Tenancy Breach Policy

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To be reviewed: February 2018
Version No: 2.0

Aims of the Policy
The aims of this policy are:
• To set out our approach to preventing and resolving tenancy breaches.
• To give staff clear guidance so that we deal with anti-social behaviour and other tenancy breaches effectively.
• To specify standards which should be met in dealing with cases reported.

Definitions
A Tenancy Breach can be defined as:
• Breaking any of the responsibilities or rules set out in customer’s tenancy agreement.

The following are examples of breaches of a tenancy where EPIC can take action.
• Tenancy Fraud – this includes people claiming benefits and not living in their home, people moving out and giving the keys to friends and people obtaining housing through deception by not being honest on their application.
• Animal related problems - Such as dog fouling, barking, letting an animal have primary use of the garden over the other tenants, keeping dangerous or banned animals in a property, allowing an animal to attack another person or animal etc.
• Rubbish and Fly tipping - Using the property (including the garden) to dump or store rubbish is a breach of a tenancy. Arrangements must be made to dispose of rubbish immediately.
• Drug related issues - Using or taking illegal drugs, producing illegal drugs or allowing them to be produced, used or sold on the premises.
• Property related - Allowing the property’s condition to deteriorate, damaging the property, completing unauthorised works, abandoning the property, subletting etc.
• Non-Access to EPIC staff or its contractors - Not allowing EPIC access for gas services, inspections, tenancy reviews or to complete repairs are all breaches of tenancy.

Anti-social behaviour is defined as conduct which:

“has caused, or is likely to cause, harassment, alarm or distress to any person, or is conduct capable of causing nuisance or annoyance to a person in relation to that person’s occupation of residential premises, or conduct capable of causing housing-related nuisance or annoyance to any person.”

This definition is contained in Anti-social Behaviour, Crime and Policing Act 2014. Our Tenancy Agreement contains specific clauses relating to nuisance, fraud and harassment.
The following are examples of Anti-social behaviour:

- Harassment or Racial Harassment - (including threats and intimidation). Harassment is behaviour which is intended to cause fear, intimidation or distress in a specific person or particular groups of people. Harassment is deliberately targeted behaviour; it often takes the form of a sustained campaign of behaviour. Although this is not an essential feature, it is a common element. This should be considered when handling cases where anti-social behaviour is intentional, malicious, or targeted at specific people. EPIC recognises the provisions of the Protection from Harassment Act 1997 and the Crime and Disorder Act 1998, which makes the act of harassment a crime sanctioned by imprisonment and/or fines.
- Noise and nuisance behaviour - Such as playing music too loudly, arguing, banging doors, undertaking noisy tasks such as vacuuming late at night, having large groups of people in attendance on a regular basis are all examples of noisy or nuisance behaviour for which EPIC can take action.
- Criminal Damage, Vandalism or Graffiti - Such as purposefully damaging other people’s or organisations property, vandalising such property or producing graffiti of an offensive or racist manner.
- Vehicle related problems - Such as parking in someone’s driveway or blocking their driveway, revving an engine to cause a nuisance etc.
- Violence – Committing violent acts or threatening violence in or around the property is a breach of the tenancy.
- Domestic Violence - Domestic violence is violent, threatening, or controlling behaviour by one person against a member, or former member of the same household (i.e. it does not need to be a partner or ex-partner).

Throughout the rest of this document when we refer to Tenancy Breaches we include Anti-social Behaviour.

**Our Approach to Dealing with Tenancy Breaches**

**Multi-Agency Working and Information Sharing**

We will work in partnership with other agencies to ensure that all measures available for dealing with tenancy breaches are considered. To achieve this we will exchange information with partners. There are clear guidelines governing the circumstances and content of any such information exchange. The Crime and Disorder Act 1998 and Data Protection Act 1998 allows for the sharing of information with other agencies, such as the police, if this is to help prevent or detect crime and disorder. We are also a signatory to the One Staffordshire Information Sharing Protocol. We will attend case review meetings and other anti-social behaviour fora where there are issues being discussed that are pertinent to our customers.

We will publicise the availability of the “Community Trigger” which results in initiating a multi-agency case review of repeated anti-social behaviour (defined as three complaints of anti-social behaviour over a six month period.) In Staffordshire, the Community Trigger can be enacted by the victim (or a person acting on their behalf) by calling the 101 non-emergency police number and announcing that they wish to use the Community Trigger.

