

Swale Borough Council

Housing Authority Enforcement Policy

(Swale Borough Council Corporate Logo – placeholder for official Swale Borough Council logo)

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1.0 Introduction

This policy shall be read in conjunction with the Swale Borough Council [overarching corporate enforcement policy](#).

This policy sets out **Swale Borough Council's** (hereafter "the Council") principles for enforcing and executing its duties as a housing authority under relevant legislation. **Section 3 of the Housing Act 2004** places a duty on councils to keep housing conditions in their district under review with a view to identifying any action that may need to be taken by them. **Section 107 of the Renters' Rights Act 2025** imposes a duty on the Council to enforce the "Landlord Legislation," which comprises:

- **Chapters 3 and 6 of Part 1 of the Renters' Rights Act 2025**
- **Part 2 of the Renters' Rights Act 2025**
- **Sections 1 and 1A of the Protection from Eviction Act 1977** (as amended)
- **Chapter 1 of Part 1 of the Housing Act 1988**

Section 110 of the Renters' Rights Act 2025 further requires the Council to report to the Secretary of State on the exercise of its functions under the Landlord Legislation. In this policy, the term "landlord" is used broadly to include **letting agents, managing agents, licensors, property owners, directors of corporate landlords, or any other person involved in the letting or management of privately rented accommodation**. The terms "House in Multiple Occupation" (HMO) or "House of Multiple Occupation" are as defined in the Housing Act 2004.

2.0 Aims of the Policy

The purpose of this enforcement policy is to provide guidance for the Council's housing officers to ensure that enforcement action is taken in line with the provisions of the Renters' Rights Act 2025 and any associated **mandatory guidance** to local authorities. The Renters' Rights Act 2025 and related **Landlord Legislation** (as defined by Section 107 of that Act) are not subject to the **Regulators' Code** (they fall outside its scope). Part 1 of the Housing Act 2004 is also outside the scope of the Regulators' Code. Notwithstanding this, the following legislation (and its enforcement) **does** fall within the **Legislative and Regulatory Reform (Regulatory Functions) Order 2007** and thus within the scope of the **Regulators' Code** and the **principles of good regulation**:

- Parts 8, 9 and 10 of the Housing Act 1985
- Part 8 of the Housing Act 1996
- Parts 2 to 5 of the Housing Act 2004

This policy document sets out what owners, landlords, their agents or any other person involved in the letting or management of privately rented accommodation, as well as tenants of private rented sector properties, can expect from Council officers when dealing with **non-compliance** in the private rented housing sector.

All enforcement action will be taken **in accordance with relevant statutory Codes of Practice**, the Council's internal procedures and protocols, and official guidance from central government and relevant local government bodies. As a public authority under the **Human Rights Act 1998**, the Council will also apply the principles of the **European Convention on Human Rights** in all enforcement actions.

3.0 Approach to Enforcement

The Council's overarching approach to housing enforcement is to support responsible landlords in raising housing standards, while ensuring compliance with housing laws and regulations. The Council expects all landlords to have a good understanding of the housing standards and management obligations that apply to privately rented accommodation.

Section 5 of the Housing Act 2004 places a duty on councils to **take appropriate enforcement action where a Category 1 hazard exists** in a residential property. **Section 7 of the Housing Act 2004** grants councils a discretionary power (which the Council will usually exercise) to take action where a Category 2 hazard exists. In general, the Council will consider taking action for Category 2 hazards, especially where they pose a significant risk to occupants' health or safety.

Council officers may identify the need to take enforcement action through various avenues, including but not limited to: proactive inspections of properties (such as through licensing regimes), **tenant complaints or requests for assistance**, and referrals from other public agencies or partner organisations. All investigations will be carried out in accordance with relevant statutory requirements. The Council has established **appropriate governance and oversight** to ensure actions are taken consistently and in line with legal powers and Council policies.

The Council may, in some circumstances, decide to begin enforcement with **formal action** immediately, rather than attempting informal measures first. In determining whether to proceed directly to formal enforcement, the Council will consider the specific circumstances of the case. Relevant factors include, but are not limited to:

- A **serious risk to public health or safety**.
- A **blatant or deliberate contravention of the law** by a landlord or agent.
- A **history of non-compliance** with housing standards or previous enforcement actions.

In particular, the Council will **usually proceed with formal action at the first instance** in cases such as:

- Non-compliance with **previous formal or informal action** (i.e. failing to heed earlier warnings or remedial notices).
- Offences related to the **licensing of Houses in Multiple Occupation (HMOs)** (e.g. operating an unlicensed HMO or breaching HMO licence conditions).

- Any **breach of the Landlord Legislation** (as defined above under the Renters' Rights Act 2025).

Outside of these circumstances, the Council may still choose to start with formal enforcement if deemed necessary. Each case will be evaluated on its own merits.

4.0 Investigatory Powers

In addition to the Council's informal and formal enforcement powers (discussed later in this policy), there are various **investigatory powers** granted by law for the collection of information and for entering premises. These powers include, but are not limited to, the following:

4.1 Power to Investigate

Section 114 of the Renters' Rights Act 2025 gives the Council the power to issue a notice to a relevant person requiring them to provide specified information to the Council. Such a notice may be served on **any person with an estate or interest in the land, a licensor, their agent, or a property marketer**. This power can be used to gather information related to suspected offences under the following legislation:

- **Sections 1 and 1A of the Protection from Eviction Act 1977** (unlawful eviction and harassment of tenants).
- **Chapter 1 of Part 1 of the Housing Act 1988** (relating to assured tenancies and possession).
- **Section 83(1) or 84(1) of the Enterprise and Regulatory Reform Act 2013** (letting agent transparency requirements).
- **Sections 21 to 23 of the Housing and Planning Act 2016** (banning orders and rogue landlord database).
- **Chapter 3 of Part 1 and Part 2 of the Renters' Rights Act 2025** (various provisions of the upcoming tenancy reforms).

