

Housing Enforcement Policy

Version 2
2024



Introduction

This policy sets out Chorley Council's approach to its housing standards compliance and enforcement activities in relation to housing conditions, including privately rented properties, housing association (registered providers) and owner-occupied properties. It also serves to inform investigating officers and decision-makers of the framework in which they operate, in addition to providing information to those people and businesses which are regulated and those protected by regulation.

Chorley Council (the Council) are committed to improving standards within the housing sector, ensuring that landlords are aware of the standard of property they should be offering, and that all properties are well managed, properly maintained, habitable and safe. Having high quality housing stock is fundamental to the quality of life and health and wellbeing of people and families in Chorley.

The Council has had regard to the Regulator's Compliance Code¹ and the Better Regulation Framework² in developing this enforcement policy.

The Council expects landlords to comply with the law and to proactively manage their properties to ensure that the health and welfare of tenants is protected. Where individuals or companies are failing in their responsibilities and duties, the Council will take appropriate action.

This policy sets out the current legislation that the Council has at its disposal. It is not an exhaustive list, and the council reserves the right to implement the enforcement of other legislation, including any new or revised legislation or regulations, prior to any policy updates.

Any fees and charges laid out in the policy will be reviewed on an annual basis as part of the council's fees and charges setting process.

¹ <https://assets.publishing.service.gov.uk/media/5f4e14e2e90e071c745ff2df/14-705-regulators-code.pdf>

² https://assets.publishing.service.gov.uk/media/65420ee8d36c91000d935b58/Better_Regulation_Framework_guidance.pdf

Summary of Changes

Civil Penalties

The Housing & Planning Act 2016 introduced a range of measures to tackle rogue landlords, including the power for Councils to issue Civil Penalties of up to £30,000 as an alternative to prosecution, for certain specified offences.

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 enables local authorities to serve financial penalties for breaches of up to £30,000 and came into full force on 1st April 2021.

HMO Licensing Procedures

Additional processes added to include notifying relevant parties of the proposal to grant a HMO licence.

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Policy Aims and Objectives

Aims

- To ensure that all privately rented accommodation is suitably maintained, providing a safe and habitable environment, improving the overall standards of the housing stock within the borough
- Secure effective compliance with legislation while minimising the burden to the Council, individuals, organisations and businesses.
- Set out the legal responsibilities, policies, principles and priorities that the Environmental Health team will follow when enforcing legislation around private housing.
- To support local landlords and agents in understanding their duties and legal obligations.
- To increase public confidence in the quality of rented accommodation.
- To ensure the Council meets its statutory duties as a public authority.

Objectives

- When brought to the Council's attention, tenants of a private landlord or registered social landlord live in homes free from significant hazards that pose risks to their health and welfare.
- Have regard to internal policies and procedures to ensure a consistent and balanced approach when making enforcement decisions.
- To ensure the satisfactory management of all rented properties including houses in multiple occupation (HMO's).
- Ensure all known properties which require mandatory licensing are licensed and licensing conditions are met and free from significant hazards.
- To work with other departments within the Council and other professional and regulatory bodies to ensure rented properties are well managed, safe and not detrimental to health and wellbeing.
- Prioritise and target problematic properties and allocate resources where most needed.

Housing Act 2004

The Housing Act 2004 (the Act)³ is the significant piece of legislation enforced by the Environmental Health team in relation to housing standards issues in private rented properties.

Part 1: The Act together with regulations made under it, prescribes the Housing Health and Safety Rating System (HHSRS) as to how Local Authorities assess housing conditions and decide on the action to be taken to deal with poor housing.

The HHSRS is a risk-based assessment method which looks at how housing conditions effect the health of occupants. 29 hazards are assessed and scored for their severity. The scores for each hazard are ranked into Bands. Hazards falling into Bands A-C are more serious and are classed as Category 1 hazards. Less serious hazards fall into bands D to J and are classified as Category 2 hazards.

The scoring is based on the risk posed to the most vulnerable potential occupant of the property over a 12month period. In determining what action to take the Council will not only consider the score but will also take account of the duty to act, the view of the occupiers and the presence of other hazards along with any history of the relevant landlord.

The Council must take appropriate action in respect to Category 1 hazards and may do so in relation to Category 2 hazards. Generally appropriate action will be undertaken on high Category 2 hazards, i.e. those scoring bandings D & E. While action on lower Category 2 hazards will generally be considered when Category 1 and high Category 2 hazards exist.