In addition in cases of Tenancy Fraud we work closely with the Council’s Corporate Fraud Unit to help them to identify and deal with fraud.

**Prevention of Tenancy Breaches**

EPIC will use a range of preventative measures to reduce the incidence of anti-social behaviour. These will include but are not limited to:
- Identifying risk factors when people apply for housing with us via the home visit.
- Seeking landlord references and probation disclosures where applicable.
- Ensuring that anyone not in employment participates in our coaching programme.
- Excluding or suspending any applicant from registration when there is evidence that their behaviour has been unacceptable and serious enough to make them unsuitable to be a tenant. It will only be applied in circumstances that are not unlawfully discriminatory (for more information see EPIC’s Allocations Policy).
- Using “Starter” (assured shorthold) tenancies
- Closely monitoring new tenancies, and offering advice to increase the awareness of tenants of types of behaviour which are anti-social
- Identifying tenants who need extra support and making appropriate referrals to external agencies
- Clearly explaining tenants’ obligations at the start of the tenancy
- Attending regular meetings and working in partnership with local police, the local authority, and other agencies.
- Tackling “hotspot” areas jointly with partners
- Publicising our successes in tackling previous incidents of anti-social behaviour, in order to encourage people to report problems, and as a deterrent.
- Issuing Section 21 notices at the beginning of tenancies where we think there may be a risk of tenancy breaches.
- Implementing a customer reward scheme that encourages pro-social behaviour.

**Tenancy Breach Procedure**

**Identifying or Receiving Reports of Tenancy Breaches**

Tenancy Breaches may be reported by any person or organisation. Complainants may remain anonymous. All complaints will be taken seriously, even if the report is anonymous.

When a report is received a detailed file note should be taken which includes the following information:

- Complainant name and address
- Alleged Perpetrator name and address
- Date of complaint.
- Details of the complaint (Who, What, When and Where)
- Any other information useful to the investigation.

If the report is as a result of an Estate Walkabout, the above file note is not required, however a summary file note should be maintained on the file with the notes of any investigation and outcome.

**Response**

**When the Alleged Perpetrator is Not an EPIC Tenant**

The case will be referred as follows:

Council tenants – The responsible Housing Officer at Stoke-on-Trent City Council

Other residents - An assessment of the severity will be made (see below). If it is low then initial action may be taken in the form of a letter or visit and if not resolved the case may be referred to the Stoke Safer City Partnership Officer. If the incident is believed to be medium or high risk, it will be referred immediately to the Stoke Safer City Partnership Officer and / or the Police.

**When the Alleged Perpetrator is an EPIC Tenant**

When a report is received it should immediately be passed to the Housing Officer responsible for that patch.
The Housing Officer will then attach a risk rating to the complaint as follows:

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<th>Risk Rating</th>
<th>Examples / Immediate Action</th>
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| Low         | Dog fouling, rubbish, minor noise such as doors banging or arguments etc.  

The investigation must begin within 7 working days of the complaint being received. |
| Medium      | Drug related, aggression (but not actual violence), threats, abandonments, persistent noise etc. and tenancy fraud.  

Repeated “Low” risk incidents impacting on the complainant’s quality of life.  

The investigation must begin within 5 working days of the complaint being received. |
| High        | All cases that involve violence, racial harassment, hate crime or put a person’s health and safety at risk (such as tampering with gas supplies) etc.  

An Action Plan outlining the approach of how the complaint will be addressed to be agreed with the complainant within 1 working day. |

**Investigation**

If the alleged behaviour is, or may be, criminal, we will inform and liaise with the Police. If the report alleges behaviour which, if proven, would constitute a breach of the tenant’s obligations under the Tenancy Agreement, we will investigate. We will do so without pre-judging the outcome. This approach will be made clear to complainants. Complainants will be assured that their details will not be disclosed without their permission. The Investigation process is mapped out at Appendix A.

It is impossible to set out how long an investigation should take, however, it is advised that the complainant and perpetrator are given regular updates at least every 10 working days until a decision is made and the case closed. This is the same for cases of any risk rating.