Section 115 of the Renters' Rights Act 2025 permits the Council, when it reasonably suspects a breach of the **"Rented Accommodation Legislation,"** to issue a notice to any person requiring them to provide information specified in the notice. This power may only be used to investigate whether a breach of the Rented Accommodation Legislation has occurred, or to determine the appropriate amount of a financial penalty. For the purposes of Section 115, **"Rented Accommodation Legislation"** includes:

- Sections 1 and 1A of the Protection from Eviction Act 1977.
- Chapter 1 of Part 1 of the Housing Act 1988.
- Parts 1 to 4 and 7 of the Housing Act 2004.
- Section 83(1) or 84(1) of the Enterprise and Regulatory Reform Act 2013.
- Sections 21 to 23 of the Housing and Planning Act 2016.
- Chapter 3 of Part 1 and Part 2 of the Renters' Rights Act 2025.

If an individual fails to comply with a **Section 115 notice**, **Section 116 of the Renters' Rights Act 2025** enables the Council to apply to the Court to enforce the notice and to seek reimbursement for the costs associated with making the application.

Section 131 of the Renters' Rights Act 2025 provides that, in addition to the offence of non-compliance with a Section 114 notice (as noted above), it is an offence for an individual to **obstruct a Council officer** who is exercising investigatory powers without reasonable excuse. It is also an offence for a person, without reasonable excuse, to fail to give a Council officer **any additional assistance or information** that the officer reasonably requires for their investigation.

Section 235 of the Housing Act 2004 allows the Council to issue a notice to relevant individuals (including property owners or occupiers) directing them to produce **documents under their control**. This power may be used for the purpose of investigating whether an offence has been committed under Parts 1 to 4 of the Housing Act 2004 or for carrying out the Council's functions under those Parts of the 2004 Act.

Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 permits the Council to issue a notice to an occupier, manager, or person with an interest in land, requiring them to provide information on the nature of their interest in the property and the names and addresses of other individuals with an interest in the property or who are occupying the premises.

4.2 Entry to Premises

Section 118 of the Renters' Rights Act 2025 authorises Council officers to **enter business premises** of relevant persons (including landlords, letting agents, and property marketers) without a warrant if entry is necessary for the purpose of **producing or seizing documents** under Sections 122–123 of the Renters' Rights Act 2025.

Section 121 of the Renters' Rights Act 2025 allows a Council officer, when named in a judicial warrant, to enter premises used for a *rental sector business* (which are not mainly residential accommodation) if there are documents on those premises that the officer could require under Section 122 or seize under Section 123. In addition, for a warrant to be granted under this section, one of the following conditions must be met:

- Access to the premises has been or is likely to be **refused**, and the Council has given notice to the occupier of its intention to apply for a warrant.
- If advance notice were given, the **documents would likely be concealed, removed, or tampered with**.
- No occupier is present at the premises, and waiting for their return would likely **frustrate the purpose of the entry**.

Following an entry under **Section 118 or Section 121 of the Renters' Rights Act 2025**, **Section 122** allows an authorised officer, at any reasonable time, to require any **relevant**

person on the premises to produce documents relating to the rental business and to take copies of them. This power is only to be exercised to ascertain whether there has been a breach of the Rented Accommodation Legislation (when an officer reasonably suspects such a breach or offence), or to determine whether the documents may be required as evidence in proceedings for such a breach or offence.

Following entry under **Section 118 or Section 121 of the Renters' Rights Act 2025**, **Section 123** authorises Council officers to **seize and retain documents** that the officer reasonably suspects may be required as evidence in proceedings relating to a breach of, or an offence under, the Rented Accommodation Legislation. When seizing documents, an officer will provide evidence of their identity and authority (if reasonably practicable) and will take reasonable steps to inform the person from whom the documents have been seized. The officer will also provide that person with a written record of what has been taken.

Section 126 of the Renters' Rights Act 2025 permits the Council to enter *residential premises* (i.e. premises subject to a residential tenancy) at a reasonable time if an authorised officer considers it necessary as part of an investigation into certain specified offences (per Section 126(1)(b) of the Act). Where required, the Council will give at least **24 hours' notice** to the occupier and any person with an interest in the property (as per Section 126(1)(c)), detailing in writing why entry is necessary and the suspected offences. If occupiers are present at the time of entry, officers will provide appropriate identification and proof of their authority to enter, where reasonably practicable.

Section 239 of the Housing Act 2004 permits Council officers, at a reasonable time, to **enter a property** to carry out a survey or examination. This power may be exercised if any one of the following conditions is met:

- To determine if any of the Council's enforcement functions under Parts 1–4 of the Housing Act 2004 **should be exercised** in respect of the premises.
- If the premises are subject to an **Improvement Notice** or **Prohibition Order** under the Housing Act 2004 (to assess compliance or effectiveness).
- If a **management order** is in force under Chapter 1 or 2 of Part 4 of the Housing Act 2004 (to assess compliance or for any purpose under those chapters).
- In certain circumstances, the Council may apply to a magistrates' court for a **warrant under Section 240 of the Housing Act 2004** to enter a premises, using force if necessary (for example, when entry has been, or is expected to be, refused and access is necessary).