It is still permissible to take informal action unless there are indicators to the contrary such as a previous history of non-compliance or where it is known that the person responsible for the premises has been aware of the hazard and has not taken any remedial action. Informal action will be replaced by a statutory notice if at any time it appears that satisfactory progress to reduce or remove the hazard(s) is not being made.

The Council will liaise with Lancashire Fire and Rescue Services in relation to fire safety within all properties to ensure satisfactory means of escape and means of detection and alarm are provided in rented accommodation, specifically when considering enforcement action.

³ <https://www.legislation.gov.uk/ukpga/2004/34/contents>

Non-Private Rented Sector Properties

Upon receiving a complaint regarding a housing association/Registered Provider (RP), the council will contact the organisation to discuss the complaint to ensure their internal complaints policy is being followed. Where the council has identified hazards, and the RP has scheduled a programme of works, which will remove the hazard, the officer will consider the programme when determining the most appropriate course of action. The council will liaise with the RP to agree a schedule to deal with Category 1 and 2 hazards in advance of the planned improvements. If necessary, the Council will utilise all powers available to resolve matters.

Other than in exceptional circumstances, the council expects owner-occupiers (including long leaseholders) to take their own action to remedy hazards at their properties. The Council will decide whether there are exceptional circumstances in a particular case to justify intervention.

Enforcement Options

The statutory notices for Category 1 hazards can include:

- Improvement Notice
- Prohibition Order
- Hazard Awareness Notice
- Emergency Remedial Action
- Emergency Prohibition Order
- Demolition Order
- Declaration of a Clearance Area

The statutory notices for category 2 hazards can include:

- Hazard Awareness Notice
- Improvement Notice
- Prohibition Order

Remedial Actions

As a minimum, Category 1 hazards should be reduced to Category 2 hazards assessed below a band F. Regard will be had to the extent of the work that is reasonable in order to reduce the hazard(s) significantly without incurring excessive costs.

Short term fixes should be avoided wherever possible, the works should be substantial and specified to be effective for a minimum of five years.

Powers on Entry

Authorised Officers have powers of entry to carry out a survey and examination of any residential premises to determine whether hazards exist and the action required. Wherever possible occupiers and owners will be given at least 24 hours' notice, usually in writing, of an intended inspection. It is a criminal offence to obstruct an Authorised Officer from undertaking their duty.

If entry to a property is refused the Council will consider applying to the Magistrates' Court for a warrant to authorise entry especially where the Council believe serious hazards exist at the property.

Powers to Require Documents

Section 235 of the Act allows the Council to require documents from a person to assist the Council undertaking their duties in relation to the Act or for the purpose of investigating whether any offence has been committed.

Additional Licensing

Section 56 of the Act permits Council's to extend the licensing of HMO's beyond the scope of the mandatory licensing regime. The requirement for additional licensing will be reviewed individually for each application.

Part 3 Selective Licensing

There are currently no selective licensing areas within Chorley. The Council may in the future declare areas of the borough as selective licensing designation areas. In the event of a designation, a licence will be required for each rented dwelling within these areas.

Part 4 Management Orders

These management orders are designed to allow a Local Housing Authority (LHA) to 'step into the shoes' of a private landlord and manage a property where it cannot be licensed or where there is some management problem which requires intervention by the LHA. An Interim Management Order (IMO) is an interim measure designed to provide time for a longer-term management solution to be found, normally the grant of a licence under Parts 2 or 3. Alternatively, a Final Management Order (FMO) can run for up to 5 years.

The Local Authority may use Management Orders to take over the control of problematic properties:

- When there is no reasonable prospect of the property being licenced
- To protect the health, safety or welfare of the tenants
- To protect the health, safety or welfare of other occupiers or landowners in the neighbourhood.

Licensing of Houses in Multiple Occupation

The Act introduced a mandatory licensing system for certain types of Houses in Multiple Occupation (HMO). This mandatory licensing requirement was updated in 2018 under the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018⁴. Following this, mandatory licensing now applies to a property of five or more occupants which consists of two or more households, this legislation removed the requirement for a property to have three or more storeys.

Sections 254-259 of the Act defines what is considered a HMO, a building or part of a building which is:

- Occupied by more than two households, in which amenities are shared
- Occupied by more than two households which is a converted building which does not comprise of self-contained flats
- A building comprising of converted self-contained flats which do not meet the standards required by the 1991 Building Regulations.

The aim of licensing is to ensure that every licensable HMO is safe for the occupants and visitors and is properly managed.

The responsibility for applying for a licence is with the person having control or the person managing the property.

