

## **DRAFT PRIVATE RENTED SECTOR HOUSING ENFORCEMENT POLICY**

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### **CONTENTS**

- 1.0 Introduction**
  - 2.0 Purpose and Scope of Revised Policy**
  - 3.0 Regulation of Private Rented Sector**
  - 4.0 Statutory Notices**
  - 5.0 Civil Penalties**
  - 6.0 Factors to be considered to determine the level of civil penalty**
  - 7.0 Determining the Civil Penalty Amount - Housing Act and Electrical Safety Standards Regulations**
  - 8.0 Determining the Civil Penalty Amount – Energy Efficiency Regulations**
  - 9.0 Rent Repayment Orders**
  - 10.0 Banning Orders**
  - 11.0 Database of Rogue Landlords and Letting Agents**
  - 12.0 Powers of Entry**
  - 13.0 Licensing of Houses in Multiple Occupation**
  - 14.0 Works in Default**
  - 15.0 Appeals**
  - 16.0 Housing Association / Registered Social Landlords**
- Appendix A – Housing Health and Safety Rating Scheme**

## 1.0 Introduction

- 1.1 Shropshire Council ('the Council') is committed to improving standards in private rented sector housing, ensuring accommodation is well managed, properly maintained, safe and habitable.
- 1.2 The private rented sector plays an important role in the county's housing market. The Council shares the Government's desire to support good landlords and agents who provide decent well-maintained homes and to crack down on unscrupulous landlords who are flouting the law and seeking profit from their noncompliance.
- 1.3 The Council is keen to strike the right balance on regulation in order to avoid stifling investment in this sector. A small number of rogue or criminal landlords knowingly rent out unsafe and substandard accommodation. The Council is determined to create a level playing field for all landlords by dealing robustly with criminal, rogue and irresponsible landlords.
- 1.4 The Council provides advice and guidance to assist landlords and property agents in complying with their legal requirements.
- 1.5 The Council advises tenants of their rights and obligations and how they can try and resolve a situation prior to any enforcement being required by the Council. Private tenants are expected to contact their landlord to report any issues before contacting the Council. This ensures that landlords are aware of issues and gives them an opportunity to resolve them. There is further information on how to report issues on the Council's [website](#). Where works are needed, tenants are expected to co-operate with the landlord to facilitate the repair. Social tenants are expected to go through the complaints' procedure of the relevant Housing Association prior to any involvement being required by the Council.
- 1.6 The Council has specific powers to impose civil penalties and other measures, introduced under the Housing and Planning Act 2016, to crack down on criminal, rogue, and irresponsible landlords; these include:
  - Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences
  - Extension of rent repayment orders to cover illegal eviction, breach of a banning order, failure to comply with an improvement notice and certain other specified offences
  - Database of rogue landlords and property agents who have been convicted of certain offences or received multiple civil penalties
  - Banning orders for the most serious and prolific offenders

- 1.7 Regulations made under the Housing and Planning Act 2016, the Housing Act 2004 and the Energy Act 2011 have extended the powers of the Council to also permit civil penalties to be imposed on landlords who are in breach of their duties in respect of the requirements set out in:
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 ('the Electrical Safety Standards Regulations')
  - The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 ('the Energy Efficiency Regulations')

- 1.8 This Policy explains how the Council can use these civil penalties and other measures and sets out how the level of the civil penalties will be determined.

## **2.0 Purpose and Scope of this Policy**

- 2.1 This policy sets out enforcement criteria regarding private rented sector housing which supplements the generic approach to enforcement described in the [Council's Better Regulation and Enforcement Policy](#).

- 2.2 This policy is aimed at the regulation of the private rented sector which will include housing association properties except those owned by Shropshire Council.

- 2.3 The supplementary private rented sector housing enforcement activities set out in this policy include the licensing of houses in multiple occupation (HMO), the service of statutory notices as well as the following measures introduced by the Housing and Planning Act 2016, Housing Act 2004 and the Energy Act 2011 which aim to tackle rogue landlords and improve the private rental sector:

- Civil penalties which can be used as an alternative to prosecution
- Banning Orders for the most prolific offenders
- Database of rogue landlords/property agents
- Rent Repayment Orders (RROs)

- 2.4 This policy takes into account the following statutory guidance for local housing authorities published by the Ministry of Housing, Communities and Local Government (now Department for Levelling Up, Housing and Communities):

- Civil penalties under the Housing and Planning Act 2016, issued April 2017 (updated April 2018)
- Database of rogue landlords and property agents under the Housing and Planning Act 2016, issued April 2018
- Rent repayment orders under the Housing and Planning Act 2016, issued April 2017

