Title:	**Private Sector Housing Enforcement Policy (Covid-19)** **April 2020**

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Introduction

The purposes of this policy are:

- to provide a framework for private sector housing enforcement activity by the Council during the Covid-19 outbreak;
- to guide investigating officers and decision makers in carrying out their work; and
- to help residents and property owners understand the powers and duties of the Council in relation to private sector housing and how they will be implemented at the current time.

The Policy cannot be prescriptive because the circumstances of individual cases and the available evidence must be taken into account. In all situations, however, we will consider the principles of this policy and the Regulators Code.

Policy principles

These are:

Proportionality: We will aim to take action which is proportional to the risk identified. This means protecting the health and safety of tenants and their visitors without placing an unreasonable burden on the landlord.
Transparency: We will be transparent about how we make decisions. We will provide clear information on how formal enforcement can be avoided or complied with. We will give information in writing wherever we can.
Accountability: We will provide information on how to make a complaint or appeal against any enforcement action we take.
Consistency: We will aim to ensure that our actions are as consistent as possible by applying legislation in line with the Council's policy and any relevant formal guidance.
Openness: We will provide clear information in plain English about the rules and regulations we enforce. We will aim to explain how the legislation can be complied with.
Fairness: We will aim to be fair to all parties, with no predisposition to favour either party in a dispute.

What to expect from the Council, and what the Council expect from you

We want to work closely with landlords, letting agents and tenants to ensure that standards in rented properties are maintained at this difficult time.
We want to emphasise the importance of keeping properties free from hazardous conditions and to reassure all parties that a pragmatic, risk based and common sense approach will be used when enforcement decisions are taken.

Landlords and Agents

- We will advise you on the relevant housing legislation and help you understand how you can comply with it.
- We will expect you to be familiar with guidance for landlords and tenants such as "Coronavirus (COVID-19) Guidance for Landlords and Tenants" published by MHCLG in March 2020. Updates to this guidance can be found on the MHCLG website: www.gov.uk/mhclg
- We will expect you to take reasonable care to ensure you are familiar with your legal obligations and that you comply with them.
- If we identify a contravention of the legislation we will advise you of the action you need to take, provided the action can be taken in line with government Covid-19 guidance. We will ask you to take it within a reasonable timescale.
- We will consider any reasonable proposals you put forward to comply.

- We will expect you to keep us informed of the action you have taken.
- If your proposals are not acceptable, or you do not carry out your stated proposals, we will normally begin formal action. However, if your reasons for not complying are due to Covid-19 restrictions, we will take this into account in deciding if formal action is appropriate.
- We will charge you the reasonable costs of our formal enforcement action.

Tenants

- We will expect you to advise your landlord of the issues affecting the property before you make contact with the Council and to have given reasonable opportunity for the landlord to respond to your complaint.
- We will respond to complaints as quickly as possible and will make initial contact with you within two working days of receiving your complaint.
- We will collect as much information as possible by telephone and may ask you to send us photographs by e-mail to help us evaluate your complaint, if you are able to do so.
- Enforcement action which is non-urgent will be delayed until Covid-19 restrictions ease.
- Inspections will not normally be carried out. This is to protect tenants and council staff from the risk of Covid-19 infection.
- In cases of very serious risk due significant hazard(s) at the property, an inspection may be carried out if this can be achieved within government guidelines and in accordance with the council's health and safety requirements. Emergency remedial action will not be undertaken but in cases of extremely hazardous conditions alternative accommodation may be considered.

- We will advise you of the possible course of action we may take and of the likely timescales involved in taking action.
- We will expect you to co-operate with your landlord to allow any emergency work to be done, provided this work is carried out in accordance with government guidance.
- If we believe that you are preventing the landlord from carrying out works, we will suspend any enforcement action.
- You may be interested in the guidance for landlords and tenants such as "Coronavirus (COVID-19) Guidance for Landlords and Tenants" published by MHCLG in March 2020. Updates to this guidance can be found on the MHCLG website: www.gov.uk/mhclg

Owner Occupiers

- We will expect owners to adequately maintain their homes.
- Enforcement action will only be considered if there is a serious and imminent risk to health and safety or if there is a serious imminent risk to neighbours.