Upon a high risk case being reported, the first stage of the investigation is for the Housing Officer to arrange a discussion with the complainant, either over the telephone or face to face to draw up an agreed action plan of how the Housing Officer intends to address the problems. This must be done within one working day of the complaint being received and the action plan must be written down and a copy kept on file.

For medium and low cases, the investigation must start within the timescales set out above and as already noted, must include regular updates to the complainant and perpetrator until the case is closed, with copies of all correspondence and file notes being included on the relevant house file for the alleged perpetrator.

In cases where repeated breaches are alleged we will provide nuisance logs so that complainants can record problems. If the breach is serious enough the complainant and witnesses will be advised to contact the police.
When interviewing the alleged perpetrator and witnesses, accurate and detailed notes must be kept. Witnesses will be interviewed separately where possible. The alleged perpetrator will be able to give their version of events. When possible, staff will give positive advice on an acceptable solution to the complaint. When further investigation is needed the following measures may be taken:

- Informal discussions with those involved.
- Witness statements. These should be typed into a standard format acceptable to the court, and signed by the witness.
- Referrals to other agencies such as Environmental Health, Police, Mediation services.
- Use of private investigators.
- Use of CCTV, undercover surveillance, involving audio and video recording.

Where the complaint includes allegations of domestic violence we will, with the complainant’s consent, help them to access specialised help from other agencies. Where appropriate, we will put in place additional security measures such as additional or replacement locks and window locks. If a perpetrator of domestic violence has caused damage to our property, it will be repaired as a priority and we will take action against the perpetrator to recover the cost (where appropriate in conjunction with the Police).

**Action Against Tenants Proven to Have Breached their Tenancy**

We do not have to be certain, or have proof beyond reasonable doubt, that a tenant has breached their tenancy agreement. The level of proof required for us to take action is the balance of probabilities: given the evidence, is it likely that the tenant has behaved in breach of their tenancy?

In cases where a report that a tenant has behaved anti-socially or breached their tenancy is proved on the balance of probability, the officer handling the case will take action using one of the following methods:

- informal advice / verbal warnings
- written warnings
- final written warnings
- Using mediation techniques and services.
- Asking perpetrators to change their behaviour / give a written undertaking to behave or not behave in specified ways
- Use of Community Harm Statements
- Acceptable Behaviour Contracts
- Legal remedies including applying for possession, Demoted Tenancy Orders, use of the mandatory route for possession, civil injunctions, and Community Protection Notices.

**Measures available under the Anti-social, Behaviour, Crime and Policing Act 2014**

Where informal measures have failed and a legal sanction is required to deal with the tenancy breach or anti-social behaviour, we will consider use of the following measures where appropriate. Reference should be made to the Statutory guidance for frontline professionals when considering use of the powers below.

**Civil Injunction**

We can apply to the County Court (or the youth court for under 18s) where on the balance of probabilities, the tenant, a household member, or visitor has engaged in conduct capable of causing a nuisance or annoyance. The injunction can prohibit certain behaviours or include positive requirements to get the perpetrator to address the underlying causes of their anti-social behaviour. A breach of the injunction for over 18s is treated as a contempt of court with an unlimited fine or up to 2 years in prison. Unlike its predecessor, the Anti-social behaviour order (ASBO), a civil injunction is based on obtaining a civil standard of proof.
Community Protection Notice
A Community Protection Notice is intended to deal with particular, ongoing problems or nuisances which negatively affect the community’s quality of life by targeting those responsible. It can be used to deal with issues such as graffiti, rubbish, noise or nuisance animals. The breach of the notice is a criminal offence punishable by a fixed penalty notice or a fine. At present, Community Protection Notices can only be issued by local authorities; however each local authority has the power to designate social landlords to issue such notices in the future.

Closure Power
Although this power can only be used by the police or local authorities, it may be necessary for us to consider requesting that they use this power where a property needs to be closed quickly as it is being used, or is likely to be used to commit nuisance or disorder. The police or the Council can issue a closure notice for up to 48 hours on a property where nuisance to the public or disorder near the premises is otherwise likely to occur. A closure order can then be applied for at the magistrates court for up to 6 months to restrict all access to the premises.