- 2.5 This policy takes into account the following non-statutory guidance for local housing authorities published by the Ministry of Housing, Communities and Local Government (now Department for Levelling Up, Housing and Communities):

- Banning Order Offences under the Housing and Planning Act 2016, issued April 2018
- Electrical safety standards in the private rented sector, first published June 2020

### **3.0 Regulation of Private Rented Sector Housing**

- 3.1 The Council responds to complaints from tenants and other residents about private rented sector housing, prioritising the complaints based on an assessment of the risk and seriousness. If enforcement action is necessary, a variety of regulatory powers may be used to address and resolve the problem.
- 3.2 Housing issues will primarily be dealt with under the Housing Act 2004; however, this is not exclusively the case and, where circumstances are appropriate, other legislation will be used including:
- Energy Act 2011: we will use this when there are concerns about the energy efficiency of a property, which is adversely impacting or may adversely impact the environment, the health of tenants, the cost of heating the property and/or the level of fuel poverty of the tenants
  - Housing and Planning Act 2016: we will use to tackle criminal, rogue and irresponsible landlords and where there are concerns about the electrical safety standards in a property
  - Environmental Protection Act 1990: we will use this where a property defect is considered prejudicial to health or causing a nuisance
  - Smoke and Carbon Monoxide Alarm (England) Regulations 2015: we will use this where there is a lack of smoke alarm or where there is no carbon monoxide detector in a room with a solid fuel burning appliance.

#### Housing, Health and Safety Rating System (HHSRS)

- 3.3 The HHSRS is set out in Part 1 of the Housing Act 2004 (see Appendix A). It is a method of assessing how likely it is that the condition of a property will cause an unacceptable hazard to the health of the occupant(s). There are two categories of possible hazards:
- Category 1 hazards represent a serious danger to health and the Council has a duty to take appropriate action to deal with these
  - Category 2 hazards represent a lesser danger and, although it has no duty to take action, the Council will exercise its power to reduce category 2 hazards through appropriate action
- 3.4 The HHSRS is an evidence-based risk assessment procedure which considers any one of 29 hazards that may be present in a dwelling. The risk that any such hazard may impact on the most vulnerable, potential occupant of that dwelling is then used to generate a score. These scores are categorised to determine the consistent level of duty the Council has with regards to the seriousness of hazards that can cause harm in dwellings and then what enforcement action is the most proportionate and suitable in each case.
- 3.5 The approach followed by The Council when making decisions in respect of enforcement decisions is set out in the Council's Better Regulation and Enforcement Policy. We aim to achieve compliance through advice, this policy provides supplementary enforcement information in relation to private rented sector housing provisions.

- 3.6 Charges will be made for any formal enforcement action that the Council takes based on cost recovery of officer time (see Council's fees and charges for further information).

### Electrical Safety Standards Regulations

- 3.7 The Electrical Safety Standards Regulations require landlords to have electrical installations inspected and tested by a person who is qualified and competent, at least every 5 years. This applies to all new tenancies commencing on or after the 1st July 2020 and existing tenancies from the 1st April 2021.
- 3.8 Landlords have a duty to supply existing tenants with a copy of the electrical safety report within 28 days of the inspection and new tenants must also be given a copy prior to occupying the property. If the Council requests the report, it must be supplied within 7 days.
- 3.9 The report, usually an Electrical Installation Condition Report (EICR), will show whether the electrical installation is safe for continued use. If the report indicates that remedial work is required (C1 – Danger Present, or C2 – Potentially dangerous) or further investigation needed without delay (FI), the landlord must complete this work within 28 days, or within the period specified in the inspection report if this is less than 28 days.
- 3.10 There may also be Category 1 or Category 2 hazards present for electrical safety and the Council may choose to take enforcement action and/or carry out works in default to remove this hazard under the Housing Act 2004.
- 3.11 If the report requires remedial work, or further investigation, landlords must provide written confirmation that the work has been carried out to their tenant and to the Council within 28 days of completing the work.
- 3.12 If the landlord fails to comply with the remedial notice, or if the EICR indicates that urgent remedial action is required and the landlord has not carried this out within the period specified in the report, the Council may, with the consent of the tenant, carry out the work and recover the costs incurred.
- 3.13 A landlord is not in breach of the duty to comply with a remedial notice if the landlord can show they have taken all reasonable steps to comply. Where the landlord (or electrician) has tried to gain access to the property to undertake the work and the tenant has prevented this, then this may be considered as reasonable steps.

