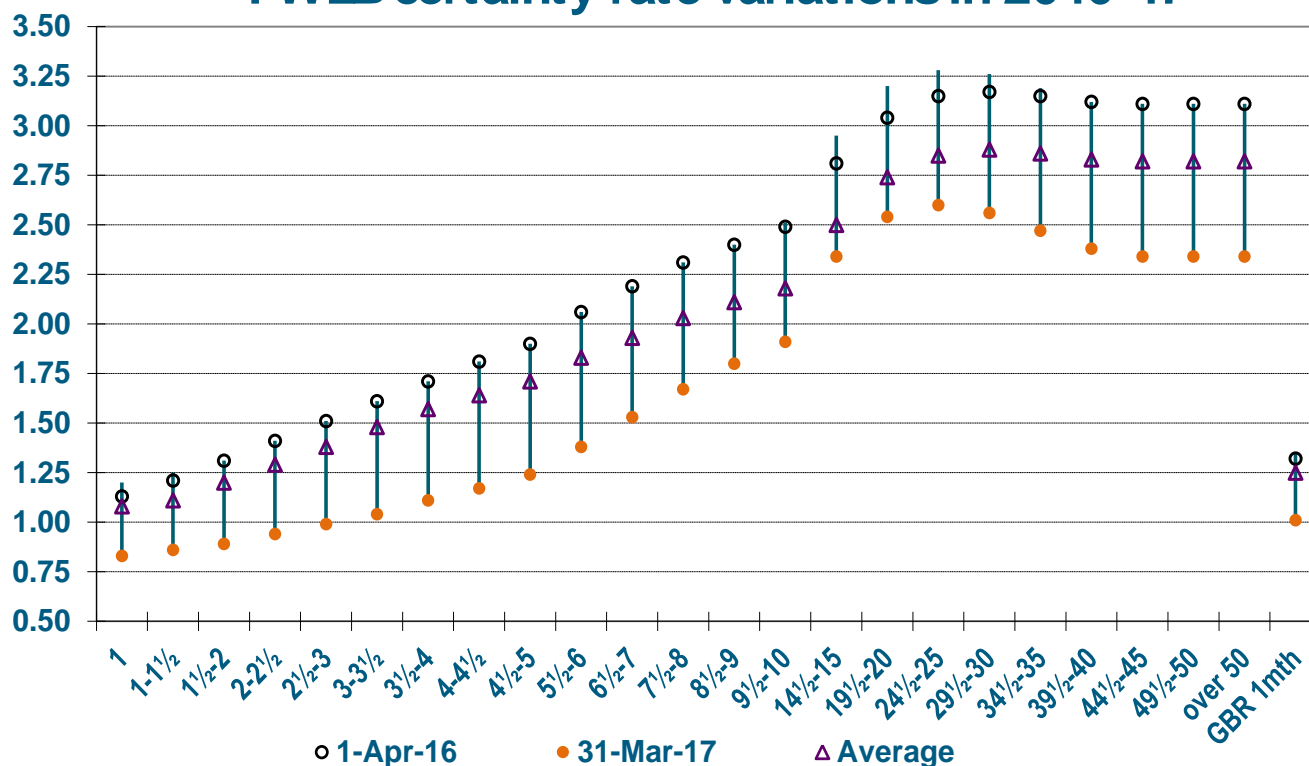
2. TREASURY MANAGEMENT INDICATORS	2015/16	2016/17	2016/17
	Actual	Original	Actual
	£m	£m	£m
Authorised Limit for external debt - General Fund			
borrowing	9.705	9.705	9.705
other long term liabilities	3.000	3.000	3.000
TOTAL	12.705	12.705	12.705
Authorised Limit for external debt - HRA			
borrowing	79.407	79.407	79.407
TOTAL	79.407	79.407	79.407
Operational Boundary for external debt - General Fund	£m	£m	£m
borrowing	1.386	-	-
TOTAL	1.386	-	-
Operational Boundary for external debt - HRA	£m	£m	£m
borrowing	71.882	73.268	65.060
other long term liabilities	-	-	-
TOTAL	71.882	73.268	65.060
Actual external debt	£m	£m	£m
	65.060	67.302	63.060
Maximum HRA debt limit	£m	£m	£m
	79.407	79.407	79.407
Interest Rate Exposure (Upper Limit)	£m	£m	£m
Limits on Fixed Interest Rates based on net debt	39.526	53.515	33.242
Limits on Variable Interest Rates based on net debt	6.454	6.556	6.483
Limits on Fixed Interest Rates:			
Debt only	64.541	65.563	64.825
Investments only	41.693	20.558	52.638
Limits on Variable Interest Rates:			
Debt only	6.454	6.556	6.483
Investments only	16.677	8.223	21.055
Upper limit for total principal sums invested for over 364 days (per maturity date)	2.000	2.000	2.000

Combined In-House Investments (excl. impaired investments)



Monthly Return (April 16 - March 17)													
	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	March	Year
Balance £'m	43.3	43.9	45.1	45.9	42.4	50.1	56.1	57.4	60.4	60.5	61.5	55.9	51.8
Interest £'k	23.4	23.6	23.4	24.4	22.2	22.2	25.1	24.6	26.4	26.4	24.6	26.5	292.9
Return	0.7%	0.6%	0.6%	0.6%	0.6%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.6%	0.6%
Upper Quartile	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.8%	0.8%	0.8%	0.9%
Average	0.8%	0.8%	0.8%	0.8%	0.8%	0.7%	0.7%	0.7%	0.7%	0.6%	0.6%	0.7%	0.7%
Lower Quartile	0.6%	0.6%	0.6%	0.6%	0.5%	0.5%	0.4%	0.4%	0.4%	0.4%	0.4%	0.4%	0.5%
% Diff from Avg	-0.1%	-0.2%	-0.2%	-0.2%	-0.1%	-0.2%	-0.2%	-0.1%	-0.1%	-0.1%	-0.1%	-0.1%	

PWLB certainty rate variations in 2016-17



	1	1-1.5	2.5-3	3.5-4	4.5-5	9.5-10	24.5-25	49.5-50	1 month variable
1/4/16	1.130%	1.160%	1.330%	1.470%	1.620%	2.310%	3.140%	2.950%	1.310%
31/3/17	0.830%	0.860%	0.990%	1.110%	1.240%	1.910%	2.600%	2.340%	1.010%
High	1.200%	1.250%	1.460%	1.630%	1.800%	2.510%	3.280%	3.080%	1.350%
Low	0.760%	0.800%	0.840%	0.880%	0.950%	1.420%	2.080%	1.870%	1.040%
Average	0.928%	0.961%	1.104%	1.226%	1.361%	2.007%	2.724%	2.494%	1.150%
Spread	0.440%	0.450%	0.620%	0.750%	0.850%	1.090%	1.200%	1.210%	0.310%
High date	27/04/2016	27/04/2016	27/04/2016	27/04/2016	27/04/2016	27/04/2016	27/04/2016	27/04/2016	20/05/2016
Low date	20/12/2016	15/03/2017	10/08/2016	10/08/2016	10/08/2016	10/08/2016	12/08/2016	30/08/2016	30/11/2016

	1 Year	5 Year	10 Year	25 Year	50 Year
1/4/16	1.13%	1.62%	2.31%	3.14%	2.95%
31/3/17	0.83%	1.24%	1.91%	2.60%	2.34%
Low	0.76%	0.95%	1.42%	2.08%	1.87%
Date	20/12/2016	10/08/2016	10/08/2016	12/08/2016	30/08/2016
High	1.20%	1.80%	2.51%	3.28%	3.08%
Date	27/04/2016	27/04/2016	27/04/2016	27/04/2016	27/04/2016
Average	0.93%	1.36%	2.01%	2.72%	2.49%

Money market investment rates 2016/17

	7 day	1 month	3 month	6 month	1 year
1/4/16	0.363	0.386	0.463	0.614	0.877
31/3/17	0.111	0.132	0.212	0.366	0.593
High	0.369	0.391	0.467	0.622	0.902
Low	0.107	0.129	0.212	0.366	0.590
Average	0.200	0.220	0.315	0.462	0.702
Spread	0.262	0.262	0.255	0.256	0.312
High date	27/5/16	21/6/16	10/5/16	22/4/16	26/4/16
Low date	28/12/16	21/12/16	30/3/17	31/3/17	10/8/16

7TH SEPTEMBER 2017

REPORT OF THE PORTFOLIO HOLDER FOR ASSETS AND FINANCE

INCREASE DISABLED FACILITIES GRANT BUDGET TO REFLECT BETTER CARE FUND ALLOCATION

EXEMPT INFORMATIONNON CONFIDENTIAL/~~CONFIDENTIAL~~**PURPOSE**

This report:-

- Seeks approval to issue an invoice to Staffordshire County Council for the Disabled Facilities Grant allocation from the Better Care Fund less the **proposed** deductions.
- Seeks approval to increase and spend the capital budget to reflect the actual allocation from the Better Care Fund (BCF).

RECOMMENDATIONS

- It is recommended that Cabinet approve the issuance of an invoice to Staffordshire County Council for the sum of £362,074.31 to reflect the Disabled Facilities Grant allocation from the Better Care Fund less **the proposed** deductions.
- It is recommended that Cabinet increase the Capital Budgets and approve spend from the Capital Budgets to reflect the actual allocation from the Better Care Fund in 2017/18 amounting to an increase in budget and spend of £138,070.
- It is recommended that Cabinet increase the Capital Budgets and approve spend from the Capital Budgets to reflect the additional allocation of £42,000 from the Better Care Fund in 2016/17.
- It is recommend that authority be delegated to Executive Director of Corporate Services to increase the budget by a further £34,800 subject to the same, additional, sums being released by Staffordshire County Council following discussions over the allocations.

EXECUTIVE SUMMARY

The 2017/18 Capital Programme budgets include a sum of £250,000 for the delivery of the mandatory Disabled Facilities Grant programme. This figure is a notional sum agreed for the budget setting process and is based on an estimate of the allocation from the Better Care Fund of £224,000 along with a further £26,000 of Tamworth Borough Council capital funding.

The BCF notification from the Department for Communities and Local Government (DCLG) confirms the DFG allocation for Tamworth as £413,501 for 2017/18.

It confirms that, in two-tier areas, upper tier authorities must pass the DFG funding in full to the respective Districts although it does allow for some jointly agreed spend on 'wider social care capital projects'.

It also has a condition that this must be passed down in full no later than 30th June 2017 – this will now not be achieved;

Tamworth Borough Council has now been advised of the actual allocation that will be passported from the Better Care Fund by Staffordshire County Council as £362,074.31. However, this is net of the following deductions:

£k	BCF Allocation 2017/18	Proposed Deductions		
		HIA	Minor works	Project management for systems review
Tamworth	(413,501)	16,621	14,472	20,333

Other than the deduction for the ongoing Home Improvement Agency (HIA) contract of £16,621, the deductions have been questioned and not yet agreed - which means that potentially a further £34,802 may be received following the resolution of the outstanding issues.

A further £42,000 has also been received from Staffordshire County Council in relation to an underpayment from the 2016/17 Better Care Fund allocation.

As the additional amounts being received from the Better Care Fund exceed £100,000 Cabinet approval is required in order to increase the budgets.

Sufficient work is already on the waiting list to take up the full amount.

There is an ongoing discussion with Staffordshire County Council over the sums being passported from the Better Care Fund, this could result in a further £34,802 being available at some point during the 17/18 financial year.

RESOURCE IMPLICATIONS

- An invoice is to be raised to Staffordshire County Council to reflect the proposed BCF allocation of £362,074.31
- We are in receipt of £42,000 from Staffordshire County Council relating to underpaid sums in 2016/17
- There is a potential that a further £34,802 could be made available from the Better Care Fund in 2017/18
- The original BCF estimate was £224,000 with a total DFG budget of £250,000
- The 2017/18 capital budgets be increased to £521,450 to reflect the known allocation of £430,070 and carry forward from 16/17 of £91,380
- Provision will need to be made for the 2017/18 budget to be increased by a further £34,800 once allocation discussions with Staffordshire County Council have concluded.

LEGAL/RISK IMPLICATIONS BACKGROUND

- | |
|---|
| <ul style="list-style-type: none">• There is a requirement to spend the BCF allocation only on qualifying DFG works.• The budget will still not be sufficient to complete all of the works currently in the pipeline or on the waiting list. |
|---|

SUSTAINABILITY IMPLICATIONS

Despite the additional funding being made available it will still not be sufficient to meet the demand in Tamworth.

BACKGROUND INFORMATION

REPORT AUTHOR

Paul Weston, Head of Asset Management

LIST OF BACKGROUND PAPERS

None

APPENDICES

None

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CABINET

THURSDAY, 7 SEPTEMBER 2017

COUNCIL

TUESDAY, 12 DECEMBER 2017

REPORT OF THE PORTFOLIO HOLDER FOR HOUSING SERVICES

PRIVATE SECTOR HOUSING- HOUSING ENFORCEMENT POLICY

EXEMPT INFORMATION

N/A

PURPOSE

To agree to the adoption and implementation of a revised Private Sector Housing Enforcement Policy. Additionally, recommendations in the report are made to agree to the adoption and implementation of The Disrepair Policy 2017; The Harassment and Illegal Eviction Policy 2017; The Housing and Planning Act 2016 Policy 2017; The Smoke and Carbon Monoxide Regulations Policy; The Redress Scheme for Letting Agency Work and the Houses in Multiple Occupation Policy. This report will also be required to go to full Council for endorsement of the aforementioned policies.

RECOMMENDATIONS

- ✓ That Cabinet approve the adoption and implementation of The Private Sector Housing Enforcement Policy.
- ✓ That Cabinet approve the adoption and implementation of The Disrepair Policy 2017.
- ✓ That Cabinet approve the adoption and implementation of The Harassment and Illegal Eviction Policy 2017.
- ✓ That Cabinet approve the adoption and implementation of The Housing and Planning Act 2016 Policy 2017.
- ✓ That Cabinet approve the adoption and implementation of The Smoke and Carbon Monoxide Regulations Policy.
- ✓ That Cabinet approve the adoption and implementation of The Redress Scheme for Letting Agency Work.
- ✓ That Cabinet approve the adoption and implementation of Houses in Multiple Occupation Policy.
- ✓ That Cabinet agree, in accordance with the Scheme of Delegation contained in the Council Constitution 16th May 2017, for the Corporate Director Communities, Partnerships and Housing to implement arrangements for the enforcement of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, made under the Energy Act 2013. The adoption of any new powers will be incorporated into Scheme of Delegation and where required will be put to full Council.
- ✓ That Cabinet agree, in accordance with the scheme of delegation contained in the Council Constitution 16th May 2017, for the Corporate Director Communities, Partnerships and Housing to implement arrangements for the enforcement of the Redress Scheme for Letting Agency Work and Property

Management Work Order 2014 made under the Enterprise and Regulatory Reform Act 2013. The adoption of any new powers will be incorporated into Scheme of Delegation and where required will be put to full Council.

- ✓ **That Cabinet agree, in accordance with the scheme of delegation contained in the Council Constitution 16th May 2017, for the Corporate Director Communities, Partnerships and Housing to implement arrangements for the enforcement of the provision made under the Housing and Planning Act 2016. The adoption of any new powers will be incorporated into Scheme of Delegation and where required will be put to full Council.**

EXECUTIVE SUMMARY

A full review of Tamworth's Private Sector Housing Enforcement Policy (attached at **Appendix 1**) and revised accompanying policies has been undertaken.

These are:

- ✓ Disrepair Policy 2017 which details our approach to disrepair in the private sector. (**Appendix 2**)
- ✓ Harassment and Illegal Eviction Policy 2017 which details our approach to illegal evictions by private landlords. (**Appendix 3**)
- ✓ Houses in Multiple Occupation Policy 2017 which details our approach to the licensing and regulation of HMOs. (**Appendix 7**) has been undertaken.

All policies have been revised to both incorporate new powers and to clarify to private tenants and homeowners the enforcement and educational role of the local authority.

In addition, new policies have been produced where legislation has brought in new powers that require a clear policy to implement.

These are:

- ✓ *The Smoke and Carbon Monoxide Alarm Regulations 2015.* (attached at **Appendix 5**)
These regulations enable Local Authorities to take enforcement action and fine against landlords who do not provide smoke detection in privately rented units.

- ✓ *The Redress Scheme for Letting Agency Work and Property Management Work Order 2014* (attached at **Appendix 6**)
These regulations enable Local Authorities to issue fines to landlords and agents who do not belong to a recognised ombudsman scheme.

- ✓ *The Housing and planning Act 2016 Policy* (**attached at Appendix 4**)
The Housing and Planning Act 2016 enhances powers granted to local authorities under the Housing Act 2004. Significant changes incorporated within the Act include the ability to issue civil penalty notices as an alternative to prosecution following noncompliance with housing act notices with regard to disrepair. The act also grants additional powers in relation to issuing civil penalty notices to deal with noncompliance of HMO management regulations as detailed in the revised HMO policy (**Appendix 7**).

Full details of the scope of the changes and implementation of the new powers can be found in the policies attached as appendices to this report.

OPTIONS CONSIDERED

No alternative options other than those put forward within this report have been considered due to the requirement to comply with relevant legislation as detailed in the appendices.

RESOURCE IMPLICATIONS

There will be no immediate additional cost to the Council in carrying out the enforcement duties as it will be met through existing resources in the Housing Conditions and Supply Team. However, the number of landlords the new regulations will apply to and the number of fines which may be issued is currently unknown.

This may (given the possibility demand may be higher than anticipated, together with the expansion of private rented sector, the activity this generates and it's valuable contribution to the homelessness prevention agenda / introduction of the Homelessness Reduction Act in 2018) require a review of capacity within Housing Conditions and Supply and especially the Private Sector Housing Team (which currently consists of 2 officers). This review will be undertaken over the coming months to take account of organisational requirements associated with the introduction of the Homelessness Reduction Act and analysis of the impact of the introduction of these measures following their implementation. It is anticipated this review will be completed by April 2018.

Proceeds from the enforcement of the Regulations can be redeployed for private sector activity in line with guidance and the regulation in The Rent Repayment Order and Financial Penalties Regulations 2017

LEGAL/RISK IMPLICATIONS BACKGROUND

The revised regulations are in line with powers delegated from government and are enforceable by law.

Procedures for challenge are detailed in each policy if applicable.

A Staffordshire wide approach has been agreed to establish the level of fines under the Housing and Planning Act where discretion was permitted. This will reduce challenge and provide a standard approach across Staffordshire.

All of the Policies covered within this report have been subjected to scrutiny by the Council's Legal Services Team.

SUSTAINABILITY IMPLICATIONS

There are significant beneficial implications of raising standards in the private sector by implementing new enforcement powers. These include:

1. contributing to healthier outcomes for occupants
2. contributing to a sustainable and good quality private rented sector
3. encouraging improvements to private sector stock

These and other associated outcomes would contribute towards the delivery of key priorities identified by the Tamworth Strategic Partnership and adopted by Tamworth Borough Council.

BACKGROUND INFORMATION

The private sector makes up 81% of Tamworth's housing stock with a mix of 10% rented accommodation and 71 % owner occupied. A recent stock condition survey showed 14% of this stock to have a least one category one hazard. In recent years the government has recognised increasing issues with disrepair and rogue landlords and has granted local authorities additional powers to regulate and enforce in the private sector.

A full review of Tamworth's Private Sector Housing Enforcement Policy (attached at **Appendix 1**) and revised accompanying policies (attached at **Appendices 2,3 and 7**) has been undertaken and a revised policy has been produced to both incorporate new powers and to clarify to private tenants and homeowners the enforcement and educational role of the

local authority.

Included in the new powers are the following:

The Smoke and Carbon Monoxide Alarm Regulations 2015.(attached at **Appendix 5**)

This power allows local authorities to serve landlords who do not install working smoke detectors at start of tenancies with remedial action notices, undertake works in default to install alarms and to issue civil penalties upon landlords who do not comply with the notice up to a value of £5,000.

The Redress Scheme for Letting Agency Work and Property Management Work Order 2014 (attached at **Appendix 6**)

This order requires that letting agents and property management companies must be members of one of three recognised official ombudsman schemes. This enables tenants to have a form of redress if they are unhappy with the conduct of the service provider. Noncompliance with the order may result in the local authority using the power to issue a civil penalty notice up to the value of £5,000.

The Housing and Planning Act 2016 (attached at **Appendix 4**)

The Housing and Planning Act 2016 enhances powers granted to local authorities under the Housing Act 2004. Significant changes include the ability to issue civil penalty notices as an alternative to prosecution following noncompliance with housing act notices with regard to disrepair. The act also grants additional powers in relation to issuing civil penalty notices to deal with noncompliance of HMO management regulations.

Full details of the scope of the changes and implementation of the new powers can be found in the policies attached as appendices to this report.

REPORT AUTHOR

Deborah Casey

Housing Conditions and Supply Manager

LIST OF BACKGROUND PAPERS

Housing Act 2004

The Redress Scheme for Letting Agency Work and Property Management Work Order 2014

The Housing and Planning Act 2016

The Smoke and Carbon Monoxide Alarm Regulations 2015

APPENDICES

Appendix 1 Enforcement Policy 2017

Appendix 2 Disrepair Policy 2017

Appendix 3 Harassment and Illegal Eviction Policy 2017

Appendix 4 Housing and Planning Act 2016 Policy 2017

Appendix 5 The Smoke and Carbon Monoxide Regulations Policy

Appendix 6 The Redress Schemes for Letting Agency Work

Appendix 7 Houses in Multiple Occupation Policy



Housing Conditions and Supply Team

Private Sector Housing Enforcement Policy

July 2017

POLICY

Document Status: draft

Originator: Sue Phipps

Updated: May 2017

Owner: Rob Barnes

Version: 0.1

Date: May 2017

Approved by: Rob Barnes

Document Location

This document is held by Tamworth Borough Council, and the document owner is Rob Barnes.

Printed documents may be obsolete. An electronic copy will be available on Tamworth Borough Councils Intranet. Please check for current version before using.

Revision History

Revision Date	Version Control	Summary of changes
5 th May 2017	1	This is a revised / reviewed policy in line with the need to review the previous out of date enforcement policy.

Document Review Plans

This document is subject to a scheduled annual review. Updates shall be made in accordance with business requirements and changes and will be with agreement with the document owner.

Distribution

The document will be available on the Intranet and the website.

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3	Advice and guidance	7
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5	Policy Revision	13
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1. Introduction

The Private Sector Housing Enforcement Policy details how the Council will regulate and improve standards in private housing in Tamworth based on relevant legislation and best practice guidance.

The Private Sector Housing Team is part of the Council's Housing Conditions and Supply Team and aims to protect and improve lives by ensuring homes are safe and warm.

The purpose of this policy is:

- To ensure a consistency of approach among Council Officers.
- Provide members of the public with clarity on what to expect from the service.
- Support the Council in legal proceedings or enforcement action which is appealed against.
- To raise standards in housing in Tamworth, working with owners, landlords, letting agents and tenants to achieve this.

This policy will deal with an overview of housing enforcement in:

- All private residential dwellings
- Houses in Multiple occupation
- Empty dwellings
- Mobile Home Parks
- Issues around harassment and illegal eviction

These areas of work also have their own specific policies which can be viewed separately.

2. Our approach

The Private Sector Housing Team will only intervene when there is a risk to the health and safety of occupants, neighbours or visitors to a property. The supply of good quality, affordable, privately rented accommodation is essential to meet local housing need.