Owners of Empty Homes

- No action will be taken to assist empty home owners to bring them back into use during the Covid-19 emergency.

Anonymous complaints

- We will not investigate anonymous complaints during the Covid-19 emergency.

Risk based inspections

- No programmed or proactive inspections will be carried out until Covid-19 restrictions ease sufficiently to make these inspections feasible.

Notification of an inspection

If an inspection is considered necessary, a minimum of 24 hours notice will be given as required by Section 239 of the Housing Act 2004. This notice may be in writing, sent by e-mail or text message or verbally by telephone.

Enforcement action

Housing Act 2004, Part 1

When we inspect dwellings under Part 1 of the Housing Act 2004, we will apply the housing health and safety rating system (HHSRS) which is a risk-based evaluation tool. This will help us identify and protect against potential risks and hazards to health and safety from any deficiencies identified in dwellings.

The assessment method focuses on the hazards that are present in housing. HHSRS identifies 29 classes of hazard that can potentially affect the health of the occupiers. Defects in the property can contribute to one or more hazards. We will assess any hazards identified by an inspection which will be assessed according to their severity.

The assessment places the hazards in a hazard banding. Hazards in bands A to C are classed as Category 1 hazards and those in bands D to J as Category 2 hazards. Tackling these hazards will make housing healthier and safer to live in.

The Council must take one of a number of specified courses of action if it finds one or more Category 1 hazards. The Council may take action in relation to Category 2 hazards.

In deciding what action to take, we will take account of

- The HHSRS hazard rating
- Whether the Council has a duty (Category 1 hazards) or power (Category 2 hazards) under the Act to take action depending upon how serious the hazard risk is

and

- The best way of dealing with the hazard having regard to the enforcement guidance and prioritise actions to ensure that imminent risks to health are targeted.

Action we can take following an HHSRS assessment

During the Covid-19 outbreak formal action by the council under Part 1 of the Housing Act 2004 will be restricted to ensuring vulnerable tenants and imminent risks to health are targeted. The most likely course of action will be an Emergency Prohibition Order under Section 43 of the Housing Act 2004 for all or part of the premises concerned. This course of action is highlighted **in BOLD** below.

Hazard Awareness Notice

- Hazard Awareness Notice – Category 1 hazards: Section 28
- Hazard Awareness Notice – Category 2 hazards: Section 29

A Hazard Awareness Notice is a formal way of drawing attention to the need for remedial action. Service of a notice is not enforcement action as such, it is advisory. The notice is not registered as a local land charge and there is no appeal process. No timescale is specified for the completion of the remedial work.

Improvement Notice

- Improvement Notice – Category 1 hazards: Section 11
- Improvement Notice – Category 2 hazards: Section 12

An Improvement Notice requires the specified remedial works to be carried out within the timescale set out in the notice. This must allow reasonable opportunity for the work to be completed. The notice cannot require the work to start earlier than 28 days after the notice is served and there is a 21 day appeal period.

Prohibition Order

- Prohibition Order – Category 1 hazards: Section 20
- Prohibition Order – Category 2 hazards: Section 21

A Prohibition Order may prohibit the occupation or use for a specified purpose of part or all of the premises. A Prohibition Order may be appropriate where serious hazards exist, but remedial action is not possible or practical. The use of part or all of the premises may be prohibited for specific groups or numbers of people. The notice must be served within 7 days of the order being made and appeals must be made within 28 days of the date of the Order.

Suspended Improvement Notices and Prohibition Orders

Improvement Notices and Prohibition Orders can be suspended enabling enforcement action to be postponed for a specific time period or until a specified event, such as a change in occupation of a property.