### Energy Efficiency Regulations

- 3.14 All domestic privately rented properties must have an Energy Performance Certificate (EPC) with a rating of Band A-E. If the current certificate is F or G, the landlord is required to make the necessary improvements to raise the EPC rating to a minimum of E unless they have a valid exemption in place.
- 3.15 The minimum standards do not apply to registered providers of social housing or a body registered as a social landlord.
- 3.16 In certain circumstances, landlords may be able to claim an exemption from this prohibition. This would need to be registered on the National Exemptions Register. There are various exemptions that apply to the prohibition on letting a

property with an energy efficiency rating below E. If a property meets the criteria for any of the exemptions, a landlord will be able to let the property once they have registered the exemption on the Private Rented Sector Exemptions Register.

- 3.17 Further details on exemptions can be found at:  
<https://www.gov.uk/government/publications/private-rented-sector-minimum-energy-efficiency-standard-exemptions/guidance-on-prs-exemptions-and-exemptions-register-evidence-requirements>
- 3.18 The Private Rented Sector Exemptions Register can be searched at:  
<https://prsregister.beis.gov.uk/NdsBeisUi/register-search-exemptions>

## 4.0 Statutory Notices

- 4.1 Where the issuing of a statutory notice is considered necessary, Section 49 of the Housing Act 2004 and Regulation 8 of the Electrical Safety Standards Regulations permit the Council to make a reasonable charge for issuing certain notices as a means of recovering certain administrative and other costs incurred. The Council wants to work with landlords to resolve issues as quickly as possible; for this reason, the cooperation of the landlord is a key factor that will be taken into account when determining the amount of administration expense incurred.
- 4.2 Where the Council is permitted to do so, it is the intention that it will charge for all notices served in accordance with the Housing Act 2004 and the Electrical Safety Standards Regulations unless there are extenuating and exceptional circumstances that would indicate this is disproportionate to the desired outcome; the amount will be dependent upon the time taken to resolve the issue(s) with the landlord. The hourly rate used for the purposes of this calculation will be published on our website.
- 4.3 Section 50 of the Housing Act 2004 gives the Council powers to recover the expenses incurred as a result of issuing statutory notices. A charge can be placed as a local land charge on the property to which it relates. This is recorded in the register of local land charges kept by the Council. This register is normally searched during a property sale by purchasers.

### Housing Health and Safety Rating Scheme

- 4.4 Following an inspection and subsequent assessment, where the rating shows that there are hazards which are classed as Category 1, the Council is under a duty to take appropriate enforcement action. Where the rating shows the hazard is classed as Category 2, the Council is not under a duty to take action but it may still do so where it is deemed necessary and proportionate to the hazard.
- 4.5 The forms of appropriate enforcement action that can be taken are as follows:

#### **For Category 1 Hazards:**

- Emergency remedial action under (Housing Act 2004, Section 40)
- Emergency prohibition order (Housing Act 2004, Section 43)

#### **For Category 1 or Category 2 Hazards:**

- Improvement notice (Housing Act 2004, Section 11 & Section 12)
- Prohibition order (Housing Act 2004, Section 20 & Section 21)
- Hazard awareness notice (Housing Act 2004, Section 28 & Section 29)

- Demolition order (Housing Act 1985, Section 265(1) & Section 265(2))
- Declaring the area in which the premises concerned are situated to be a clearance area (Housing Act 1985, Section 289(2))

#### Electrical Safety Standards Regulations

- 4.6 Where the Council has reasonable grounds to believe that a landlord is in breach of one or more of the duties under the Electrical Safety Standards Regulations, and the inspection report relating to the property does not indicate urgent remedial action is required, the Council must serve a remedial notice on the landlord within 21 days.
- 4.7 Where an inspection report indicates that urgent remedial action is required and the Council is satisfied, on the balance of probabilities, that the landlord has not undertaken the required works with the specified period in the report, the Council may, with the consent of the tenant(s), arrange for an authorised person to take the required urgent remedial action. In such instances, the Council must service a notice on the landlord and occupier(s) or fix the notice to a conspicuous part of the premises with 7 days of the urgent remedial works commencing.

#### Energy Efficiency Regulations

- 4.8 Under the Energy Efficiency Regulations, if the Council believes a landlord may be in breach of the prohibition on letting a sub-standard property, it may serve a compliance notice requesting information from the landlord to help it decide whether a breach has occurred. The Council may serve a compliance notice up to 12 months after a suspected breach occurred on the current landlord. As such, it is good practice for landlords to retain records and request records when buying properties.