5.0 Informal Action

The Council may, in appropriate circumstances, initially take **informal action** to secure compliance. Informal action typically involves giving **verbal or written advice** or warnings to the landlord or responsible person without immediately resorting to legal orders or penalties.

In some cases, Council officers may make an **initial visit** to a property, for example when a complaint or other information suggests an immediate investigation is warranted. If, during this initial visit, only very **minor deficiencies** are identified, the officer may provide advice or a simple warning (either verbal or written) outlining the issues and what actions are needed. When giving written advice, the Council will usually include **reasonable timeframes** for the landlord or responsible party to undertake any required works or actions.

It should be noted that while the Council will use its discretion in deciding whether to start with informal action, **there is no obligation to issue informal advice or warnings before proceeding to formal action**, especially in cases involving serious hazards or offences. In particular, the Council does **not** need to provide prior informal advice for Category 2 hazards before taking formal action, if it judges that formal measures are more appropriate.

6.0 Formal Action

If the Council determines that formal action is necessary or more appropriate (for example, due to the severity of the issue or a history of non-compliance), a range of **formal enforcement options** is available. These include:

The Council may serve statutory notices or orders under Part 1 of the Housing Act 2004 to address identified Category 1 or Category 2 hazards in a residential property. Specifically:

- **Improvement Notice (Housing Act 2004, Sections 11–12):** This notice requires the recipient (usually the landlord or responsible party) to undertake specified remedial works to eliminate or reduce Category 1 hazards (and certain Category 2 hazards) within a given timeframe. The nature and urgency of the required works, as well as the deadline for completion, will be determined by the Council based on the seriousness of the hazard.
- **Prohibition Order (Housing Act 2004, Sections 20–21):** This order prohibits the use of all or part of a dwelling, or restricts the number of occupants, where either a Category 1 or a serious Category 2 hazard exists. The prohibition takes effect within a specified time frame (or immediately in some cases, as described below) and remains in force until the Council is satisfied the hazard is removed or reduced to an acceptable level.
- **Hazard Awareness Notice (Housing Act 2004, Sections 28–29):** This notice serves to formally notify the property owner and occupants of the existence of specified Category 1 or Category 2 hazards at the property. It **does not require any remedial action**; its purpose is to make those concerned aware of the problem. Because a Hazard Awareness Notice does not compel any work or reduce risk within a set time, the Council will generally **not use this as the primary action** if there are significant hazards requiring timely remediation—particularly for Category 1 hazards.
- **Emergency Remedial Action (Housing Act 2004, Section 40):** In cases of **imminent risk of serious harm** (typically Category 1 hazards posing an immediate danger to occupants or others), the Council has the power to carry out emergency remedial

works without prior notice. This step is considered exceptional and is taken only when necessary to remove an imminent risk. The Council can recover the costs incurred for such emergency work from the relevant person (usually the landlord).

- **Emergency Prohibition Order (Housing Act 2004, Section 43):** Where there is an **imminent risk of serious harm** to occupants or others due to a hazard (typically a Category 1 hazard), the Council may issue an Emergency Prohibition Order, which takes effect immediately to prohibit the use of all or part of a dwelling (for example, declaring a property or part of it immediately unsafe for habitation). This is an emergency measure to protect occupants or the public.
- **Suspension of Notices or Orders:** The Council has discretion, under certain circumstances, to **suspend an Improvement Notice or a Prohibition Order** (Housing Act 2004 provisions for suspended notices). Suspension may be considered, for example, to accommodate the needs of current occupants or to allow a landlord additional time to comply without vacating tenants, but only when such a suspension does not pose undue risk to occupant safety. The decision to suspend enforcement action will be made on a case-by-case basis.
- **Demolition or Clearance:** In extreme cases, demolition of a dwelling or clearance of an area (under Part 9 of the Housing Act 1985 or other applicable legislation) may be considered to deal with Category 1 or severe Category 2 hazards that cannot otherwise be remedied. Such actions would typically require additional procedures (e.g. Clearance Area declarations or Demolition Orders) and relevant approvals.

Non-compliance with formal notices is taken very seriously:

- **Failure to comply with an Improvement Notice (Housing Act 2004, Section 30)** is a criminal offence. The Council will usually follow such a failure with prosecution and/or the imposition of a civil financial penalty (see below).
- **Failure to comply with a Prohibition Order (Housing Act 2004, Section 32)** is a criminal offence and will typically also be followed by prosecution.

In addition to notices requiring remedial works, the Council may issue other types of formal notices or orders addressing various issues. These can include (but are not limited to): notices to **require information** (such as those under Section 235 of the Housing Act 2004 or Section 16 of the Local Government (Miscellaneous Provisions) Act 1976, as described above), **notices related to overcrowding** (such as Overcrowding Notices under the Housing Act 2004), and others.

6.1 Work in Default

In cases where a recipient of a statutory notice fails to carry out **required works** by the compliance date, the Council has the power (in certain circumstances) to **undertake the works in default**. This means the Council may step in to complete the works itself (or through contractors) and then seek to recover the full cost of the works, along with any associated administrative costs and fees, from the responsible person (usually the landlord).

The use of works in default is at the Council's **discretion** and there is **no duty** on the Council to undertake such works. The Council will decide whether to proceed with work in default on a case-by-case basis, potentially in addition to or instead of other enforcement action (such as prosecution or civil penalties for the non-compliance).