Absolute Ground for Possession
The Act introduces a new absolute ground for possession for assured tenancies where anti-social behaviour or criminality has already been proven by another court. To use the power, the tenant, a member of their household, or a visitor, must meet one of the following conditions:

- They have been convicted of a serious offence (See Appendix B)
- They have been found by a court to have breached a civil injunction
- They have been convicted of breaching a criminal behaviour order
- They have been convicted for breaching a noise abatement notice
- The tenant’s property has been closed for more than 48 hours under a closure order.

Where we plan to use the Absolute Ground we will give the tenant the option to appeal our decision at the time of issuing the Notice of Seeking Possession. The appeal will be heard under the terms of our Appeals Procedure.

Shorthold Tenants
All shorthold tenants who breach their tenancy agreement during the first twelve months of their tenancy will at least have their shorthold tenancy extended but may have a Section 21 notice served immediately. In cases where a high risk breach is proven, action to end the tenancy will begin immediately.

Housing Officers may decide to serve a Section 21 notice at the start of a tenancy where risk factors have been identified during the application process (such as domestic violence, arrears or property neglect). In addition, for all applicants that are rejected but housed on their appeal being upheld, a Section 21 notice will be served within 7 days of tenancy commencement.

Mediation
In cases where all parties are willing to communicate directly or indirectly to try to resolve the issues between them, we will use mediation techniques and services to help them.

Legal Action
Where legal action is deemed necessary, the Chief Executive or the Director of Housing will review the case before legal action commences. Any witness attending court will be offered transport to and from the court. Advice on the court process will be given to the witness at least three days before the court hearing. In cases where a witness feels
intimidated, the court may be able to hear evidence without the witnesses’ identity being disclosed. Alternatively EPIC staff may be permitted to give “hearsay” evidence (i.e. telling the court what the complainant has reported to us without giving their name).

**Supporting Perpetrators, Complainants and Witnesses**

EPIC recognises the positive effect that support may have on perpetrators when considering anti-social behaviour issues that result directly or indirectly from:

- Drug abuse
- Alcohol abuse
- Mental illness
- Disability

In such cases, EPIC will seek support for tenants who need it by referring them to external agencies such as Adsis, Arch, Mind North Staffs, Changes etc.

EPIC will also support people who suffer from acts of anti-social behaviour, those who witness them, and those who complain about such behaviour. Support can include:

- Providing emergency contact points.
- Linking in with external agencies such as Arch, Women’s Aid, and Victim Support etc.
- Linking victims to community alarm systems, issue with personal alarms or mobile phones.
- Treating any damage by perpetrators as emergency repairs where appropriate.
- Ensuring that the complainant knows they have a contact point for support at all times.
- Removing graffiti within 24 working hours.
- Improving home security where appropriate including installing surveillance cameras in communal areas or in the victim’s home.
- Holding meetings with the complainant and local police. In circumstances of extreme risk of harm, we will consider alternative temporary, emergency accommodation.

**Recording Incidents**

An audit trail of all paperwork, correspondence and file notes relating to each case must be kept on the house file of the alleged perpetrator. However, all incidents will also be recorded on the anti-social behaviour system (currently a spread sheet). The purpose of the electronic record is to ensure that complaints can be monitored and reported on easily. For that reason the following categories should always be used for recording complaints:

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**Closing a Case**
Cases will be closed only when the complainant is satisfied with the outcome. The exception to this rule is where the case has been fully investigated and the complainant wants unreasonable action taken which goes against our policies and procedures. Once the case has been officially closed the complainant will receive verbal or text message confirmation of this.

**Training**
Staff will be given appropriate training to enable them to deal with tenancy breaches effectively.

**Equality and Diversity Statement**
We recognise that there are some groups who are especially at risk of suffering from anti-social behaviour. We will ensure that there is a separate Equality and Diversity Policy in place. In addition, in instances of anti-social behaviour that are believed to be racially motivated, all incidents will be reported to the Police and support will be sought from an outside agency, should the victim require it.

For any legal case, an equality impact assessment should be undertaken to take into consideration any disabilities or limitations of either the perpetrator or the complainant. If we know that the perpetrator has a disability, then prior to commencing with court action a justification exercise must be completed to avoid a breach of the Disability Discrimination Act 1995. We must also consider as to whether the perpetrator has the capacity (within the meaning of the Mental Capacity Act 2005) to instruct solicitors or whether it may be necessary for a litigation friend to be appointed.