We also want to be able to support those owner occupiers living in poor conditions.

The Service will use risk assessments to concentrate resources in the areas that need them most and on the properties in the worst condition.

Following the receipt of a service request or complaint about poor housing conditions, an initial risk assessment will normally be carried out and any follow up advice or action will be depend on the outcome of the initial assessment, which may not always involve a visit to the property.

Suitably trained Officers routinely use the Housing Health and Safety Rating System (HHSRS), which is a statutory, evidence-based, risk assessment of those problems in properties which lead to health and safety issues for those who live or visit a property.

We will not offer advice where we feel for example we will put ourselves at risk of litigation e.g. a formal report on a property which a landlord is still in the process of purchasing and such advice could be deemed to have halted that sale.

We will not knowingly send Officers into situations where their health and safety may be at risk.

We will when necessary and / or appropriate work with other departments and agencies e.g. our colleagues in the Housing Solutions, Community Safety and Planning Teams. External partners include the Police and Social Services.

3. What you can expect from us

3.1 Advice and guidance

The Service will provide authoritative, accessible advice easily and affordably available. Wherever possible, this will be provided free on the Council's website. General information, advice and guidance to make it easier for landlords, agents, home owners and others to understand their regulatory obligations will be provided in clear, concise and accessible language, using a range of appropriate formats and media. The Service will consult with the Landlords' forum.

3.2 Inspections, other visits and information requirements

No inspection will take place without a reason. Inspections and other visits will take place in response to a reasonable complaint or request for service or where poor conditions have been brought to our attention; in accordance with risk-based programmes; in accordance with statutory inspection requirements (such as for mandatory licensing of houses in multiple occupation [HMOs]); or on receipt of relevant intelligence.

Unless the visit is intended for advice purposes only, the landlord or his or her agent will be contacted and given the opportunity to accompany the investigating Officer at the visit. Following an inspection, positive feedback will be given wherever possible to encourage and reinforce good practices.

When offering compliance advice, the Service will distinguish between statutory requirements and advice or guidance aimed at improvements above minimum standards. Advice will be confirmed in writing, if requested.

The Service will focus its greatest inspection effort on the highest risk properties, those in worst condition and properties owned by landlords who regularly fail to comply with regulations or frequently have properties with poor

conditions. The Service will endeavour not to ask for unnecessary information or to ask for the same piece of information twice.

Any action necessary will be fairly and transparently taken in line with the Regulators code, the operating guidance of the relevant legislation e.g. HHSRS operating guidance and this Policy.

From April 2014, the Council has been required to have regard to the Regulators' code - issued by department for Business and Skills. The overriding principles of the Code are that Regulators must carry out their activities in a way that supports those they regulate to comply and grow.

- Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.
- Effective and well targeted regulation is essential in promoting fairness and protection from harm.
- Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.

If informal action is inappropriate or ineffective and we need to take formal action the primary legislation we will use is the Housing Act 2004 (with the relevant amendments made by the Housing and Planning Act 2016). We also have other legislation such as The Environmental Protection Act 1990, Protection from Eviction Act 1977, and the Public Health Legislation available to us.

3.3 Landlords

- We will advise you of the legislation and help you understand how you can comply with it. This includes the relevant legislation in both single family dwellings and Houses in Multiple Occupation (HMOs).
- We will advise you as to what action you need to take to comply with the legislation and ask you to respond with your proposal of how you intend to comply.

- If we are satisfied with your proposal we will work with you to comply within agreed timescales.
- If we are not satisfied with your proposal or how the work is progressing we will initiate a formal action in a proportionate manner as appropriate to the circumstances.
- In making the decision to prosecute or levy a civil penalty we will have regard to how serious any offence is, any history of non-compliance, the benefit of the formal action, public interest considerations and whether some other action would be better.
- A charge will be made for the service of certain Notices and either registered as a land charge or pursued by the Council's debt recovery procedures.
- Breaches of certain formal Notices will attract penalties directly from Tamworth Council under provisions brought in by the Housing and Planning Act 2016.
- Landlords also need to be aware of the introduction the Rogue Landlord database and of 'banning' orders which will be brought in October 2017.
- These new provisions will mean that for certain offences and penalties a landlord may be added to the database - available to central government and all local authorities. Banning orders will mean that there is a possibility that conviction of certain offences or a no of civil penalties someone can actually be prohibited from being a landlord.
- All allegations of illegal eviction or harassment against a landlord will be considered and investigated in accordance with our specific policy.

3.4 Tenants

- Unless it an emergency situation, we will expect you to advise your landlord / letting agent of the issues within your property before contacting us. This should be in writing and allow the landlord / agent 14 days to respond. Please keep a copy of all correspondence as you may need to send us a copy.

- We will advise you as to what action we can take and advise you of the expected timescales.
- We will expect you to co-operate with the landlord to get the works carried out, for example allowing access to contractors, and to advise us of any action taken by the landlord.
- It is **not** our policy to advise withholding of rent in lieu of disrepairs.
- Complaints about Housing Association properties will be referred to the Association to investigate first. If necessary the issue will be escalated up to the management of that Association. Where these avenues have failed we will intervene.

3.5 Owner occupiers

- We will normally expect owners to maintain the properties they live in.
- We will work with you to advise and assist when we are able to and work in conjunction with other agencies and people supporting you if appropriate.
- Enforcement action will be considered if there is an imminent risk to life or a statutory nuisance not being addressed.

3.6 Owners of empty homes

We will work proactively with owners of empty homes to encourage and assist in bringing their empty homes back into use. We offer a discretionary empty homes grant of up to £10,000 and ask that you work with us in return e.g. we lease the property from you to use, currently, as temporary accommodation. If owners fail to take responsibility for their properties, are not willing to engage or negotiations have failed, and where there is little prospect of a property being brought back into use voluntarily, enforcement action (e.g. Improvement Notices, Boarding up, Compulsory Purchase Order, Empty Dwelling Management Order, and Enforced Sale) will be considered.

3.7 Mobile Home Park owners

The Mobile Homes Act 2013 introduced sweeping changes in abilities for Local Authorities to be able to charge fees for the licencing activities they

undertake. In addition we can issue Notices / undertake works in default where there are problems on a site (as opposed to just being able to prosecute for breaches of the Licence conditions). We will use these new provisions as appropriate.

4. Compliance and Enforcement Actions

The Service will seek to identify the few landlords, agents, property owners or businesses that persistently break regulations and ensure that they face proportionate and meaningful sanctions. By facilitating compliance through a positive and proactive approach, the Team aims to achieve higher compliance rates and reduce the need for reactive enforcement actions. However, those who deliberately or persistently break the law will be targeted.

When considering formal enforcement action the Service will, where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. This will not apply where immediate action is required to prevent or respond to a serious breach or to deal with an imminent risk to health or safety, or where to do so is likely to defeat the purpose of the proposed enforcement action.

The Team will ensure that clear reasons for any enforcement action are given and complaints and appeals procedures are explained at the same time.

4.1 Accountability/complaints

The Team will be accountable for the efficiency and effectiveness of its activities, while remaining independent in the decisions that it takes. Employees will provide a courteous, prompt and efficient service and will identify themselves by name. A contact point, telephone number and email address will be provided. Applications for licences etc. will be dealt with efficiently and promptly and services will be effectively coordinated to minimise unnecessary overlaps and time delays.

Information about independent appeal mechanisms, such as to the First-Tier Tribunal, (Property Chamber) and the Council's corporate complaints procedure will be explained where necessary and as appropriate.

The Councils' complaints procedure has three stages and can mostly easily be accessed via the 'Tell Us System' on our website. Anyone not satisfied with the internal response can approach the independent Local Government Ombudsman Service, which is external to the Council. The complaints procedure will be followed for any complaints received about the Service or the application of this enforcement policy.

4.2 Authority to Investigate or Enforce

The Housing Act 2004 and associated secondary legislation sets out the duties and powers that Tamworth Borough Council has in relation to regulating housing standards in its capacity as the Local Housing Authority.

Any Officer exercising powers will be appropriately authorised to do so via Tamworth Borough Council's Scheme of Delegation.

Although the Housing Act 2004 is the Act that is utilised most complementary powers are also contained in the Housing Act 1985, as amended, and other legislation, including the Environmental Protection Act 1990 (to deal with properties in such a state of disrepair as to be nuisance to neighbouring properties) the Public Health Acts 1936 and 1961 (Filthy and verminous properties) The Prevention of Damage by Pests act 1949, and the Mobile Home Act 2013.

This is not a comprehensive list.

All these Acts confer powers of entry upon authorised Officers - e.g. section 239 of the Housing Act 2004, and in addition powers to require relevant documentation is provided to us e.g. section 235 of the Housing Act 2004.

4.3 Power to charge for enforcement action

Legislation allows for Local Authorities to charge for certain activities / licensing and / or enforcement works.

For example Section 49 of the Housing Act 2004 enables Local Authorities to charge for and recover costs in relation to enforcement works. These costs can be registered as local land charges until recovered. This provision includes when works are undertaken in 'default' by the local authority.

Tamworth Borough Council will normally charge for work undertaken where the legislation allows us to do so.

Where charges have been made and there is an opportunity for the charges to be appealed e.g. to the 1st Tier Tribunal Service this will be made clear in the correspondence from Tamworth Borough Council.

If we are considering undertaking works in default we will whenever possible give the owner of the property reasonable notice that we intend to undertake the works (If we know the whereabouts of the owner.) If it is an emergency situation it may not be possible to give reasonable notice.

10. Policy Revision

The Policy will be reviewed regularly and will take account of any changes to Legislation, Guidance and Procedure. Minor changes to policy delivery may be required from time to time, and will be undertaken with the agreement of the Corporate Director of Communities, Partnerships and Housing.

11. Complaints

Tamworth Borough Council has an established corporate complaints procedure for dealing with complaints. Information on how to make a complaint is outlined in a complaints leaflet that is available at all Tamworth Borough Council Offices and on the website. (The 'tell us system')

12. Further information

If you would like further information about this policy, please contact Tamworth Borough Councils Housing Conditions and Supply Team

In writing

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Housing Conditions and Supply Team

Private Sector Disrepair Policy

July 2017

POLICY

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Approved by: Rob Barnes

Document Location

This document is held by Tamworth Borough Council, and the document owner is Rob Barnes.

Printed documents may be obsolete. An electronic copy will be available on Tamworth Borough Councils Intranet. Please check for current version before using.

Revision History

Revision Date	Version Control	Summary of changes
25 th May 2017	1	This is a review of the existing policy around disrepair in use by the private sector housing team.

Document Review Plans

This document is subject to a scheduled annual review. Updates shall be made in accordance with business requirements and changes and will be with agreement with the document owner.

Distribution

The document will be available on the Intranet and the website.

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1. Introduction

The Housing Act 2004 introduced the Housing Health & Safety Rating System (HHSRS). It is a calculation of the effect of 29 possible hazards on the health of occupiers. The legislation provides a range of actions for addressing identified hazards. It is a two-stage calculation combining the likelihood of an occurrence taking place and then the range of probable harm outcomes that might arise from that occurrence which would result in a numerical rating. This is repeated for each of the hazards present. The assessment is not based purely upon the risk to the actual occupant but upon the potential risk to any potential occupant of a member of the group most vulnerable to that particular risk (e.g. Children under 5yrs old) over a 12 month period of time.

Once scored, any action that is then considered will take into account the effect of that risk upon the actual occupant.

The scores for each hazard present are then banded from A to J. Bands A to C (ratings of 1,000 points and over) are the most severe, and are known as Category 1 hazards when considering action. Bands D to J, the less severe (rating less than 1,000 points) are known as Category 2 hazards.

HHSRS provides a combined score for each hazard identified and does not provide a single score for the dwelling as a whole. It is applied to all residential premises, whether owner-occupied or rented.

It is this HHSRS system that authorised Officers will use to assess disrepair in both single family dwellings and Houses in Multiple Occupation (HMOs).

Authorised Officers will serve Notices under the Housing Act 2004.

There is normally a right of appeal open to anyone in receipt of a Notice the 1st Tier Tribunal Service.

It may be more appropriate to exercise powers under alternative legislation for example The Environmental Protection Act 1990 to deal with a situation where the condition of one property is affecting another.

This Policy takes account of guidance provided by the Government, Tribunal decisions and best practice guidance, and sets out how the Council will use its powers and reach its decisions in relation to the Housing Health & Safety Rating System (Part 1 of the Housing Act 2004).

The Council has a duty to take appropriate action in response to a Category 1 hazard. When a Category 1 hazard is identified, the Council must decide which of the available enforcement options it is most appropriate to use.

The Council will exercise its discretion and consider individual cases and circumstances when deciding whether to take action in response to Category 2 hazards.

2. Choice of Appropriate Enforcement Action

Unless there is an imminent risk to the health and safety of the occupant or visitors to the property, the Council will normally attempt to secure the required improvements informally and within a reasonable amount of time.

Where this approach fails, the Council will determine which of the specific enforcement options it will use, taking into account the facts and circumstances in each individual case and statutory enforcement guidance.

A statement of reasons will be provided with any Notice it serves, explaining why the Council has decided to take a particular course of action, rather than any other kind of enforcement action.

The enforcement options available to the Council are as follows:

- Improvement Notice (including Suspended Improvement Notice)
- Prohibition Order (including Suspended Prohibition Order)
- Hazard Awareness Notice
- Emergency Remedial Action or Emergency Prohibition Order

- Demolition Order
- Clearance Area

2.1 Improvement Notices

It is anticipated that Improvement Notices will be an appropriate and practical remedy for most hazards. **We will use these to address both category 1 and category 2 hazards.**

Where the Council determines that an Improvement Notice should be served in respect of a Hazard(s), it will require works that will either remove the hazard entirely or will reduce its effect so that it ceases to be a Category 1 hazard, and will take whichever of these two options it considers appropriate, having considered the circumstances of the case.

If the Council determines that the hazard can only be reduced to a Category 2 hazard rather than removed, it will require works to be carried out as far as is reasonably practical to reduce the likelihood of harm.

Where the Council determines that an Improvement Notice should be served in respect of a Category 2 Hazard, it will require works it judges sufficient either to remove the hazard or reduce it to an appropriate degree, and will make these decisions having considered the circumstances of the case.

2.2 Suspended Improvement Notice

The Council has the power to suspend an Improvement Notice once served and will consider this course of action, where it is reasonable, in all circumstances, to do so.

The following are situations in which it may be appropriate to suspend an Improvement Notice:

- The need to obtain planning permission (or other appropriate consent) that is required before repairs and/or improvements can be undertaken.

- Works which cannot properly be undertaken whilst the premises are occupied and which can be deferred until such time as the premises falls vacant or temporary alternative accommodation can be provided.
- Personal circumstances of occupants; for example, temporary ill health, which suggests that works should be deferred.

When deciding whether it is appropriate to suspend an Improvement Notice, the Council will have regard to:

- The level of risk presented by the hazard(s)
- The turnover of tenants at the property
- The response or otherwise of the landlord or owner
- Any other relevant circumstances (e.g. whether the vulnerable age group is present)

Suspended Improvement Notices will be reviewed after a maximum of 12 months and then at intervals of not more than 12 months, but suspension will not normally exceed 6 months.

2.3 Prohibition Orders

Prohibition Orders can be used in respect of both Category 1 and Category 2 hazards for all or part of a dwelling and are likely to be used; if repair and/or improvement appear inappropriate on grounds of practicality or excessive cost (i.e. the cost is unrealistic in terms of the benefit to be derived for example where several category 1 hazards exist). An example might include a dwelling or part of a dwelling where adequate natural lighting or adequate fire escape cannot realistically be provided or;

- In an HMO, to prohibit the use of specified dwelling units or of common parts. This might, for example, be used if the means-of-escape is unsatisfactory or
- To specify the maximum number of persons who can occupy a dwelling where it is too small for the household's needs, in particular, in relation to the number of bedrooms or

- In relation to premises lacking certain facilities but which are nonetheless suitable for a reduced number of occupants.

In addition to prohibiting all uses in relation to the whole or part of the premises in question (other than uses specifically approved by the Council), Prohibition Orders can prohibit specific uses (Section 22 (4)(b) Housing Act 2004); this option may be employed to prevent occupation by particular descriptions of persons. Use of this power may be appropriate in situations such as the following:

- Premises with steep staircases or uneven floors which make them particularly hazardous to elderly occupants.
- Premises with open staircase risers or widely spaced balustrades that make them particularly unsuitable for infants.

2.4 Suspended Prohibition Order

The Council has the power to suspend a Prohibition Order once served and will consider this course of action where it is reasonable to do so if the facts of a particular case appear to justify it (e.g. until the number of people in a current household will naturally decrease).

Suspended Prohibition Orders will be reviewed after a maximum of 12 months and then at intervals of not more than 12 months, but suspension will not normally exceed 6 months.

The Council will consider any written requests made for alternative uses of premises or part-premises which are subject to a Prohibition Order, and will not withhold its consent unreasonably. Any such consent will be confirmed in writing.

2.5 Hazard Awareness Notice

Hazard Awareness Notices may be served to notify owner-occupiers of the existence of hazards (for example where the risk from the hazard is mitigated by the long-standing nature of the occupancy). It might also be applicable where:

- It is judged appropriate to draw a landlord's attention to the desirability of remedial action
- To notify a landlord about a hazard as part of a measured enforcement response
- To advise an owner occupier around a desired course of action.

Hazard Awareness Notices do not have the same legal status as the other Notices under the Housing Act and cannot be 'breached' as such.

2.6 Emergency Remedial & Prohibition Action

The situations in which Emergency Remedial Action and Emergency Prohibition Orders may be used are specified by Sections 40 to 45 of the Housing Act 2004. Specifically, the Council must be satisfied that:

- A Category 1 hazard exists, and that
- The hazard poses an imminent risk of serious harm to health or safety, and that
- Immediate action is necessary.
- Contact cannot be made with the owner/ landlord or there is no confidence that co-operation will be forthcoming.

If these conditions are met the Council intends to take appropriate emergency action, but it does not anticipate that this will be a frequent event. Situations in which emergency action may be appropriate include:

- Residential accommodation located above commercial premises and which lack a safe means of escape in the event of fire because there is no independent access.
- Risk of electrocution, fire, gassing, explosion or collapse.
- A HMO where category 1 hazards are present and the landlord cannot be contacted.

2.7 Demolition Orders

The Housing Act 2004 has retained the power to make Demolition Orders but has amended Section 265 of the Housing Act 1985 to align it with the new method of hazard assessment and enforcement provisions.

Demolition Orders are a possible response to a Category 1 hazard (where they are judged the appropriate course of action). In determining whether to issue a Demolition Order, the Council will take account of Government guidance and will consider all the circumstances of the case.

2.8 Clearance Areas

The Council can declare an area to be a Clearance Area if it is satisfied that each of the premises in the area is affected by one or more Category 1 hazards (or that they are dangerous or harmful to the health and safety of inhabitants as a result of a bad arrangement or narrowness of streets). In determining whether to declare a Clearance Area, the Council will act only in accordance with Section 289 of the Housing Act 1985 (as amended) and having had regard to relevant Government guidance on Clearance Areas and all the circumstances of the case.

3. Tenure

The HHSRS applies equally to all tenures. Further, it does not specify that particular approaches or solutions should be used on the basis of ownership or the occupier's status. All of the enforcement options are available to the Council regardless of whether the premises in question are owner-occupied, privately rented or belong to a Registered Social Landlord (RSL). However, the Council considers that owner-occupiers are usually in a position to take informed decisions concerning maintenance and improvement issues that might affect their welfare and are then able to set their financial priorities accordingly; whereas tenants are not usually able to do so.

For this reason the Council judges that it is appropriate for its powers to be used differently according to tenure, as follows:

3.1 Owner-Occupiers

The Council anticipates that Hazard Awareness Notices will frequently be the appropriate course of action. However, the use of Improvement Notices, Prohibition Notices and their emergency equivalents will be considered in cases involving:

- Vulnerable individuals who require the intervention of the Council to ensure their welfare is best protected.
- Hazards that might reasonably affect persons other than the occupants.
- Serious risk of life-threatening harm such as electrocution or fire.

Unless an identified hazard is judged to pose an imminent risk of serious harm, the Council will contact the owner to confirm its involvement, explain the nature of the hazard and confirm the action it is intending to take. The Council will take account of any proposals or representations made by, or on behalf of the owner. The Council will solicit and take account of the opinion of the relevant Welfare Authority in considering both the vulnerability and capability of such persons as well as in determining what action it will then take.

3.2 Social Landlords

The Council will not normally take formal action against an RSL unless it is satisfied that the problem in question has been properly reported to the RSL and upon the RSL failing to take appropriate action, the complainant has followed the RSLs internal complaint procedure.

If the Council determines that it is appropriate to take action, it will then notify the RSL that a complaint has been received and/or a hazard identified and seek the RSLs comments and proposals.

Only in cases where it judges that an unsatisfactory response has been received, will the Council take further action and will then determine which of the available

enforcement options is the most appropriate, taking into account the facts of the case.

3.3 Private Landlords

The Council will have regard to the principles of the Regulators' code, enforcement guidance and decisions from the 1st Tier Tribunal and will initially seek to proceed informally.

Formal action will be initiated immediately if a hazard in question is judged by the Council:

- To pose an imminent risk of serious harm to any person (whether or not immediate action is required, and whether the hazard(s) in question is likely to affect a tenant, an employee or a member of the public), or
- The landlord in question is known to have failed, on a previous occasion, to take appropriate action in response to an informal approach.

Where an inspection is arranged, the Council will write to the landlord (or his/her relevant agent) to confirm their involvement and the time and date of the visit. Following the inspection, the Council will explain the nature of the hazard(s) in writing and seek the landlord/agent's proposals for remedying the problem.

Unless the Council already holds the required information, a Requisition for Information Notice may also be served at this point (section 16 local Government Miscellaneous Provisions Act 1976). It is an offence not to comply with a section 16 notice and Tamworth Council will look to prosecute for non-compliance.

Following the inspection, if the Council considers that satisfactory proposals and timescales for the work to be carried out are received and agreed within 14 days, and provided matters then proceed to a satisfactory conclusion, the Council will not normally need to take any further action to discharge its duties.

Landlords are expected either to provide any agent acting for them with sufficient authority to act on their behalf, in the event that they are contacted by the Council, or to ensure that they maintain appropriate communication with their agent in order that appropriate decisions and responses can be provided to the Council. The failure of

an agent to respond to communication from the Council or any failure to take appropriate action may be treated as a failure by the landlord. If the Council receives:

- No response from the landlord/agent or
- A response it judges inadequate or
- Proposals that were judged acceptable but which are not then followed through (for example if works fail to start when agreed, fail to make proper progress or are completed to an inadequate standard)

It will proceed with formal action by taking whichever of the various available enforcement actions it judges to be the most appropriate in accordance with this Policy.

3.4 What is expected of Tenants?

Before considering taking any action in respect of a tenanted property, the tenant(s) will be required to contact their landlord about the problems first in writing. This can be a letter, email, text message or message through social media.

Copies of correspondence between the landlord and tenant should be provided for Officers. Tenants are responsible for keeping Officers informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.) which may affect the action the Council is taking or considering taking.

Tenants should also consider seeking independent legal advice about their own individual powers to resolve any dispute with their landlord.

4. Situations where a Service may not be provided

Where any of the following situations arise, consideration will be given to either not providing a service or ceasing to provide a service. In all instances when a service is either not provided or ceased approval shall be sought from the Head of Strategic Housing.

