PRIVATE SECTOR HOUSING ENFORCEMENT POLICY 2022

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Private Sector Housing Enforcement Policy

Introduction

The Housing Improvement Team is responsible for enforcing a wide range of statutory provisions relating to housing conditions affecting public health and safety.

The objectives of the team are to:

- improve the standards of homes in the private sector;
- assess local housing conditions and keep them under review;
- reduce the number of properties with serious risks to health and safety;
- reduce the number of vulnerable households living in non-decent homes;
- improve the energy efficiency of homes and to help reduce fuel poverty;
- improve standards in private rented accommodation;
- improve the standards in houses in multiple occupation (HMOs), including the licensing of those HMOs that fall under the mandatory HMO licensing scheme;
- help bring empty homes back into use;
- ensure those caravan sites that require licensing are licensed and comply with the site licence conditions;
- work closely with private sector landlords to help them achieve and maintain good standards within private rented accommodation; and
- provide an excellent service accessible to everyone

In exercising their duties and other functions, officers commit to good principles of enforcement that comply with the statutory powers and all other relevant legislation including the:

- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Human Rights Act 1998
- Regulation of Investigatory Powers Act 2000
- Criminal Justice Act 2003
- Equality Act 2010
- General Data Protection Regulations (GDPR) 2018.

Also, in accordance with any formal procedures and codes of practice made under legislation in so far as they relate to our enforcement powers and responsibility.

This policy deals with the practical application of enforcement procedures that are used to achieve compliance with a statutory requirement. It sets out what owners, landlords, their agents and tenants can expect from officers.

Principles of Good Enforcement

Tonbridge & Malling Borough Council have adopted a corporate enforcement policy. The aim of the policy is to protect and improve public health, the environment and quality of life for everyone who lives, works or visits the borough of Tonbridge and Malling. The policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulators' Compliance Code. The Council has also signed up to the Enforcement Concordat where the main principles are openness, proportionality and consistency.

Our General Approach to Enforcement

The Council has a staged approach to enforcement wherever possible to ensure solutions are initially sought through education, co-operation and agreement. Where this is not successful, there will be cases where formal action will be necessary, which may ultimately lead to prosecution, penalty charges or other summary action. Similarly, there may be circumstances where there is an imminent risk to health and safety and it may be necessary to take formal action in the first instance.

We will provide general information, advice and guidance to help property owners/businesses understand and meet their obligations. When offering advice we will clearly distinguish between statutory requirements and advice or guidance aimed at improvements above minimum legal standards.

Where we and other regulators have a shared interest in a property, we will work together to co-ordinate our activities to minimise any burdens on owners/businesses providing this is of benefit and does not detrimentally affect the enforcement responsibilities for either regulator for example Kent Fire & Rescue Service.

In considering the most appropriate course of enforcement action, we will have regard to the extent of control that an occupier has over works required to the dwelling, for example, an owner-occupier has responsibility for undertaking their own repairs.

In most cases, this will mean taking the most appropriate course of action against a landlord. Before taking any action in tenanted properties, we will usually require the tenant to have contacted their landlord regarding the issue beforehand. This applies to both tenants in the private rented sector and those housed by registered providers (generally known as housing associations). Legislation covering landlord and tenant issues requires that tenants notify their landlords of any problems with the property as landlords can only carry out their repairing obligations once they are made aware of them. Any copies of correspondence between the tenant and landlord should be provided to officers upon request. Tenants will be expected to keep officers

informed of any contact they have with their landlord (or landlord's agent, contractor) that may have an effect on what action the Council takes.

Generally, owner-occupiers will not be required to carry out works to their own home except where there is an imminent risk of serious harm to the occupiers themselves or where the condition of the dwelling may significantly affect the health and safety of others outside the household. This does not mean formal enforcement action is not taken for category 1 hazards under the Housing Act 2004 but this may just mean a hazard warning notice is served.