Emergency Remedial Action: Section 40

If a Category 1 hazard presents an imminent risk of serious harm to the health and safety of the occupiers, the Council may take emergency remedial action and will do so when:

- The Council considers immediate action is needed to remove or reduce the hazard to an acceptable level and
- The property owner cannot or will not take the necessary action

If the Council takes Emergency Remedial Action a notice must be served on the relevant person within 7 days. Appeals may be brought within 28 days of the date the action is taken.

Emergency Prohibition Order: Section 43

Where a Category 1 hazard exists and it presents an imminent risk of serious harm to the health and safety of any occupiers, the Council may make an Emergency Prohibition Order. This action is likely where Emergency Remedial action is not considered appropriate, which will generally be the case during the Covid-19 outbreak. If this action is taken, a notice must be served within 7 days of the Order being made. Appeals may be brought within 28 days of the date of the Order.

Enforcement action by the Council – tenanted properties

Category 1 hazards

If an inspection shows a Category 1 hazard or hazards to be present, the Council will take one of the appropriate courses of action specified In Part 1 of the Housing Act 2004 as soon as possible. If the hazard or hazards do not present an imminent risk to health and safety, a Hazard Awareness Notice will normally be served with an agreed time period to rectify the defects and remove or reduce the hazard(s) to a reasonable level.

If the owner fails to take the necessary action, the Hazard Awareness Notice will be revoked and an Improvement Notice served. An Improvement Notice may also be served immediately if:

- the hazard is considered to be of a serious nature
- there are a number of Category 1 hazards
- the owner has failed to respond to informal action in the past

Category 2 hazards - band D or E

Where an inspection identifies a Category 2 hazard, band D, the same procedure will be followed as for Category 1 hazards. However, where the hazard falls into Category E or below, the Council will not normally take any

further action unless there are exceptional circumstances.

Category 2 – Multiple Hazards

Where a number of hazards at band D or below create a more serious situation or where a property appears to be in a dilapidated condition the Council will consider following the procedure for Category 1 hazards.

Enforcement action– owner occupied properties

In accordance with HHSRS enforcement guidance, owner occupied properties are not exempt from enforcement action and instances where the Council may take enforcement action include:

- Cases of vulnerable elderly people who are judged not capable of making informed decisions about their own welfare
- Cases of vulnerable individuals who require the intervention of the Council to ensure their welfare is best protected.
- Instances where hazards might reasonably affect persons other than the occupants.
- Where there is a serious risk of life-threatening harm such as electrocution or fire.
- Any other exceptional case determined by the Director of Development Services

Enforcement action – vacated properties

In cases where properties are subject to a statutory notice and the property is subsequently vacated, all notices or orders will be reviewed to consider whether variation, suspension or revocation of the notice is appropriate.

Criminal Offences and Civil Penalties

If we are satisfied that an offence has been committed we will consider criminal prosecution if this is considered to be in the public interest. However, for some offences, Section 126 of the Housing and Planning Act 2016 allows civil penalties to be imposed as an alternative to prosecution.

The same criminal standard of proof, beyond all reasonable doubt, is required for a civil penalty as it would be for a prosecution.

As an alternative to prosecution, the Housing and Planning Act 2016 amended the Housing Act 2004 to enable the Council to impose civil penalties for certain offences. These offences for which we may consider a civil penalty include:

- Section 30 – failure to comply with an Improvement Notice
- Section 72 – failure to licence an HMO
- Section 139(7) – failure to comply with an overcrowding notice
- Section 234 – failure to comply with HMO Management Regulations

The Council can impose a civil penalty of up to £30,000. The Council would expect any offence under the Housing Act 2004 to be dealt with by means of a financial penalty. The level of the penalty would be calculated by reference to the guidelines set out in Appendix 1.

Where the Council is minded to issue a civil penalty, it will first issue a notice of intent. The person on whom the notice was served then has 28 days to make representations. After the 28 day period the Council must decide whether to impose a penalty and if it still wishes to do so, a final notice will be issued.