- Where the tenant(s) unreasonably refuse access to the landlord, managing agent or landlord's builder, to arrange or carry out works.

- Where the tenant(s) have, in the opinion of the Council, clearly caused the damage to the property they are complaining about, such damage does not present an imminent risk to health and safety, and there are no other items of disrepair.
- Where the tenant's only reason for contacting the Private Sector Housing Service, in the opinion of the Council, is in order to get re-housed.
- Where the tenant(s) have requested a service and then failed to keep an appointment and not responded to a follow up letter or appointment card.
- Where the tenant(s) have been aggressive, threatening, verbally or physically abusive towards Officers.
- Where there is found to be no justification for the complaint, on visiting the property.
- Where the tenant unreasonably refuses to provide the Council with relevant documentation or information.

5. Powers of Entry and Power to Require Information

The Council has the power of entry to properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004 provided that:

- The Officer has written authority from an appropriate Officer stating the particular purpose for which entry is authorised.
- The Officer has given 24 hours' Notice to the owner (if known) and the occupier (if any) of the premises they intend to enter.

No Notice is required where entry is to ascertain whether an offence has been committed under Sections 72 (offences in relation to licensing of HMOs), 95 (offences in relation to licensing of houses) or 234(3) (offences in relation to HMO Management Regulations).

If admission is refused, premises are unoccupied or prior warning of entry is likely to defeat the purpose of the entry, then a warrant may be granted by a magistrate on written application. A warrant under this section includes power to enter by force, if necessary, Tamworth Council will use this provision if necessary. Agreement will

normally be sought from the Head of Strategic Housing before a warrant is applied for.

The Council also has power under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with:

- Any purpose connected with the exercise of its functions under Parts 1-4 of the Housing Act 2004.
- Investigating whether any offence has been committed under Parts 1-4 of the Housing Act 2004.

The Council also has powers under Section 237 of the Housing Act 2004 to use the information obtained above and Housing Benefit and Council Tax information obtained by the authority to carry out its functions in relation to these parts of the Act.

6. Power to Charge for Enforcement Action

The Local Authority has the power under Section 49 of the Housing Act 2004 to make a reasonable charge as a means of recovering certain administrative and other expenses incurred in serving an Improvement Notice, Hazard Awareness Notice, making a Prohibition, Emergency Prohibition or Demolition Order or taking Emergency Remedial Action. A typical Charge for the service of an Improvement Notice is about £200.

6.1 Charges for Notices & Orders

Where a charge is made, the Council can recover a reasonable amount for expenses incurred in connection with time spent gaining entry, visiting and inspecting the premises to determine appropriate action and the administration costs for the production of a Notice, Order or Remedial Action.

Costs incurred carrying out Work in Default or Remedial Action will be charged separately.

When the charge demand becomes operative, the sum recoverable will be a local land charge.

7. Failure to Comply with Notices

If a Notice is complied with, no further action will be taken.

However if A Notice is not complied with, the Council will consider the following options: (it may be appropriate to undertake a combination of options)

- Simple caution
- Prosecution
- Civil penalty (brought in by the Housing and Planning Act 2016 from April 2017)
- Carrying out the works in default;

Failure to comply with an Improvement Notice or a Prohibition Order is an offence punishable by a fine of up to Level 5. Following conviction, it is an offence to carry on using the premises in breach of the Prohibition Order, attracting a daily fine.

(A landlord/ agent convicted of an offence will from October17 find them-selves on the 'Rogue' landlord database or even subject to a banning order).

The Council will take action to recover its costs in connection with works in default. The Council will also take action to recover the costs incurred in carrying out works associated with Emergency Remedial Action.

7.1 Simple Caution

The use of a Simple Caution (previously known as a Formal Caution) may be considered where it is felt a prosecution is not appropriate. A decision to offer a Simple Caution will be in accordance with the Home Office Guidance on the use of Simple Cautions.

The following factors will be considered in deciding when to offer a Simple Caution:

- The case does not fully meet the Public Interest Test (as set out below).
- The defendant has made a clear and reliable admission of the offence.

A decision to offer a Simple Caution will be if the case is as robust as for a prosecution and will not be considered in cases where the evidence will not give the likely prospect of success in prosecution. If the offer of a Simple Caution is declined the Council **will** take legal proceedings or issue a civil penalty in line with the Housing and Planning Act 2016.

A Simple Caution will not be offered to the same person or company for the same offence within the expiry period. If further offences are committed, prosecution or a civil penalty action will be taken and any details of previous Cautions will be placed before the Court where appropriate.

If a Simple Caution is accepted, the details of the offence will be fully recorded and a copy of the documentation held on the relevant national database.

7.2 Prosecution

Where statutory powers exist to prosecute, they shall only be undertaken where the evidential test and the public interest test has been met, in line with the guidance set out in “The Code for Crown Prosecutors”. The Code for Crown Prosecutors has been issued by the Director of Public Prosecutions under section 10 of the Prosecution of Offences Act 1985 and updated in January 2013.

As of April 2017 it has become possible to offer a civil penalty as an alternative to prosecution in certain circumstances (please see separate Policy document on the Housing and Planning Act 2016). The ‘tests’ to be satisfied before issuing a penalty are the same as those for Prosecution so the information contained in this policy pertains to both options.

Prosecution is a discretionary power and any decision to prosecute will not be taken lightly and based on the circumstances of each case taking into account any defence that may be available. An alternative option to prosecution will be considered in all cases. However, in certain circumstances prosecution action may be taken without prior warning.

A breach of legislation will not automatically result in the instigation of legal proceedings or a civil penalty. The circumstances which are likely to warrant a such action may be characterised by one or more of the following criteria:

- There is a serious breach of the law such that the occupants or the public health, safety or well-being is put at risk, or there is a serious offence under housing standards legislation.
- There is a failure to comply in full or part with a Statutory Notice or Order or there is an offence under the House in Multiple Occupation (HMO) Management Regulations.
- There is a failure to apply for a licence for an HMO or Park Home that is required to be licensed or there has been a breach of condition(s) of HMO licensing or Park Home site licences.
- There is a serious offence under the Protection from Eviction Act 1977 and evidence suggests harassment or illegal eviction from a residential premises or a permanent residential park home.
- There have been breaches of legal requirements in a residential premises and it appears management is unwilling or unable to deal adequately with them.
- The failure by an offender to correct an identified serious potential risk to safety after having been given a reasonable opportunity to do so.
- The offender has failed to accept a Simple Caution or the offence is too serious to offer a Simple Caution.
- A Simple Caution has been issued for a similar offence.

The decision to instigate legal proceedings does not preclude the issue of statutory notices or other enforcement action. Investigation and decision-making will not be unduly prolonged or delayed. It will be in accordance with the principles laid out in the following Acts:

- Human Rights Act 1998
- Police and Criminal Evidence Act 1984
- Regulation of Investigatory Powers Act 2000 and guidance updated May 2015

7.3 Test for Prosecution

In deciding whether a prosecution is necessary, the following tests will be satisfied:

- Evidential Test
- Public Interest Test

7.4 Evidential Test

There must be sufficient evidence to provide a realistic prospect of conviction against each defendant and on each charge before a prosecution is authorised. This is an objective test and means that a jury or bench of Magistrates, properly directed in accordance with the law, is more likely than not to convict each defendant on each charge. If the case does not pass the evidential test, it will not go ahead, no matter how important or serious it may be.

In considering the evidence, the factors taken into consideration will be the reliability of an admission made in an interview, for example, a defendant's age and the reliability of any witness.

7.5 Public Interest Test

There are a number of factors which will determine whether a prosecution is in the public interest and a balance in favour or against will be made between these factors. The following list of factors is not exhaustive but positive answers will tend towards prosecution being sought:

- The seriousness of the offence and if a conviction is likely to result in a significant sentence.
- Evidence that the offence was committed deliberately or maliciously.
- Evidence that the defendant intimidated or harassed those affected.
- The defendant was in a position of authority or trust.
- The previous history of the defendant and evidence of on-going offences of a similar type.
- Likelihood of repeated offence which may be deterred by prosecution.
- The offence is widespread in the area in which it was committed and a prosecution would be of public benefit.

7.6 The Housing and Planning Act 2016

This Act has amended a number of provisions of the Housing Act 2004 including those around non – compliance of Improvement Notices.

A civil penalty can be issued instead of undertaking a prosecution.

The ‘burden of proof’ for issuing a civil penalty is the same as for taking a prosecution.

We will be using this new provision to issue civil penalties.

Please see the separate Policy Document on the Housing and Planning Act 2016.

If the Private Sector Housing team have reasonable cause to suspect that an offence has been committed an initial meeting will need to be undertaken with the line management to try and reach a decision as to whether or not a civil penalty or prosecution is appropriate and the relevant a procedures followed.

8. Revocation and Variation of Notices

The Council must revoke an Improvement Notice once the Notice has been complied with.

If part of the work required within the Notice is carried out, then the Notice can be varied.

9. Works in Default

Work in default refers to the discretionary powers given to the Council under specific legislation to carry out works required in a statutory Notice that has not been complied with. Works carried out in an emergency situation must be where an imminent risk to the health and safety of the public has been identified. In both situations the approval of The Strategic Housing Manager or their authorised deputy

must be sought before arrangements can be made to carry out the works. In considering WID the following issues will be taken into account:

- The effects of not carrying out the work on the health and safety of the occupant of the property concerned.
- The wishes of the tenant where the Notice has been served in respect of a rented property.
- The reason for the work not being carried out in the first place.
- Any other factors that are specific to individual properties.
- The Council will normally seek to recover all of the costs associated with undertaking work in default (including time spent by its Officers, administrative costs, contractors costs, the cost of any specialist reports, supervisory costs etc.)
- In the case of Officer time, the Council will calculate costs as follows:
 - The actual time spent by Council Officers on the chargeable activities and recorded using file notes and database.
 - Time spent will be converted into a monetary figure using the appropriate hourly rate set for the Officer(s) concerned.

The expenses are to be recovered from the person(s) on whom the Notice or Order is/are served (“the relevant person”). Where the relevant person receives the rent on behalf of another, the expenses are also to be recovered from that other person. The expenses will carry interest from the date of service until payment of all sums due under the demand at a rate of 1% over the Bank of England Base Rate. The recoverable expenses, together with interest accrued on them, are a charge on the premises.

10. Policy Revision

The Policy will be reviewed regularly and will take account of any changes to Legislation, Guidance and Procedure. Minor changes to policy delivery may be required from time to time, and will be undertaken with the agreement of the Corporate Director of Communities, Partnerships and Housing.

11. Complaints

Tamworth Borough Council has an established corporate complaints procedure for dealing with complaints. Information on how to make a complaint is outlined in a complaints leaflet that is available at all Tamworth Borough Council Offices and on the website. (The 'tell us system')

12. Further information

If you would like further information about this policy, please contact Tamworth Borough Councils Housing Conditions and Supply Team

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Housing Conditions and Supply Team

Harassment and Illegal Eviction Policy

July 2017

POLICY

Document Status: Draft

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Document Review Plans

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1. Summary

There are a small number of private landlords or their agents with properties in Tamworth who do not conduct themselves within the requirements of the legislation relating to private rented accommodation. These landlords sometimes resort to using illegal eviction and/or harassment to force tenants to leave their properties.

Illegal eviction can normally be prevented through mediation with the landlord, however, there are occasions when the landlord continues to harass or even illegally evict a tenant despite advice and information that they may be committing a criminal offence.

The Council provides a range of assistance to help landlords comply with their legal responsibilities when asking a tenant to vacate their properties including providing landlords with relevant advice and the landlord forum. Illegal Eviction and Harassment are Criminal Offences and the maximum penalty in a Crown Court is an unlimited fine and two years' imprisonment.

Harassment and illegal eviction can cause considerable distress and anxiety to households and may lead to homelessness. The Council will therefore take a proactive stance against illegal eviction and/or harassment and offer support, advice and assistance to residents in this situation including taking appropriate action to help tenants regain occupancy of their home.

The Council will also prosecute landlords or their agents where it is deemed appropriate to do so.

The purpose of the Policy is to identify and ensure a fast, clear and co-ordinated response by the Council, in partnership with its customers, landlords and partner agencies to deal with allegations of harassment and illegal eviction.

2. Introduction

Harassment and illegal eviction are not always reported to the Council, however when such events occur they will have a severely disruptive effect on the households involved, possibly leading to homelessness. This in turn will have a financial impact on the Council in having to find temporary accommodation such as bed and breakfast.

The law protects people living in residential properties against illegal eviction and/or harassment. It does this in two ways: by making illegal eviction and/or harassment a criminal offence, and by enabling someone who is being illegally evicted and/or harassed to claim damages through the civil courts. The only way a landlord can force a tenant to leave a property is by following the relevant legislation and procedures in the Housing Acts. For example for Assured Shorthold Tenants this means that the relevant notice must be served and then the possession order and warrant obtained. Only a court appointed bailiff can evict an Assured shorthold Tenant.

Whilst people living in accommodation on 'Licence' or less formal agreements have less rights they will still be protected from harassment.

Local Authorities have the power to take criminal proceedings for offences of illegal eviction and/or harassment. If the evidence justifies it, they can carry out investigations and prosecute if they believe an offence has been committed.

Adoption of this policy will make clear that the Council will actively investigate any allegation it receives regarding harassment and/or illegal eviction. It is hoped that landlords/agents will be prompted to ensure that they do not take any action that could constitute harassment or illegal eviction and will be deterred from following such courses of action.

3. The problem locally

Both the Housing Solutions and Housing Conditions Team receive enquiries about the legality and/ or correctness of Notices/ requests to leave accommodation from both tenants and landlords. Most landlords follow the advice given and take the correct procedures to evict their tenants. However there are some private landlords (or their agents) with properties in Tamworth who do not conduct themselves within the requirements of the legislation relating to private rented accommodation, most notably the 'Protection from Eviction Act, 1977'. These landlords may issue a 'notice to quit' that is not legally valid and/or encourage their tenants to leave through a variety of means (persistent calling at the property, threat to change the locks and in the extreme case physically removing a tenant from a property by force). Some tenants are not aware of their rights and may end up leaving their home without any support or advice. It is therefore difficult to assess the frequency of tenant harassment and illegal eviction and it is likely that many cases go unreported.

The Private Sector Housing Team has experienced instances where landlords will try to evict their tenants when they are contacted by the team following a request for service. It is believed that a number of these may have resulted in harassment or an illegal eviction, but tenants are too frightened to come forward for help.

Research suggests that the types of household most likely to experience harassment and illegal eviction are those dependent on housing benefit and classed as 'priority'.

4. What is Harassment?

Harassment is defined in the Protection from Eviction Act 1977 as:

- Acts likely to interfere with the peace and comfort of those living in the property, or
- Persistent withdrawal of services that are reasonably required for the occupation of the property.

The Protection from Eviction Act 1977 creates two separate offences of harassment:

- The first offence can be committed by any person if it can be shown that s/he had an intent to cause an occupier to leave all or part of the property or refrain from exercising any right or remedy in respect of the premises.
- The second can only be committed by a landlord or her/his agent. This offence is committed if it can be shown that the landlord or her/his agent should have known or had reasonable cause to believe that her/his action(s) was likely to have this effect. This Act creates four criminal offences, harassment, putting another person in fear of violence, breach of restraining order and breach of an injunction.

Examples of behaviours which may be classed as harassment include:

- Making threats to persuade a tenant to leave.
- Cutting off services such as gas, electricity or water.
- Preventing access to shared kitchens and bathrooms.
- Entering a tenant's room without permission.
- Not carrying out essential repairs.

5. What is Illegal Eviction?

The majority of occupiers cannot be evicted unless specific legal procedures have been followed (Protection from eviction Act 1997). The exact procedures vary according to the particular type of tenancy or licence agreement the occupier has.

Action taken by a landlord or any other person to deprive an occupier of access to all or part of their accommodation without following the correct legal procedures constitutes illegal eviction.

The Council will take a proactive approach to supporting the rights of residents and tenants in relation to illegal eviction and/or harassment. This will include taking appropriate action to help the tenant regain entry to their home and the possible prosecution of any person, organisation or agency who are acting illegally.

The Council also recognise the rights as well as the responsibility of landlords and will actively encourage all tenants to observe their legal obligations as tenants.

In all cases the Council will adhere to its written procedures in reported or suspected cases of illegal eviction and/or harassment.

At the time of writing this policy there is no accurate data on the number of harassment and illegal evictions in Tamworth, but the Private Sector Housing Team has successfully mediated on a number of occasions to help tenants remain in their homes.

6. Retaliatory eviction

Tenants with Assured Shorthold Tenancies created after 1st October 2015, can be protected from what's known as 'retaliatory eviction'. Retaliatory-eviction is a term used to describe situations where a landlord chooses to evict a tenant who has made a request for repairs rather than carrying out any necessary work. Tenants will only be protected from eviction in these circumstances where the Council's Private Sector Housing Team have undertaken a risk assessment of the property and served a relevant notice as a consequence of a disrepair issue that is hazardous to health or safety. In such circumstances the landlord cannot issue the tenant with a section 21 until 6 months after the service of the Housing Act Notice.

Tenants who receive notice from their landlord before the Council takes this action may only be protected if they have made their initial repair request to the landlord in writing. Normally the landlord is allowed 14 days to respond appropriately to the request for repairs. We recommend that you keep a copy of any correspondence you send to your landlord for your own records as this could be important. If you are a tenant and you are worried about retaliatory eviction please speak to the Council's Private Sector Housing Team.

7. Relevant legislation

There are two main pieces of legislation that deal with illegal eviction and harassment:

- Protection from Eviction Act 1977

Under S1 (2) Protection from Eviction Act 1977 it is an offence for any person to unlawfully deprive a residential occupier of the premises (or any part of it) that they occupy.

The law makes it an offence to:

- Do acts likely to interfere with the peace or comfort of a tenant or anyone living with him or her; or
- Persistently withdraw or withhold services for which the tenant has a reasonable need to live in the premises as a home.

It is an offence to do either of the things described above, intending, knowing, or having reasonable cause to believe, that they would cause the tenant to leave their home, or stop using part of it, or stop doing the things a tenant should normally expect to be able to do. It is also an offence to take someone's home away from them unlawfully.

- Protection from Harassment Act 1997

This Act creates four criminal offences, harassment, putting another person in fear of violence, breach of restraining order and breach of an injunction.

8. Service Criteria

In dealing with cases of illegal eviction and/or harassment the Council: -

- Aims to mediate and negotiate in cases of serious landlord and tenant disputes in the rented housing sector within the boundaries of Tamworth. We will signpost anyone from outside the Borough to talk to their own local authority.

- Where mediation fails or is inappropriate the Council may decide to pursue an investigation which may lead to a criminal prosecution under the Protection from Eviction Act 1977 or the Protection from Eviction Act 1997.

The Council will deal with cases of: -

- Unlawful eviction of tenants by private and registered social landlords or people acting on their behalf.
- Threatened unlawful evictions of tenants by private and registered social landlord tenants or people acting on their behalf.
- Serious cases of harassment of tenants by their landlord or people acting on their behalf. Serious could be violence, threats of violence, abusive, discriminatory, aggressive or intimidating behaviour.
- Disconnection of essential services (water, gas, electricity) by the landlord or person acting on their behalf.
- Cases of harassment where the tenant(s) involved may be vulnerable e.g. elderly tenants, tenants with mental or physical health problems.
- Cases of racial, sexual or other discriminatory issue.
- Any enquiries over general terms and conditions of tenancies, tenancy deposits, contracts, rent increases or other related matters will be directed to the Private Sector Housing Team.

9. How the policy will operate

The Council will take a proactive approach to supporting the rights of residents and tenants in relation to illegal eviction and/or harassment. This will include taking appropriate action to help the tenant regain entry to their home and the possible prosecution of any person, organisation or agency who are acting illegally.

The Council also recognise the rights as well as the responsibility of landlords and will actively encourage all tenants to observe their legal obligations as tenants.

In all cases the Council will adhere to its written procedures in reported or suspected cases of illegal eviction and/or harassment (see attached procedures). This will

include making contact with the landlord/ agent to discuss the situation and issuing the templated initial letter.

Referrals will be made to the Housing Solutions team where appropriate. The service provides information, advice, help and support about a wide range of housing solutions and for those who maybe homeless or threatened with homelessness.

The Council has the legal power to investigate and prosecute under the provisions of the Protection from Eviction Act 1977 and the Protection from Eviction Act 1997.

Referrals may also be made in certain circumstances to the local Police e.g. where threats of violence have been made or where we feel they may be needed to assist with stopping an attempted illegal eviction. The Police may review the circumstances when taking a prosecution for other related factors that might include theft of residential occupier's belongings, criminal damage, assault or protection from harassment.

9.1 Specific principles

In all cases of illegal eviction and/or harassment of a residential occupier the Council will actively consider a formal caution or prosecution on behalf of the customer. In coming to this decision between the two options, the Council will have regard to the seriousness of the alleged incident of illegal eviction or harassment, and where a formal caution is refused; prosecution will usually commence having regard to the issues outlined in the following section.

9.2 Issues to be taken into account

In deciding whether a case is suitable for the application of a caution or prosecution the authority will take a number of issues into account, and these are outlined below;

- Strength of evidence obtained
- The severity of the offence and the circumstances of the case
- If there is any previous history of this landlord/ agent being involved/ suspected of being involved with illegal eviction /harassment

- Voluntary disclosure
- Social factors

A case will not be deemed unsuitable for a prosecution or caution because either the Council has successfully enable the tenant to regain possession of their home or because the landlord or their agent has allowed or is about to allow a displaced residential occupier back into their home.

9.3 Enforcement options

The Council regards enforcement from a holistic view whilst encompassing all actions that can be taken to achieve compliance with a statutory requirement. It has a staged approach to enforcement wherever possible to ensure solutions are initially sought through education, co-operation and agreement. Where this is not successful, formal action will be necessary, which may ultimately lead to prosecution or other summary action. The following options will be available:

- Mediation & negotiation
- Formal Cautions
- Prosecution

Any case will need to meet both the Evidential Test and also the Public Interest Test. The case will have to be prepared, discussed with the Housing Conditions and Supply Manger and presented to the Corporate Director who will have to give consent for the prosecution to go ahead.

10. Roles & Responsibilities

The Council is ultimately responsible for ensuring that any case of illegal eviction and/or harassment will be investigated and where appropriate, will take any necessary action including prosecution.

All staff are responsible for adhering to the policy and for reporting any matters where they suspect illegal eviction and/or harassment may be taking place. Partner

agencies have a responsibility to advise and assist customers and to refer relevant cases to the Council's Private Sector Housing Team.

11. Reviewing the policy

The policy will be reviewed annually or sooner should there be any major changes in National or Local policy. Where minor changes are required to the policy this will be undertaken with the agreement of the head of service and the Portfolio Holder for Housing and Health.

12. Complaints

Tamworth Borough Council has an established corporate complaints procedure for dealing with complaints. Information on how to make a complaint is outlined in a complaints leaflet that is available at all Tamworth Borough Council Offices and on the website via the 'tell us system'.