Powers and duties

The principal pieces of legislation used by the Housing Improvement Team are the Housing Act 2004 and the Housing and Planning Act 2016. However, there are circumstances where other pieces of legislation may be more appropriate in dealing with a housing related problem such as:

- Environmental Protection Act 1990 – section 79 statutory nuisance
- Building Act 1984 – to deal with defective drainage, sanitary conveniences and defective premises
- Prevention of Damage by Pests Act 1949 – to require works to keep the land free of rats and mice
- Protection from Eviction Act 1977 – protection from illegal eviction and harassment
- Public Health Act 1936 – to deal with filthy or verminous properties
- Local Government (Miscellaneous Provisions) Act 1976 – can be used to re-instate service supplies (such as water, electricity or gas) where disconnected
- Local Government (Miscellaneous Provisions) Act 1982 – can be used to require empty premises to be made secure or to be made safe where a danger to public health
- Caravan Sites and Control of Development Act 1960 (as amended by the Mobile Homes Act 2013) - for dealing with conditions on licensed caravan/park home sites.

There are also certain regulations covering specific aspects of housing such as:

- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
- Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.

In some cases, use of a combination of the above legislation may be appropriate.

The officers of the Housing Improvement Team are authorised to exercise executive functions through delegation in accordance with the Council's constitution. Each officer's delegation of powers can be viewed on request.

Delegation level is in accordance with qualifications and levels of experience of each officer.

Powers of entry

Section 239 of the Housing Act 2004 states that a person authorised by the local authority may enter the premises in question at any reasonable time for carrying out a survey or examination of the premises. Before entering the premises in exercise of this power, the authorised person must give at least 24 hours notice of their intention to do so, to the owner (if known) and the occupier (if any). No inspection will take place without reason. Each inspecting officer within the team is authorised under section 239 and will carry identification including details of their authorisation.

Where the Council needs to enter a property for the purpose of ascertaining whether an offence has been committed in relation to house in multiple occupation (HMO) licensing or HMO management, prior notice of entry does not need to be given. If this is the case, officers can enter the property at any reasonable time.

If access is refused or if the giving of prior notification would defeat the purpose of entry, the authorised officer can apply to the Justice of the Peace for a warrant to enter. A person who obstructs a relevant person in the performance of their duties commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

In most cases if enforcing under different legislation to the Housing Act 2004 prior notice is required to owners, holders of a caravan site licence if relating to a caravan site and occupiers in accordance with the relevant legislation.

Complaints regarding property conditions

The following situations may lead to the Housing Improvement Team not investigating a complaint regarding property conditions, where:

- a complainant has not taken reasonable steps to resolve the problem prior to contacting the Council, for example by not liaising with their landlord or not liaising with the site licence holder where a caravan site.
- tenants of their own free will move out of the property shortly after making the complaint before we can arrange a visit and there is no relevant history associated with the address.
- tenants unreasonably or repeatedly fail to allow entry to the Council's staff, the landlord, landlord's agent or builder, making it difficult to arrange or carry out the required works.

Housing, Health and Safety Rating System

Part 1 of the Housing Act 2004 (the Act) prescribes the methodology by which the majority of residential dwellings are assessed but the Housing Act 2004 does not apply to those dwellings that do not fall under the definition of a building for example caravans, mobile homes, park homes and houseboats. The methodology is called the Housing, Health and Safety Rating System (HHSRS) assessment, which is a risk assessment approach to assessing 29 housing related hazards as listed in Appendix 1. The Council's HHSRS enforcement decisions are based on a three-stage approach:

1. The hazard rating determined under HHSRS following Government operating guidance and worked examples;

2. Whether the Council has a duty or power to act, determined by the presence of a hazard above or below a threshold prescribed by Regulations (Category 1 and Category 2 hazards); and

3. The Council's judgement as to the most appropriate course of action to deal with the hazard, having regard to the Housing Health and Safety Rating System Enforcement Guidance.

The hazard rating is expressed through a numerical score which falls within one of ten bands. Scores in Bands A to C (score 1,000 or above) are Category 1 hazards. Scores in Bands D to J (score below 1,000) are Category 2 hazards.