6.2 Emergency or Suspended Enforcement Action

As noted above, if a Category 1 hazard is present and poses an imminent risk of serious harm, the Council can employ **emergency measures**: issuing an **Emergency Prohibition Order** (Section 43, Housing Act 2004) to immediately prohibit use of all or part of a dwelling, and/or taking **Emergency Remedial Action** (Section 40, Housing Act 2004) without prior notice to remedy the hazard. When the Council takes Emergency Remedial Action, it will seek to recover any costs incurred, including administrative costs, from the landlord.

The Council also has discretion to **suspend enforcement action** (as mentioned above under Part 1 of the Housing Act 2004) in situations where a notice (Improvement Notice or Prohibition Order) has been served. Suspension might be used to minimize hardship or disruption to occupants, for example to align required works with an occupant's planned absence. However, suspending enforcement will only be considered if it does not put occupants or others at risk, and will typically involve specific conditions and a timeline for compliance.

6.3 HMO Licence Conditions

The Council may impose specific **conditions on licences for Houses in Multiple Occupation (HMOs)** to require works or actions that ensure properties meet certain standards (for example, installing additional amenities or safety measures, or complying with HMO Management Regulations). In general, however, local authorities are encouraged to address **Category 1 and Category 2 hazards via Part 1 of the Housing Act 2004 (Housing Health and Safety Rating System)** rather than solely through licence conditions. This is because Part 1 enforcement is usually more effective at reducing hazards in a timely manner. That said, the Council may still include reasonable and necessary licence conditions (for example, requiring installation or maintenance of particular safety facilities or equipment) even if the same outcome could be achieved under Part 1 powers.

Failure to comply with an HMO licence condition is a criminal offence and may lead to prosecution or the imposition of a civil financial penalty, as appropriate.

6.4 Other Legislative Alternatives

Where appropriate, the Council may consider using **other legislative powers** to remedy problems that lead to **Category 2 hazards**, if those powers are considered a more effective or appropriate enforcement approach in the circumstances. For example, issues might also be addressed under environmental health, building safety, or public health legislation, depending on their nature. The Council will choose the most relevant and effective enforcement tool available to address a given concern.

6.5 Prosecution

In some cases where a criminal offence has been committed under housing-related legislation, the **Council may pursue a prosecution**. However, if a **civil financial penalty** is available as an **alternative to prosecution** (as is the case for certain housing offences under the Housing Act 2004 and other legislation), the Council will generally reserve traditional prosecution for the more **serious cases**.

The decision to prosecute will depend on the **evidence available** and an assessment of the **public interest** factors, in line with the guidance provided by the Crown Prosecution Service (**the Code for Crown Prosecutors**). The Council will only commence a prosecution if there is sufficient evidence to provide a realistic prospect of conviction and if prosecution is in the public interest, taking into account factors such as the severity of the offence, the harm caused, and the culpability of the offender.

In many instances where an offence is committed by a corporate entity (such as a company), legislation allows the Council to hold **directors, managers, or other officers of the company** to account in addition to, or instead of, prosecuting the corporate body itself. The Council will assess each case individually to determine whether it is appropriate to take enforcement action against **individual officers** of a company as well as (or in place of) the company.

6.6 Civil Financial Penalties for Specified Offences

For certain housing-related offences, the law permits the Council to impose a **civil financial penalty** (as an alternative to prosecution). This section of the policy outlines the Council's use of civil penalties for specified offences in the housing sector.

The Council is empowered to impose a **civil financial penalty** (a monetary penalty) of up to £30,000 as an alternative to prosecution for the following offences under housing legislation:

- **Unlawful eviction or harassment of an occupier** (as defined by the Protection from Eviction Act 1977).
- **Failure to comply with an Improvement Notice** (*Housing Act 2004*, Section 30).
- **Offences in relation to licensing of Houses in Multiple Occupation (HMOs)** (*Housing Act 2004*, Section 72).
- **Offences in relation to the selective licensing of houses** (under *Housing Act 2004*, Section 95).
- **Failure to comply with an Overcrowding Notice** (*Housing Act 2004*, Section 139).
- **Failure to comply with HMO management regulations** (*Housing Act 2004*, Section 234 – offences under the Management of Houses in Multiple Occupation (England) Regulations).

- **Offences under Regulation 3 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020** (failure to comply with electrical safety duties in privately rented homes).
- **Failure to comply with a banning order** (*Housing and Planning Act 2016*, Section 21).
- **Failure to provide a written tenancy terms statement** (failure to give a tenant a written statement of terms, *Housing Act 1988*, Section 16D).
- **Failure to provide an existing tenant with information on relevant tenancy law changes** (failure to inform a tenant of changes made by the Renters' Rights Act 2025, per *Renters' Rights Act 2025*, Schedule 6, Paragraph 7(2)).
- **Attempting to let a property on a fixed-term contract exceeding the prescribed limits** (*Housing Act 1988*, Section 16E).
- **Attempting to end a tenancy orally or by an unlawful notice** (i.e. not using the proper legal procedures, under *Housing Act 1988*, Section 16E).
- **Serving an illegal eviction notice outside the prescribed Section 8 process** (*Housing Act 1988*, Section 16E).
- **Relying on a possession ground without reasonable prospect of success** (where the person does not reasonably believe the landlord could obtain possession on that ground, under *Housing Act 1988*, Section 16E).
- **Knowingly or recklessly providing false grounds for possession** (knowing the landlord would not be able to obtain possession, or being reckless as to this, under *Housing Act 1988*, Section 16J).
- **Failing to give prior notice to a tenant when required for use of certain possession grounds** (under *Housing Act 1988*, Section 16E).
- **Re-letting or re-marketing a property within 12 months of using certain grounds for possession** (specifically, re-letting after claiming a need to move in or sell, contrary to the 12-month no-let period under *Housing Act 1988*, Sections 16E and 16J).
- **Discriminating against prospective tenants on benefits or with children** (during the letting process, on the basis of receipt of benefits or presence of children, under *Renters' Rights Act 2025*, Sections 33 and 34).
- **"Rent bidding" offences – e.g. advertising a rental property without listing a rent, or encouraging offers of rent above a stated amount** (offences under *Renters' Rights Act 2025*, Section 56, which prohibits inviting or accepting bids over an advertised rent).