The penalty is recoverable through the County Court as though it were an order of that court. There is a general right of appeal against the final notice to the First Tier Tribunal.

Only in the most serious cases would a prosecution be considered. For example:

- Extremely serious first offence
- Long history of non-compliance
- More than one civil penalty previously issued
- An offence which could be a Banning Order offence appears to have been committed

A breach of a Prohibition Order can only be sanctioned by criminal prosecution.

Banning Orders

Where a landlord has been prosecuted and convicted of a banning order offence, the Council will consider applying to the First Tier Tribunal for a Banning Order. The decision to apply will be made on a case by case basis and will be pursued for the most serious offenders.

The term "landlords" also includes "property agents" (letting agents and property managers as defined under Chapter 6 of Part 2 of the Housing and Planning Act 2016) unless otherwise specified.
In deciding whether to apply for a Banning Order the Council will consider:

- The severity of the sentence imposed by the Court. A minimum sentence or conditional discharge would not be regarded as sufficiently serious for a Banning Order
- Any relevant information on the rogue landlord database to establish whether a landlord has committed other banning order offences or has received any civil penalties in relation to banning order offences
- In respect of property agents who are required to be a member of a redress scheme, evidence of non-compliance with that requirement will also be taken into account
- The harm caused to the tenant (or perceived by the tenant) especially those offences that directly impact on the health and safety of the tenant.
- Whether there is potential for repeat offending.
- Whether a Banning Order is likely to deter others from committing similar offences.

If a decision is made to apply for a Banning Order, the Council will follow the process set out in Section 15 of the Housing and Planning Act 2016. A notice of intent will be served on the landlord within 6 months of the landlord being convicted of the offence. Landlords will be given 28 days to make representations and any representations submitted will be taken into account when deciding if to proceed with the application for a Banning Order.

Further information may be sought from the landlord if this will assist in reaching a decision. This may include requesting details of other properties owned by the landlord.

If the decision is made to pursue a banning order an application will be made to the First-tier Tribunal who have the power to make the banning order.

The Council will publicise successful banning orders, including the names and addresses of individual landlords at a local level through the local media (including social media).

Any business (managing or lettings agency) which has been subject to a banning order will be named publicly and will be named on the Council's website.

If a tenant requests information on banned landlords, we will make this information available.

Rent Repayment Orders

A rent repayment order, made under the Housing and Planning Act 2016 or the Housing Act 2004 is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent where certain offences have been committed. These offences include:

- Failure to comply with an Improvement Notice – s. 30(1) Housing Act 2004
- Failure to comply with a Prohibition Order – s. 32(1) Housing Act 2004
- Offences in relation to licensing of HMOs – s. 72(1) Housing Act 2004
- Breach of a Banning Order – s. 21 Housing and Planning Act 2016
- Illegal eviction or harassment of the occupiers of a property - s. 1 Protection from Eviction Act 1977

If the rent was paid wholly or partly through Housing Benefit or Universal Credit, the council can apply for a rent repayment order when a landlord has committed one of the offences listed in paragraph above. An application for a rent repayment order will be made whether or not the landlord has not been convicted of the offence if there is sufficient evidence to indicate that it is likely that the First-tier Tribunal will be satisfied beyond reasonable doubt that the landlord has committed the offence. Where the First Tier Tribunal find in favour of the council the rent repayment order will require the landlord to repay the rent to the local Authority up to a maximum of 12 months. The payment of a rent repayment order may be enforced as a debt through the County or High Court.

In determining the amount the council seek to recover, consideration will be given to the following factors:

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.

Charges for enforcement action

The Council will normally make a charge for its enforcement costs when taking the following action:

- Serving Improvement Notices
- Serving Prohibition Orders
- Serving Emergency Prohibition Orders
- Carrying out Emergency Remedial Action

The Council will not charge for Hazard Awareness Notices.