### **5.0 CIVIL (FINANCIAL) PENALTIES**

- 5.1 Sections 23 and 126 and Schedules 1 and 9 of the Housing and Planning Act 2016 gives the Council the power to impose civil penalties of up to £30,000 on individuals and organisations, as an alternative to prosecution, for certain offences in both the Housing Act 2004 and the Housing and Planning Act 2016.
- 5.2 Civil penalties are intended to be used against landlords who are in breach of one or more of the sections of the Housing Act 2004 listed below:
- Section 30 - Failure to comply with an Improvement Notice
  - Section 72 - Offences in relation to licensing of Houses in Multiple Occupation
  - Section 95 - Offences in relation to licensing of houses under Part 3 of the Act
  - Section 139 - Offences of contravention of an overcrowding notice
  - Section 234 - Failure to comply with management regulations in respect of Houses in Multiple Occupation
- 5.3 In addition, civil penalties can be used in relation to a breach of a banning order under Section 21 of the Housing and Planning Act 2016.
- 5.4 Although only one civil penalty can be issued (as an alternative to prosecution) for each of the first four offences listed in paragraph 5.2 and the one offence referred to in paragraph 5.3 above, a civil penalty can be issued for each separate breach of the Management of Houses in Multiple Occupation (England) Regulations 2006 ('HMO

Management Regulations’).

- 5.5 Regulation 11 of the Electrical Safety Standards Regulations gives the Council the power to impose civil penalties of up to £30,000 on a landlord who has breached any one of more of the duties relating to the safety of electrical installations placed on a landlord under these Regulations.
- 5.6 Regulation 38 of the Energy Efficiency Regulations gives the Council the power to impose civil penalties of up to £5,000 in total per property:
- where it is satisfied that the landlord is, or has, at any time within the preceding 18 months let a sub-standard property; or
  - where the landlord has failed to comply with a compliance notice requesting information for the purposes of checking whether a breach of the Regulations has occurred.
- 5.7 If the Council is satisfied that it has a reasonable prospect of a conviction in a particular case, it will consider a civil penalty in the first instance and only by exception will it seek alternative disposal measures such as prosecution or formal caution. In addition to civil penalties or other disposal measures to deal with any offences/breaches, works in default to remove hazards may also be considered.
- 5.8 All cases where civil penalties are being considered as an alternative to prosecution will still have to satisfy the beyond reasonable doubt standard of proof that would be required if the decision had been taken to institute legal proceedings.
- 5.9 Any monies received from the payment of civil penalties is retained by the Council and used to further the delivery of the Council’s statutory functions relating to the enforcement activities covering the private rented sector.

## **6.0 Factors to be considered to determine the level of civil (financial) penalty**

- 6.1 In order to ensure that a civil penalty is set at an appropriate level, the Council will consider the following factors as set out in the statutory guidance entitled ‘Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities’ issued by the Ministry of Housing, Communities and Local Government in April 2017 (updated in April 2018).

### **a) The severity of the offence**

The more serious the offence, the higher the civil penalty should be.

### **b) The culpability and track record of the offender**

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.

### **c) The harm caused to the tenant**

The greater the harm or the potential for harm, the higher the civil penalty will be.

### **d) The punishment of the offender**



A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it 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.

**e) Whether it will deter the offender from repeating the offence**

The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future.

**f) Whether it will deter others from committing the offence**

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 when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

**g) Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence**

The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

**7.0 Determining the Civil (Financial) Penalty Amount - Housing Act and Electrical Safety Standards Regulations**

7.1 The table below provides an indication of the level of penalty that is likely to be appropriate taking into account both culpability and harm.

<b>HARM</b>	HIGH	£15,000 - £19,999	£20,000 - £24,999	£25,000 - £30,000
	MEDIUM	£10,000 - £14,999	£15,000 - £19,999	£20,000 - £24,999
	LOW	£0 - £4,999	£5,000 - £9,999	£10,000 - £14,999
		LOW	MEDIUM	HIGH
<b>CULPABILITY</b>				

7.2 £30,000 is the maximum level of penalty permitted under the legislation.

7.3 The starting point in each band will be the mid-point, i.e. for Band 1 the mid-point will be £2,500.

7.4 The penalty may be increased by £1,000 for each aggravating factor up to a maximum of the top of the band level determined above.

7.5 The penalty may be decreased by £1,000 for each mitigating factor up to a maximum of the bottom of the band level determined above.

- 7.6 When considering aggravating and mitigating factors the penalty imposed must remain proportionate to the offence.
- 7.7 An offender will be assumed to be able to pay a penalty up to the maximum amount unless they can demonstrate otherwise.
- 7.8 In determining the level of harm the Council will have regard to:
- the person, i.e. physical injury, damage to health, psychological distress
  - the community, i.e. economic loss, harm to public health
  - other types of harm, i.e. public concern/feeling over the impact of poor housing conditions on the local neighbourhood
- 7.9 The nature of harm will depend on the personal characteristics and circumstances of the victim, e.g., a tenant.
- 7.10 Where no actual harm has resulted from the offence the Council will consider the relative danger that persons have been exposed to as a result of the offender's conduct, the likelihood of harm occurring and the gravity of harm that could have resulted.
- 7.11 Factors that indicate a higher degree of harm include:
- multiple victims
  - serious or psychological effect on the victim
  - victim is particularly vulnerable