The Council's separate **Civil Financial Penalties Policy** provides detailed guidance on the use of civil penalties for these offences, including how penalty amounts are determined. This Enforcement Policy should therefore be read in conjunction with the Council's Civil Financial Penalties Policy, as the latter is a standalone document detailing the principles and process for imposing civil penalties.

6.7 Rent Repayment Orders

Part 2, Chapter 4 of the Housing and Planning Act 2016 empowers the Council to apply to the First-tier Tribunal (Property Chamber) for a **Rent Repayment Order (RRO)**. An RRO can require a landlord to repay a specified amount of rent, usually to either the tenant(s) or to the Council (if rent was paid through Housing Benefit or the housing element of Universal Credit), when the landlord has committed certain offences. **Section 48 of the Housing and Planning Act 2016** places a duty on the Council to consider applying for a Rent Repayment Order in cases where a landlord has committed a qualifying offence.

If a landlord has been convicted of a relevant offence, or has received a civil financial penalty for the offence, the Tribunal must order the **maximum amount of rent** (usually 12 months' rent) to be repaid, except in exceptional circumstances where a lower amount may be deemed appropriate. This power will be considered in response to all qualifying offences, provided there is sufficient evidence to support a successful application to the Tribunal.

The **qualifying offences** for which the Council will consider seeking a Rent Repayment Order include:

- **Unlawful eviction or harassment of occupiers** (as defined in the Protection from Eviction Act 1977).
- **Failure to comply with an Improvement Notice** (*Housing Act 2004*, Section 30(1)).
- **Offences in relation to *unlicensed* HMOs** (*Housing Act 2004*, Section 72(1)).
- **Offences in relation to *unlicensed* houses** (*Housing Act 2004*, Section 95(1)).
- **Failure to comply with an Improvement Notice** (*repeat offence*, second or subsequent occurrence under *Housing Act 2004*, Section 30(1)).
- **Failure to comply with a Prohibition Order** (*Housing Act 2004*, Section 32(1)).
- **Breach of a banning order** (*Housing and Planning Act 2016*, Section 21).
- **Using violence to secure entry** (to a property, *Criminal Law Act 1977*, Section 6(1)).
- **Knowingly or recklessly providing false or misleading information in relation to a possession ground** (*Housing Act 1988*, Section 16J(1)).
- **Letting or marketing a property within 12 months of using the "moving in" or "selling" ground for eviction** (*Housing Act 1988*, Section 16J(2)).
- **Continuous breach of certain tenancy reform requirements** (*Housing Act 1988*, Section 16J(3)).

Note: The above is a summary of the offences that can lead to a Rent Repayment Order. In many cases, these overlap with the offences for which civil penalties or prosecutions may be pursued. The Council may seek an RRO **in addition to other enforcement actions** (for example, after a successful prosecution or imposition of a civil penalty) particularly where public funds (e.g. housing benefit or Universal Credit) have been paid in respect of the tenancy in question and the landlord's offence is one of the above qualifying offences.

Section 49 of the Housing and Planning Act 2016 additionally allows the Council to assist tenants in applying for Rent Repayment Orders. In practice, the Council will usually assist tenants by referring them to, or advising them to seek help from, appropriate organisations (for example, specialist housing advisors or charities) that can support tenants through the RRO application process.

6.8 Banning Orders

Part 2, Chapter 2 of the Housing and Planning Act 2016 allows the Council to apply to the First-tier Tribunal for a **Banning Order** against a landlord or property agent who has been **convicted of one or more *banning order offences***. A Banning Order, once granted by the Tribunal, would prohibit the person from:

- **Letting housing** in England (entirely).
- **Engaging in letting agency work** in England.
- **Engaging in property management work** in England.
- Doing **two or more** of the above.

The Council will **consider applying for a Banning Order** in cases involving the most **serious offenders**. In determining whether to seek a Banning Order, the Council will take into account a range of factors, including: the severity and nature of the offence(s) committed; whether the landlord or agent has any history of prior offences or non-compliance (including whether they have been previously fined via civil penalties for any banning order offences); and the **overall harm or potential harm to tenants**. Other relevant considerations may include (but are not limited to):

- The actual or potential **harm caused to tenants** by the offender's actions (such as physical harm, financial loss, or severe distress).
- The need to **penalize the offender** for wrongdoing.
- The need to **deter the offender from repeating the offence**.
- The need to **deter others** from committing similar offences (i.e. the wider deterrent effect of a Banning Order in the private rental sector).

If a Banning Order is made, the individual is added to the **national database of rogue landlords and property agents** for the duration of the ban. The Council will adhere to any guidance on the use of Banning Orders and will follow legal procedures, including issuing a **notice of intent and a decision notice** as required by law when pursuing a Banning Order.