Charges for enforcement action will be published annually in the Fees and Charges Report published by the Council. Additional charges will be levied where work in default is carried out.

There is a right of appeal to the First Tier Tribunal (Property Chamber) in respect of statutory notices served under the Housing Act 2004 and complaints that are within the FTT jurisdiction should be dealt with through that mechanism.

If the complaint falls outside the remit of the FTT the Council's Complaints Policy will apply.

Works in Default

The Council may carry out the works required by a statutory notice if the Landlord does not carry them out. The cost of the works, plus the Council's administration charges will be recovered through the civil court. Where there is no prospect of the money being recovered, the debt may be placed on the property as a land charge.

Houses in Multiple Occupation

Houses in multiple occupation (HMOs) are defined in Section 254 of the Housing Act 2004. HMOs are accommodation which is occupied by persons who do not form a single household and where 2 or more households share one or more basic amenity such as a kitchen, toilet and/or bathroom.

All HMOs must comply with the Management Regulations made under section 234 of the Housing Act 2004. A contravention of the Management Regulations is not something that can be addressed by the service of a notice and enforcement of the regulations is by way of prosecution.

There is no provision for the service of a notice or for work to be carried out in default under the management regulations, and prosecution or civil penalty is the method of enforcement.

If the council find evidence of a breach of the regulations a formal letter will be sent to the HMO manager detailing the regulations that have been breached as well as the works required to remedy the breach. The timescale given to carry out the works will be limited in duration with a reminder to the manager that an offence has already been committed. Once the timescale has expired a re-visit will be carried out to assess if the breach has been remedied. If the breach has not been remedied, we will decide whether to prosecute or impose a civil penalty. The decision will take account of the available evidence and the enforcement principles set out in this policy. We will normally impose a financial penalty in these circumstances, unless the breach is extremely serious.

HMO licensing

During the Covid-19 outbreak we will:

- **contact landlords who are due to be making new HMO licence applications and explain there may be a delay in determining their applications when received**
- **contact landlords who are due to renew their HMO licence applications and explain that renewal will be carried out as an administrative process by e-mail and an inspection of the property will be undertaken when restrictions ease.**
- **take individual landlords circumstances into account where licence fee payments may be delayed due to the Covid-19 outbreak**

HMOs occupied by 5 or more people in 2 or more households are licensable under Part 2 of the Housing Act 2004.

Failure to obtain a licence for a licensable HMO is an offence. Enforcement action will normally be the application of a Civil Penalty. However, prosecution will be considered if the breach is considered to be sufficiently serious.

HMO licenses will be granted for a period of up to 5 years and will specify the maximum number of persons permitted to occupy the property. In cases where it is appropriate to do so a licence may be granted for a period of less than 5 years. Such circumstances could include where there may be deficiencies in the condition of the property or inadequacies in the management. In such cases clear reasons for the issue of a shorter term licence will be given.

The following mandatory conditions apply to all HMO licences:

Mandatory conditions:

- Produce gas safety certificates annually for the Councils inspection
- Keep electrical appliances provided by the landlord safe and produce on demand a declaration to that effect.
- Keep furniture provided by the landlord safe and produce on demand a declaration to that effect
- Ensure that smoke alarms are installed on each storey of the house on which there is a room used wholly or partly as living accommodation are keep them in proper working order. Produce on demand a declaration as to the condition and positioning of these alarms. 'Room' includes a hall or landing.
- Ensure that a carbon monoxide alarm is installed in any room in the house which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance, to keep any such alarm in proper working order and to supply the authority, on demand, with a declaration by him as to the condition and positioning of any such alarm.
- Supply to the occupiers of the house a written statement of the terms on which they occupy it.
- Ensure that rooms used as sleeping accommodation comply with the minimum room sizes specified in Schedule 4 of the Housing Act 2004, as amended by the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018. For example, sleeping room for 1 person (over 10 years) is 6.51m^2 (minimum). For 2 persons, 10.22m^2 (minimum).
- Comply with any scheme which is provided by the local housing authority which relates to the storage and disposal of household waste at the HMO pending collection.