Enforcement of the Housing, Health and Safety Rating System

The Council has a duty to act when Category 1 hazards found. It has a discretionary power to act in respect of a Category 2 hazard. The courses of action available where there is either a duty or a power to act are to:

- serve an Improvement Notice requiring remedial works;
- make a Prohibition Order, which closes the whole or part of a dwelling or restricts the number or class of permitted occupants, or restricts its use;
- suspend either of the above, until a date or time specified;
- serve a Hazard Awareness Notice;
- take Emergency Remedial Action*;
- serve an Emergency Prohibition Order*;
- make a Demolition Order*; or
- declare a Clearance Area*.

**Only in respect of Category 1 hazards*

While the HHSRS hazard rating is based on the most vulnerable potential occupant, the Council will be able to take account of the circumstances of the actual occupant in deciding the most appropriate course of action.

The action the Council chooses to take must be the most appropriate course of action in relation to the hazard. With the exception of a hazard awareness notice, each of the notices and orders are declared on local land charge searches and outstanding notices may affect the sale or value of a property. The Council may revoke or vary Notices served.

Having regard to the latest statutory guidance "The Housing, Health and Safety Rating System: Enforcement Guidance", in addition to the Council's duty to take action where a Category 1 hazard exists, the Council may exercise its discretion to take the most appropriate course of action where a Category 2 hazard exists in the following situations:

- Band D Hazards, or Damp and Mould Band E Hazards - There will be a general presumption that where a Band D Hazard or Damp and Mould Band E hazard exists, officers will consider action;
- Multiple Hazards - Where a number of hazards at Band D or below appear, when considered together, to create a more serious situation, or where a property appears to be in a dilapidated condition, officers will consider action;
- Exceptional Circumstances - In exceptional circumstances where the above options are not applicable, the Director of Planning, Housing and Environmental Health may authorise action.

Deciding what enforcement action is appropriate

There is a range of potential enforcement options, from no action through to proceedings in court but any action taken will always depend on the circumstances of the case and the legislation applied. The main types of action that may be considered are as listed below:

Action	**Circumstance**
No action	Complaints or allegations in relation to housing conditions or statutory nuisances are unsubstantiated. Formal action is inappropriate in the circumstances.
Verbal advice	There is insufficient evidence of breaches of legislation or they are not serious enough to warrant enforcement action. Immediate action taken by the responsible person to comply with failures.
Informal letter	Any previous history or no history of dealing with the relevant parties allows confidence that informal action will achieve compliance. Conditions are not serious enough to justify formal action straight away. To notify the

	responsible person that action is required prior to taking formal action
Formal notices	There are significant failures of statutory requirements. There is a lack of confidence in the individual or management particularly in the willingness to respond to an informal approach. There is obstruction or assault. There is a history of non-compliance or informal action has not secured compliance. The Council is required to serve a statutory notice. The defect presents an imminent risk to health. The following will be provided as part of formal notices: • Clear information and advice to all relevant parties about the reasons for the type of action chosen (for Housing Act formal enforcement, this will be in the form of a section 8 statement accompanying the notice). • Ensure an opportunity given to discuss what is required before formal action is taken (unless urgent action is required). • Advise the relevant parties of the named officer responsible for dealing with their case. • Give a written explanation of any rights of appeal at the time the notice is served. • Notify the relevant parties about any financial charge that the Council may apply and seek to recover the charge as part of the enforcement process. • Realistic time limits will be attached to notices and wherever possible these will be agreed with the relevant parties in advance. In some circumstances requests for extension of time or alternative works can be made in writing to the named officer. The Housing Act 2004 requires only that the works specified to improve the conditions reduce a Category 1 hazard to a Category 2 hazard. The Council will generally seek to specify works whilst not necessarily achieving the ideal will achieve a significant reduction in the hazard level and in particular will be to a standard that should ensure that no further