Upon receipt of a complete application, the documentation will be checked and an inspection of the property will be undertaken. Once the Council is satisfied that the property and documentation is satisfactory all each relevant party will be consulted. All representations will be considered and responded to and variations may be considered.

Mandatory licences last for a period of 5 years from the date of issue. Where non-compliance with the licensing conditions has been identified, several enforcement options

⁴ <https://www.legislation.gov.uk/uksi/2018/221/made>

are available to ensure risks to the health and safety of the occupants are reduced to acceptable levels.

Variation of licences

The Council can vary the terms of a licence with or without the agreement of the licence holder if the circumstances regarding the relevant HMO or other property have changed.

Revocation of licences

The Council may have to revoke a licence. The grounds for revoking a licence include:

- A request of revocation from the owner
- Where the Council believes that the licence holder is no longer a fit and proper person
- As a result of the number of occupants or other current standards that apply, the HMO would not have been licensable under its current conditions.

Temporary Exemption Notice

The Council may serve a temporary exemption notice where a person who is required to be licensed notifies the Council that they propose to take steps to ensure the property is no longer required to be licensed. The notice is served on this person and exempts that property from being licensed for a period of 3 months.

In exceptional circumstances the Council may serve a second temporary exemption notice that lasts a further 3 months. No further notice can be served after the expiry of the second notice.

The Council can refuse to serve a temporary exemption notice which allows a right of appeal. Such circumstances where the Council may refuse to serve a temporary exemption notice is where the owner has failed to supply clear evidence showing that they are taking steps to exempt the HMO or other property from the criteria for licensing.

Licence Appeals

The applicant or any relevant person may appeal to the First Tier of the Lands Tribunal against a decision by the Council to:

- Refuse or grant a licence
- Grant a licence
- To vary or revoke a licence

- To refuse to vary or revoke a licence.

Public Registers

Section 232 of the Housing Act 2004 requires every housing authority to establish and maintain a register of:

- all licences granted under Part 2 and 3 of the Act (HMO and selective licensing);
- all temporary exemption notices served and;
- all management orders made.

The register may be in such a format as the Council consider necessary subject to requirements prescribed in regulations.

General Enforcement Policies and Principles

The Regulator's Code

The Council are required by the Legislative and Regulatory Reform Act 2006, to have regard to The Regulators' Compliance Code (the Code).

This Enforcement Policy is compliant with the Code in that it aims to promote efficient and effective approaches to regulatory inspection and enforcement, thereby improving regulatory outcomes without imposing unnecessary burdens upon property owners and occupiers. Any departures from the Code will be properly reasoned, documented and based upon material evidence.

The Code does not however apply to actions under Part 1 of the Housing Act 2004 relating to the HHSRS. Actions under Part 1 will therefore continue to be subject to the principles of the Enforcement Concordat.

Informal actions

Where applicable the council will ensure to exhaust all informal actions in order to support a property owner in achieving improved housing standards and compliance with the relevant legislation.

We will provide advice on appropriate housing standards, legislation, and legal procedures to property owners. Advice and guidance is an essential part of the work that we do to raise housing standards. The following methods will be used to provide advice:

- The posting of information on the Council's website
- Verbal advice

- Written advice, guidance, information leaflets, dissemination of official good practice guidance
- Ensuring officers undertaking Housing Inspections are appropriately qualified, trained and receive adequate updates of private sector housing enforcement matters
- Obtaining information on grants, national funding schemes and local funding arrangements which may be available.

When considering formal action consideration will be given to the track record (if any) of the person (or company). Officers will consider whether any enforcement notices have had to be served in the past, the recipient's response to them and the ability and willingness of the recipient to keep to agreed timetables of work.

There are cases where informal action is not applicable on occasion where the risk posed by the hazards identified will be so great that emergency works will be required.

Formal Action

Formal action involves the serving of enforcement notices and orders. Most notices and orders served require the recipient of the notice or order to commence and complete specified works within specified time limits.

The decision regarding when to serve a notice or order depends upon whether there is a duty or a power to take such action and will consider the following:

- Where the pre-enforcement action has not resulted in compliance with the legislation
- There is a lack of confidence that the recipient of the notice or order will comply
- There is a history of non-compliance
- The consequences of non-compliance have a serious risk of harm to the health, safety or welfare of the public
- The owner/person having control is unknown or unable to be contacted
- The owner/person having control is incapable of undertaking the required works (usually owner-occupied property)

All notices and orders have guidance notes with them that explain the effect and the recipient's right of appeal. Officers will always be willing to discuss the works specified in the notice or order and the reason for the service.