We will ensure that equality and diversity issues are given high priority in any reviews concerning the Company’s approach to anti-social behaviour.

We will provide a translation service to assist individuals whose first language is not English. EPIC will provide information in other formats for those who need them.

**Monitoring and Reporting**
- Tenancy Breach performance is reported monthly to the Management Team via a Key Performance Indicator.
- Anti-social behaviour satisfaction is monitored by the Star Survey undertaken with customers every 2 years.

The Director of Housing will carry out monthly tenancy management meetings with the Housing Officers to ensure that breach cases are being dealt with appropriately, and will review all high risk cases or cases going to court on a monthly basis.

**Responsibilities**
- Any member of staff can take the details of an initial report of a tenancy breach.
- Housing Officers will carry out the investigation, resolve cases including liaising with the Chief Executive or Director of Housing where legal proceedings are necessary and update the IT system accordingly.
- The Director of Housing will carry out spot checks and review all high risk cases on a monthly basis.

**Review Mechanism**
The Tenancy Breach Policy will be reviewed every 3 years.
Appendix A: Investigation of a Tenancy Breach

Does the report allege any criminal act (e.g. assault, criminal damage)?

Yes

Report the matter to Police and liaise with them in your investigation. Note that a police decision not to take action does NOT necessarily mean that we will not do so (criminal proof v civil proof).

No

What is the Risk Rating for the case?

High  Medium  Low

Agree an Action Plan with the Complainant within 1 working day.

Interview:
- The complainant
- The alleged perpetrator
- Witnesses

(Interview individuals separately where possible)

Ask all parties for full details:
- What happened?
- When?
- Who did what?
- Who saw/heard it?
- What were the effects on the victim(s)?
- Were there any mitigating circumstances (e.g. provocation)?

Gather all other evidence:
- Visual / Photographs
- Film evidence
- History – previous behaviour
- Etc...

Consider:
- The seriousness of the breach
- The effects of the behaviour on the complainant/EPIC/others
- Previous breaches and any action we have taken
- The preferred outcome of the complainant
- The attitude of the perpetrator (e.g. remorse/willingness to sign an undertaking not to repeat the behaviour/take remedial action)

Take action:
- Informal / Written / Final Written warning
- Perpetrator to sign undertaking
- NOSP/Section 21 Notice
- Demotion Order
- Other legal action

Take agreed action & close case

Consider:

Yes

Breach Occurred

No

Ask the Complainant if they identify the perpetrator?

Yes

Does the Complainant identify the perpetrator?

Yes

Challenge the alleged perpetrator. Do they accept responsibility?

No

Challenge the alleged perpetrator. Do they accept responsibility?

No

Assess all evidence & reach your conclusion:
What do you believe happened on the balance of probabilities?
Has there been a breach; if so which clauses of Tenancy Agreement?
What course of action do you propose?

No Breach

No

Explain your decision to complainant and perpetrator.
Confirm either verbally (making a file note) or text message the outcome and that the case is closed.

Yes

Explain your decision to complainant and perpetrator.
Confirm either verbally (making a file note) or text message the outcome and that the case is closed.

Report the matter to Police and liaise with them in your investigation. Note that a police decision not to take action does NOT necessarily mean that we will not do so (criminal proof v civil proof).
Appendix B – Serious Offences which can be considered for the Absolute Ground for Possession (Schedule 2A to the Housing Act 1985)

Murder.
Manslaughter.
Kidnapping.
False imprisonment.

An offence under any of the following sections of the Offences against the Person Act 1861—
(a) section 4 (soliciting murder),
(b) section 16 (threats to kill),
(c) section 18 (wounding with intent to cause grievous bodily harm),
(d) section 20 (malicious wounding),
(e) section 21 (attempting to choke, suffocate or strangle in order to commit or assist in committing an indictable offence),
(f) section 22 (using chloroform etc. to commit or assist in the committing of any indictable offence),
(g) section 23 (maliciously administering poison etc. so as to endanger life or inflict grievous bodily harm),
(h) section 24 (maliciously administering poison etc. with intent to injure, aggrieve or annoy any other person),
(i) section 27 (abandoning or exposing children whereby life is endangered or health permanently injured),
(j) section 28 (causing bodily injury by explosives),
(k) section 29 (using explosives etc. with intent to do grievous bodily harm),
(l) section 30 (placing explosives with intent to do bodily injury),
(m) section 31 (setting spring guns etc. with intent to do grievous bodily harm),
(n) section 38 (assault with intent to resist arrest),
(o) section 47 (assault occasioning actual bodily harm).