7.12 Examples of Harm Categories

High	Housing defect giving rise to the offence poses a serious and substantial risk of harm to the occupants and/or visitors; e.g. danger of electrocution, carbon monoxide poisoning or serious fire safety risk
Medium	Housing defect giving rise to the offence poses a serious risk of harm to the occupants and/or visitors; e.g. falls between levels, excess cold, asbestos exposure
Low	Housing defect giving rise to the offence poses a risk of harm to the occupants and/or visitors; e.g. localised damp and mould, entry by intruders

- 7.12 In determining culpability the Council will have regard to four levels of culpability. Where the offender:
- has the **intention** to cause harm, the highest culpability where an offence is planned
  - is **reckless** as to whether harm is caused, i.e. the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences, even though the extent of the risk would be obvious to most people
  - has **knowledge** of the specific risks entailed by their actions even though they do not intend to cause the harm that results
  - is **negligent** in their actions

### 7.13 Examples of culpability

High (Deliberate Act)	An intentional breach by a landlord or property agent or flagrant disregard for the law. For example, by failing to comply with a notice or regulations.
High (Reckless Act)	An actual foresight of, or willful blindness to the risk of offending, but decides to take the risk nevertheless. For example, failing to comply with a strict liability in the HMO regulations.
Medium (Negligent Act)	The failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding the offence. For example, partial compliance with a schedule of work to an enforcement notice but failure to fully comply with all schedule items.
Low (Low or no culpability)	The offence committed has some fault on the part of the landlord or property agent but there are other circumstances for example obstruction by the tenant to allow a contractor access for repairs, or damage caused by tenant negligence.

## 8.0 Determining the Civil (Financial) Penalty Amount – the Energy Efficiency Regulations

8.1 Poor energy performance in a property can adversely impact the health of tenants, the environment, the cost of heating the property and the level of fuel poverty. The degree to which these factors are or may be impacted may be taken into consideration when determining the amount of any civil penalty.

8.2 If the Council confirms that a property is (or has been) let in breach of the Energy Efficiency Regulations, it may serve a civil penalty up to 18 months after the breach and/or publish details of the breach for at least 12 months. The Council will decide on the level of the penalty, up to the maximum limits set by the Regulations. The maximum level of the penalties varies depending on the type of breach:

- up to £2,000 and/or publication penalty, for renting out a non-compliant property for less than 3 months
- up to £4,000 and/or publication penalty, for renting out a non-compliant property for 3 months or more
- up to £1,000 and/or publication penalty, for providing false or misleading information on the Private Rented Sector Exemptions Register
- up to £2,000 and/or publication penalty, for failure to comply with a compliance notice

8.3 The maximum amount per property is £5,000 in total.

8.4 The Council will impose the maximum penalty level for any breach of the Energy Efficiency Regulations; however, where representations are received that demonstrate the breach/breaches occurred due to extenuating and exceptional circumstances, the level of the penalty will be independently reviewed by a senior manager and may be reduced.

- 8.5 A civil penalty will be imposed only after engagement with the landlord has been attempted in order to discuss how:
- the property can be improved
  - what grants (if any) are available for improvements
  - how to register a valid exemption
- 8.6 In addition to imposing a civil penalty, the Council may also impose a publication penalty. This means that the Council will publish details of the landlord's breach on a publicly accessible part of the Private Rented Sector Exemptions Register. The Council decides how long to leave the information on the Register; however, it will be available for view by the public for at least 12 months.
- 8.7 The information that the Council may publish is:
- the landlord's name (except where the landlord is an individual)
  - details of the breach
  - the address of the property in relation to which the breach occurred
  - the amount of any financial penalty imposed

## **9.0 RENT REPAYMENT ORDERS**

- 9.1 Rent Repayment Orders were introduced by the Housing Act 2004 to cover situations where a landlord has failed to obtain a licence for a property where one is required.
- 9.2 The use of these Orders has now been extended by the Housing and Planning Act 2016 to cover a wider range of offences. These are outlined below:
- Failure to comply with an Improvement Notice served under the Housing Act 2004
  - Failure to comply with a Prohibition Order served under the Housing Act 2004
  - Breach of a Banning Order made under the Housing and Planning Act 2016
  - Illegal eviction or harassment of the occupiers of a property under the Protection of Eviction Act 1977
  - Using violence to secure entry to a property under the Criminal Law Act 1977
- 9.3 Rent repayment orders can be granted to either the tenant or the Council. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the Council. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent basis
- 9.4 A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty.
- 9.5 The Council must consider a rent repayment order after a person is the subject of a successful civil penalty and in most cases the Council will subsequently make an application for a rent repayment order to recover monies paid through Housing Benefit or through the housing element of Universal Credit.