Statutory notices and orders are legal documents. Once served failure to comply with them has serious implications, normally resulting in one or more of the following sanctions.

Any extensions of time limits for compliance with a statutory notice or order, once served must be justified, recorded and confirmed in writing to all recipients of the notice or order.

Charging for enforcement activity

Section 49 of the Act allows for Council's to make a charge for certain enforcement activities to recover the costs involved in those actions. In line with the requirements of this section of the Act the Council will generally make a charge when we:

- Serve an improvement notice
- Make a prohibition order
- Take emergency action
- Make an emergency prohibition order, and;
- Make a demolition order

The Council will not normally charge for serving a hazard awareness notice. The council reserves the right not to invoice or to waive the charge for enforcement action in exceptional circumstances with each case being considered on its own merits.

Work in Default

Work in default is a power contained in several types of statutory notice. The legislation authorises the Council, to employ a contractor to enter the property and carry out the work required to ensure compliance with the notice. If the Council is required to do this, it will charge the appropriate person for the cost of the works, together with the costs involved in arranging for the work to be done. These costs will be added to those already incurred in serving the original notice.

The Council has a duty to ensure that the works are carried out at a fair price and to an adequate standard. However, the Council must undertake the works in a short timescale. This can be expensive as contractors carrying out emergency works often do so at a premium rate.

It should be noted that carrying out work in default does not exclude the Council from either issuing a formal caution or prosecuting the offender. The Council is entitled to ensure that the work is carried out and officers will then also consider if it is appropriate to take further action.

Recovering Costs

The Council will recover its costs incurred in enforcing housing related legislation.

When a charge is imposed under section 49 of the Act or by completing works in default, the sum recoverable becomes a local land charge on the premises concerned. Costs will include officer time in determining whether to serve a notice/order and serving a notice/order. In addition, for works in default full contractor costs incurred and time for arranging and overseeing the contractor's work plus an administrative cost will be charged. If enforcement action has been taken against a named person or legal entity the Council will seek to recover the charge by invoice. If the debt is not recovered by payment of an invoice all outstanding debts will be registered with the Local Land Charges Registry as a financial charge. Once registered, interest will be added to the debt at a compound interest rate of 8%* starting on the date the charge became applicable until the debt is settled in full.

The Council may recover the costs incurred in carrying out work in default by one of the following methods:

Invoice, followed by county court action	<ul style="list-style-type: none"> • For debts less than £500.00 • Where debtor has sufficient means to settle the debt • Where other forms of debt recovery are not possible
Charge placed on property (compound interest of 8% *in exceptional circumstances the interest rate may be reduced), where permissible by legislation.	<ul style="list-style-type: none"> • Where owner occupiers are unable to settle the debt • Where landlords are unable to settle the debt and mortgage repayments make sequestering the rent unviable • Where the responsible person cannot be traced
Sequestering the rent – by serving notice on the tenant requiring them to pay rent directly to the Council until costs are recovered	<ul style="list-style-type: none"> • Where the property is tenanted and there are no or low mortgage repayments.
Enforced sale – under the Law and Property Act 1925 the Council can force the sale of the property through the Courts and recover the costs from the proceeds of the sale	<ul style="list-style-type: none"> • Where the property is empty • Where the property is tenanted but there are multiple debts on the property and the landlord is not maintaining the property

Rent Repayment Orders

Where housing benefit has been paid to a landlord and the Council is satisfied that the landlord has committed one or more specific offences, the Council can apply for a Rent

Repayment Order. Where the landlord is convicted of one of the relevant offences, the Council is under a duty to consider applying for a Rent Repayment Order. The specific offences are:

- Failure to comply with an Improvement Notice
- Failure to comply with a Prohibition Order
- Offences in relation to licensing of HMO's
- Offences in relation to licensing of HMO's under Part 3 of the Act
- Breach of a Banning order
- Using violence to secure entry to a property
- Illegal eviction or harassment of the occupiers

The Council will usually apply for the full amount that can be recovered and lesser amounts will only be sought in exceptional cases.

Cautions

An alternative to prosecuting a property owner is the issuing of a formal caution. A formal caution is where an offender is given written details of the offence and he/she signs to say that he/she admits the offence. It is not a form of sentence.

A record of the caution will be kept at the Council for a period of three years and it may subsequently influence a decision to instigate proceedings should the offender break the law in the future. It may also be cited if the Council takes legal action for a subsequent offence.