13. Further information

If you would like further information about this policy, please contact Tamworth Borough Councils Housing Conditions and Supply Team

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Housing Conditions and Supply Team

The Housing and Planning Act 2016

(How Tamworth Borough Council will approach, adopt and use the enhanced measures the above Act which extend and amend certain powers and activities in relation to the Housing Act 2004)

July 2017

POLICY

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Revision Date	Version Control	Summary of changes
	1	This is a new policy drafted in line with the provisions of The Housing and Planning Act 2016

Document Review Plans

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1. Introduction

This policy sets out the approach that Tamworth Borough Council will take in the adoption and operation of the new measures introduced by the Housing and Planning Act 2016, amending and extending the provisions of the Housing Act 2004.

The Housing Conditions and supply team are responsible for increasing both the quality and quantity of residential accommodation in Tamworth.

The number of households in the private rental sector in England is increasing and now stands at 4.3 million. In Tamworth there are some 3,087 privately rented dwellings (BRE 2017).

Although officially, in line with council tax records, there are officially only just over 100 HMOs it is thought through experience and intelligence that there are many more.

The relevant Private Sector Housing Officers undertake proactive property assessment and respond to complaints of deficiencies in housing conditions and standards.

The assessments are completed in accordance with part 1 of the Housing Act 2004.

The assessment process is a risk based process referred to as the Housing Health and Safety rating System (HHSRS). The Authority is obligated to act if the outcome score of the process is 1000 or above (category 1 hazard) or a high scoring category 2 hazard (scoring up to 1000). Lower scoring hazards can be actioned under the discretion of the authority with robust justification

The team also undertake the Licencing of Houses in Multiple Occupation (HMOs) under provisions of the Housing Act 2004.

The current and proposed legislative changes contained within the Housing Act 2016 are intended to assist Local Authorities in tackling 'rogue landlords' in their Borough.

- Introduction of financial (civil) penalties of up to £30,000 as an alternative to prosecution for certain specified offences (in force 6th April 2017).
- Extension of existing rent repayment order powers to cover a range of offences by landlords in the private rented sector, such as illegal eviction, breach of a banning order and others (in force 6th April 2017).
- Introduction of powers to require the sharing of certain data held by the three main Tenancy Deposit Protection (TDP) schemes to Assist LA's in identifying privately rented accommodation in their district (in force 6th April 2017).
- A database of rogue landlords and property agents who have been convicted of certain offences or received multiple financial penalties (scheduled to come into force 1st Oct 2017).
- Banning orders for the most serious and prolific offenders (scheduled to come into force 1st Oct 2017).

There are also proposals to extend the current regime around HMO (House in Multiple Occupation) licencing. The proposals will mean that any HMO property occupied by 5 or more persons (in separate households) will need a licence. Part 5 of the Housing and Planning Act 2016 gives the secretary of state power to regulate around requiring landlords to ensure Electrical safety throughout the tenancy and it is likely that Local Authorities will enforce on this (Oct 2017).

2. Financial (civil) Penalties

The power to impose a civil financial penalty came into force from 6th April 2017 as an alternative to prosecution for these offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016 (amending the Housing Act 2004).

A Local Authority **cannot** issue a civil penalty and prosecute for the same offence - it must decide in which way it wishes to deal with the offence.

Local Authorities are expected to develop and document their policy on these penalties:

- When to prosecute and when to issue a financial penalty (both cannot be imposed for the same offence).
- Determining the appropriate level of financial penalty in a particular case (there is no minimum level of penalty and the maximum is £30,000).

When civil penalties were introduced through the Housing and Planning Act 2016, Ministers made very clear that they expected this power to be used robustly as a way of clamping down on rogue landlords.

In the House of Commons, Marcus Jones MP (Parliamentary Under Secretary of State at the Department for Communities and Local Government) stated:

“[it is necessary to] clamp down on rogue landlords, so the civil penalty [has been increased] up to a maximum of £30,000. “

“It is important to raise the level of civil penalty to £30,000, because a smaller fine may not be significant enough for landlords who flout the law to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants.”

Whilst the initial impact of these changes will not be significant in Tamworth it could increase for example when the current HMO licencing regime is extended.

Money raised through these penalties can be kept by the Local Authority and used in further work to improve condition in the private housing sector.

The list of offences that that may be dealt with by way of a financial penalty are as follows:

- Failure to comply with improvement notice (Housing Act 2004 Section 30) **(does not apply to Prohibition orders)**
- Licensing of HMOs under Housing Act 2004 Part 2 (Housing Act 2004 Section 72)
- Licensing of houses under Housing Act 2004 Part 3, (Housing Act 2004 Section 95)

- Failure to comply with overcrowding notice, (Housing Act 2004 Section 139(7))
- Management regulations in respect of HMOs. (Housing Act 2004 Section 234)

2.1 What burden of proof is required?

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, a local housing authority should satisfy itself that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction.

In order to actually achieve a conviction in the magistrates' court, the local housing authority would need to be able to demonstrate beyond reasonable doubt that the offence has been committed. Similarly, where a civil penalty is imposed and an appeal is subsequently made to the First-tier Tribunal, the local housing authority would need to be able to demonstrate beyond reasonable doubt that the offence had been committed.

The legislation allows a maximum financial penalty of £30,000 to be imposed per offence. In determining whether to impose a financial penalty the Council will have regard to any relevant local enforcement policy and any relevant governmental guidance. In particular the factors set out in 3.5 of the Government Guidance on Civil penalties under the Housing and Planning Act 2016 which has been incorporated into the charging table adjustments set out in Appendix 1.

The rationale in relation to the financial penalty is in accordance with Magistrates Court procedures for imposing fine levels taking into account culpability and income from their housing related activities. Tamworth Borough Council enforcement policies were reviewed over the Spring/ Summer 2017 and the disrepair and HMO policies details the enforcement approach in relation to the Housing Health and Safety Rating System and licensing standards issued in HMOs.

3. Our Approach

Tamworth Borough Council will adopt and use this new power to issue civil penalties as an alternative to prosecution.

Although there is no statutory need to consult around the adoption of these changes they will be 'advertised' on our webpages, disseminated via the landlord forum and a press release.

In line with the statutory guidance to Local Authorities we need to produce a written policy advising when we will prosecute to and when we will issue a civil penalty.

The Guidance suggests that we must decide on a case-by-case basis in line with our policy what the correct action to take is. It further advises that prosecution may be the most appropriate option where the offence is 'particularly' serious or where the offender has committed similar offences in the past. This does not mean that we cannot use the civil penalty in cases where the offence is serious as a significant financial penalty may be the most appropriate and effective sanction in some cases.

Our approach will normally be to issue a civil penalty unless the 'offender' has already received at least 3 civil penalties over the preceding 18 months, as this would suggest that the civil penalty option is not working.

Prosecution will be considered as the first option for the most serious offences. An example of this could be where a landlord fails to comply with fire safety issues or deliberately puts the health, safety and welfare of more individuals at risk by not complying with HMO Management Regulations around fire safety.

As with prosecution currently both the evidential the 'public interest' test will also have to be met before a penalty can be issued.

When deciding what level of penalty to use the government guidance asks us to consider issues such as the severity of the offence, culpability and track record of the offender.

Work has been undertaken through the Staffordshire Housing Technical Group, in line with government guidance, to produce a financial penalty matrix detailing the

penalty limits and added premiums. **All Local Authorities in Staffordshire, including Tamworth Borough Council** will apply these levels of penalties in the relevant circumstances. This should help ensure equality in enforcement across the County and result in fewer challenges from the 1st Tier Tribunal Service.

See Appendix 1

The process of issuing a civil penalty is set out in Schedule 13A of the Housing Act 2004 must involve the issuing of a 'Notice of Intent' 28 days before the final Penalty is issued.

The 'case ' for issuing the civil penalty and the preparation of the notice of intent and final Notice will be prepared by the Senior Private Sector Housing Officer in discussion with the Housing Conditions Manager The final Notice will be signed and 'issued' by the Corporate Director of Communities, Partnerships and Housing.

If in the period of time between intent and final notice the Corporate Director may choose to withdraw a Notice or reduce the amount specified in a Notice (e.g. where it is felt that the 'offender' makes a valid representation in the 28 days between the intent and final notice) this decision will be relayed in writing.

If the penalty remains unpaid Tamworth Borough Council will refer the case to the County Court for an order of that court, We will, if it becomes necessary use county court bailiffs to enforce the order and recover the debt.

4. Rent Repayment Orders

The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of Houses in Multiple Occupation (section 72(1)) and offences in relation to licensing of houses under Part 3 of the Act (section 95(1)). Rent repayment orders have now been extended through the Housing and Planning Act 2016 to cover a much wider range

of offences which are described below. Rent Repayment Orders are made by the 1st Tier Tribunal Service.

Rent repayment orders are being extended to cover the following situations:

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

Either the tenant or the local housing authority can apply for the order.

If a Local Authority becomes aware that a person who is a landlord has been convicted of any of the offences, and those offences have been committed in their area it **must consider** applying for a rent repayment order.

A rent repayment order can be applied for when the landlord has committed an offence, whether or not a landlord has been convicted of one of the offences listed above. Where an application for a rent repayment order is made and the landlord has not been convicted of the offence for which the rent repayment order application is being made, the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence.

Where a landlord **has** been convicted of the offence to which the rent repayment order relates, the First-tier Tribunal must order that the maximum amount of rent is repaid (capped at a maximum of 12 months).

Where a landlord **has not** been convicted of the offence to which the rent repayment order application relates, the following factors should be taken into account when considering how much rent a local housing authority should seek to recover:

- **Punishment of the offender** - Rent repayment orders should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. Factors that a local housing authority may wish to consider include the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has previously been convicted of similar offences;
- **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;
- **Dissuade others from committing similar offences** - Rent repayment orders are imposed by the First-tier Tribunal and so the fact someone has received a rent repayment order will be in the public domain. Robust and proportionate use of rent repayment orders is likely to help ensure others comply with their responsibilities.
- **Remove any financial benefit the offender may have obtained as a result of committing the offence** - This is an important element of rent repayment orders: the landlord is forced to repay rent, and thereby loses much, if not all, of the benefit that accrued to them by not complying with their responsibilities.

A Local Authority can impose a civil penalty or prosecute for the offence and apply for a rent repayment order for certain offences. Both sanctions are available for the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of Houses of Multiple Occupation (section 72(1));
- Offences in relation to licensing of houses under part 3 of the Act (Section 95(1)).

If a Local Housing Authority becomes aware that a person who is a landlord has been convicted of any of the offences listed, and the offence was committed in their area, it must consider applying for a rent repayment order.

The First-tier Tribunal must order that the maximum amount of rent (up to 12 months) is repaid where the landlord has been convicted of the offence to which the rent repayment order applies. This is regardless of whether or not the local housing authority or tenant has applied for a lesser amount. Where the landlord has not been convicted, the First-tier Tribunal will determine the amount to be repaid in accordance with section 44 (tenants) or section 45 (local housing authorities) of the Housing and Planning Act 2016.

Where a landlord has been convicted of any of the offences listed and the rent repayment order, or part of it, is being made in favour of the local housing authority (because rent was paid through Housing Benefit/Universal Credit), the First-tier Tribunal must require the landlord to repay all of the rent paid to the landlord by the local housing authority up to a maximum of 12 months, provided the conditions in section 46 of the Housing and Planning Act 2016 are met.

4.1 Our approach

Tamworth Borough Council will normally apply to the First-tier Tribunal in all appropriate cases, the 'case' will be prepared by the Senior Private Sector Housing Officer and the application will be signed off by the Corporate Director.

5. Obtaining and using tenancy deposit information

Landlords must put their tenant's deposit in a government – backed tenancy deposit scheme if they let their property on an Assured Shorthold Tenancy that started after the 6th April 2017.

There are three TDP Schemes:

- Deposit Protection Services (DPS)
- Tenancy Deposit Scheme

- My Deposits

From the 6th April 2017 these schemes are required to provide the specific information they hold on tenancies in England to any Local Authority who requests the information. Only information which relates to properties in the authority's area will be provided.

Once the data has been received the Local Authority must only use it whilst exercising their powers under Parts 1-4 of the Housing Act 2004 this includes the investigation of whether or not an offence has been committed.

The information provided will exclude the landlord's name but this can be found via other records such as council tax and benefit records.

Once the information has been accessed or downloaded by the Local Housing Authority, it is the Local Housing Authority's responsibility to use the information in accordance with the Housing Act 2004 and the principles of the Data Protection Act 1998 (But it can be shared with other parties assisting with Housing Act 2004 functions).

5.1 Our approach

Local Authorities can choose to use this provision.

Tamworth Borough Council will make full use of this new provision where it will be useful and add to our 'tools' to act effectively under the Housing Act 2004.

The government has produced strict guidance and even template letters for use.

Requests for information must be in writing- letter-headed paper signed by a Senior Officer in the private sector housing team and then scanned across to all the schemes separately as necessary.

Response will be from the scheme via a secure web-portal link (usually within 5 days).

6. Amendments to the HMO Licensing Criteria

The existing regime of mandatory HMO licensing has been reviewed by the Government and the numbers of HMOs requiring a mandatory licence has increased. The changes being brought in (Oct. 17) and will:

- Remove the storey rule so all properties (regardless of how many floors) with 5 or more people from 2 or more households will now require a licence.
- Extends the mandatory licensing to flats above and below business premises (regardless of storeys).
- Set a minimum room size of 6,5msq (single room). This is already in line with our local standards.

We will undertake the licensing of these extended categories in the same way that we deal with existing licensable HMOs. We will use our current standards and where necessary will enforce against those landlords who do not comply.

We will publicise these changes via our webpages, landlord forum, other internal teams e.g. Benefits and a press release.

7. Electrical safety

Provision has been made under part 5 of the Housing and Planning Act 2016 for the secretary of state to enact secondary legislation around electrical safety in rented accommodation. This legislation will strengthen the existing obligations under the Landlord and tenant act 1985.

The Electrical Safety Standards that the Secretary of State may impose are in relation to:

- The installation in the premises or the supply of electricity; or
- Electrical fixtures, fittings or appliances provided by the landlord.

The landlord's obligations are expected to include duties to ensure that a suitably qualified electrician has checked that the standards have been met, that they obtain a certificate confirming this with a copy provided to the tenant or any other relevant person. It will be for the Secretary of State to decide how often these checks should be carried out and who will be suitably qualified to do so.

The enforcement of the pending secondary legislation is likely to be carried out by the Local Authority. Landlords in breach will be subject to a financial (civil) penalty, the Local Authority will have the power to enter the premises with the tenant's consent and remedy any failure to comply with electrical safety standards.

These changes are likely to be in force by October 2017.

7.1 Our approach

We will adopt and use these powers in line with government guidance issued and our enforcement policy approach.

8. Banning orders

The Housing and Planning Act 2016 introduced the power for the First Tier Tribunal to serve a banning order for landlords and agents who have been convicted of serious offences, and/ or repeat offenders. Subject to further detailed regulation Banning orders should be in force from October 2017.

8.1 Proposed banning order offences (relevant housing offences)

An offender has been convicted of a 'relevant housing offence', (regardless of whether that was in the Crown Court or Magistrates Court). For the majority of landlords or property agents convicted of a banning order offence, it is very likely that the offence will be in relation to the condition and/or management of the properties that they are renting out. Therefore, it is very important to ensure that a banning order is a potential sanction following conviction for a relevant housing offence.

Initially, it was proposed that someone would have to be found guilty of at least two relevant housing offences, but the Act was amended during its passage through Parliament. As a result, conviction of a single 'relevant housing offence' would be sufficient for someone to be put on the database and, **if the Local Authority considered it appropriate and obtained a banning order, banned from being involved in letting out or managing property.**

A 'relevant housing offence' could include a conviction for any of the following offences:

- Illegally evicting or harassing a residential occupier in contravention of the Protection from Eviction Act 1977 or the Criminal Law Act 1977 or;
- Any of the following offences under the Housing Act 2004:
- Offences in relation to licensing of Houses in Multiple Occupation (HMOs) (section 72);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95);
- Allowing a HMO that is not subject to licensing to become overcrowded (section 139);
- Failure to comply with management regulations in respect of HMOs (section 234).

Other 'relevant housing offences' may include the following:

- An offence under section 36 of the Gas Safety (Installation and Use) Regulations 1998;
- Failure to comply with a Prohibition or Emergency Prohibition Order under sections 20, 21 and 43 of the Housing Act 2004;
- An offence under section 32 of the Regulatory Reform (Fire Safety) Order 2005 provided it relates to a property that is being rented out or managed by a landlord or property agent.

8.2 Proposed banning order offences (Immigration offences)

- Letting to someone disqualified from renting because of their immigration status, resulting in an offence under Part 3 of the Immigration Act 2014.

8.3 Proposed banning order offences (serious criminal offences)

- Any offence, whether committed by an individual or a body corporate, for which they have been sentenced in the Crown Court (regardless of whether they were originally convicted in the Crown Court or Magistrates Court) involving:
 - Fraud under the Fraud Act 2006;
 - The production, possession or supply of all classes of illegal drugs (including poisons) and/or managing premises where drug dealing and/or production takes place; or
 - Any offence under Schedule 15 of the Criminal Justice Act 2003 (specified violent and sexual offences).

8.4 The offence must have been committed

- At any residential premises in England, or in the local area of those premises;
or
- In relation to such residential premises.
- In either case, the offender, or a person associated with him, must have owned or been involved in the management of the residential premises concerned at the time the offence was committed;

In addition, neither the offender nor the associated person must occupy the residential premises as their main residence and the offence must relate to the occupier of the residential premises.

8.5 Proposed banning order offences (other criminal offences)

- Any offence, whether committed by an individual or a body corporate, for which the offender has been sentenced in the Crown Court (regardless of whether they were originally convicted in the Crown Court or Magistrates Court). The offence must have been committed against, or in conjunction

with, any person who was residing at the property owned by the offender, other than a person associated with the offender.

Examples of the types of offences include:

- Theft or criminal damage committed by the property agent (including a body corporate);
- A landlord colluding with the occupier to commit a criminal offence, for example, tax evasion or the supply of illegal drugs.

It will be for Local Authorities to decide whether they should apply for a banning order against a landlord or property agent convicted of such offences. However, these are serious criminal offences for which an offender may well receive a lengthy custodial sentence upon conviction. Therefore, it is likely that Local Authorities will want to consider seeking a banning order against a landlord or property agent convicted of any of those offences.

In addition, where a landlord is subject to a banning order, their property may be made the subject of a management order by the Local Authority, thereby allowing the Local Authority to rent out the property. Where that happens, the Local Authority will receive all of the rental income from the property and can reuse it for housing related purposes. The owner of the property would still be liable for any mortgage or other repayments that may be due on the property.

8.6 Our approach

The process for obtaining a banning order is described in the Act and will be the subject of further guidance.

We will work towards enhancing our links with other agencies and statutory services to ensure we are made aware of other possible relevant convictions/sentencing, and that we are able to enter the details onto the 'Rogue landlord database. * see next section of this document *

If a person or body corporate is convicted of an offence which meets the definition of a banning order offence, the local housing authority **may** serve them with a notice stating that the authority intends to apply to the First-tier Tribunal for a banning order to be made against them. In deciding whether to apply for a banning order, the Local Authority may require a person to provide certain specified information (e.g. information about the properties that a person rents out) within a reasonable period of time. It is an offence to fail to provide such information or to provide false or misleading information. The Local Authority will need to serve any notice of its intention to apply for a banning order within 6 months of the date on which the person was convicted of a banning order offence. The Notice must explain why the banning order is being sought, state the length of the proposed ban and invite the person to make representations within a period of at least 28 days.

We will use the power to apply for banning orders. The 'case' will be prepared by the Senior Private Sector Housing Officer. The Intent and Final decision to go ahead and apply for the order will be made by the Corporate Director of Communities, Partnerships and Housing.

9. The database of rogue landlords and property agents

Section 28 of the Housing and Planning Act also provides for a national database of rogue landlords and property agents to be set up and maintained by Local Authorities, this provision should be in force by October 2017.

Further regulation will set out the finer details.

The database should help Local Authorities keep track of 'rogues' and target enforcement action. Only DCLG (HMRC?) and Local Authorities will be able to access the database. (In London there is a similar localised database which the public can access).

9.1 When will someone be included?

Details of any landlord or property agent convicted of a banning order offence **OR** who has received 2 or more civil penalties as an alternative to prosecution for a banning order offence (within a 12 month period).

(There is also some discussion in government circles as to whether or not agents who continue to charge fees to tenants after the ban becomes live will be included).

Details included on the database could include:

- Their address and contact details
- Period for which entry is made
- Details of all properties owned, let or managed
- Details of banning orders
- Details of financial penalties
- For body corporate, information about its officers

9.2 Our approach

In line with the regulation we will complete entries onto the Database. The Senior Private Sector Housing Officer will be responsible for completion of the database and will inform the Corporate director when an entry has been made.

(It is likely that the database will resemble the current LogasNet systems operated by DCLG).

Where someone has been convicted of a banning order offence and has subsequently had a banning order made against them, the Local Authority that sought the order **must** include the person's details on the database. Discretion is currently given as to making entries in other circumstances but Tamworth Council will take every available opportunity to make an entry onto the database.

10. Policy Revision

The Policy will be reviewed regularly and will take account of any changes to Legislation, Guidance and Procedure. Minor changes to policy delivery may be required from time to time, and will be undertaken with the agreement of the Corporate Director of Communities, Partnerships and Housing.

11. Complaints

Tamworth Borough Council has an established corporate complaints procedure for dealing with complaints. Information on how to make a complaint is outlined in a complaints leaflet that is available at all Tamworth Borough Council Offices and on the website. (The 'tell us system')

12. Further information

If you would like further information about this policy, please contact Tamworth Borough Councils Housing Conditions and Supply Team

In writing

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By telephone

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By email

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Appendix 1

Charging table for determining value of Financial Penalties

Failure to comply with an Improvement Notice (Section 30)		£
1st offence	(note 1)	5000
2nd subsequent offence by same person/company	(note 2)	15000
Subsequent offences by same person/company	(note 7)	25000
Premiums (use all that apply)		
Acts or omissions demonstrating high culpability	(note 8)	+2500
Large housing portfolio (10+ units of accommodation)	(note 3)	+2500
Multiple Category 1 or high Category 2 Hazards	(note 4)	+2500
Vulnerable occupant and/or significant harm occurred as result of housing conditions	(note 5)	+2500
Perpetrator demonstrates Income to be less than £440/week	(note 6)	-50%

Offences in relation to licensing of HMOs under Part 2 of the Act (Section 72)		£
Failure to obtain property Licence (section 72(1))	(note 1)	10000
2nd subsequent offence by same person/company	(note 2)	30000
Perpetrator demonstrates Income to be less than £440/week	(note 6)	-50%
Breach of Licence conditions (Section 72(2) and (3)) - Per licence breach		
		5000
Perpetrator demonstrates Income to be less than £440/week	(note 6)	-50%

Offences in relation to licensing of HMOs under Part 3 of the Act (Section 95)		£
Failure to Licence (section 95(1))	(note 1)	10000
2nd subsequent offence by same person/company	(note 2)	30000
Perpetrator demonstrates Income to be less than £440/week	(note 6)	-50%
Breach of Licence conditions (Section 95(2)) - Per licence breach		
		5000
Perpetrator demonstrates Income to be less than £440/week	(note 6)	-50%

Offences of contravention of an overcrowding notice (section 139)		£
1st relevant offences	(note 1)	5000
2nd subsequent offence by same person/company	(note 2)	15000
Premiums (use all that apply)		
Acts or omissions demonstrating high culpability	(note 8)	+2500
Vulnerable occupant and/or significant harm occurred as result of overcrowding	(note 3)	+2500
Perpetrator demonstrates Income to be less than £440/week	(note 6)	-50%

Failure to comply with management regulations in respect of HMOs	£

(Section 234)		
<i>1st relevant offences</i>	<i>(note 1)</i>	<i>1000/offence</i>
<i>Second subsequent offences by same person/company for the same offence</i>		<i>3000/offence</i>
Premiums (use all that apply)		
<i>Acts or omissions demonstrating high culpability</i>	<i>(note 8)</i>	<i>+2500</i>
<i>Large housing portfolio (10+ units of accommodation)</i>	<i>(note 3)</i>	<i>+2500</i>
<i>Vulnerable occupant and/or significant harm occurred as result of housing conditions</i>	<i>(note 5)</i>	<i>+2500</i>
<i>Perpetrator demonstrates Income to be less than £440/week</i>	<i>(note 6)</i>	<i>-50%</i>

NOTES

Note 1 – Offences that may be dealt with by way of imposing a financial penalty

The starting point for a financial penalty is based on the number of previous convictions or imposition of a financial penalty for the same type of offence in the previous four years. After the starting point has been determined, relevant Premiums are added to the starting amount to determine the full financial penalty to be imposed. No single financial penalty may be over £30,000. Where the addition of all relevant premiums would put the penalty above the maximum, it shall be capped at £30,000.