Where the condition regarding minimum sleeping room sizes is not met at the time the licence is granted, a period of 18 months will be permitted for compliance to be achieved.

In addition to the mandatory licence conditions, discretionary conditions may be applied, as appropriate.

Discretionary conditions:

- Conditions imposing restrictions on the use or occupation of particular parts of the house by persons occupying it.
- Conditions requiring the taking of reasonable and practical steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house
- Conditions requiring facilities or equipment to be made available in the house for the purpose of meeting standards prescribed under section 55 of the Housing Act 2004 (generally kitchen and bathroom facilities).
- Conditions requiring such facilities and equipment to be kept in repair and proper working order.
- Conditions for works needed for such facilities to be provided or maintained to be carried out within a specified time period.

Timescale for processing HMO licence applications

We are committed to processing applications in a timely manner. We will process all applications that are complete, contain all the required information and are accompanied by the relevant fee, within 56 days. The fee will be banked promptly and the 56 day period will not commence, assuming all other information has been provided, until the funds have cleared into the council's bank account. The 56 day time period does not include the statutory consultation period that is required between the issue of the proposed licence to the applicant and the agreement on the content of the full licence.

Charging for HMO licences

Charges for HMO licences and HMO licence renewals will be published annually in the Fees and Charges Report published by the Council.

Non-statutory inspections

On request, inspections will be carried out in support of applications made to British embassies or high commissions for Entry Clearance into the United Kingdom to confirm the whether the dwelling is free from Category 1 hazards and will not be overcrowded.

Charges for these inspections will be published annually in the Fees and Charges Report published by the Council.

Letting Agents – Requirement to belong to a redress scheme

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to belong to a Scheme etc.) (England) Order 2014 requires all letting agents and property managers to join an approved redress scheme.

If the Council becomes aware that a letting agent or property manager has not done so, a notice of intent to impose a penalty will be issued. The notice will give details of the Council's reasons for taking this action. The recipient of the notice has 28 days to make a representation to the Council. If a representation is made, this will be considered by the Director of Development Services who will decide whether to confirm, modify or withdraw the penalty. This is without prejudice to the right of appeal to the First Tier Tribunal.

The maximum penalty for non-compliance will be applied unless extenuating circumstances exist to justify a lower amount. Extenuating circumstances may include:

- Whether a £5,000 would be disproportionate to the turnover or scale of the business
- The timeliness of corrective action by offender
- The level of co-operation of the offender with the Council during the investigation of the alleged breach

If the person on who the fine is levied does not pay within the period specified, the council will recover the fine with the permission of the court as if payable under a court order. Where proceedings are necessary for the recovery of the fine, a certificate signed by the chief financial officer stating that the amount due has not been received by a date specified on the certificate will be taken as conclusive evidence that the fine has not been paid.

Smoke and Carbon Monoxide Alarm (England) Regulations 2015

These regulations require a landlord of a residential property to install smoke alarms on each floor of a property that contains living accommodation, and carbon monoxide alarms in each room that is used as living accommodation and contains a solid fuel combustion appliance. These alarms must be checked by the landlord to ensure they are in working order at the start of any new tenancy.

In circumstances where the Council reasonably believes that a landlord is in breach of the duties set out above, a remedial notice will be served on the landlord within 21 days. The notice will require the landlord to take appropriate remedial action within 28 days. The Council will receive any representations made by the landlord during the 28 day period.

If the landlord fails to carry out the remedial action, the Council will arrange the remedial action within a further 28 days. The action must be taken by a person authorised in writing by the Director of Development Services for the purpose of taking remedial action.

A landlord who has breached the regulations will be issued with a penalty charge notice. Within 28 days of receipt of the penalty charge notice the landlord can request a review of the charge. If not satisfied with the review decision, an appeal to the First Tier Tribunal can be made.