The service of a formal caution will be considered when the circumstances of the offence satisfy the criteria detailed below:

- The offence is sufficiently serious to warrant prosecution; and
 - It is a first offence; and/or
 - The offence occurred through ignorance and the offender has expressed remorse and a willingness to comply with the law in future; and
 - The officer believes that a formal caution will prevent repeat offences.
- A formal caution may only be issued if the following criteria are satisfied:
- There is sufficient evidence of the offender's guilt to give a realistic prospect of conviction.
 - The offender admits that they are guilty.
 - The offender will accept the formal caution and understands its significance.
 - It is in the public interest to issue a formal caution rather than instigate prosecution proceedings.

Prosecution

The Council recognises that the decision to prosecute is important. In making a decision to prosecute, a two-stage test is applied:

- The first stage is the evidential test, which requires that there must be sufficient, admissible and reliable evidence that an offence has been committed by an identifiable individual or company, that there is a realistic prospect of conviction. If the case does not pass this test, it must not proceed, no matter how serious or important it may be.
- Secondly, a decision must be made as to whether a prosecution would be in the public interest.

A prosecution will normally be pursued in the following circumstances:

- Where an individual or company has deliberately, negligently or persistently breached legal obligations.
- Where an individual or company has deliberately or persistently ignored written warnings or formal notices and / or orders.
- Where an individual or company has endangered the health, safety or wellbeing of occupiers, visitors or the public to a serious degree.
- Where an individual has assaulted or obstructed an Officer in the course of their duties.
- Where a HMO or house is required to be licensed and has been operating without a licence.

All prosecutions will be brought without unavoidable delay, and there is a requirement to lay information with the courts within six months of the identified date that the offence was committed.

Working with Other Regulatory Bodies

Where other regulatory bodies have enforcement powers to investigate housing related matters referrals will be made to those bodies. Officers will liaise with that other body to ensure effective co-ordination, avoid inconsistencies, and ensure that contraventions of legal requirements are investigated by the most appropriate agency. These agencies include:

- Health and Safety Executive
- Lancashire Fire & Rescue Service
- Police
- UK Border Agency
- Lancashire Social Care and Health
- Revenues and Benefits Departments

- HMRC

Housing Act 1985 (as amended) The Council have additional, existing powers under the Housing Act 1985⁵:

- **Section 265 - Power to make Demolition Order**
A demolition order is an option for the Council to use to deal with the existence of Category 1 hazards on a residential premises. A demolition order requires the property to be vacated within a specific time and subsequently demolished. It is a criminal offence to allow the property to be occupied after the demolition order has come into effect. If the person upon whom the order has been served does not demolish the building, the Council can demolish it instead and recharge the person accordingly. Should the Council be required to demolish the property, and the demolition leaves an adjacent terrace property party wall exposed, then the Council will construct a new gable wall and will recover the cost from any compensation monies owing to the owner.
- **Section 289 - Declaration of clearance area**
A clearance area is an area that is to be cleared of all buildings. Where Category 1 hazards exist on a residential premises, the Council can declare a clearance area. If this is chosen as the most appropriate enforcement action, the Council is required to consult on the declaration of a clearance area and publish its intentions. Owners and in certain cases occupiers of properties are compensated accordingly.
- **Section 324 – Overcrowding**
A property is overcrowded when the number of persons sleeping in the dwelling contravenes either the specified room or space standard. It is an offence for either an occupier or landlord to cause or permit overcrowding. The Council can prosecute the person committing such an offence. Where a dwelling is found to be overcrowded the Council may serve notice on the occupier, in writing requiring him to abate the overcrowding within 14 days from the date of service of notice.

Local Government (Miscellaneous Provisions) Act 1976

Section 16 - Requisition for Information

When the Council needs to obtain information about a property in respect of which we are proposing to take enforcement action we will serve a requisition for information on the occupier and/or any person who has a legal interest in it, or who directly or indirectly receives rent, or is authorised to manage or to arrange for its letting.

⁵ <https://www.legislation.gov.uk/ukpga/1985/68/contents>

It will always indicate the Act and section of the Act that it is proposing to enforce. Generally, a Requisition for Information is served at an early stage to ensure that it is corresponding with the correct person(s) but where the Council consider that urgent enforcement action is necessary it may be served at the same time as a formal Notice.

Housing and Planning Act 2016

Civil Penalties

The Housing & Planning Act 2016⁶ introduced a range of measures to tackle rogue landlords, including the power for Councils to issue Civil Penalties of up to £30,000 as an alternative to prosecution, for certain specified offences.

This power came into force on 6 April 2017 and was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

Income received from a Civil Penalty can be retained by the local housing authority, provided that it is used to support the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector.