Note 2 - 2nd subsequent offence by same person/company

The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

Note 3 - Large housing portfolio (10+ units of accommodation)

The premium is applied where the perpetrator has control or manages of 10 or more units of accommodation.

For the purposes of this premium, the definition of a person having control and person managing are as defined by Housing Act 2004 Section 263.

Note 4 - Multiple Category 1 or high Category 2 Hazards

This premium will apply where the failure to comply with the Improvement Notice relates to three or more Category 1 or high scoring Category 2 hazards associated with different building deficiencies. For the avoidance of doubt this means that where two hazards are present but relate to the same property defect, they are counted as one hazard for purposes of this calculation.

For the purpose of this premium, a high scoring category 2 hazard is defined as one scored following the Housing Health and Safety Rating System as “D” or “E”.

Note 5 - Vulnerable occupant and/or significant harm occurred as result of housing conditions

This premium will be applied once if either the property is occupied by a vulnerable person or if significant harm has occurred as a result of the housing conditions.

For purposes of this premium a vulnerable person is defined as someone who forms part of a vulnerable group under Housing Health and Safety Rating System relating to hazards present in the property or an occupant or group of occupants considered by the Council to be at particular risk of harm that the perpetrator ought to have had regard.

For purposes of this premium, significant harm is defined as physical or mental illness or injury that corresponds to one of the four classes of harm under the Housing Health and Safety Rating System Operating Guidance.

At the time of drafting this document can be found at www.gov.uk and a summary table is below.

Hazard	Vulnerable age group (age of occupant)
Damp and mould growth	14 and under
Excess Cold	65 or over
Excess Heat	65 or over
Carbon Monoxide	65 or over
Lead	under 3 years
Personal Hygiene, Sanitation and Drainage	under 5 years
Falls associated with baths etc.	60 or over
Falling on level surfaces etc.	60 or over
Falling on stairs etc.	60 or over
falling between levels	under 5 years
Electrical hazards	under 5 years
Fire	60 or over
Flames, hot surfaces etc.	under 5 years
Collision and entrapment	under 5 years
Collision and entrapment - low headroom	16 or over
Position and operability of amenities etc.	60 or over

Note 6 - Perpetrator demonstrates Income to be less than £440/week

This premium will be applied after all other relevant premiums have been included and if applicable will reduce the overall financial penalty by 50%.

To be applicable, the person served by the Notice of Intent must provide sufficient documented evidence of income.

The figure of £440/week is to be calculated after omission of income tax and national insurance.

The Council reserves the right to request further information to support any financial claim, and where this is incomplete or not sufficiently evidenced may determine that the premium should not be applied.

Note 7 - Previous history of non-compliance with these provisions

This premium is applied where there has been a conviction or imposition of a financial penalty for the same type of offence in the previous four years.

The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

Note 8 – Acts or omissions demonstrating high culpability

This premium will be applied where, the person to which the financial penalty applies, acted in a reckless or deliberate manner in not complying with the statutory notice or previous relevant formal advice.



Housing Conditions and Supply Team

**The Smoke and Carbon Monoxide Alarm
(England) Regulations 2015 Policy**

July 2017

Page 113



POLICY

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Originator: Sue Phipps

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Owner: Rob Barnes

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Approved by: Rob Barnes

Document Location

This document is held by Tamworth Borough Council, and the document owner is Rob Barnes.

Printed documents may be obsolete. An electronic copy will be available on Tamworth Borough Councils Intranet. Please check for current version before using.

Revision History

Revision Date	Version Control	Summary of changes
25 th May 17	0.1	This is a new policy introduced in line with the provisions of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Document Review Plans

This document is subject to a scheduled annual review. Updates shall be made in accordance with business requirements and changes and will be with agreement with the document owner.

Distribution

The document will be available on the Intranet and the website.

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1. Introduction

This policy sets out the approach which Tamworth Borough Council will take in its adoption of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

Properties in the private rented sector have fewer alarms installed than other types of housing tenure.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force on 1st October 2015. Private sector landlords are now required to ensure that at least one working smoke alarm is installed on every storey of their rented property and that a carbon monoxide alarm is installed in any room containing a solid fuel burning appliance. The Regulations also require landlords to ensure that such alarms are in proper working order at the start of each new tenancy. In addition, the regulations amend the conditions which must be included in a licence under Part 2 or 3 of the Housing Act 2004 (“The 2004 Act”) in respect of smoke and carbon monoxide alarms. A ‘new tenancy’ is a tenancy agreement that begins on or after 1 October 2015 and is not a renewal of a previous tenancy agreement.

There are exceptions listed in the Regulations but in short the Regulations apply to Single family dwelling and non-licensed HMOs in the private rented sector unless there is a long lease, in excess of 7 years in place.

2. Responsibility for enforcement

The Local Authority is the enforcing body for this regulation. The Regulations do not actually require a local authority to enter a property. Intelligence can be gathered from the tenant or other agencies.

3. The process

Local Authorities are **required** to issue a remedial notice where they have reasonable

grounds to believe a landlord has not complied with one or more of the requirements of the Regulations .Remedial action could include installing alarms or fixing current ones. The landlord must comply with the notice within 28 days.

If they do not, the local authority **must** carry out the remedial action (where the occupier consents) to ensure the requirements in the regulations are met and can issue a civil penalty **of up to £5,000**. Written notice of the intention to issue a 'penalty' charge notice must be given including the reasons for the notice.

It is the breach of the Remedial notice that attracts the penalty.

Local authorities should be open and transparent regarding the civil penalty and publish a statement of principles which they will follow when determining the amount of a penalty charge. The amount of the charge comprises of 2 elements, a punitive element and the costs of actually undertaking the works.

A landlord can request for the penalty notice to be reviewed and if still not resolved appeal to the 1st Tier tribunal Service.

The Regulations impose a number of procedural steps which must be taken before the council can impose a financial penalty. Before imposing a requirement on a landlord to pay a penalty charge the council must, within a period of six weeks from the point at which it is satisfied that the landlord has failed to comply with the requirements of the Remedial Notice, serve a penalty charge notice setting-out:

- The reasons for imposing the penalty charge;
- The premises to which the penalty charge relates;
- The number and type of prescribed alarms (if any) installed at the premises;
- The amount of the penalty charge;
- The obligation to pay that penalty charge or to give written notice of a request to review the penalty charge;
- How payment of the charge must be made; and
- The name and address of the person to whom a notice requesting a review may be sent.

Where the Council is satisfied on the balance of probabilities that the landlord on whom it has served a remedial notice (the notice) under regulation 5 has failed to take the remedial

action specified in the notice within the period specified the council will, on written notice from the landlord served with a penalty charge notice, review the penalty charge imposed. In conducting the review, the council will consider any representations made by the landlord, and serve notice of its decision whether to confirm, vary or withdraw the penalty charge to the landlord

4. Our approach

We will adopt and use the provisions of this Regulation. This will include working with authorised and vetted contractors to undertake the works to provide/ install/ repair the alarms on our behalf.

Adopting the Regulations will provide us with another tool to increase the safety of tenants in the private rented sector and the properties in which they live. A financial penalty will be an effective incentive in getting landlords to comply. Until recently Staffordshire Fire and Rescue service, would in most circumstances, fit 10 year life smoke detectors in homes for free (this would include rented properties). This service has now been scaled back to cover only older and more vulnerable people. This means it is even more important for us to undertake work around ensuring that homes do have detectors

The Senior private sector housing officer will undertake the initial 'casework' and serve the remedial action notice. If the notice is not complied with the case will be discussed with the Housing Conditions and supply manager who will be able to agree that the works to comply with the Notice can be undertaken. (If the tenant consents).

If the remedial action is not complied with the case to serve the penalty will be prepared by the Senior private sector housing officer, in discussion with the Housing conditions and supply manager. The Corporate Director will sign off the penalty charge notice. The Corporate Director will also deal with issues of appeals and reductions of the penalty.

5. Charges

As described above there are 2 elements to this, the punitive element and the costs of the works including the admin costs of undertaking the remedial action. Officer time will be charged at the hourly rate of the Senior private sector housing Officer.

There is discretion to reduce the charges for swift payment.

Please see Appendix 1 for full fees statement.

6. Publicity

Although these Regulations have received a great deal of national publicity already there will be information published on the Council webpages, information disseminated via the landlords' forum and a press release issued advising that we are now adopting the Regulations.

10. Policy Revision

The Policy will be reviewed regularly and will take account of any changes to Legislation, Guidance and Procedure. Minor changes to policy delivery may be required from time to time, and will be undertaken with the agreement of the Corporate Director of Communities, Partnerships and Housing.

11. Complaints

Tamworth Borough Council has an established corporate complaints procedure for dealing with complaints. Information on how to make a complaint is outlined in a complaints leaflet that is available at all Tamworth Borough Council Offices and on the website. (The 'tell us system')

12. Further information

If you would like further information about this policy, please contact Tamworth Borough Councils Housing Conditions and Supply Team

In writing

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Appendix 1

Statement of principles for determining the amount of penalty charge in respect of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

1. Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduces the following requirements for all landlords 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 has been a breach of the Regulations 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. Principles to be followed in determining the amount of a Penalty Charge

Where a local housing authority is satisfied, on balance of probabilities, that a landlord on whom it has served a remedial notice is in breach of the duty under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015, The Authority may require the landlord to pay a penalty charge of such an amount as the authority may determine. The amount of the penalty charge must not exceed £5,000.

4. Level of Penalty Charge

The cost recovery element of the penalty shall be as follows:

- Officer costs calculated at an hourly full cost recovery rate
- A £250 administration fee; and
- A £250 cost recovery fee, unless paid within 14 days.

The deterrent element of the penalty shall be as follows:

- A £500 base sum;
- For landlords who have been subject to single previous formal action under Housing Act 2004 or other housing legislation, an additional £1000;
- For landlords who have been subject to more than one case of formal action under the Housing Act 2004 or other housing legislation, an additional £2500.

Any funds left over after any necessary remedial works have been taken Tamworth Borough Council will be redeployed to further the work of the Housing Conditions and Supply Team.

5. Recovery of Penalty Charge

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

- The penalty will be enforceable on the order of a court, as if payable under a court order.
- Where proceedings are necessary for the recovery of the penalty, a certificate signed by the local housing 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 penalty has not been paid.

6. 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.

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Housing Conditions and Supply Team

The Redress Schemes for letting agency
work and property management work
(Requirement to belong to a scheme.)
Policy

July 2017



POLICY

Document Status: draft

Originator: Sue Phipps

Updated: May 2017

Owner: Rob Barnes

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Revision History

Revision Date	Version Control	Summary of changes
5 th May 2017	1	This is a new policy introduced in line with the provisions of The Redress Schemes for letting agency work and property management work,(Requirement to belong to a scheme etc.) (England) Order 2014.

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1. Introduction

This Policy sets out the approach that Tamworth Borough Council will take in regards to the adoption and operation of The Redress Schemes for letting agency work and property management work, (requirement to belong to a scheme etc.) (England) Order 2014, hereafter referred to as 'The Order.'

The Order was made under the Enterprise and Regulatory Reform Act 2013.

As the enforcing body the Council are required to set out its policy about the level of fines and the reason for imposing them.

By implementing this Order the Council will be in a position to take action against businesses that are not members of an approved scheme and this will be for the benefit of local private sector tenants and responsible businesses that have joined a scheme. It also gives an added means of improving the standard of private sector housing within Tamworth and assists in tackling rogue landlords or agents which give the sector a bad name.

2. Scope- applicable organisations

The order requires persons involved in two types of property work to be members of a redress scheme:

- Lettings agency work; and
- Property management work

2.1 Letting agents

A person who engages in lettings agency work must be a member of an approved redress scheme to deal with complaints in connection with that work made by a person who is, or has been, a prospective landlord or a prospective tenant. The scheme will apply to prospective tenancies which are assured (including assured shorthold tenancies), which are to be granted by a private sector landlord. Companies will not be able to seek redress under a redress scheme.

For the purposes of the Order, lettings agency work is defined as things done by any person in the course of a business in response to instructions from either 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.

2.2 Property managers

A person who engages in property management work must be a member of a redress scheme to deal with complaints in connection with that work. Unlike for lettings agency work, the Order does not define the type of complaints in relation to property management work that the redress schemes must consider.

Property management work is categorised as 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, improvements, insurance, or to deal with any other aspect of the management of premises consisting of, or containing, a dwelling-house let under either a long lease, an assured tenancy or a protected tenancy.

3. Approved schemes

The Order makes it a legal requirement for all lettings agents and property managers in England to join one of three Government approved schemes. Only membership of one of the schemes below will be accepted as meeting the requirements of the order

There are three Government approved schemes as follows:

- Ombudsman Services Property
- Property Redress Scheme
- The Property Ombudsman

4. Enforceable Penalty

4.1 Maximum penalty

A maximum penalty of £5,000 will be imposed by Tamworth Borough Council where it is satisfied that someone is engaged in letting or property management work and is required to be a member of a redress scheme, but has not joined. Government guidance makes it clear that use of the maximum fine should be the norm.

4.2 Reduced penalty - extenuating circumstances

In line with official guidance Tamworth Borough Council will consider reducing the penalty if one or both of the following circumstances can be proved. Representations made about penalty reduction will be considered on a case by case basis.

- Lack of awareness – The Letting agent or property manager can prove they have not received any notification about the scheme and were unaware of their duties under the Order.
- The level of the fine being disproportionate for the business.

4.3 Cumulative Breaches

The Order identifies two specific breaches. It is usual for a business to be engaged in both management and / or letting work. Breaches could involve both elements. Tamworth Borough Council will interpret the legislation as stating that £5000 is the cumulative figure when both specified breaches occur.

There is no limit to the number of fines that can be imposed if the individual continues not to join a scheme.

5. The Process

5.1 Administration

The Housing Conditions and Supply Team will lead and administer this Policy. All initial penalty notices served shall be issued by the Senior Private Sector Housing Officer and approved by the Housing Conditions and Supply Manager. Final notices issuing the fine will be signed by the Director of Communities, Partnerships and Housing.

5.2 Informal warning letter

If we have reason to believe that an agent or manager is in breach of the requirements we will notify them in writing of the requirements of the Order and ask them to rectify the Breach within 14 days.

5.3 Initial notice

If after 14 days we have reason to believe that an agent or manager is still in breach of the requirements, we will give written notice of our intention to impose a penalty. The notice will set 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, starting from the day after the date the notice of intent was sent.

5.4 Final notice

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

5.5 Right to appeal

There is a right of appeal to the 1st Tier Tribunal Service.

6. Proceeds of enforcement action

Proceeds from the enforcement of the Order can be redeployed as the Authority sees fit. Penalty fines received will offset the overall cost of enforcement activities within the service. If there any surpluses they will be used to support the other work of the Housing Condition and Supply Team.

7. Recovery of penalty charges

If the charge is not paid the recovery will be actioned via The Councils' debt recovery procedures which include recovery through the County Court.

8. Publicity and Transparency

There was significant work and publicity undertaken around this Order and policy back in June/July 2016.

Information was posted on our webpages and all known local property agents and managers contacted. They were asked to submit details of which scheme they belong to. This information remains on our webpages.

To date there are a small number of local agents who are known not to have submitted this information and it is suspected have not joined one of the relevant schemes.

We will refresh this process of publicising the Policy.

09. Policy Revision

The Policy will be reviewed regularly and will take account of any changes to Legislation, Guidance and Procedure. Minor changes to policy delivery may be required from time to time, and will be undertaken with the agreement of the Corporate Director of Communities, Partnerships and Housing.

10. Complaints

Tamworth Borough Council has an established corporate complaints procedure for dealing with complaints. Information on how to make a complaint is outlined in a complaints leaflet that is available at all Tamworth Borough Council Offices and on the website. (The 'tell us system')

11. Further information

If you would like further information about this policy, please contact Tamworth Borough Councils Housing Conditions and Supply Team

In writing

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Housing Conditions and Supply Team

Houses in Multiple Occupation Policy

July 2017

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Originator: Sue Phipps

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Owner: Rob Barnes

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Revision History

Revision Date	Version Control	Summary of changes
	1	This is a reviewed policy drafted in line with the provisions of The Housing Act 2004 and Housing and Planning Act 2016

Document Review Plans

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1. Introduction

This Policy is a reviewed policy made in accordance with the provisions of the Housing Act 2004 (“The Act”). The Act came into force in April 2006 and overhauled the powers available to Local Housing Authorities, in particular, housing enforcement officers. The Act introduced an inspection regime referred to as the Housing Health and Safety Rating System (HHSRS) which enables officers to assess hazards in residential premises that may affect the health and safety of the occupants. The Act also redefined the classification for Houses in Multiple Occupation (HMO) and introduced mandatory licensing of certain categories of HMOs.

The introduction of a new definition of an HMO clarified previous confusion of what constituted an HMO. A dwelling is considered to be in multiple occupation if it contains occupants who do not form a single household, share one or more amenity and is the occupant’s main or only place of residence. The definition includes houses containing bedsits, hostels, shared houses and flats. The exact definition is described by standard tests detailed in Section 254 of the Act.

Tamworth Borough Council aims to maximise the availability of private rented accommodation in Tamworth and ensure that it is of a decent standard to protect the health, safety and welfare of tenants. The availability of good quality HMOs helps sustain the availability of affordable housing, particularly for vulnerable residents who access the Housing Solutions Team and partner agencies.

The risk to health and risk of death and injury from fire is greatly increased in this type of dwelling and persons who live in such properties tend to be more vulnerable than persons in other types of accommodation. There is also a body of evidence around the negative effects on mental health around living in unsatisfactory shared housing. The Government introduced a mandatory licensing scheme for certain types of HMO and also introduced standards specific to these properties over and above those expected of normal rented dwellings.

This policy has been produced by the Tamworth Borough Council Private Sector Housing Team. The policy also considers guidance issued by Local Authorities Co-ordinators of Regulatory Services (Lacors) and Homestamp (a partnership consortium with an interest in private sector housing comprising of Local Authorities, the Private Rented Sector, Universities, West Midlands Police and West Midlands Fire Service). The purpose of the policy is to ensure that Tamworth Borough Council carry out the requirements of the Act in relation to HMOs. It is also intended to provide a local area standard to ensure that a consistent approach is taken throughout the Council and to assist in a pro-active program designed to eliminate poor housing standards in this type of accommodation.

1.1 General Obligations

The 2004 Act imposed certain general obligations on the Council, including:

- The Local Housing Authority must keep the housing conditions in their area under review with a view to identifying any action that may need to be taken by them under parts 1 and 2 of the Act, this includes;
- To make such arrangements as are necessary to secure the effective implementation in their district of a mandatory HMO licensing regime.
- To ensure that all applications for a licence and other issues to be determined by them under this Part are determined within a reasonable time; and
- To satisfy themselves, as soon as is reasonably practicable, that there are no Part 1 functions (HHSRS) that ought to be exercised by them in relation to the premises in respect of which such applications are made.

Part 1 of the Act focuses on the HHSRS.

If the LHA considers that it would be appropriate to inspect residential premises to establish whether or not there is a category 1 or category 2 hazard, the authority must arrange for an inspection to be carried out.

Section 5 of Part 1 of the act imposes a general duty on LHAs to take appropriate enforcement action where there is a category 1 hazard.

The system seeks to provide proper enforcement of the HHSRS in the highest risk HMOs. This Policy is therefore written in the context of Tamworth Borough Council's

Private Sector Housing Enforcement Policy and the Regulators Code, updated April 2014.

In addition to physical property standards the Act allows LHA's to consider the management competency and 'fitness' of those managing or providing HMO accommodation. Licensing aims to ensure that the HMOs presenting the most significant health and safety risks, come to the attention of the Council placing a more direct obligation on landlords to provide acceptable standards.

1.2 Definition of an HMO

The definition of a "House in Multiple Occupation" is contained in section 254 of the Act.

The definition is quite long and detailed in its entirety therefore, the following is a summary of the main points.

A House in Multiple Occupation (HMO), is a building, or part of a building, (such as a flat) that is occupied by more than one household and;

- Shares or lacks an amenity, such as a bathroom, toilet or kitchen
- Is a converted building which may contain, but is not entirely, made up of self-contained flats, eg floor-by-floor lets, (whether or not some amenities are shared or lacking)
- Is converted into self-contained flats, but does not meet as a minimum standard the requirements of the 1991 Building Regulations, and at least one third of the flats are occupied under short tenancies.
- The living accommodation is occupied by persons as their only or main residence, and whether the occupation constitutes a 'significant use' of that accommodation (section 255(2)).

1.3 Definition of 'a Household'

The definition of a "household" is contained in section 258 of the Housing Act 2004 as follows:

(2) Persons are to be regarded as not forming a single household unless -

(a) they are all members of the same family,

(3) For the purposes of subsection (2) (a) a person is a member of the same family as another person if -

(a) those persons are married to each other or live together as husband and wife (or in an equivalent relationship in the case of persons of the same sex);

(b) one of them is a relative of the other, or

(c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple

2. Background

There has been significant growth in the number of HMOs in the Borough since the original policy was written back in 2010. Factors contributing to this growth include growing demand from people moving into the area for work at local industrial and distribution parks, changes in benefit rules for younger people and the level of profit to be made in comparison to renting out properties as single family dwellings.

Our recent stock condition survey undertaken by BRE concludes that 10% of the housing stock here in Tamworth is now privately rented, 17% of these properties contain a category 1 hazard.

This report does not state the numbers of HMOs specifically but recent council tax figures suggest there are in the region of 103. This is thought to be an underestimation as intelligence from other sources such as members of the public and local letting agents are informing around the numbers and locations of suspected HMOS. More work is needed to gather accurate knowledge of numbers. The numbers could be as high as double the current official figs.

Under the current mandatory Licensing regime there are 32 licensed HMOs in the Borough. When the new provisions under the Housing and Planning Act 2016 come into force (October 17) many more will require a mandatory licence. (See policy on the Housing and Planning Act 2016).

3. Our Approach

Tamworth Borough Council will investigate all reports regarding properties being used as potential HMOs and take appropriate action based on this policy and the Enforcement Policy.