7.0 Costs and Charges

The Council incurs costs in carrying out its regulatory functions. Where legislation allows, the Council will seek to recover **reasonable costs and expenses** associated with its enforcement, licensing, and other regulatory activities. These costs may include, but are not limited to: costs arising from property inspections, investigations, evidence gathering, preparing and serving notices and other statutory documents, follow-up inspections or monitoring, and undertaking works in default or other interventions.

The Council may use all **available legal methods** to recover such costs. This can include, for example, initiating civil debt recovery action, placing **charges on properties** (e.g. placing a local land charge against the property so that costs are recouped upon sale), or other enforcement actions permitted by law to secure repayment. Where legally permitted, the Council may also apply **interest to outstanding debts** related to enforcement costs until such debts are paid in full.

8.0 Other Legislative Alternatives

The Council may also utilise and enforce **other relevant legislation** to address housing-related health, safety, and welfare issues that fall outside the scope of the Housing Act 2004. These additional powers, often exercised by the Council's Environmental Health and Private Sector Housing teams, complement the Housing Act provisions and enable a comprehensive response to substandard housing conditions. Such legislation includes the **Environmental Protection Act 1990** (for dealing with statutory nuisances such as premises in a condition that is prejudicial to health or a nuisance, smoke, fumes, accumulations of refuse, noise, etc.), the **Building Act 1984** (for remedying defective premises, dangerous or dilapidated buildings, and drainage defects), the **Public Health Act 1936** (for cleansing of filthy or verminous premises and addressing certain public health nuisances), the **Prevention of Damage by Pests Act 1949** (for control of rats, mice and other pests), as well as any **other relevant public health or environmental legislation**. The Council's officers will choose the most appropriate legal framework to resolve each issue in the interests of protecting public health and tenant safety, and will use these powers in conjunction with housing legislation as needed.

9.0 Complaints

Anyone who is directly affected by the Council's actions or decisions under this policy may make a complaint to the Council. Complaints or general enquiries related to this policy or the Council's housing enforcement actions can be made by email at housingadmin@swale.gov.uk or by post to: Housing Standards and Assistance, Swale Borough Council, Swale House, East Street, Sittingbourne, Kent, ME10 3HT.

Please note the following in relation to complaints:

- **Ongoing Legal Action:** A service user (e.g. a landlord or tenant affected by enforcement action) may still lodge a complaint even if the Council has already initiated legal proceedings (such as issuing a notice or beginning a prosecution). However, the act of making a complaint will **not halt or delay legal action**. Enforcement and legal timescales (for example, compliance periods on a notice or court dates for a prosecution) will continue unless and until the Council determines that suspension or another remedy is appropriate.
- **Statutory Appeals:** If a statutory notice or order has been served (for example, an Improvement Notice, Prohibition Order, civil penalty notice, etc.), making a complaint to the Council **does not replace or extend the legal right to appeal** that

notice or order. Any appeal against a notice or order must be made through the proper legal channels (such as the Residential Property Tribunal/First-tier Tribunal, where relevant) within the time frames specified in the notice or related legislation. Lodging a complaint with the Council will **not grant additional time** to comply with requirements of a notice or to lodge an appeal.

- **Disagreement with Notices:** If a recipient disagrees with the serving of a statutory notice or order, they should refer to the **appeal information provided with that notice or order** and follow the prescribed appeal process, if one exists, rather than (or in addition to) using the Council's complaint process. The notes accompanying the notice or order will typically outline any available appeal rights and the procedure to follow.

The Council will address all complaints in line with its corporate **Complaints Policy**. This ensures that complaints are dealt with fairly and promptly, and that, where necessary, any lessons learned are incorporated into service improvements. Complaints about the content of this Enforcement Policy, or the conduct of officers under this policy, will be recorded and handled in accordance with our standard procedures.

10.0 Review of the Policy

This Policy will be subject to review and amended to reflect any change in legislation, corporate policy or official guidance. Any amendment shall be in line with meeting the requirements of the legislation and the public interest. Any minor changes to this Policy, being those that are required by amendments to legislation or typographical amendments, are authorised to be made by the Head of Housing and Community Services.

Appendix 1 – Statement of Principles: Smoke & Carbon Monoxide Alarm Regulations (2015, as amended 2022)

This section outlines the legal duties of landlords to install and maintain smoke and carbon monoxide (CO) alarms in rented properties and explains Swale Borough Council's approach to enforcement. Under Section 13 of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (as amended in 2022), the Council must publish these principles, which guide how it determines financial penalties (up to £5,000 per breach) for landlords who fail to comply with the alarm requirements.

Landlord Duties under the Regulations

Landlords must ensure:

- **Smoke Alarms:** A working smoke alarm is installed on every storey of a rental property that is used wholly or partly as living accommodation.
- **Carbon Monoxide Alarms:** A working CO alarm is installed in any room used as living accommodation where there is a fixed combustion appliance (e.g. a solid-fuel fire, wood burner, or boiler – *gas cookers are exempt*).

- **Initial Alarm Checks:** All required alarms are tested on the first day of each new tenancy to confirm they are in proper working order.
- **Repair/Replacement of Alarms:** Since 1 October 2022, if a tenant (or their representative) reports that a required smoke or CO alarm isn't working, the landlord must repair or replace that alarm as soon as reasonably practicable.

Note: "Living accommodation" includes any room used wholly or partly as living space – for example, bedrooms, lounges, dining rooms, kitchens, or bathrooms (including any room used for sleeping).

Enforcement Procedures for Non-Compliance

Remedial Notice (Regulation 5): If the Council has reason to believe a landlord has breached any of the above duties, it will serve a Remedial Notice. This notice will specify what actions the landlord must take to comply and will give the landlord at least 28 days to perform the required actions.