An offence under any of the following sections of the Explosive Substances Act 1883—
(a) section 2 (causing explosion likely to endanger life or property),
(b) section 3 (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property),
(c) section 4 (making or possession of explosive under suspicious circumstances).

An offence under section 1 of the Children and Young Persons Act 1933 (cruelty to children).
An offence under section 1 of the Infanticide Act 1938 (infanticide).

An offence under any of the following sections of the Public Order Act 1986—
(a) section 1 (riot),
(b) section 2 (violent disorder),
(c) section 3 (affray).

An offence under either of the following sections of the Protection from Harassment Act 1997—
(a) section 4 (putting people in fear of violence),
(b) section 4A (stalking involving fear of violence or serious alarm or distress).

An offence under any of the following provisions of the Crime and Disorder Act 1998—
(a) section 29 (racially or religiously aggravated assaults),
(b) section 31(1)(a) or (b) (racially or religiously aggravated offences under section 4 or 4A of the Public Order Act 1986),
(c) section 32 (racially or religiously aggravated harassment etc.).
An offence under either of the following sections of the Female Genital Mutilation Act 2003—
(a) section 1 (female genital mutilation),
(b) section 2 (assisting a girl to mutilate her own genitalia).

An offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing the death of a child or vulnerable adult).

**Sexual offences**
An offence under section 33A of the Sexual Offences Act 1956 (keeping a brothel used for prostitution).

An offence under section 1 of the Protection of Children Act 1978 (indecent photographs of children).

An offence under section 160 of the Criminal Justice Act 1988 (possession of indecent photograph of a child).


**Offensive weapons**
An offence under either of the following sections of the Prevention of Crime Act 1953—
(a) section 1 (prohibition of the carrying of offensive weapons without lawful authority or reasonable excuse),
(b) section 1A (threatening with offensive weapon in public).

An offence under any of the following provisions of the Firearms Act 1968—
(a) section 16 (possession of firearm with intent to endanger life),
(b) section 16A (possession of firearm with intent to cause fear of violence),
(c) section 17(1) (use of firearm to resist arrest),
(d) section 17(2) (possession of firearm at time of committing or being arrested for offence specified in Schedule 1 to the Act of 1968),
(e) section 18 (carrying a firearm with criminal intent),
(f) section 19 (carrying a firearm in a public place),
(g) section 20 (trespassing with firearm),
(h) section 21 (possession of firearms by persons previously convicted of crime).

An offence under either of the following sections of the Criminal Justice Act 1988—
(a) section 139 (having article with blade or point in public place),
(b) section 139AA (threatening with article with blade or point or offensive weapon).

**Offences against property**
An offence under any of the following sections of the Theft Act 1968—
(a) section 8 (robbery or assault with intent to rob),
(b) section 9 (burglary),
(c) section 10 (aggravated burglary).

An offence under section 1 of the Criminal Damage Act 1971 (destroying or damaging property).

An offence under section 30 of the Crime and Disorder Act 1998 (racially or religiously aggravated criminal damage).

**Road traffic offences**
An offence under section 35 of the Offences against the Person Act 1861 (injuring persons by furious driving).
An offence under section 12A of the Theft Act 1968 (aggravated vehicle-taking involving an accident which caused the death of any person).
An offence under any of the following sections of the Road Traffic Act 1988—
(a) section 1 (causing death by dangerous driving),
(b) section 1A (causing serious injury by dangerous driving),
(c) section 3A (causing death by careless driving when under influence of drink or drugs).

**Drug-related offences**
An offence under any of the following provisions of the Misuse of Drugs Act 1971—
(a) section 4 (restriction of production and supply of controlled drugs),
(b) section 5(3) (possession of controlled drugs with intent to supply),
(c) section 8(a) or (b) (occupiers etc. of premises to be punishable for permitting unlawful production or supply etc. of controlled drugs there).

An offence under section 6 of that Act (restrictions of cultivation of cannabis plant) where the cultivation is for profit and the whole or a substantial part of the dwelling-house concerned is used for the cultivation.