Tamworth Borough Council aims to ensure that the occupiers of HMOs live in safe and healthy homes by providing advice, education and where appropriate enforcing the relevant provisions of the Act. Consequently, Tamworth Borough Council aim, where resources allow, is to take a proactive approach by actively identifying and inspecting HMOs in the borough. We will continue to implement the mandatory HMO Licensing regime and adopt the new extended provisions of the Housing and Planning Act 2016.

We will work to ensure that the standards in **all** HMO properties are also good and safe. This includes dealing with disrepair and Management Regulation breaches. Wherever possible we will, in line with our general enforcement policy take a graduated enforcement approach. When necessary we will take formal action. This will include using where necessary a range of enforcement notices available under the Housing Act 2004 e.g. improvement notices / emergency works.

There are currently no plans to implement any scheme around additional licencing of HMOs.

3.1 Identifying HMOs in Tamworth

The Council will utilise a range of information sources to identify HMOs within the borough. The Private Housing Team will liaise with internal departments and external organisations as follows:

- Housing Benefit and Council Tax – in accordance with the Act, Section 237, information sharing agreement.
- Environmental Health – will inform the Private Housing Enforcement Team of any action taken in relation to an HMO whilst carrying out their duties.
- Town Planning Service – will inform and consult with the Private Housing Enforcement Team on all HMOs that are subject to planning permission.
- Housing Solutions Team – will notify the Private Housing Team of housing register applicants that declare they live in shared accommodation.
- Police Service – will inform and work together with Private Housing Team on dealing with problem HMOs.
- Street Wardens – will alert the Private Housing Enforcement Team of any anti-social behaviour that they encounter at a house in multiple occupation.
- Fire Service – The Staffordshire Fire and Rescue Service have a duty to consult with the Private Housing Enforcement Team on the issue of fire safety standards in HMOs within the Borough.
- Social Services – will alert the Private Housing Enforcement Team where any of their clients are living in an HMO.

4. Mandatory Licensing in Tamworth

The Act places a duty on Tamworth Borough Council to implement the mandatory licensing regime in their district.

The aim of HMO licensing is to ensure the highest risk and lowest quality properties in the private rented sector meet the legal standards and are properly managed.

4.1 Definition of HMOs requiring a licence

Under the 2004 Act, a HMO will require a licence if:

- It is three or more storeys high;
- It has five or more people in more than two households; and

- The occupants share amenities such as bathrooms, toilets or cooking facilities.

The Housing and Planning Act 2016 will extend this definition to include all HMOs where there are five people in more than one households irrespective of the number of storeys and will include properties above and below business premises.

Tamworth Borough Council has developed a mandatory licensing procedure to ensure that all requirements as prescribed by the national authority are met.

Licences will be granted where:

- The house is deemed reasonably suitable for occupation as an HMO
- The management arrangements are satisfactory, and
- The licensee and manager are deemed 'fit and proper' persons.

The licensee must be the most appropriate person to hold the licence.

4.2 Encouraging Applications

Tamworth Borough Council will encourage landlords to apply for a licence using a variety of methods, including:

- Discussions through the Private Landlords' Forum.
- Periodically publicise the need to licence HMOs using local newspaper and newsletter advertising.
- Publicising the extended requirements under the Housing and Planning Act 2016.
- Provide electronic and paper application forms.
- Provide Landlord Information Packs detailing general guidance on the landlord's role and responsibilities when renting a property.
- Offer a service assisting applicants with completion of forms and measuring rooms, where resources permit.

- Send information letters, reminders to landlords and letters of warning of prosecution, where necessary.
- Involve landlords and letting agents through information sessions and forums.

4.3 Licensing Fee

The fee for each application will be £574.80 with an additional £37.79 for each bed space above five. If a landlord approaches the Council with a view to licensing an HMO they will be entitled to a 20% discount if a full application (including all necessary enclosures and fee) is received by the Council within 28 days of sending the application pack. The discount will be applied after the application has been verified by the Private Housing Team, Senior Officer who will deal with the application, and a refund will be given. The availability of decent HMO properties is an important resource in order to sustain affordable housing within Tamworth and the fee level has been set to cover the Council's reasonable costs of setting up and administering the application process.

4.4 'Fit and Proper' Persons

Tamworth Borough Council is required to assess whether the applicant, and/or any manager, and any person associated with them or formerly associated with them, are 'fit and proper' people to own or manage a HMO.

A person will be considered 'fit and proper' if Tamworth Borough Council is satisfied that:

- They have no unspent convictions relating to:
 - i. Offences involving fraud, dishonesty, violence or drugs, or sexual offences.
 - ii. Unlawful discrimination on grounds of sex, race, or disability.
 - iii. Housing or Landlord and Tenant law.
 - iv. Breaches of planning, compulsory purchase, environmental protection or other legislation enforced by the Council.
- They have not been refused a HMO licence, been convicted of breaching the conditions of a licence or have acted otherwise than in accordance with the

approved code of practice under Section 197 of the Act within the last five years.

- They have not been in control of a property subject to a HMO Control Order, an Interim Management Order (IMO) or Final Management Order (FMO) or had works in default carried out by a Local Authority.

4.5 Licence Period

A licence will be valid for up to 5 years, unless revoked, and will specify the maximum number of occupiers and households. The occupancy number will depend on the number and size of rooms and the kitchen and bathroom facilities. Each licence will represent a single property and is not transferable upon change of owner or person in control of the HMO.

4.6 Licence Conditions

A licence must include mandatory conditions as prescribed by the Act and the associated regulations. Additionally Tamworth Borough Council may include discretionary conditions for the purpose of improving the management, and occupation of the house.

The following mandatory and discretionary conditions will be applied to all licences:

The following mandatory conditions will be applied to all licences:

- Provide copies of gas safety certificates annually.
- Ensure electrical appliances and furniture is in a safe condition.
- Ensure the smoke detection system is in working order.
- Provide tenants with a written tenancy agreement.

The following discretionary conditions will be applied to all licences:

Licence Conditions section 67(1) and (3):

- The licensed premises will comply with all statutory requirements including Management Regulations as outlined in the Management of Houses in Multiple Occupation (England) Regulations 2006.
- Anti-social behaviour within the premises will be dealt with under the terms of the Tenancy.
- Anti-social behaviour outside the building is notified to the Council and the Police by the Licence holder or Manager who will work with them to eliminate anti-social behaviour.
- Maintenance reports must be supplied to the Council annually with regards to emergency lighting, fire detection and alarm systems.
- The following documents must be clearly displayed within the common parts:
 - i) Copy of the Licence
 - ii) Copy of the current Gas Safety Certificate
 - iii) Name, address, telephone number and emergency contact of the Licence Holder or Manager of the property.
- The Licence Holder or Manager will provide, to any Authorised Officer of the Council, access into the licensed premises as and when required to do so.
- To undertake all works contained in any Schedule of Works issued by the Council within **Six Months**, unless otherwise stated, notwithstanding any rights of appeal.
- The Licence Holder must inform the Council of any changes in circumstances relating to ownership, usage, layout or increase in the number of occupants

which will result in exceeding the number of permitted occupants for the licensed premises.

- **Gas Supply and Appliances** - To provide to the Council annually a gas safety certificate obtained in respect of the property within the last 12 months carried out on the gas supply and all gas appliances by a Gas Safe Registered gas engineer. To ensure that all recommendations outlined in the landlord Gas Safety Record are complied with.
- **Electrical Installations** - To ensure that the fixed electrical installation of the premises is inspected and tested at intervals not exceeding 5 years by a person qualified to undertake such inspection and testing and must provide to the Council, on demand, a current periodic electrical inspection certificate for the premises in accordance with British Standard 7671. All recommendations for urgent attention and improvement (codes 1 and 2) should be carried out within a reasonable period of time and in any case not less than 3 months.
- **Electrical Appliances** - To keep all electrical appliances provided within the property by the licence holder (or on his/her behalf) in a safe condition. To provide to the local housing authority, on demand, a declaration as to the safety of such electrical appliances.
- **Furniture** - Keep all furniture provided within the property by the licence holder (or on his/her behalf) in a safe condition. To this extent all such furnishings should comply with the Furnishings (Fire Safety) Regulations 1988. To provide to the local housing authority, on demand, a declaration as to the safety of such furniture.
- **Provision of Standard Amenities** - The premises must be provided with sufficient and adequate standard amenities for use by the maximum number of occupants (as specified in the licence) according to the type of accommodation offered in accordance with the Council's amenity standards and 'The Licensing and Management of Houses in Multiple Occupation and Other Houses

(Miscellaneous Provisions) (England) Regulations 2006'. All standard amenities and equipment provided for use by the occupiers of the premises are maintained in good repair and proper working order.

- **Provision and Maintenance of Heating** - Each unit of accommodation within the premises plus all bathrooms, whether shared or for exclusive use are adequately heated and capable of maintaining an indoor temperature of at least 18 degrees Celsius in habitable rooms when the outdoor temperature is -1 degree Celsius. Heating should be controllable by the tenants and safely and properly installed and maintained. Where the system is centrally controlled, the tenants should be provided with thermostatic controls within their individual unit. Where this condition is not met at the time of issuing the licence, this condition must be met within 3 months of the licence issue date.

- **Fire Precautions** - To adopt the Homestamp 'A Guide to Fire Protection in Multi-Occupied Residential Properties' standard within the property. To ensure that smoke alarms are installed in the house and kept in proper working order. To provide the local authority, on demand, a declaration as to the position and condition of the smoke alarms. This information may be provided either in written form or in detailed plan (not to scale).

- **Information to Tenants** - To supply to the occupiers of the house a written statement of the terms of their tenancy/occupancy agreement.
 - i) To have a written complaints procedure – available on request.
 - ii) To supply the tenant with receipt on payment of rent.

- **Deposits** - If a deposit is taken, to register said deposits with either scheme outlined by the Government under the Act, informing the tenant of which scheme is being used.

5. Other Information

All valid applications will be logged onto a HMO database. This database is compatible with Central Government's mandatory monitoring requirements.

There is also a public register of all licensed HMOs, accessible via the Tamworth Borough Council website.

On receipt of a valid application form a notice of intention to grant a licence must be served on all interested parties allowing at least fourteen days for representations before granting the actual licence.

The Private Housing Team aims to serve notice of intentions within 21 days of a full valid application. Any representations received within that time will be reviewed and investigated where appropriate.

5.1 Temporary Exemption Notice

A Temporary Exemption Notice (TEN) will be served where an owner of an HMO requiring a licence states in writing that he/she is taking steps to make a HMO non-licensable. The TEN exempts that property from being licensed for a period of 3 months (from the date the Notice is served). In exceptional circumstances, Tamworth Borough Council may serve a second TEN that lasts a further 3 months and that takes effect when the first TEN ends. No further TENs can be served after the expiry of the second TEN.

The Private Housing Team will not use these notices routinely, and therefore, a second notice will only be used in exceptional and unforeseen circumstances agreed by the Assistant Director of Housing.

5.2 HMO Declaration

Where it is unclear whether the households are occupying the building as their only or main residence, Tamworth Borough Council can declare the building to be a HMO to remove any doubt. Tamworth Borough Council must serve a Notice on the person

managing or controlling the property within 7 days of deciding to make the declaration stating:

- The date of the Council's decision to serve the Notice
- The date on which the Notice will come into force (which must not be less than 28 days from the date the Notice is served.)
- The recipient's right to appeal to the Residential Property Tribunal within 28 days of the Council's decision.

If no appeal is made to the residential property tribunal within 28 days, the Notice comes into force on the date stated in the Notice and the person managing or controlling the premises will have to apply for a licence if the dwelling is of the type where a mandatory licence is required.

5.3 Regulatory Reform (Fire Safety) Order 2005

The Staffordshire Fire & Rescue Service has powers under the Regulatory Reform (Fire Safety) Order 2005 to ensure the common areas in HMOs, purpose built flats and workplace accommodation are safe in terms of fire. The Order does not apply to private single family dwellings.

6. Licensing Enforcement Tools

The following highlight the enforcement tools that Tamworth Borough Council can utilise where conditions are such that an application for a licence has been refused.

6.1 Management orders

Any decision to seek a management Order would need the approval and 'sign off' of the Corporate Director.

Where there is no prospect of an HMO being licensed, the Act requires under section 102 and 113 that the Council use their interim management powers if it is satisfied that:

- There is no reasonable prospect of the property being licensed in the near future; or
- The health and safety condition applies.

The health and safety condition applies when an Interim Management Order (IMO) is necessary to protect the health, safety and welfare of the occupiers of the property and/or residents and/or owners of properties in the vicinity.

An IMO is in force for 12 months and the Council must:

- Take immediate steps to protect health, safety and welfare (if appropriate) and;
- Take steps to manage the property pending the grant of a licence, the making of a Final Management Order or the ending of the IMO.

The IMO allows Tamworth Borough Council to manage the property with all rights of a landlord and to collect rent and expend it on works to the property. Any residual balance must be paid to the landlord. However, Tamworth Borough Council cannot create any interests (e.g. grant tenancies) without the written permission of the owner. The IMO must contain the date upon which it ceases to be in force (being no more than 12 months from its creation) and there are provisions to vary, revoke and appeal against an IMO.

The IMO ceases to have effect if a licence is granted within its duration. Before such action can be taken, Tamworth Borough Council needs to put in place arrangements to manage HMOs subject to management orders. Tamworth Borough Council operate a Private Sector Leasing Scheme, any HMO subject to a management order will be operated under the conditions of this property management scheme.

Tamworth Borough Council also has the discretion under section 102 of the Act to apply to the 1st Tier Tribunal Service for an IMO in other circumstances. The power is available if the property concerned is an HMO, which does not come within the mandatory licensing regime. The tribunal can only grant this IMO if it is satisfied that

the health and safety condition applies and must take into account any past compliance on the part of the landlord with any codes of practice (the Management Regulations).

The conditions in which discretionary IMO's will be available can be used to tackle isolated problems of anti-social behaviour. The aim is to allow Tamworth Borough Council to tackle individual problems without having to draw up a full Additional Licensing Scheme.

6.2 Final Management Order

In extreme cases under section 113 of the Act, management orders can be extended to five years, with Tamworth Borough Council also having the power to grant tenancies. Final Management Orders (FMO) are designed to secure the proper management of a house in the longer term and as a replacement for the short term IMO. In order to do this Tamworth Borough Council must put in place a management scheme.

6.3 Prosecution action

Section 72 of the Housing Act 2004 deals with offences related to HMO licensing.

A person commits an offence if:

- They are the person having control of or managing an HMO required to be licensed but it is not so licensed.
- The person having control permits more persons than is authorised by the licence to occupy the HMO.
- Failure to comply with the conditions of the licence.

Tamworth Borough Council will investigate and take the appropriate action in accordance with the Private Housing Team's Enforcement Policy when dealing with offences committed under this section.

The Housing and Planning Act 2016 has introduced the power to issue a civil penalty as an alternative to prosecution. Please see the Housing and Planning Act 2016 Policy for full details.

6.4 Rent Repayment Orders

A tenant living in an HMO that should have been licensed, but was not, can apply to the Tribunal Service to claim back any rent they have paid during the unlicensed period (up to a limit of 12 months). The Tribunal must make such an order if the landlord has been found guilty of the offence of failing to obtain a licence.

Where a landlord is convicted for failure to licence and the rent is paid as Housing Benefit, Tamworth Borough Council will apply to the RPT for a Rent Repayment Order requiring that up to 12 months' rent is repaid to Tamworth Borough Council.

Tamworth Borough Council will advise tenants of landlords convicted of failure to licence their HMO of how to apply for a rent repayment order.

6.5 Management Regulations

Section 234 of the Housing Act 2004 details the regulations in respect of all HMOs.

The Management of Houses in Multiple Occupation (England) Regulations 2006 must be adhered to by managers of HMOs at all times. A person commits an offence if they fail to comply with a regulation under this section. If convicted of an offence they are liable to a fine not exceeding level 5 on the standard scale.

Tamworth Borough Council will investigate breaches of these regulations and take the appropriate action in accordance with the Private Housing Team's Enforcement Policy.

7. Powers of Entry

Under Section 239 of the Act a person authorised by Tamworth Borough Council may enter an HMO at any reasonable time and without giving any prior notice if it

considers that any premises need to be entered for the purpose of ascertaining whether any of the following offences have been committed:

- Failing to comply with a regulation under the Management of Houses in Multiple Occupation (England) Regulations 2006.
- If a person having control of or managing an HMO which is required to be licensed but is not so licensed.
- If a person having control of or managing an HMO knowingly permits another person to occupy the house, and;
- If a person having control of or managing an HMO fails to comply with any condition of the licence.

The power of entry will be used where an officer suspects that any of the above offences are being committed. However, in most cases the person having control or managing the HMO will be contacted for the purpose of inspection of the premises. The Council is also able to apply for a warrant to access a property if they suspect an offence is being committed and to give prior notice of entry would defeat the objective of the visit.

Where the council have identified an HMO that requires a licence they will invite the owner to apply in accordance with the Tamworth Borough Council licensing procedures. However, if an offence has already been committed under the licensing provisions, the Corporate Director and legal services will be consulted regarding prosecution proceedings or issuing of a civil penalty.

8. Appeals to the 1ST Tier Tribunal Service

A landlord may appeal to the 1st Tier Tribunal in certain cases, such as:

- Where it is believed a legal Notice has been served on them incorrectly or where they believed that works were over specified or;
- Where it is believed that a licence has been refused without adequate justification.

- Where they disagree with the civil penalty imposed.

The 1st Tier Tribunal Service (property chamber) is an independent body, and appeal panels consist of three people, a legal expert, a technical expert and a lay member. The function of the Tribunal is to consider the appeal and it may accept the appeal, dismiss the appeal or vary the requirements of a Notice or Order.

The Tribunal is also responsible for authorising Rent Repayment Orders on behalf of the Council, and where an application is made, authorising Interim and Final Management Orders.

9. Tamworth Borough Council required Standards for Houses in Multiple Occupation.

Tamworth Borough Council has set a local minimum standard for HMOs. Setting a local minimum standard for HMOs will enable officers to provide a consistent approach across the borough when dealing with such accommodation. It will also allow officers to easily advise landlords regarding the requirements the council expect to find at their properties. The standards will address such issues as room sizes and the bathroom and kitchen facilities that are acceptable for the number of occupants.

The local area standards (reviewed and adopted 2016) for HMOs in Tamworth are appended as **Appendix 1 of this policy**.

10. Policy Revision

The Policy will be reviewed regularly and will take account of any changes to Legislation, Guidance and Procedure. Minor changes to policy delivery may be required from time to time, and will be undertaken with the agreement of the Corporate Director of Communities, Partnerships and Housing.

11. Complaints

Tamworth Borough Council has an established corporate complaints procedure for dealing with complaints. Information on how to make a complaint is outlined in a complaints leaflet that is available at all Tamworth Borough Council Offices and on the website. (The 'tell us system')

12. Further information

If you would like further information about this policy, please contact Tamworth Borough Councils Housing Conditions and Supply Team

In writing

Marmion House, Lichfield Street, Tamworth, Staffordshire, B79 7BZ

By telephone

01827 709 486/ 286

By email

housingconditions@tamworth.gov.uk

Appendix 1

1.1 INTRODUCTION

The Housing Act 2004 introduced mandatory licencing of certain higher risk houses in multiple occupation (HMO's) and a new system of assessing housing conditions, this is known as the Housing Health and Safety Rating System (HHSRS). This system replaces the former housing fitness standard and covers a wider variety of issues which may pose a threat to the health and safety of the occupiers or visitors.

For detailed guidance on those HMO's that require a licence see the 'Licencing Guide for Landlords in Staffordshire'. Essentially a HMO must be licenced if it meets the following criteria:

- Has three or more storeys and

- Has five or more tenants living as two or more households and
- Share facilities such as a kitchen, bathroom and toilet

All of the above criteria must apply for the HMO to require licencing. A copy of the Council's HMO Licence Application form and details of the licence fee can be found on the Council website www.tamworth.gov.uk/housing or by telephoning the Private Sector Housing Team on 01827 709486. The Management of Houses in Multiple Occupation (England) Regulations 2006 also apply to all non-licencable HMO's and must be complied with at all times, the requirements of these Regulations are discussed in Section 3.8.

This document is a revised version of the previous document 'Required Standards for Houses in Multiple Occupation' and includes the most commonly encountered arrangements found within Tamworth. This booklet provides basic information on the standards required within the types of HMO's most commonly found in Tamworth and defines what a house in multiple occupation is.

Whilst general standards are detailed in this guidance fire safety precautions are not included and are contained within the National Guidance document published by LACORS entitled "Guidance on Fire Safety Provisions for Certain Types of Existing Housing". This can be downloaded free of charge from the LACORS website www.lacors.gov.uk It includes guidance on fire safety measures for various types of property, including different types of HMO's and provides worked examples. Regard should be made to this guidance when determining what fire safety measures will be appropriate.

1.2 WHAT IS A HOUSE IN MULTIPLE OCCUPATION?

Under the Housing Act 2004, if you let a property which is one of the following types, it will be classed as a house in multiple occupation:

- An entire house or flat let to 3 or more tenants who form 2 or more households whilst sharing a kitchen, bathroom or toilet.

- A house converted entirely into bedsits or non-self-contained accommodation and let to 3 or more tenants who form 2 or more households whilst sharing a kitchen, bathroom or toilet.
- A converted house containing 1 or more flats which are not self-contained (i.e. do not contain kitchen, bathroom and toilet) and which is occupied by 3 or more tenants who form 2 or more households.
- A building which is converted entirely into self-contained flats and the conversion did not meet the standards of the 1991 Building Regulations and more than one-third of the flats are let on short-term tenancies.

A property with a live-in resident landlord who has three or more lodgers will also be deemed to be a HMO. These types of HMO's can also require licencing if the property has three or more storeys, is occupied by five or more persons and there is sharing of facilities.

1.3 DEFINITION OF HOUSEHOLD

A household as defined under the Housing Act 2004:

- Couples married to each other or living together as husband and wife and couples in same sex relationships.
- Relatives living together, including parents, grandparents, children and step children, grandchildren, brothers, sisters, uncles, aunts, nephews, nieces or cousins.

Domestic staff are also to be treated as forming part of the household if they are living rent free in accommodation provided by their employer.

Three unrelated friends living together would be deemed to be three households, whether occupying the property on a single tenancy or not and as such would meet the definition of a HMO. However two unrelated single persons occupying a

property are exempt from the definition and therefore this would not be classed as a HMO.

CATEGORIES OF HMOs

The most common arrangements are described however there will always be circumstances which do not exactly match those given. If this is the case then it is advisable to contact the Private Sector Housing Team for guidance.

Category A (Bedsit Type)

Houses occupied by a number of unrelated persons living as more than one household where each occupant lives independently of all others. Within this category there is some exclusive occupation (usually bedroom/living room) and some sharing of amenities (bathroom, toilet and/or kitchen). There will often be no communal living or dining room. This category can be divided into two groups, those with cooking in lets and those with a shared kitchen and both are considered in this guidance.

Category B (Shared houses and flats)

Houses occupied on a shared basis. These would normally be occupied by members of a defined social group e.g. students or a group of young single adults under a single tenancy. The occupiers each enjoy exclusive use of a bedroom but would share other facilities including a communal living space.

Category C (Lodgings)

These are properties with a resident live-in landlord who will often provide a service such as cleaning, laundry and will provide meals.

Category D (Hostels / Bed & Breakfast)

Generally referred to as 'hostels', 'guest houses' and will provide accommodation to those with no other permanent home elsewhere.