Failure to Comply with a Remedial Notice (Regulation 8): If the landlord fails to complete the required actions within the specified time frame:

- The Council may arrange for the necessary work to be carried out (for example, install or repair the alarms itself).
- The Council will then impose a financial penalty on the landlord for the failure to comply.

Penalty per Breach: Each individual duty not complied with can attract a separate financial penalty of up to £5,000. (In other words, penalties are levied per breach, not per property or per inspection. For example, failing to install both a smoke alarm and a required CO alarm could lead to two penalties.)

Standard of Proof: The Council will impose a penalty in every case where it is satisfied – on the balance of probabilities – that the landlord failed to comply with the Remedial Notice. "Balance of probabilities" is the civil legal standard, meaning it is more likely than not that the breach occurred.

No Penalty with Reasonable Excuse: A penalty will not be issued if the landlord can prove they took all reasonable steps to comply with the Remedial Notice. For instance, if a landlord provides evidence of persistent attempts to access the property to install or fix alarms (e.g. copies of letters, emails, or texts to tenants) and the tenants refused access, the Council may accept this as a reasonable excuse for non-compliance and decide not to impose a fine.

Penalty Amounts and Calculation

For each breach where a financial penalty is imposed, the amount is determined as follows:

- **First Breach:** Baseline penalty of £3,000. This can be increased up to £5,000 or reduced to a minimum of £2,500 based on aggravating or mitigating factors (see

below). A penalty below £2,500 would be considered only in exceptional circumstances that go beyond the usual mitigating factors.

- Subsequent Breach (by the same landlord): £5,000 (the maximum). The Council will generally impose the full £5,000 for repeat offenses to serve as a strong deterrent. Only in truly exceptional cases would a repeat offender receive a lower penalty.

Factors Influencing Penalty Adjustments: After identifying the baseline, the Council examines the specifics of the case for any factors that justify adjusting the penalty:

Aggravating factors (may increase the penalty toward £5,000):

- Multiple or serious failures – e.g. several required alarms were missing or non-functional.
- Extended or deliberate non-compliance – the landlord ignored the rules for a long time or after prior warnings.
- Higher risk to occupants – the breach put many or vulnerable residents (e.g. children, elderly) at greater risk from fire or CO.
- Previous offences – a history of similar safety breaches or other housing-related offences.
- Obstruction – the landlord hindered the Council’s investigation or remedial work.

Mitigating factors (may decrease the penalty toward £2,500):

- Prompt remedy – the landlord acted quickly to fix the problem upon being notified.
- Evidence of compliance – proof that all required alarms were installed and working at the tenancy start (indicating a one-off lapse).
- Tenant prevented access – the landlord made genuine, documented attempts to comply (e.g. tried to arrange repairs) but couldn’t complete the work due to tenant refusal or other factors beyond their control.
- Low risk & good history – the breach occurred in a low-risk setting (e.g. a small property with few occupants), and the landlord otherwise has a strong record of compliance.

For clarity, the typical penalty levels are summarized below:

Occurrence of Breach	Guideline Financial Penalty
First Offence	£3,000 (base figure). <i>May be reduced to £2,500 with strong mitigating factors, or increased up to £5,000 with significant aggravating factors.</i>
Second or Subsequent Offence	£5,000 (maximum). <i>Usually applied in full for repeat offenders; reductions from £5,000 are rare and only for exceptional circumstances.</i>

Appendix 2 – Statement of Principles (Minimum Energy Efficiency Standards in Private Rented Properties)

Landlord Obligations under MEES:

Landlords must comply with the domestic *Minimum Energy Efficiency Standards (MEES)* set by the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015. In summary:

- **Minimum EPC Rating: *Prohibition on low-rated properties.*** It is unlawful to let a residential property with an Energy Performance Certificate (EPC) rating below “E” (i.e. F or G) unless a valid exemption is registered. Landlords must ensure each rented property has an EPC rating of E or better, or that an official exemption is in place.
- **Continued Letting: *No renting out sub-standard properties beyond deadlines.*** Landlords cannot continue to rent out an F or G rated property after the relevant compliance date (even if no new tenancy is starting) unless an exemption is registered on the government’s PRS Exemptions Register.
- **Compliance Notices:** If the Council suspects a breach of MEES, it may serve a Compliance Notice requiring the landlord to provide evidence of the property’s EPC rating or exemption status. Landlords must comply with any such notice by providing accurate information. Failure to respond fully and truthfully is itself an offence under the Regulations.

Enforcement & Penalty Process:

When the Council determines (on the balance of probabilities) that a landlord has failed to meet the MEES requirements within the last 18 months, it can issue a penalty notice. This notice may include:

- **Financial Penalty:** A fine (per breach) as outlined in the table below.
- **Publication Penalty:** The Council may publish the landlord’s details and the breach on the publicly accessible PRS Exemptions Register (typically for at least 12 months). This may include the landlord’s name (or company name), the property address, the nature of the breach, and the penalty amount, serving as a public notification of non-compliance.