A civil penalty may be imposed as an alternative to prosecution for the following offences under the Housing Act 2004:

- failure to comply with an Improvement Notice (section 30),
- offences in relation to licensing of Houses in Multiple Occupation (section 72),
- offences in relation to licensing of houses under Part 3 of the Act (section 95),
- offences of contravention of an overcrowding notice (section 139), and
- failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234)

Only one penalty can be imposed in respect of the same offence and a civil penalty can only be imposed as an alternative to prosecution. However, a civil penalty can be issued as an alternative to prosecution for each separate breach of the House in Multiple Occupation management regulations. Section 234(3) of the Housing Act 2004 provides that a person commits an offence if he fails to comply with a regulation. Therefore, each failure to comply with the regulations constitutes a separate offence for which a civil penalty can be imposed.

For Chorley Council's Civil Penalty Policy and Guidance Matrix – see Appendix A.

⁶ <https://www.legislation.gov.uk/ukpga/2016/22/contents>

Minimum Energy Efficiency Standards

The Minimum Energy Efficiency Standards⁷ (MEES) regulations were introduced by the government in 2018. The regulations seek to:

- Improve the quality of privately rented homes,
- Increase the energy efficiency of the worst performing houses,
- Improve the comfort and conditions in privately rented homes and reduce fuel poverty.
- The regulations require all privately rented properties to have an Energy Performance Certificate (EPC) rating of at least E before the tenancy is renewed or the house is rented out to a new tenant. Properties with an EPC rating of F or G cannot be rented out unless they are covered by statutory exemption.

Landlords must ensure there is a valid EPC for their property, with a minimum energy efficiency rating of E, unless there is a valid exemption.

If a private sector landlord continues to rent a property with an EPC rating of F or G, a Compliance Notice and a Penalty Notice can be issued to the landlord, with a maximum penalty of £5000.

If the energy rating is F or G, landlords must make improvements to the property to bring it into compliance. The cost of energy efficiency improvements for F or G rated properties is currently capped at £3500 including VAT.

If the hazard of excess cold is identified within a property and the property meets the rating of E, landlords will need to provide adequate heating and thermal comfort. The Council can prosecute or issue penalties of up to £30,000 when hazards including excess cold are identified in a property and not rectified.

Properties that are legally required to have an EPC, which cannot be improved to meet the minimum E Rating, may be exempt from MEES regulations.

Smoke and Carbon Monoxide Alarm (England) Regulations 2015

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force on 1 October 2015.

The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022⁸ came into force on 1 October 2022. From that date, all relevant landlords must:

⁷ <https://www.gov.uk/guidance/domestic-private-rented-property-minimum-energy-efficiency-standard-landlord-guidance#full-publication-update-history>

1. Ensure at least one smoke alarm is equipped on each storey of their homes where there is a room used as living accommodation. This has been a legal requirement in the private rented sector since 2015.
2. Ensure a carbon monoxide alarm is equipped in any room used as living accommodation which contains a fixed combustion appliance (excluding gas cookers).
3. Ensure smoke alarms and carbon monoxide alarms are repaired or replaced once informed and found that they are faulty.

The requirements are enforced by local authorities who can impose a fine of up to £5,000 where a landlord fails to comply with a remedial notice.

It is anticipated that powers under Part 1 of the Housing Act 2004 will continue to take precedence to ensure adequate fire safety on the basis that remedial works can be carried out with more expediency.

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 enables councils to serve financial penalties for breaches of up to £30,000 and came into full force on 1st April 2021.

These regulations require landlords to have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at an interval of at least every 5 years. Landlords must provide a copy of the electrical safety report to their tenants, and to their local authority if requested.

Landlords of privately rented accommodation must:

- Ensure national standards for electrical safety are met. These are set out in the latest edition of the 'Wiring Regulations,' which are published as British Standard 7671.
- Ensure the electrical installations in their rented properties are inspected and tested by a qualified and competent person at an interval of at least every 5 years.
- Obtain a report from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test.

⁸ <https://www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-landlords/the-smoke-and-carbon-monoxide-alarm-england-regulations-2015-qa-booklet-for-the-private-rented-sector-landlords-and-tenants>

- Supply a copy of this report to the existing tenant within 28 days of the inspection and test.
- Supply a copy of this report to a new tenant before they occupy the premises.
- Supply a copy of this report to any prospective tenant within 28 days of receiving a request for the report.
- Supply the local authority with a copy of this report within 7 days of receiving a request for a copy.
- Retain a copy of the report to give to the inspector and tester who will undertake the next inspection and test, where the report shows that remedial or further investigative work is necessary, complete this work within 28 days or any shorter period if specified as necessary in the report.
- Supply written confirmation of the completion of the remedial works from the electrician to the tenant and the local authority within 28 days of completion of the works.