Category F (Self-contained flats)

Houses converted completely into self-contained flats with living, cooking, bathroom and sleeping facilities within the flat.

Section 2: Property Standards

2.1 CATEGORY A HMO'S (BEDSIT TYPE)

Houses occupied as individual rooms, where there is some exclusive occupation (usually bedroom/living room) and some sharing of amenities (bathroom and/or toilet and/or kitchen). Each occupant lives otherwise independently of others. There is typically no shared living room.

The principles below should be considered to be the general principles of occupation for all Category A (bedsit type) HMO's.

- In no case shall any room be occupied by more than two persons
- Persons of the opposite sex over the age of 10 shall not be permitted to share the same room for sleeping purposes unless they are of marriageable age and are either married or living as partners.
- The sharing of a room for sleeping purposes by persons who are neither related nor living as a married couple or partners shall be permitted only when both persons give their consent.
- No unit of accommodation shall be occupied on the basis of a divided or shared tenancy. This is to avoid the situation arising whereby a unit of accommodation may be occupied by different persons at different times of the day or different days of the week (for instance shift workers or seasonal / migrant workers who occupy a property in connection with their employment).
- Only rooms designated as living rooms, bedrooms or bed/sitting rooms may be used for living or sleeping purposes.
- Irrespective of overall floor area, consideration will be given to the shape and useable living space within the room when determining its suitability for

occupation. No account will be taken of any part of a room where the ceiling height is less than 1.525 m (5ft).

- A single bed/sitting room containing cooking facilities is not suitable for accommodating a child below the age of 5 years.

Where dimensions and areas are specified below they shall, unless the context requires otherwise, be regarded as the minimum. Irrespective of such recommendations however, consideration should be given to the shape and usable living space of any room in determining whether and by how many people it is suitable for occupation. This is a matter of functionality; whether given its shape and size the particular room is reasonably capable of performing the role assigned to it for the number of persons who need to use it.

MINIMUM ROOM SIZES

2.2 BEDSITS WITH COOKING IN LETS

(a) One person units of accommodation

(i) One room units

- A single room containing kitchen facilities 13 m²
- A bed / sitting room with a separate shared kitchen 10 m²

(ii) Two or more roomed units

- Each combined living room/kitchen 11 m²
- Each living room (without kitchen facilities) 9 m²
- Each bedroom 6.5 m²
- Each separate kitchen 3.5 m²

(b) Two or more person units of Accommodation

(i) One room units

- A bed / sitting room including kitchen facilities for two persons 20 m²
 - A bed / sitting room for two persons with separate kitchen facilities 15 m²
- (ii) Two or more roomed units
- Each combined living room / kitchen 15 m²
 - Each living room 12 m²
 - Each bed / sitting room 15 m²
 - Each single bedroom 6.5 m²
 - Each double bedroom 10 m²
 - Each separate kitchen for exclusive use of up to three occupants, living as one household 4.5 m²

2.3 BEDSITS WITH COMMUNAL KITCHEN

Separate kitchens, whether shared or for exclusive use shall be of sufficient size for their purpose. As a general guide the sizes below should be met for communal kitchens however minor variations will be permitted provided there are suitable facilities:

- Kitchens for 2 to 5 persons 7 m²
- Kitchens for 6 to 10 persons 10 m²
- Kitchens for 11 to 15 persons 13.5 m²

(a) One person units of accommodation

- Each bedroom / study where all occupants of the house have access to a separate communal living room 6.5 m²

- Each bedroom with no access to a separate communal living room 10 m²
- (b) Two or more person units of Accommodation
- Each bedroom where all occupants have access to a separate communal living room 11 m²
 - Each bedroom where all occupants do not have access to a separate communal living room 15 m²

2.4 KITCHEN FACILITIES (BEDSITS)

Each occupancy shall have adequate facilities for the storage, preparation and cooking of food and the disposal of waste water. Where possible this should be located within the unit of accommodation. Where this is not practicable, the kitchen must be located not more than one floor distant from the accommodation.

The kitchen facilities appropriate for any of the circumstances mentioned above are:-

(a) **Bedsitting room with combined kitchen (cooking in lets)**

The facilities must comprise as a minimum:

- Cooking

Single person - a gas or electric cooker with a minimum of two burners/hobs, an oven and grill.

Two persons - a gas or electric cooker with a minimum of four burners/hobs, an oven and grill.

Alternatively a combination microwave oven may be substituted for one (in single) or two (in double) of the burners/hobs respectively or in place of a conventional oven.

- A metal or ceramic kitchen sink and drainer with a constant supply of hot and cold water. The sink shall be connected to the drainage system via a suitable trap. A wash-hand basin shall not be used in place of a sink.
- Sufficient fixed smooth, impervious work surface to enable each user to prepare food safely and hygienically. A minimum of 500 mm clear run of work surface will be required for a single person bedsit and 1000 mm for a double room.
- A suitable refrigerator of sufficient size to store an average persons dietary requirements on a day to day basis. A freezer compartment is desirable but not essential in a single person bedsit.
- Sufficient storage cupboard space for dry and canned food goods plus cooking utensils, crockery and cutlery (e.g. 500mm wide wall or base unit per occupier).
- Electric power sockets: two twin switched power sockets set at a convenient height and safe position in relation to the kitchen facilities.

Additional requirements specific to kitchen areas within bedsitting rooms:-

- The kitchen area must be provided with an easily cleansable non-slip floor covering to an adequate extent and separated from any adjoining carpeted floor area by suitable dividing strips securely fixed in position.
- Cookers must be safely positioned within the room such that they do not compromise escape in the event of a fire associated with the cooker i.e. they

must not be positioned adjacent to the exit doorway – in particular gas cookers must not be positioned directly adjacent to openable windows where flames are likely to be extinguished by excessive draughts or where curtains are likely to catch fire.

(b) Separate Kitchen Directly Off the Bedsitting Room

The kitchen must be of sufficient size and layout to enable food to be prepared safely and hygienically. A minimum floor area of 3.5 m² for a single person letting and 4.5 m² for a two person letting is normally required for this purpose. The facilities to be provided are as those for kitchens within the bedsitting room.

(c) Bedsits with Communal Kitchen

A shared kitchen should ideally be not more than one floor distant from any unit of accommodation having use of it. It is however, acceptable for a kitchen to be a maximum of two floors distant where there is a communal room adjacent to the kitchen suitable for dining purposes or where the kitchen is of sufficient size to serve as a kitchen / dining room.

Each shared kitchen shall comprise as a minimum:

Cooking

The kitchen must be provided with sufficient cooking appliances suitably located to enable users to cook food safely and hygienically and to minimise waiting time when more than one person wishes to cook food at the same time. In particular:

- For every five persons there must be a conventional gas or electric cooker with at least 4 burners/hobs, oven and grill.

- For up to and including 7 persons a combination microwave oven of minimum 20 litres capacity, suitably located on a fixed worktop may be provided in place of an additional conventional cooker.
- For 8 to 10 persons there must always be at least 2 conventional cookers and for 11 to 15 persons at least 3 conventional cookers, whether or not any supplementary microwave ovens are provided.

Sinks

- For every 5 persons there must be a kitchen sink complete with hot and cold water supplies and trapped waste.
- For up to and including 7 persons a double bowl sink and drainer will be regarded as adequate in place of providing an additional sink. Alternatively, a standard sink plus an electric dishwasher will be acceptable for up to and including 7 persons.
- For 8 to 10 persons there must always be at least two standard sinks and for 11 to 15 persons at least three standard sinks whether or not any supplementary dishwasher is provided.

Food Preparation

- There must be sufficient fixed work surfaces to enable each user to prepare food safely and hygienically. A 0.5 metre run of work surface for each user will generally be sufficient although minor variations of up to 20 per cent shortfall may be acceptable provided there is still a good practical working area.
- For properties with more than 10 occupants sharing the same kitchen, a reduction in this standard may be appropriate as it is unlikely that all persons in the group will be preparing food at the same time.

- At least 2 twin switched power sockets set at a convenient height and safe position in relation to the kitchen facilities and work surfaces must be provided for every 5 persons. This is in addition to any dedicated sockets serving major appliances such as dishwashers, washing machines and refrigerators.

Food Storage

Shared kitchens within bedsit type accommodation should not generally be used for communal food storage purposes (either refrigerated or dry food storage) where this leads to conflict between residents.

Lockable food cupboards (a minimum 500mm wide wall or base unit per person) and refrigerators (0.075m^3 (one shelf)) can be considered although providing them in each unit of accommodation will be preferable if there is space to do so where problems do arise.

Any refrigerator within the individual unit of accommodation must be of sufficient size to store an average person's dietary requirements on a day to day basis. A freezer compartment is desirable but not essential within a single person bedsit room.

Ventilation

- All shared kitchens must be provided with adequate mechanical extract ventilation of minimum 60 litres / second flow rate.

2.5 PERSONAL WASHING AND BATHING FACILITIES (BEDSITS)

(a) Baths and showers

For bedsit type accommodation where all or some of the units of living accommodation do not contain bathing facilities for the exclusive use of each individual household, there must be an adequate number of suitably located bathroom to enable those facilities to be used on a shared basis. Either a

bath or shower is suitable for this purpose. Any shower must be provided with thermostatically controlled hot water.

Facilities must be provided not more than one floor distant from users and should be accessible from a common area. There must be a shower or bath on a ratio of one bath or shower to every 5 persons sharing.

(b) Wash hand basins

Where some or all of the units of accommodation do not contain wash hand basins for the exclusive use of the individual unit there must be an adequate number of wash hand basins to a ratio of one for every four persons sharing.

Shared wash hand basins may be located within shared bathrooms, WC's or other suitable room however all rooms containing a WC must also be provided with a wash hand basin.

2.6 TOILET FACILITIES (BEDSITS)

Toilet facilities should be provided not more than one floor distant from any user on a ratio of at least:

- One WC per five persons sharing where the WC is separate from the bathroom (and is accessible from a communal area without going through the bathroom)
- One WC per four persons sharing where the WC is located within the bathroom

Examples of acceptable minimum combinations of WCs and bathrooms are given in the table below. (Other combinations may achieve the same required minimum provisions, however).

NUMBER OF PERSONS SHARING	FULL SUITE	BATH ONLY	SEPARATE WC
4 or less	1		
5	1		1
5		1	1
6, 7, 8	2		
9	1	1	1
9 or 10	2		1
11 or 12	3		
13, 14, 15	3		1
16	4		
17, 18, 19, 20	4		1

2.7 CATEGORY B HMO's (SHARED HOUSES/FLATS)

Houses or flats occupied on a shared basis. These would normally be occupied by members of a defined social group, e.g. students or a group of young single adults who, in the main will have rented the house as one group. The occupiers each enjoy exclusive use of a bedroom but would share other facilities including a communal living space, bathroom and all other parts of the house.

All the tenants will have exclusive legal possession and control of all parts of the house. The anticipated duration of the occupancy will often be finite and numbers of occupiers above about six are probably more suggestive of Category A bedsit accommodation. This standard is not intended to apply to purpose-built student accommodation.

The principles below should be considered to be the general principles of occupation for all Category B (shared house) HMO's.

- In no case shall any room be occupied by more than two persons
- Persons of the opposite sex over the age of 10 shall not be permitted to share the same room for sleeping purposes unless they are of marriageable age and are either married or living as partners.

- The sharing of a room for sleeping purposes by persons who are neither related nor living as a married couple or partners shall be permitted only when both persons give their consent.
- No unit of accommodation shall be occupied on the basis of a divided or shared tenancy. This is to avoid the situation arising whereby a unit of accommodation may be occupied by different persons at different times of the day or different days of the week (for instance shift workers or seasonal / migrant workers who occupy a property in connection with their employment).
- Only rooms designated as living rooms, bedrooms or bed/sitting rooms may be used for living or sleeping purposes.
- Each separate bedroom within a shared house is regarded as a unit of accommodation for the purpose of assessing amenity standards.
- Irrespective of overall floor area, consideration will be given to the shape and useable living space within the room when determining its suitability for occupation. No account will be taken of any part of a room where the ceiling height is less than 1.525 m (5ft).

2.8 MINIMUM ROOM SIZES

For the most common arrangement found in Tamwoth, that is, one person per room, the room needs to be 10m² if there is just a shared kitchen, or 6.5m² if there is a shared kitchen and living room of the minimum size given in the lower half of the table.

Category B HMO's Minimum Room Sizes (m2)				
Persons in bedroom		Minimum Room Size	Minimum Room Size if separate Living Room provided	
1		10	6.5	
2		15	11	
Minimum sizes of other rooms (m2)				
Total Residents in House	Kitchen (obligatory)	Dining kitchen (optional)	Living Room (optional)	Dining Rooms (optional)
2-5	7	11.5	11	11
6-10	10	19.5	16.5	16.5
11-15	13.5	24	21.5	21.5
All category B houses must have a shared kitchen. To take advantage of the lower bedroom size they must also have at least a separate living room but can have additional shared rooms				

Combined Kitchen, Living, Dining Space

Used by 2-5 persons 16m²

Used by 6-10 persons 25.5m²

The kitchen facilities must be suitably arranged so that the food preparation and cooking areas are safely separated from the dining/living areas. Adequate structural support must be provided in accordance with current Building Regulations where walls are being removed to create the open plan room.

Dining kitchens

Where the kitchen is large enough to accommodate a dining table, there must be adequate space to allow the majority of tenants to sit without decreasing the kitchen working space.

Note: The above are minimum space standards based on optimum shape and layout. In practice, it may be necessary to have a larger space standard to ensure that there is sufficient space to fit in all the facilities required and provide a circulation area which permits safe use for the number of users.

2.9 KITCHEN FACILITIES (SHARED HOUSES)

A shared kitchen should ideally be not more than one floor distant from any unit of accommodation having use of it. It is however, acceptable for a kitchen to be a maximum of two floors distant where there is a communal room adjacent to the kitchen suitable for dining purposes or where the kitchen is of sufficient size to serve as a kitchen / dining room.

Each shared kitchen shall comprise as a minimum:

Cooking

The kitchen must be provided with sufficient cooking appliances suitably located to enable users to cook food safely and hygienically and to minimise waiting time when more than one person wishes to cook food at the same time. In particular:

- For every five persons there must be a conventional gas or electric cooker with at least 4 burners/hobs, oven and grill.
- For up to and including 7 persons a combination microwave oven of minimum 20 litres capacity, suitably located on a fixed worktop may be provided in place of an additional conventional cooker.

- For 8 to 10 persons there must always be at least 2 conventional cookers and for 11 to 15 persons at least 3 conventional cookers, whether or not any supplementary microwave ovens are provided.

Sinks

- For every 5 persons there must be a kitchen sink complete with hot and cold water supplies and trapped waste.
- For up to and including 7 persons a double bowl sink and drainer will be regarded as adequate in place of providing an additional sink. Alternatively, a standard sink plus an electric dishwasher will be acceptable for up to and including 7 persons.
- For 8 to 10 persons there must always be at least two standard sinks and for 11 to 15 persons at least three standard sinks whether or not any supplementary dishwasher is provided.

Food Preparation

- There must be sufficient fixed work surfaces to enable each user to prepare food safely and hygienically. A 0.5 metre run of work surface for each user although minor variations of up to 20 per cent shortfall may be acceptable provided there is still a good practical working area.
- Kitchens must be provided with floor covering which is impervious, reasonably smooth and easily cleansable. Ideally floor coverings should be slip resistant. Walls and ceilings must also be reasonably smooth such that they can be kept clean and easily redecorated.
- For properties with more than 10 occupants sharing the same kitchen, a reduction in this standard may be appropriate as it is unlikely that all persons in the group will be preparing food at the same time.

- At least 2 twin switched power sockets set at a convenient height and safe position in relation to the kitchen facilities and work surfaces must be provided for every 5 persons. This is in addition to any dedicated sockets serving major appliances such as dishwashers, washing machines and refrigerators.

Food Storage

- Adequate refrigerated food storage must be provided either within the shared kitchen or within a room directly adjacent to the kitchen if space is a particular problem.

For every 3 persons there must be a standard domestic refrigerator of at least 100 litres capacity and a freezer compartment of at least 15 litres capacity.

Alternatively a tall upright fridge freezer will be acceptable for every 5 persons. These usually have a fridge capacity of around 140 to 180 litres and a freezer capacity of around 70 to 90 litres.

A combination of separate larder refrigerators and freezers will also be acceptable provided they give an approximate equivalent standard.

- Adequate dry/canned food storage and utensil storage cupboards must also be provided. A 500mm wall or base unit per person will be acceptable for this purpose. The space beneath a sink is not acceptable for food storage purposes.
- In shared kitchens where it is likely that there will be a high degree of communality (for example students or professionals) it is not normally a requirement for refrigerators or storage cupboards to be locked.

In shared kitchens where a lesser degree of communality may be expected, the sharing of refrigerators and storage cupboards may lead to poor storage practice and conflict between residents. In such cases the house will more likely be regarded as a Category A2 HMO (Bedsits with communal kitchen)

rather than a Category B HMO and lockable food storage cupboards may be necessary.

Ventilation

- All shared kitchens must be provided with adequate mechanical extract ventilation with an extract rate of at least 60 litres per second venting directly to the external air.

2.10 PERSONAL WASHING AND BATHING FACILITIES (SHARED HOUSES)

(a) Baths and Showers

A bathroom containing a bath or shower shall be provided on a ratio of at least one bath to every five persons sharing. Bathroom in properties housing up to five persons should ideally not be more than one floor distant from every bedroom

In properties housing over five persons there will be a need for additional bathroom(s).

(b) Wash hand basins

Any bathroom of separate room containing a WC must be provided with a wash hand basin.

2.11 TOILET FACILITIES (SHARED HOUSES)

Toilet facilities should be provided not more than one floor distant from any user on a ratio of at least:

- One WC per five persons sharing where the WC is separate from the bathroom (and is accessible from a communal area without going through the bathroom)
- One WC per four persons sharing where the WC is located within the bathroom

Examples of acceptable minimum combinations of WCs and bathrooms are given in the following table. (Other combinations may achieve the same required minimum provisions, however).

NUMBER OF PERSONS SHARING	FULL SUITE	BATH ONLY	SEPARATE WC
4 or less	1		
5	1		1
5		1	1
6, 7, 8	2		
9	1	1	1
9 or 10	2		1
11 or 12	3		
13, 14, 15	3		1
16	4		
17, 18, 19, 20	4		1

CATEGORY C HMO'S (Lodgings)

MINIMUM ROOM SIZES

(a) Each bedroom

- Single room 6.5 m²
- Double room 10 m²

(b) Common Living room

- 1-5 residents 11 m²
- 6-10 residents 16.5 m²

The provision of facilities is to be the same as category B HMO's (shared houses/flats). Either a resident landlord must provide use of their own kitchen or provide a separate facility.

2.13 CATEGORY D HMO'S (Hostels / Bed & Breakfast)

Houses generally referred to as 'hostels', 'guest houses' and 'bed and breakfast hotels' or similar. There would ordinarily be exclusive use of a bedroom and some sharing of bathroom/toilet facilities. Meals may be provided on a catered or self catering basis, there is usually a communal living and dining room.

These provide accommodation for unrelated persons with no other permanent place of residence. This must constitute a significant use of the accommodation to be classified as a HMO as distinct from hotels which only provide accommodation for temporary visitors who have alternative accommodation elsewhere.

A significant use is defined as where 25% or more of the total number of sleeping rooms are occupied by persons in receipt of housing benefit or paying a weekly or monthly rent as opposed to an overnight charge. This would include temporary accommodation used by the local authority to house homeless families or persons pending alternative accommodation. It would also include hotels housing both homeless households and visitors. The Council may declare the building to be a HMO if it meets this criteria.

General principles of occupation for all Category D (hostel) HMO's:

- In no case shall any room be occupied by more than two unrelated persons however, provided the room is large enough, it may be used by more than two persons subject to them all being family members (family includes married couples, couples living together as partners, parent, grandparent, child, step-child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin).
- Persons of the opposite sex over the age of 12 shall not be permitted to share the same room for sleeping purposes unless they are of marriageable age and are either married or living as partners. (An exception to this rule would be where a family is placed in emergency accommodation and their stay does

not exceed five nights and there is no other appropriate accommodation available in the same premises or locality).

- Family rooms are to be used by a maximum of four persons.
- No unit of accommodation shall be occupied on the basis of a divided or shared tenancy. This is to avoid the situation arising whereby a unit of accommodation may be occupied by different persons at different times of the day or different days of the week (for instance shift workers or seasonal / migrant workers who occupy a property in connection with their employment).
- Only rooms designated as living rooms, bedrooms or bed/sitting rooms may be used for living or sleeping purposes.
- Room containing cooking facilities are not suitable for children under five years old.
- Rooms accessed via the external air where residents would need to go outside to access facilities within the main part of the premises are not suitable for living / sleeping purposes.
- Irrespective of overall floor area, consideration will be given to the shape and useable living space within the room when determining its suitability for occupation. No account will be taken of any part of a room where the ceiling height is less than 1.525 m (5ft).

2.14 MINIMUM ROOM SIZES

Bedroom sizes where no communal living room is available are shown in brackets.

(a) Bedrooms where separate kitchen provided

- Single room 6.5 m² (10m²)
- Double room 11 m² (15 m²)
- 3 person (family room) 15 m² (20 m²)
- 4 person (family room) 19.5m² (24 m²)

(b) Bedrooms with kitchen provided within room

- Single room 10 m² (13 m²)
- Double room 14 m² (20 m²)
- 3 person (family room) 18.5 m² (24 m²)
- 4 person (family room) 23m² (28 m²)

(c) Kitchen

- 2-5 residents 7 m²
- 6-10 residents 10 m²

Communal Rooms

In general need or short term accommodation there must be a communal living room (or rooms) provided unless the bedrooms meet the higher standard above. A communal room of at least 15m² must be provided for the first four persons plus 1m² for each additional person.

2.15 Kitchen Facilities

For self-catering hostels kitchens must meet the standard required by category B HMO's (shared houses) or where there is cooking within the letting room, category A standards (bedsits).

Kitchen Facilities for Hostel Type Accommodation

a) CATERED ACCOMMODATION

Where any meals are provided for residents, all food must be stored, handled, prepared and served in accordance with the provisions of the Food Safety Act 1990 and associated regulations (in particular the Food Hygiene (England) Regulations 2006).

All persons who are employed to handle food must have received appropriate and approved food hygiene training and the operation must be registered as a food business with the Council's Environmental Health Department.

Kitchens must be adequately equipped according to the number of meals expected to be served on a daily basis.

Further information on food hygiene matters and the adequacy of kitchen facilities can be found on the Government's website www.food.gov.uk and follow the link to 'Safer Food Better Business' using the A-Z directory.

The following general principles apply to catered accommodation.

- Meals must be served and consumed in the premises in which the occupants reside (i.e. residents should not be expected to travel to another hostel/hotel or café premises in the locality to obtain their meals).

It is acceptable for hotels which have an annexe building within the same curtilage to serve meals in the main building provided there is safe and well lit access between the buildings.

- Where there are insufficient catering facilities within a particular premises, meals may be prepared elsewhere and brought in, provided the food is prepared in a food safety compliant kitchen and transported in hygienic conditions under proper temperature control.
- An appropriate dining room must be provided together with sufficient tables and chairs for the number of users. (Meals may be served on a sitting basis)

- Residents must not generally have access to any catering kitchen in order to prepare their own meals.
- In some small hostels (ie those with six or less occupants in total), it may be acceptable for residents to prepare some meals within the kitchen which is also used for catering purposes provided such meals are prepared under the supervision of a person having undertaken appropriate food hygiene training.