- 9.6 The Council will also offer advice, guidance and support to assist tenants to apply for a rent repayment order if the tenant has paid the rent themselves.
- 9.7 Where a landlord has been convicted of the offence to which the rent repayment order relates the First-tier Tribunal must order that the maximum amount of rent is repaid, capped at a maximum of 12 months.
- 9.8 An Order can also be applied for where an offence has been committed but a landlord has not been convicted of one of the above offences. In this instance the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence. In this instance when considering how much rent should be recovered the following factors will be taken into consideration:
- the Rent Repayment Order should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities
  - the level of the penalty should be such that it is likely to deter the offender from repeating the offence
  - the imposition of the Order will be in the public domain so robust and proportionate use of them will dissuade others from committing similar offences
  - removal of any financial benefit the offender may have obtained as a result of committing the offence

## **10.0 BANNING ORDERS**

- 10.1 The Housing and Planning Act 2016 gives the Council the option of applying for a Banning Order to prevent a person from managing rented property, where they have been prosecuted for a relevant offence.
- 10.2 In deciding whether to apply for an Order the following will be considered:
- the seriousness of the offence to which the person has been convicted
  - any previous convictions the person has for a banning order offence
  - whether the person has at any time been included in the database of rogue landlords and property agents
  - the likely effect of the banning order on the person and anyone else who may be affected by the order
- 10.3 Banning Orders must be for a minimum of 12 months except for certain exemptions.
- 10.4 Any person who is subject to a Banning Order may not hold an HMO licence.

## **11.0 DATABASE OF ROGUE LANDLORDS AND LETTING AGENTS**

- 11.1 The database will contain details of landlords and property agents who have been convicted of a Banning Order offence or have received two or more civil penalties by any local authority in any 12-month period.
- 11.2 Banning order offences are specified in legislation and can be for landlords or property agents who have been convicted of particular serious offences and/or are repeat offenders. A number of offences set out in the regulations are not directly

related to housing, such as fraud, sexual assault, misuse of drugs, theft and stalking. To result in a banning order such an offence must be committed:

- against or in collusion with her/his tenant or licensee (or member of her/his household) or at (or in relation to) the property let out, and
- at a time when the offender was a landlord or property agent of that property, and
- by an offender who was sentenced in the Crown Court.

11.3 The offence can also be for relevant housing offences including any offence under the Housing Act 2004, committing or causing overcrowding, providing a local authority with false or misleading information, continuing to let to illegal immigrants, or illegally evicting or harassing as residential occupier.

11.4 Their details can be entered on the National Database of Rogue Landlords and Property Agents. This national database is an important tool to assist local authorities and prospective tenants identify landlords who have failed to maintain their properties to the required standard.

## **12.0 Powers of Entry**

12.1 Authorised officers have a power of entry to properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004 provided that they have given 24 hours' notice to the owner (if known) and the occupier (if any) of the premises they intend to enter. These duties are:

- Enter a property to carry out an inspection
- Take any appropriate persons with them
- Take equipment or materials with them
- Take measurements, photographs or make recordings
- Take samples of articles or substances

12.2 If admission is refused, then a warrant may be granted by a Justice of the Peace on written application. A warrant under this section includes power to enter by force, if necessary.

12.3 No notice is required where entry is to ascertain whether an offence has been committed under certain sections of the Act relating to HMOs.

## **13.0 Licensing of Houses in Multiple Occupation**

13.1 The Housing Act 2004 introduced a mandatory licensing system for certain types of Houses in Multiple Occupation (HMO). The aim of licensing is to ensure that every licensable HMO is safe for the occupants and visitors and is properly managed.

13.2 An HMO is a house or flat that is occupied as a main residence, by more than one household, where occupiers share facilities such as kitchens, bathrooms and WCs. This would include, for example, houses containing bedsits, a combination of bedsits and self-contained flats where the bedsits share facilities, and also shared houses and hostels. In addition, houses entirely converted into self-contained flats not in

strict compliance with the Building Regulations 1991, with at least one third occupied as flats on short tenancies are classed as HMOs.