The Council will recover the penalty charge through a court order once the charge is payable and no longer subject to review or appeal.

The statement of principles which will be considered in determining the level of the penalty charge is shown in Appendix 2.

The Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015 (as amended)

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended) ("the Regulations") set out the minimum level of energy efficiency for homes in the domestic private rented sector for new tenancies from 1 April 2018 and for all tenancies from 1 April 2020. The minimum level is an Energy Performance Certificate (EPC) rating of Band E.

From 1 April 2018 landlords of domestic private rented properties which are rented out through an assured, regulated or agricultural tenancy may not grant a new tenancy to a new or existing tenant if their property has an EPC rating of F or G as shown on the EPC certificate unless an exemption has been registered. A property falling within these categories is referred to in the Regulations as a 'sub-standard property'. To continue letting out the property, the landlord will be required to carry out energy efficiency improvements to raise the EPC rating to a minimum of E. The requirement to meet the minimum level of energy efficiency is triggered when a new tenancy is created or when an existing tenancy with an existing tenant is extended. This includes situations where a fixed term tenancy such as a six month assured shorthold tenancy expires and becomes a periodic tenancy.

From 1 April 2020 landlords must not continue to let sub-standard domestic property, being those with an EPC rating of F or G, even to existing tenants.

If the council receives a complaint alleging that a landlord is in breach of the prohibition on letting a substandard property, or believes a landlord may have been in breach of the regulations at any time within the past 12 months, a compliance notice requesting information from the landlord as this will help in deciding whether the landlord has breached the prohibition. If the landlord fails to provide the information required by the compliance notice or fails to register an exemption on the PRS Exemption Register, a penalty notice may be served.

The level of the penalty charges are set out below:

- Renting out a non-compliant property (less than 3 months breach) £1000 plus publication penalty.
- Renting out a non-complaint property (three months or more in breach) £2000 plus publication penalty.
- Providing false or misleading information on the PRS (Private Rented Sector) Exemptions Register £1000 plus publication penalty.
- Failing to comply with a compliance notice £2000 plus publication penalty.
- For second or subsequent offences for the same property the "renting out" penalties are doubled.
- Maximum financial penalty £5000 per property and per breach of the regulations.
- A publication penalty means that the Council will publish some details of the landlords breach on a publically accessible part of the PRS Exemptions Register for a period of 12 months.

Appendix 1

Application of Civil Penalties under section 126 Housing and Planning Act 2016

Statement of Principles

The level of civil penalty to be applied will be determined with reference to the culpability of the offender and the harm, or potential harm, caused to occupiers as a result of the breach. The principles that the Council will take into account when applying a civil penalty are:

1. The more serious the offence, the higher the penalty should be.
2. A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
3. The harm caused to the tenant. This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.
4. Punishment of the offender. A civil penalty should not be regarded as an easy or lesser option compared to prosecution. The penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending. However, it is important that this is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.
5. To reduce the likelihood of any further offending and help ensure that the landlord fully complies with all legal responsibilities in future. The level of penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
6. To deter others from committing similar offences. While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels. An important part of deterrence is the realisation that the Council are proactive in levying civil penalties where needed and that the level of civil penalty is high enough to both punish the offender and deter repeat offending. Where a landlord or property agent receives two civil penalties over a 12 month period, we will include that persons details in the central government database of rogue landlords and property agents in order to help ensure that other local authorities are made aware that formal action has been taken against that person.
7. To remove any financial benefit the offender may have obtained as a result of committing the offence. It should not be cheaper to offend than to ensure that a property is well maintained and properly managed.

These principles will be applied using the Culpability/Harm matrix set out below to arrive at an appropriate penalty.