The council may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of a breach. Each breach constitutes a separate offence for which a financial penalty can be imposed.

The same criminal standard of proof is required for a financial penalty as for prosecution. Therefore, the Council must be able to demonstrate, beyond reasonable doubt, that the offence has been committed.

The Council will issue the person deemed to have committed a relevant offence a notice of its proposal ('notice of intent') to impose a financial penalty. This will set out:

- the amount of the proposed financial penalty,
- the reasons for proposing to impose the penalty, and
- information about the right of the landlord to make representations

The notice of intent must be given no later than 6 months after the Council has sufficient evidence of the conduct to which the penalty relates, or at any time when the conduct is continuing.

The Council will ask to be provided with any financial information that they consider shall influence the defendant's ability to pay a fine. This will be taken into consideration if it appears reliable. If no information is provided, then the Council will consider any information known to them regarding the offender and consider this when deciding the level of fine.

A person who is given a notice of intent may make written representations to the Council regarding the intention to impose a financial penalty within 28 days from the date the notice was given.

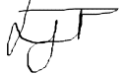
Prosecution versus Civil Penalty Notice

The decision to impose a Civil Penalty as opposed to pursuing a prosecution will be determined on a case-by-case basis. Prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. However, that does not mean civil penalties should not be used in cases where serious offences have been committed. A civil penalty of up to £30,000 can be imposed where a serious offence has been committed and a local housing authority may decide that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution, is the most appropriate and effective sanction in a particular case.

Where a local housing authority decides to prosecute when a landlord has committed breaches in more than one local housing authority area, it should consider the scope for working together with other local housing authorities.

The following principles will apply to each case to be considered:

- Each case will be considered on its own merits and any known mitigating and aggravating circumstances will be considered
- There must be sufficient, reliable evidence to justify the action taken
- The action taken must be in the public interest
- Decisions to take enforcement action should always be fair and consistent

Signed: 	Date: 1 st July 2024
Designation: Head of Public Protection	Review date: July 2029

Appendix A

Policy and Matrix for the use of Civil Penalties

Introduction

The Housing and Planning Act 2016 introduces Civil Penalties of up to £30,000 as an alternative to prosecution for certain Housing Act 2004 offences from 6th April 2017.

The power to impose a civil penalty as an alternative to prosecution for these offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

These are:

- Section 30 failure to comply with an Improvement Notice
- Section 72 offences in relation to licensing of Houses in Multiple Occupation (HMO)
- Section 95 offences in relation to licensing of houses under part 3 (Selective Licensing)
- Section 139(7) failure to comply with an overcrowding notice
- Section 123 failure to comply with a Remedial Notice in relation to electrical safety standards
- Section 234 Management Regulations in respect of HMOs

In determining the Civil Penalty amount the Local Housing Authority will have regard to the statutory guidance issued under schedule 9 of the Housing and Planning Act 2016 and the Civil Penalty Matrix developed by the Department for Communities and Local Government.

Burden of Proof

The criminal burden of proof, beyond all reasonable doubt must be satisfied before a Civil Penalty can be issued as an alternative to prosecution. The Local Housing Authority must satisfy itself that there would be a realistic prospect of conviction, applied objectively, to the evidence available.

In assessing the evidence regard must be given to the Code for Crown Prosecutors and when deciding whether there is sufficient evidence to prosecute consideration must be given as to whether the evidence can be used and is reliable.

Due regard must be given to any potential defences available and in certain circumstances the Local Housing Authority may decide to conduct an interview under caution in accordance with PACE codes of practice to assist in determining whether the issue of a Civil Penalty is appropriate or not.

Factors to consider when determining to prosecute or issue a civil penalty

Each case will be determined on its own merits taking into account all available evidence.

Prosecution is likely to be the most appropriate action where the offence is particularly serious and/or where the landlord has a history of non-compliance in relation to property condition or property management.

The following factors, whilst not exhaustive, are examples of where it would be appropriate to consider the issuing of a Civil Penalty:

- The offender has no evidence of previous non-compliance with appropriate legislation
- The offender has no previous convictions recorded
- The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence)
- The offender's co-operation is beyond what would be expected
- The offender took prompt action to remedy the deficiency i.e. excessive follow up not required.

Factors to consider when determining the level of civil penalty

The actual amount levied in each individual case should reflect the severity of the offence, as well as the landlord's previous record of offending.