- 13.3 Since 1 October 2018, the Housing and Planning Act 2016 extends mandatory HMO licensing, so HMOs occupied by five or more people, in two or more households, must obtain a licence, irrespective of the number of storeys of the property. This is a mandatory legal requirement.
- 13.4 The responsibility for applying for a licence rests with the person having control of or the person managing the property.
- 13.5 The Housing Act 2004 sets out a number of HMO licensing related offences all of which carry an unlimited fine, including:
- Operating an unlicensed HMO or allowing an HMO to be occupied by more persons than a licence allows
  - Breach of licence condition
  - Supplying incorrect information in a licence application
- 13.6 A civil penalty can be issued as an alternative to prosecution for each separate breach of the HMO management regulations.
- 13.7 In addition to the above, a landlord who operates an unlicensed HMO can be subject to a Rent Repayment Order (RRO). The Council may also decide to apply a Civil Penalty for certain offences using the Housing and Planning Act 2016.
- 13.8 Any breach of a licence condition will, in principle, initially be dealt with informally. However, if the breach is serious and affects the safety of the occupants or the responsible person does not carry out necessary works within an agreed timescale, the Council will pursue enforcement action in line with the [Council's Better Regulation and Enforcement Policy](#).
- 13.9 In serious cases an Interim Management Order (IMO) transfers the management of a residential property to the Council for a period of up to twelve months. In exceptional circumstances the Council can also apply for a Final Management Order (FMO) which can last for up to five years.
- 13.10 Licence Holders and HMO Managers will be assessed in order to determine whether they are a fit and proper person having regard to:
- any previous convictions relating to violence, sexual offences, drugs and fraud
  - contraventions of any laws relating to housing, public health or landlord and tenant issues, including those dealt with by way of civil penalties
  - any convictions for unlawful discrimination
  - previous HMO licence refusals
  - training and qualifications through professional bodies and/or landlord accreditation schemes
  - Basic Disclosure result - the Council requires that a Basic Disclosure is undertaken for the proposed licence holder and manager of the HMO. Where a company is either the licence holder and/or the manager, each Company Director/Partner will be required to undertake a Basic Disclosure

## **14.0 Works in Default**

- 14.1 In certain circumstances the Council may decide to carry out works detailed in any enforcement notice or order. Such action can be taken with or without the agreement of the responsible person. If works in default are undertaken a civil penalty can still be imposed or a prosecution considered.
- 14.2 The Council is not obliged to carry out the works in default and reserves the right not to do so. The Council will avoid actions that may encourage owners, landlords and agents to be non-compliant, such as carrying out costly works in default where it may be difficult for the Council to recover its costs.
- 14.3 When taking action with the agreement of the person concerned, the Council may take any action which that person is required to take in relation to the Notice/Order. However, taking action by agreement will only generally be considered where it is felt that the relevant person is, for whatever reason, incapable of organising, executing and overseeing the necessary works. Any such work undertaken will be at the expense of the person concerned.
- 14.4 Taking action without the agreement of the person concerned, will be considered as a course of action in the following circumstances:
- where there is a significant risk to health and safety
  - where a person has failed without “reasonable excuse” to comply with the requirements of an Improvement Notice
  - where reasonable progress, in relation to the requirements of the Notice/Order, is not being made
  - where it is likely that the Council will be able to recover its costs
- 14.5 Where the Council has, under the Housing Act 2004, undertaken works in default, or exercises its power to take Emergency Remedial Action, it will seek to recover the cost of the work carried out and our reasonably incurred expenses for organising the work. The costs incurred will carry interest from the date of service until payment of all sums due under the demand at a rate of the Bank of England Base Rate +2% calculated at the point the charge is payable. The Housing Act 2004 allows a Local Land Charge to be placed on the premises to which it relates
- 14.6 Where the Council has undertaken remedial works under the Electrical Safety Standards Regulations, steps will be taken to recover reasonably incurred costs.

## **15.0 APPEALS**

### **In relation to Civil Penalties**

- 15.1 There is a right of appeal to a First-tier Tribunal and must be made within a specified time from the date a notice is served. Tribunals are informal bodies and do not operate like courts. They will hear cases presented by each side.
- 15.2 The Council will rigorously defend its decision to issue civil penalties and take appropriate enforcement action where a person fails to pay a civil penalty.



## Housing Act 2004 and Electrical Safety Standards Regulations

- 15.3 The Council is required to issue a 'notice of intent' to issue a civil penalty. Under this notice a landlord has 28 days within which to make representations to the Council about the proposal to impose a financial penalty. At the end of this period, should the Council still propose to issue the civil penalty, they must serve a 'final notice' imposing the penalty.
- 15.4 On receipt of a final notice imposing a civil penalty a landlord can appeal to the First-tier Tribunal against the decision to impose a penalty and/or the amount of the penalty. The appeal must be made within 28 days of the date the final notice was issued. If an appeal is made, the final notice is suspended and therefore the civil penalty is not payable, until such time as the appeal is determined or withdrawn.
- 15.5 The appeal will involve a re-hearing of the Council's decision to impose the civil penalty and may be determined having regard to matters of which the Council was unaware. The Tribunal has the power to confirm, vary (increase or decrease) or cancel the civil penalty that the Council has issued.
- 15.6 The First-tier Tribunal can also dismiss an appeal if it is satisfied the appeal is frivolous, vexatious or an abuse of process, or if the appeal has no reasonable prospect of success.