Culpability

Very High: The offender intentionally breached or flagrantly disregarded the law. This may be evidenced by numerous previous failures to comply with enforcement action.
High: Actual foresight of, or wilful blindness to risk of offending, but risk nevertheless taken. This may be evidenced by some previous enforcement activity.
Medium: Offence committed through act or omission which a person exercising reasonable care would not commit.
Low: Little fault, because, for example, efforts were made to address the risk, albeit they were inadequate on this occasion, or failings were minor and occurred as an isolated incident.

Harm:

Level 1: Multiple serous failings giving rise, for example to a number of Category 1 Hazards that posed a substantial risk to occupiers, or very serious breach of HMO management regulations.
Level 2: Significant risk arising from, for example, a single Category 1 Hazard, a number of Category 2 Hazards, or significant breach of HMO management regulations.
Level 3: Lower risk arising, for example, from one or two Category 2 Hazards only, or from a minor breach of the HMO management Regulations.

Calculating the Civil Penalty Level

The level of civil penalty will be calculated with reference to the table on the following page. A history of previous non-compliance and/or evidence of financial gain from the failure to comply will result in a higher penalty being imposed within the range shown. Previous good character, less financial gain and evidence of efforts to remedy the situation will result in a lower penalty within the range.

	Starting Point	**Range**
Very High Culpability		
Harm Level 1	£20,000	£10,000 - £30,000
Harm Level 2	£10,000	£5,000 - £15,000
Harm Level 3	£5,000	£2,500 - £7,500
High Culpability		
Harm Level 1	£10,000	£5,000 - £15,000
Harm Level 2	£7,500	£3,750 - £11,250
Harm Level 3	£3,000	£1,500 – £4,500
Medium Culpability		
Harm Level 1	£5,000	£2,500 - £7,500
Harm Level 2	£3,500	£1,750 - £5,250
Harm Level 3	£2,000	£1,000 - £3,000
Low Culpability		
Harm Level 1	£3000	£1,500 - £4,500
Harm Level 2	£2,000	£1,000 - £3,000
Harm Level 3	£1,000	£500 - £1,500

Appendix 2

Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Statement of Principles

The Regulations require a statement of principles to be followed in order to determine the amount of a penalty charge. This statement is published as required by the Regulations and will be used by the Council to determine the amount of any penalty charge it makes under regulation 8:

1. Regulation 8 specifies that the amount of the penalty charge will not exceed £5,000.
2. Regulation 9 allows for the penalty charge to be reduced if it is paid within 14 days of the date the penalty charge notice is served.
3. The requirement on residential landlords to install smoke alarms and (where relevant) carbon monoxide alarms can be done at relatively low cost by the landlord and are designed to protect the safety of tenants.
4. Only when a landlord fails to comply with a remedial notice can a penalty charge notice be served. A landlord cannot be regarded as being in breach of a remedial notice if he/she has taken all reasonable steps to comply.
5. If the landlord fails to comply with the remedial notice, the Council will directly incur costs because regulation 7 requires the Council to carry out the remedial work itself.
6. As well as allowing for the recovery of the Council's costs for work carried out in default, the penalty charge will be a deterrent if set at a high level.
7. The Regulations would not have allowed a maximum fine of £5000 had it not been envisaged that this is the amount considered fair for Councils to levy.
8. The number of alarms the landlord is expected to install is unlikely to vary significantly from property to property, so the expectations on most landlords are similar. On this basis, it is considered reasonable to set most penalty notices at the same level.
9. The starting point for the fixed penalty notice will be £5,000, with a 50% reduction for a first offence. For second and subsequent offences the maximum charge will be imposed. The charge will be reduced where payment is made within 14 days of the penalty charge being levied.

Summary of charges

	Penalty Charge	**Reduced penalty charge (payment within 14 days)**
First offence	£2,500	£1,250
Second and subsequent offences	£5,000	£3,500

Directorate	Development Services	**Section**	Housing Services	**Ref. Number**	
Authorised By	Paul Walker	**Job title**	Director of Development Services	**Issue Date**	
Author	Ursula Seddon	**Job title**	Principal Housing Services Officer	**Revision No**	
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