Before issuing a penalty notice, the Council will typically have given the landlord an opportunity to address the breach (for example, through a compliance notice or other communication). If the landlord then fails to take appropriate action, penalties will be imposed as per the following framework:

Breach of MEES requirement	Financial Penalty (per breach)
Letting a sub-standard property (EPC rating F or G) for <3 months (no valid exemption)	£2,000 fine
Letting a sub-standard property (EPC rating F or G) for ≥3 months (no valid exemption)	£4,000 fine

Providing false or misleading information on the PRS Exemptions Register	£1,000 fine
Failure to comply with a MEES Compliance Notice from the Council	£2,000 fine

- No double penalties for the same offence: If a single breach falls into both time-based categories above (for example, a continuous period of non-compliant letting that crosses the 3-month mark), the higher penalty will apply – the fines are not added together for that single breach.
- Combining different penalties: Penalties for false/misleading information and/or non-compliance with a notice can be issued in addition to the fine for renting out an F or G rated property. However, the total financial penalties for a single property per enforcement action will not exceed £5,000 (the maximum allowed by law for domestic MEES cases).

Penalty Calculation and Considerations:

The penalty amounts are set with regard to the severity and duration of the offence, and the level of cooperation by the landlord:

- A longer period of unlawful letting (more than 3 months) is treated more severely (higher fine) than a short-term breach.
- Deliberate misrepresentation (false exemption claims) and non-cooperation with the Council (ignoring compliance notices) are considered serious offences and incur separate penalties.
- Repeat or persistent non-compliance with MEES is likely to result in the maximum fines.
- Conversely, if a landlord promptly corrects a breach (for example, by quickly improving a property's EPC rating or registering a valid exemption) or demonstrates genuine efforts to comply, the Council will take those actions into account. Such cooperation, while it does not erase the breach, may influence the Council's decision on whether to impose the full penalty or only issue a warning for minor, first-time infractions. *(However, any discretion will be exercised in line with legal guidelines – significant or willful breaches will still attract substantial fines.)*

Key Points:

- EPC "E" Minimum: Renting out properties below EPC E (without exemption) is illegal and subject to fines.
- Penalty Bands: Fines are tiered by the length of the illegal rental period: higher penalties for longer non-compliance.
- False Info & Non-Compliance: Lying about exemptions or ignoring Council notices are separate offences, each carrying additional fines.
- Maximum Cap: The total penalty per property per enforcement action is capped at £5,000, ensuring proportionality.
- Public Register: Significant breaches will be publicized on the PRS Exemptions Register, which can affect a landlord's reputation.

These principles ensure that enforcement of MEES is fair but firm: penalties should always deter non-compliance and remove any financial benefit from breaking the law, while being proportionate to the offence. The Council will review this policy periodically and update it to reflect any changes in legislation or Government guidance on MEES.

Appendix 3 – Other Relevant Legislation: Housing & Public Health Enforcement Powers

Legislation & (Key Sections)	Summary of Local Authority Enforcement Powers
Environmental Protection Act 1990 (Part III – Statutory Nuisances: Sections 79–82)	Empowers councils to deal with statutory nuisances . The Council can serve an Abatement Notice (Section 80) when premises or activities cause issues deemed prejudicial to health or a nuisance (e.g. dampness/mould, accumulations of rubbish, pest infestations, noise, smoke/fumes). Failure to comply with an abatement notice is a criminal offence; the Council may prosecute offenders and/or carry out works in default to abate the nuisance and recover costs.
Building Act 1984 (Sections 59, 76–79)	Provides powers to address structural or sanitary problems in buildings. For example: Section 59 allows notices requiring proper drainage where drains are inadequate or injurious to health; Section 76 permits the Council to remedy premises that are in a defective state and pose a health risk (as an expedited alternative to a statutory nuisance process); Sections 77 & 78 allow the Council to deal with dangerous structures (requiring owners to make them safe, or taking emergency action to remove immediate dangers); Section 79 enables the Council to require the repair or demolition of ruinous or dilapidated buildings that are negatively affecting the area. Non-compliance with such notices can lead to the Council executing works in default and recovering costs.
Public Health Act 1936 (Section 83)	Enables the Council to address filthy or verminous premises . Under Section 83, the Council can require the cleansing and disinfecting of filthy premises and the eradication of vermin (pests such as rats, mice, insects) in any premises that are in such a condition as to be prejudicial to health. If an occupier or owner fails to comply with a notice to cleanse a filthy or verminous property, the Council may carry out the necessary cleaning or pest treatment and recover costs. (Other Public Health Act 1936 provisions address sanitation, drainage, and similar issues, which the Council will also use where applicable.)
Prevention of Damage by Pests Act 1949 (Sections 2, 4)	Imposes a duty on the Council to keep the Borough free from rats and mice as far as practicable. Section 4 of the Act empowers the Council to serve notice on owners or occupiers of land or premises requiring them to take specified steps for the destruction of rats or mice , or to keep land/premises free

	from rodents. This can include requiring pest control treatments and removal of accumulations of refuse or other conditions likely to attract vermin. If a person fails to comply with a notice, the Council can carry out the work in default, prosecute the offender, and recover the costs of the works.
Other relevant legislation (various)	The Council may also use additional legal powers as appropriate to protect public health and safety in residential environments. For example, the Local Government (Miscellaneous Provisions) Act 1982, Section 29 allows the Council to secure abandoned or unguarded properties against unauthorised entry or to prevent them from becoming dangerous. The Public Health Act 1961 provides expedited powers to deal with issues like accumulations of rubbish (Section 34) and minor drainage or sanitary defects (Section 17). These and any other relevant statutory provisions may be used in conjunction with housing legislation to achieve the best outcomes in tackling problem premises.

This Enforcement Policy (including all appendices) is subject to periodic review and may be updated to reflect changes in legislation, guidance, or local priorities. By enforcing the above legislation and standards robustly yet fairly, Swale Borough Council is committed to ensuring that all residents in the Borough have a safe, healthy, and decent place to live.