This will normally be 'Supported Lodgings' type accommodation where residents are assisted to gain skills which may help them to live independently in the community.

- The extent that meals are provided for residents will vary from premises to premises with some providing breakfast only, and some providing full board. Meal provision may also vary between weekdays and weekends. There may also be variation from person to person with some choosing to take meals and some choosing to cater for themselves.

Whatever the arrangements, all residents must have access to adequate kitchen facilities (separate from any catering kitchen) in order to prepare their own food.

The following separate kitchen facilities shall be provided for use by residents according to the predominant characteristics of the catering operation:

All Meals Provided (Three Meals per Day)

Kitchen facilities must be sufficient for residents to prepare light meals and hot drinks.

One set of facilities shall be provided for every **fifteen** persons consisting as a minimum of:

- One kitchen sink complete with hot and cold water supplies and trapped waste.
- A conventional four burner/hob cooker with oven and grill or a combination microwave oven/grill of minimum 20 litres capacity,

- A minimum two metre run of fixed work surface (minimum 500mm depth).
- A standard domestic refrigerator incorporating a freezer compartment.
- Two twin 13 amp switched power sockets suitably sited in relation to the work surface and in addition to any sockets serving major appliances.
- Adequate storage for cooking utensils, crockery and cutlery etc.
- A kettle for making hot drinks or a vending machine if considered appropriate.

Such facilities may be located within an appropriately laid out area within a communal room but should preferably be located within a separate kitchen or kitchens.

A minimum floor area of 10 m² per set of such kitchen facilities is required.

Breakfast and evening Meals Provided

A set of kitchen facilities as described above for premises providing all meals shall be provided on a ratio of one set of facilities to every **ten** persons.

Breakfasts Only Provided

One set of kitchen facilities shall be provided for every **seven** persons, consisting as a minimum of:

- One kitchen sink complete with hot and cold water supplies and trapped waste.
- A conventional four burner/hob cooker with oven and grill or two combination microwave ovens/grills of minimum 20 litres capacity each.

The use of microwave ovens may be more appropriate if there are any concerns over the ability of residents to prepare hot food safely.

The use of deep fat fryers shall not be generally permitted unless supervision of cooking activity is likely to take place.

- A minimum two metre run of fixed work surface (minimum 500mm depth).

- Two twin 13 amp switched power sockets suitably sites in relation to the work surface and in addition to any sockets serving any major appliances.

A minimum kitchen floor area of 10m² per set of such kitchen facilities is required.

- For food storage purposes a refrigerator plus adequate storage for dry/canned foods and utensils/crockery/cutlery shall be provided within each unit of accommodation.

b) SELF CATERING ACCOMMODATION

For hostels providing fully self-catered accommodation, food preparation facilities may be located either within each unit of accommodation or within shared kitchens.

Food Preparation Facilities within the Unit of Accommodation

The facilities shall comprise as a minimum:

- Cooking:
Single Person: a gas or electric cooker with two burners/ hobs, oven and grill
Two Persons or Family Room: a gas or electric cooker with four burners/hobs, oven and grill.

A microwave oven may be substituted for one or two of the burners/hobs respectively and a combination microwave oven / grill in place of a conventional oven.

- A metal or ceramic kitchen sink and drainer with a constant supply of hot and cold water.
- Sufficient fixed work surface to enable food to be prepared safely and hygienically.

- A suitable refrigerator of adequate size according to the number of occupants. A family room would require a standard work top height refrigerator with freezer compartment.
- Sufficient storage cupboard space for dry and canned food goods plus cooking utensils, crockery and cutlery.
- Electric power sockets: two twin switched power sockets set at a convenient height and safe position in relation to the kitchen facilities.
- The kitchen area must be provided with an easily cleansable non-slip floor covering to an adequate extent and separated from any adjoining carpeted floor area by suitable dividing strips securely fixed in position.
- Cookers must be safely positioned within the room such that they do not compromise escape in the event of a fire associated with the cooker, ie they must not be positioned adjacent to the exit doorway. In particular gas cookers must not be positioned directly adjacent to openable windows where flames are likely to be extinguished by excessive draughts or where curtains are likely to catch fire.

2.16 Shared Kitchens

One set of kitchen facilities shall be provided for every five persons, consisting as a minimum of:

- One kitchen sink complete with hot and cold water supplies and trapped waste.
- A conventional four burner/hob cooker with oven and grill or two combination microwave ovens/grills of minimum 20 litres capacity each.

The use of microwave ovens may be more appropriate if there are any concerns over the ability of residents to prepare hot food safely.

The use of deep fat fryers shall not generally be permitted unless supervision of cooking activity is likely to take place.

- A minimum two metre run of fixed work surface (minimum 500 mm depth).

- Two twin 13 amp switched power sockets suitably sited in relation to the work surface and in addition to any sockets serving any major appliances.
- A minimum kitchen floor area of 7m² per set of such kitchen facilities is required.
- For food storage purposes a refrigerator plus adequate storage for dry/canned foods and utensils/crockery/cutlery shall be provided within each unit of accommodation.

2.17 Personal Washing and Bathing Facilities for Hostel Type Accommodation

Baths and Showers

Where it is not practicable to provide each unit of accommodation with its own bathroom, a readily accessible bathroom containing a bath or shower shall be provided on a ratio of one bath or shower to every five persons on occupation.

A bathroom must be available within one floor of any unit of accommodation. A shower facility installed over a bath will not count as an additional shower.

Institutionalised bathrooms with communal changing facilities shall not be permitted.

Wash Hand Basins

Each separate occupancy shall be provided with a wash hand basin together with constant supplies of hot and cold water and sited within the unit of accommodation.

If a sink is fitted within a room then a separate wash hand basin will not be required.

All bathrooms or separate compartments containing a WC must be provided with a wash hand basin.

2.18 Toilet Facilities for Hostel-type Accommodation

Toilet facilities being not more than one floor distant from any unit of accommodation shall be provided in the following ratios in relation to the total number of occupiers of the accommodation.

- | | |
|-------------------|--|
| 1 – 4 persons - | 1 WC which may be separate or located within a shared bathroom. |
| 5 persons - | 1 WC which must be separate from the bathroom but can be contained within a second bathroom. |
| 6 – 10 persons - | 2 separate WCs but one of the WCs can be contained within a bathroom. |
| 11 – 15 persons - | 3 separate WCs but 2 of the WCs can be contained within 2 bathrooms |

This sequence would continue proportionally for every additional five persons.

Institutionalised toilets where there is more than one WC cubicle within the same room shall not be permitted.

Fire Precautions Hostel Type Accommodation

Hostel type accommodation may vary greatly in its size and complexity, ranging from small 'Supported Lodgings' schemes to large hostels.

Each case must be assessed individually in consultation with Staffordshire Fire and Rescue Service. Owners must also have regard to 'The Regulatory Reform (Fire Safety Order) 2005.

Heating in Hostel Type Accommodation

All habitable rooms within a hostel or bed and breakfast establishment must be provided with an adequate fixed form of heating capable of achieving a room temperature of 21oC within one hour of turning on when the air temperature outside is –1oC.

For heating to be properly used by residents, it must be affordable. Central heating is the preferred option but electric night storage heaters and balanced flue gas heaters are also satisfactory.

Where open-flue gas fires are provided in a room used for sleeping purposes, they must be of modern design and fitted with an automatic oxygen depletion cut-off device.

Heaters which use full price electricity are not normally acceptable as the main form of heating.

In many hostels, the heating is operated by timer and under control of the landlord or manager. This is acceptable provided adequate temperatures are maintained and adjustments are quickly made when problems of cold or excessive heat are brought to attention.

Central heating radiators in residents rooms should be fitted with a thermostat under control of the occupier.

All heaters, other than water filled radiators, must be suitably positioned such that there is at least two metres between the heater and any bedding and such heaters must also not be located where curtains/blinds are likely to catch fire.

Paraffin heaters, LPG heaters and free standing plug-in electric heaters are not acceptable.

All heating appliances must be fixed to either the wall or the floor and be provided with an appropriate base or surround if one is specified by the appliance manufacturer.

All gas heaters or boilers of any type must be properly serviced and maintained in a safe condition in accordance with the manufacturer's recommendations and the Gas Safety (Installation and Use) Regulations 1998 (as amended).

All bathrooms, whether for exclusive use or shared use, must also be provided with a fixed form of heating. Electric fan or radiant wall heaters are acceptable in bathrooms provided they are design to operate in moist atmospheres.

Where heating is provided to any communal rooms or areas, the running costs must be met out of general rental charges or general energy charges rather than any type of pre-payment meter.

2.19 CATEGORY F HMO'S (SELF-CONTAINED FLATS)

These standards apply to houses converted into self contained flats where the conversion did not, and still does not meet the standards of the Building Regulations 1991 (approved document B standard). Houses converted into self contained flats where the conversion met standards of the Building Regulations 1991 are exempt from the HMO definition.

The flats should be occupied by a single household and where any flat is occupied by groups of three or more unrelated persons then the flat would be regarded as a house in multiple occupation in its own right.

2.20 MINIMUM ROOM SIZES

Planning consent and Building Regulation approval should be obtained where houses are being converted into self contained flats and these departments may specify higher standards than those listed below.

One person flat

Bedroom (one occupant)	7 m ²
Living room	11.5 m ²
Living/kitchen	14.5 m ²
Bed/living room	13 m ²
Kitchen	5.5 m ²

Two person, one bed flat

Main bedroom	10.5 m ²
Living room	13 m ²
Living/kitchen	14.5 m ²
Bed/living room	16.5 m ²
Kitchen	5.5 m ²

Two bedroom flat

Main bedroom	10.5 m ²
Secondary bedrooms	7 m ²
Living room	16 m ²
Kitchen	7 m ²

Three bedroom flat

Main bedroom	10.5 m ²
Secondary bedrooms	7 m ²
Living room	18 m ²
Kitchen	7 m ²

2.21 KITCHEN FACILITIES (SELF-CONTAINED FLATS)

All kitchens must be provided with:

- a) A sink
- b) Adequate food preparation surface (of at least 0.75m²)
- c) 30amp electric cooker point or gas supply point
- d) Fixed storage cupboards either below food prep surface or wall mounted with minimum storage space of 0.5m³.
- e) Four 13A sockets, at least two of least to be located above work surface.
- f) A refrigerator

2.20 PERSONAL WASHING AND BATHING FACILITIES (SELF- CONTAINED FLATS)

Each flat must be provided with its own bath or shower with constant supplies of hot and cold water meeting the standards laid out in Section 3.

Each flat must also be provided with a suitable wash hand basin with constant supply of hot and cold water, this may be sited within the bathroom or bedroom.

2.21 TOILET FACILITIES (SELF-CONTAINED FLATS)

Each flat must be provided with its own WC which must be located within a bathroom or other separate compartment. Any room containing a WC must be provided with a wash hand basin.

Section 3: General Standards Applicable to all HMO Categories

3.1 SPACE HEATING

Each unit of accommodation in a HMO must be equipped with adequate means of space heating. Where heating is provided to communal rooms or areas this cost should be met by the general rental or energy charges rather than via a pre-payment meter.

All habitable rooms shall be provided with a fixed heating appliance capable of heating the room to a temperature of 18 degrees centigrade within one hour when the outside temperature is -1 degree centigrade. The heating should be efficient, safely designed and be sited / guarded as to minimise the risks to health and safety. Any such appliances shall be maintained by a competent person. Any electric heating, where provided, must be hard wired into the electrical installation.

All forms of heating must be controllable by the occupants at all times. Paraffin, LPG heaters and freestanding plug in electric heaters are not acceptable.

Any bathroom, whether for shared or exclusive use must also be provided with suitable heating. Electric fan or radiant wall heaters are acceptable in bathrooms provided they are designed to operate in moist atmospheres.

Proper provision for space heating is important. In addition to maintaining a comfortable temperature for the tenants, good heating will also reduce the maintenance and redecoration needed where condensation forms and leads to mould growth. Therefore good heating is also likely to protect the structure of the building.

3.2 LIGHTING

All habitable rooms shall have an adequate level of natural lighting, provided via a clear glazed window or windows, and/or door(s) the glazed area to be equivalent to at least one-tenth of the floor area and to extend normally to a point 1.75m above floor level.

Basement rooms used for human habitation should, in addition to the requirement in the first paragraph, have sufficient natural lighting for their purpose.

All staircases, landings, passages, kitchens, bathrooms and water closets are to be provided, where practicable, with a window. Windows to bathrooms and water closets are to be glazed with obscured glass.

Adequate electric lighting points are to be provided to all habitable rooms, staircases, landings, passages, kitchens, bathrooms and water closets. Lighting to staircases, landings and passages may be controlled by time switches or other devices having a similar effect.

3.3 PERSONAL WASHING FACILITIES

Baths should be a minimum of 1.67m in length and provided with a tiled splash back abutting walls. Any shower trays, should be a minimum size of 800mm x 800mm and have fully tiled walls or be complete self standing cubicles. A waterproof seal between any shower/bath must be provided using a flexible waterproof sealant. Constant hot and cold water supplies must be adequate and available at all times with hot water being delivered at a thermostatically controlled temperature.

- The walls and floor of any bathroom or shower room should be reasonably smooth, non-absorbent and capable of being easily cleaned.
- Privacy door locks must be provided

- Natural or mechanical extract ventilation; the latter is desirable even if natural ventilation is present and is essential for shared facilities
- Artificial lighting must be provided
- Bathrooms must be provided with an adequate fixed space-heating appliance

3.4 VENTILATION

All habitable rooms, kitchens, bathrooms, and water closet compartments shall have a minimum floor to ceiling height of 2.3m. All habitable rooms shall be ventilated directly to the external air by a window which has an openable area not less than 1/20th of the floor area.

Existing attic rooms shall have a minimum height of 2.3m over an area of the floor equal to not less than half of the area of the room. Any floor area with a ceiling height of less than 1.53 metres shall be disregarded.

In addition to any natural ventilation, all shared kitchens must be provided with adequate mechanical extract ventilation with an extract rate of at least 60 litres per second venting directly to the external air providing at least three air changes per hour.

Bathrooms shall be ventilated directly to the external air, either by a window, the openable area of which shall be equivalent to at least 1/20th of the floor area of the room; or by suitably sited 100mm mechanical ventilation providing a minimum of one air change per hour operated from the lighting circuit of the room and fitted with a 20 minute overrun (it may alternatively be humidistat controlled).

Basement rooms used as habitable rooms should be provided with natural ventilation direct to the external air. In addition, there should normally be an unobstructed space immediately outside the window opening which extends the entire width of the window or more and has a depth of not less than 0.6m measured from the external wall or not less than 0.3m in the case of a bay window with side lights.

Suitable and sufficient permanent ventilation shall be provided and maintained in any room in which there is a gas heating appliance in accordance with the Gas Safety (Installation and Use) Regulations 1998 (as amended).

3.5 KITCHENS

A shared kitchen must be no more than one floor distant from the large majority of users and, in any event, not more than two floor distant from any user. Where in the case of any occupancy this is not practicable, that occupancy shall have its own kitchen facilities within the unit of accommodation.

Layout - Kitchen must be arranged to enable the occupiers to handle and prepare food safely. Any cooking appliance should be sited away from a doorway or position where collisions are likely. There should also be fixed work surfaces to both sides of any cooker to enable hot food to be put down and handles guarded etc.

All kitchens must have floor coverings which are smooth, impervious, easily cleansable and laid to prevent trip hazards.

Lighting – Adequate ceiling mounted lighting must be provided to the kitchen ensuring all areas are suitably lit.

Food Preparation – Must be of heat resistant, impermeable and easily cleansable materials. Any joint abutting walls should be watertight with a suitable splashback should be provided above sinks.

Sink - A stainless steel, ceramic or other comparable easily cleansable sink and drainer in good condition with sink top (or surface into which it is inset) must be a minimum of 500mm x 900mm with a constant supply of hot and cold water. A tiled splashback of up to 150mm shall be provided with watertight seal abutting walls. The sink(s) shall be connected to the drainage system via a suitable trap.

Food Storage – Must be a minimum size of 0.1 cubic metres (equivalent to a standard single wall unit). Surfaces must be easily cleansable and securely fixed. Food storage beneath a sink is not acceptable. Adequate provision for the storage of kitchen utensils shall be provided in the kitchen, in addition to the space provided for food storage.

Appropriate refuse disposal facilities must be provided for the number of occupants.

3.6 BATHROOMS (INCLUDING SHOWER ROOMS)

The Room - Floor covering must be smooth, impervious and easily cleansable. Walls and ceilings must also be reasonably smooth so that they can be easily decorated and kept clean.

Obscure glazing must be provided to all bathroom windows and doors to any shared bathroom must be fitted with a privacy lock.

Ventilation – Bathroom must be well ventilated. Where there is no natural means of ventilation via an openable window, mechanical ventilation giving an extract rate of at least 15 litres per second must be provided.

Any extractor fan in a room containing a bath or shower must be provided with an overrun of at least 20 minutes (or at least one air change) or should be humidistat controlled to prevent condensation related mould growth.

One water closet shall be provided and maintained for every five persons or lesser number. Every such water closet shall be in a separate room within the building and where shared by two or more households, be entered from a common passageway or hallway and shall not be more than one floor distant

from any individual letting. Each WC compartment must be provided with a suitable wash hand basin with constant hot and cold water.

External WCs shall be ignored. Fifty per cent of WCs shall be provided in separate compartments except that where a sole WC is provided and maintained for not more than four persons it may be within a bathroom.

3.7 MEANS OF ESCAPE AND OTHER FIRE PRECAUTIONS

Appropriate fire safety measures must be installed within all HMO's given the increased risk of fire associated with their use. The fire safety precautions outlined in the LACORS 'Housing – Fire Safety' document which provides guidance on fire safety provisions for certain types of existing housing should be referred to. This guidance contains examples of the most commonly found layouts for various types of HMO's.

If you require further information or guidance on anything mentioned within the Fire Safety then you should contact the Private Sector Housing Team on 01827 709372 or email privatehousing@tamworth.gov.uk.

3.8 MANAGEMENT OF HOUSES IN MULTIPLE OCCUPATION REGULATIONS 2006

These regulations detail the management standards to be met and require the manager of the premises to carry out certain duties to maintain their property, taking account of the age, character, locality and prospective life of the house.

The duties of the manager are as follows:

- **To display their contact details** – the manager's name, address and contact telephone number must be clearly displayed in a prominent position. On the wall in the entrance hall is usually the best place. (Regulation 3)

- **To maintain all means of escape from fire** – all fire doors must be maintained in a good condition, free from damage and fully self-closing so that they will close fully into the rebates of the frame. The main routes of escape e.g. exit doors, landings, staircases and hallways must be kept free from obstruction. Escape routes must also be clearly indicated by fixing notices in appropriate places in all HMOs having five or more occupants. The fire detection and warning system and emergency lighting system must be tested regularly. For most small and medium sized HMOs a monthly test by the landlord should suffice in addition to a thorough annual test by a suitably competent person (such as a qualified electrician or specialist fire alarm engineer). For larger HMOs more regular testing may be required. Fire fighting equipment, where provided, must also be maintained in good working order. (Regulation 4).
- **To take safety measures** – all necessary measures to protect the occupiers from injury must be taken, having regard to the design, the structural condition and the number of occupiers in an HMO. In particular this relates to the prevention of accidents associated with access to any roof or balcony and any low window sill (Also Regulation 4).
- **To maintain the water supply and drainage system** – the water supply or drainage system must be maintained in a good, clean and working condition. They must not be unreasonably interrupted from use by any occupier and any water storage tank must be covered and kept clean. Any water fitting which is liable to damage by frost must be suitably protected (Regulation 5).
- **To maintain gas and electrical supplies and to provide safety certificates** – the gas installation and any appliances must be tested annually by a Gas Safe registered engineer who will issue a 'Landlords gas safety certificate'. This must be supplied to the local authority within 7 days of any written request to do so. The electrical installation must be inspected and tested at least every five years by a qualified electrician who must issue a test certificate. Again, this must be supplied to the local authority within 7 days of

- a written request to do so. Neither the gas or electricity supplies must be unreasonably interrupted. (Regulation 6).
- **To maintain all common parts and installations within the property** – all common parts of the HMO eg. Entrance hallways, entrance doors, porches, steps, staircases, landings, shared bathrooms and kitchens plus all shared fittings and appliances must be maintained in a good state of repair and safe and working condition and kept clear from obstruction. Communal areas must also be kept clean and well decorated. In HMOs where the occupants are previously acquainted with each other and rent the house under the terms of a single tenancy agreement, for example a student shared house, it may be acceptable to expect the tenants to undertake the cleaning of the common areas on a group basis. The manager should visit from time to time, by prior appointment, to ensure that the common areas are being maintained to a satisfactory standard of cleanliness. In all other types of HMO, cleaning of communal areas will normally be the responsibility of the manager (Regulation 7).
 - **To maintain in good order and repair any outbuildings, yards, gardens or boundary fences** – any outbuilding, yard, forecourt, boundary wall, fence or railing belonging to the HMO must be maintained in good and safe repair so as not to constitute a danger to the occupiers. Any yard or garden belonging to the HMO must be kept in a safe and tidy condition (also Regulation 7).
 - **To maintain each unit of accommodation** – each unit and any furnishings must be clean at the beginning of a person's occupation of it. The internal structure, any fixtures, fittings or appliances, any window or other means of ventilation must be maintained in good repair as long as the tenant has treated the accommodation properly in accordance with the conditions contained within his lease or tenancy agreement (Regulation 8).

- **To ensure refuse is stored and disposed of adequately** – a sufficient number of bins must be provided for the storage of refuse pending disposal. Arrangements must be in place to ensure that all refuse is removed and disposed of on a regular basis, generally this will be undertaken by the Local Authority. It would be expected that one standard refuse bin be provided per three occupiers and that appropriate instructions are provided to each tenant at the beginning of the tenancy as to the refuse collection arrangements. For larger hostel type premises (10 or more occupiers), a Trade Refuse Contract with the local authority would be expected. This may also be necessary for smaller premises, particularly where meals are provided (Regulation 9).

The regulations (Regulation 10) also place a duty on all occupiers of an HMO to:

- Conduct themselves in a way that will not hinder or frustrate the manager in the performance of his duties.
- Allow the manager at all reasonable times to enter any living accommodation to enable him to carry out any duty. Except in the case of emergencies, at least 24 hours notice either in writing or by phone of any intended visit should be given to the occupiers.
- Provide the manager with any information requested to enable him to carry out his duties.
- Take reasonable care to avoid causing damage to the property and its contents.
- Store and dispose of refuse in accordance with the arrangements made by the manager.
- Comply with the reasonable instructions of the manager in respect of any means of escape from fire, the prevention of fire and the use of fire equipment.

Under regulation 11, the manager is not expected to carry out any works or actions with respect to the supply of water, gas or electricity or to the drainage of the house where responsibility for a particular fault or problem lies with either the local authority

or the supply company. The manager is however expected to bring any such faults or problems to the attention of the appropriate person, authority or company as necessary as soon as he becomes aware of the matter (for example a blocked sewer or power failure).

It is an offence not to comply with these regulations. A person who is convicted of such an offence may be fined up to level 5 on the standard scale (currently £5000). This applies to both the manager of a property and to the occupiers as appropriate.