The Council should consider the following factors to help ensure the civil penalty is set at an appropriate level:

- Severity of the offence, determined by harm caused and culpability of the offender
- The history of compliance of the offender
- Punishment of the offender for the offence
- The deterrent from repeating the offence
- The deterrent for others committing similar offences
- Removing any financial benefit obtained from committing the offence

These factors are reflected in the financial penalty matrix which helps officers to determine the level of fine that should be imposed by creating a score and band for each case.

Financial Penalty Matrix

Officers should first determine the severity of the offence by looking at the harm and culpability categories.

Examples of Harm Categories

The table below contains factors relating to both actual harm and risk of harm.

<p>Category 1 - High</p>	<p>Serious adverse effect on individuals and/or having a widespread impact.</p> <p>High risk of an adverse effect on individuals including where persons are vulnerable.</p> <p>Housing defect giving rise to the offence poses an imminent or serious and substantial risk of harm to the occupants and/or visitors, for example Housing Health and Safety Rating System (HHSRS) imminent category 1 hazards such as danger of electrocution, carbon monoxide poisoning, serious fire safety risk or excess cold with vulnerable resident.</p>
<p>Category 2 - Medium</p>	<p>Adverse effect on individuals</p> <p>Medium risk of an adverse effect on individuals including where persons are vulnerable.</p> <p>Tenant misled/disadvantaged by the failing.</p> <p>The housing defect giving rise to the offence poses a serious risk of harm to the occupants and/or visitors, for example HHSRS category 1 hazards, multiple high category 2 hazards such as falls between levels, excess cold, asbestos exposure.</p>
<p>Category 3 - Low</p>	<p>Low risk of an adverse effect on individuals</p> <p>The housing defect giving rise to the offence poses a risk of harm to the occupants and/or visitors, for example low category 2 hazards under the HHSRS, localised damp and mould.</p>

Examples of Culpability Categories

<p>Very High (Deliberate Act)</p>	<p>Where the offender intentionally breached, or flagrantly disregarded, the law.</p> <p>For example, the offender has ignored reminders to apply for a property or HMO licence. Failure to comply with a correctly served improvement notice. No attempt made to contact the local authority to discuss breaches.</p>
<p>High (Reckless)</p>	<p>Actual foresight of or wilful blindness to the risk of offending but risks nevertheless taken by the landlord or property agent, for example</p>

Act)	failure to comply with HMO Management Regulations.
Medium (Negligent Act)	Failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems that prevent the offence being committed, for example part compliance with a schedule of works but failure to fully complete all schedule items within notice timescale Another example would be partially completed licensing application forms.
Low (Low or no culpability)	Offence committed with little or no fault on the part of the landlord or property agent, for example significant efforts were made to address the risk but they were obstructed by the tenant to allow contractor access or damage caused by tenants. Failings were minor and occurred as an isolated incident such as low category 2 hazards under the HHSRS found in one property from a large portfolio.

Having determined the category, the Officers should refer to the following starting points to reach a penalty band. Officers should then consider whether further adjustments should be made for aggravating and mitigating features.

Starting points

Culpability	Harm category 1	Harm category 2	Harm category 3
Very high	6	5	4
High	5	4	3
Medium	4	3	2
Low	3	2	1

Banding Levels

Band 1	£0 to £4,999
Band 2	£5,000 to £9,999
Band 3	£10,000 to £14,999
Band 4	£15,000 to £19,999
Band 5	£20,000 to £24,999
Band 6	£25,000 to £30,000

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

An offender will be assumed to be able to pay any financial penalty imposed unless they can demonstrate otherwise.

Aggravating Factors

The penalty can be increased by £1000 for each aggravating factor up to a maximum of £5000.

The factors listed below are a non-exhaustive list of factual elements that should result in an upward adjustment from the starting point:

- Motivated by financial gain
- Failure to respond to warning
- Deliberate concealment of illegal nature of activity
- Obstruction of investigation
- Falsification of documentation
- Targeting vulnerable groups
- Poor housing record
- Relevant previous convictions/civil penalties

Mitigating Factors

The penalty can be decreased by £1000 for each mitigating factor up to a maximum of £5000.

The factors listed below are a non-exhaustive list of factual elements that should result in a downward adjustment from the starting point:

- No previous relevant convictions or no relevant housing enforcement history.
- Evidence of steps taken voluntarily to remedy problem.
- High level of co-operation with the investigation, beyond that which will always be expected.
- Good housing record.
- Self-reporting, co-operation and acceptance of responsibility.