## Energy Efficiency Regulations

- 15.7 The landlord may make a request for a review of the Council's decision to serve a civil penalty notice within the period stated in the notice. Following the review, should the Council confirm the penalty notice, the landlord may appeal to the First-tier Tribunal on the following grounds:
- the issue of the penalty notice was based on an error of fact or law;
  - the penalty notice did not comply with a requirement imposed by these Regulation; or
  - in the circumstances of the case, it was inappropriate for the penalty notice to be served.
- 15.8 If an appeal is brought, the penalty notice is suspended and, therefore, the civil penalty is not payable until such time as the appeal is determined or withdrawn. The First-tier Tribunal may quash, confirm or modify the penalty notice.

## **In relation to Other Matters**

- 15.9 Under the Housing act 2004, there is a right of appeal to the 'appropriate tribunal' in relation to improvement notices, prohibition orders, licence decisions, management orders, overcrowding notices and emergency measures.
- 15.10 Under the Electrical Safety Standards Regulations, there is a right of appeal to the First-tier Tribunal in relation to remedial notices, emergency remedial notices and recovery of costs.

## **16.0 Housing Associations**

- 16.1 Housing Associations that are registered with the Regulator of Social Housing (Private Registered Providers) normally have published arrangements for reporting problems and clear response times for tenants to address problems. Where tenants consider that repairs have not been carried out to their satisfaction each Housing Association has a complaints procedure that tenants should follow. As a result of this, the Council will not normally investigate issues from tenants of Private Registered Providers, unless the reporting and complaints procedure of the Provider in question has been followed and the landlord has then failed to take appropriate action.
- 16.2 For those Housing Associations that are not registered with the Regulator of Social Housing but have similar arrangements in place as the Private Registered Providers to allow tenants to address problems, the Council will not normally investigate issues from such Housing Association tenants, unless the reporting and complaints procedure of the Housing Association in question has been followed and the landlord has then failed to take appropriate action.
- 16.3 For those Housing Associations that are not registered with the Regulator of Social Housing and there is evidence that the Housing Association does not have appropriate arrangements in place to allow tenants to address problems and raise complaints, the Council will normally consider the problems being experienced by the Housing Association tenants and determine whether an investigation is appropriate.

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## APPENDIX A The Housing, Health and Safety Rating Scheme (HHSRS)

The HHSRS provides an objective framework that Local Authorities must use to assess and rate 29 broad categories of hazard. These are summarised as follows:

- Dampness, excess cold/heat
- Pollutants e.g. Asbestos, Carbon Monoxide, lead
- Lack of space, security or lighting, or excess noise
- Poor hygiene, sanitation, water supply
- Accidents – falls, electric shocks, fires, burns, scalds
- Collisions, explosions, structural collapse

The system provides a means of comparing the risks associated with different types of hazard. Some are slow and insidious in their effect, like dampness and cold, whilst others are quick, such as falls. Some hazards are more likely to result in death, such as carbon monoxide, others are very unlikely to cause death e.g. noise or poor layout of amenities.

When an inspector finds a hazard, two key tests are applied – what is the likelihood of a dangerous occurrence as a result of this hazard in the next 12 months and if there is such an occurrence, what would be the likely outcome. This assessment is based on the risk to the actual, or potential, occupant who is most vulnerable to that risk. Each assessment of a hazard carried out using HHSRS results in a score.

This score is calculated using the following formula:

**Risk (likelihood) x Outcome = Numerical Score**

The calculation includes a 'weighting' to reflect the more serious outcomes.

Once the score has been decided it is given a banding. The table below shows the hazard bands:

BAND	HAZARD SCORE RANGE	
A	5,000 or more	<b>CATEGORY 1 HAZARD</b>
B	2,000 to 4,999	
C	1,000 to 1,999	
D	500 to 999	<b>CATEGORY 2 HAZARD</b>
E	200 to 499	
F	100 to 199	
G	50 to 99	
H	20 to 49	
I	10 to 19	
J	9 or less	

If a hazard score falls into Bands A to C, this is classed as a Category 1 hazard. Those rated in Bands D and lower will fall into the residual category, Category 2.

The hazard score does not dictate the action to be taken, but if Councils find a Category 1 hazard in a home, they have a mandatory statutory duty to take the most appropriate action. Where a Category 2 hazard exists, there is no such similar duty; instead the Act confers a power to take action.

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