	intervention should be required for a minimum period of twelve months given normal levels of maintenance and repair. The Council will charge for taking enforcement action unless extenuating circumstances are exhibited; where it will be reported to the Director of Planning, Housing and Environmental Health for consideration and determination as to whether the charge will be reduced or waived. Examples of extenuating circumstances are where the responsible person is providing accommodation for others and they are: • vulnerable due to their personal circumstances. This may include people who have physical or sensory impairments, learning difficulties; who suffer from mental illness or emotional distress or are frail older people; and who for any other reason are unable to care for themselves or protect themselves from significant harm or exploitation; or • financially vulnerable i.e. in receipt of a means tested benefit.
Works in Default – Emergency remedial action	There is an imminent risk to health and safety to the public. Prosecution would not adequately protect the public interest. The responsible person is unable or unwilling to take remedial action immediately. The Council will seek to recover all costs incurred, including the cost of the works, the officer time and our administrative costs. Where the legislation allows, this will be registered on the Local Land Charges register and interest charged.
Works in Default – non compliance with a notice	The Council may choose to carry out works required by a notice if they are not completed within the permitted time frame. This action may be taken in conjunction with or followed by a prosecution.

	The Council will seek to recover all costs incurred, including the cost of the works, the officer time and our administrative costs. Where the legislation allows, this will be registered on the Local Land Charges register and interest charged.
Formal or simple caution	A formal caution will be considered for less serious offences where the person committing the offence agrees to accept a caution.
Prosecution	There is sufficient and reliable evidence that an offence has been committed. There is a realistic prospect of conviction and the prosecution is in the public interest.
Civil Penalties	The Civil Penalties policy in Appendix 2 sets out the decision making process regarding whether to use a civil penalty and what level it should be charged at as an alternative to prosecution of offences under section 249A of the Housing Act 2004 and section 23 of the Housing and Planning Act 2016.
Financial Penalty Charges	We have the ability to impose financial penalty charges for breaches of certain legislation as follows: The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.)(England) Order 2014 – a financial penalty charge of £5,000 unless extenuating circumstances apply as determined by the Director of Planning, Housing and Environmental Health, maximum penalty charge £5,000. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 – see statement of principles on charging contained in Appendix 3 for further information, maximum penalty charge £5,000. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended) – see Appendix 4 for further information, maximum financial penalty £5,000.

	The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 – see Appendix 5 for further information, maximum financial penalty of £30,000.
Rent Repayment Orders	Made by the First-tier Tribunal and may grant for rent to be repaid to either the tenant or the Council if rent paid through benefits. The Housing and Planning Act 2016 extended the range of offences that these can be awarded for.
Banning Orders	Under the Housing and Planning Act 2016, the Council may apply to a First-tier Tribunal to request that a landlord or property agent be banned from letting a property or engaging in property agent work in England.
Rogue Landlord Database	The Council can enter details of criminal landlords considered to be “rogue” onto the government database. It is available to all local authorities to enable them to share information about criminal landlords who operate in multiple Council areas.
Revocation of HMO licence	The HMO licence holder or Manager is no longer a ‘fit and proper person’ to hold the licence.
Revocation of caravan site licence	The caravan site licence can be revoked for those site owners successfully prosecuted for caravan site licence related offences.
HMO Management Order	The Housing Act 2004 enables the Council to take over the management of a HMO where the HMO is required to be licensed but the Council is unable to licence it and it is necessary to protect the health and safety and welfare of persons occupying it or those adjoining occupiers/owners. There are two stages, an interim management order (IMO) and a final management order (FMO).
Empty Dwelling Management Orders	These enable the Council to take control of and manage a long-term empty residential property. There are conditions which must

	apply before an EDMO can be sought the key ones being: • dwelling empty for at least two years • no prospect of the dwelling becoming occupied in the near future • all attempts to contact the owner or negotiations to bring the property back into use have failed. There are two stages, an interim EDMO and a final EDMO.
Enforced Sale	This is a last resort if other enforcement options have failed to bring the property up to an appropriate standard or it is long term empty where the Council have been unable to bring back into use. If a charge registered at Land Registry following an unpaid debt, the Council may opt to recover this by way of an enforced sale of the property. The criteria that will apply for this course of action are: • the total debt on the property exceeds £1,000 • the property is in a very poor condition and impacting on neighbouring properties, or determined a long term problematic empty and has been empty for more than two years • the necessary enforcement notices and documents have been served. Following disposal of the property, we will recover all debts and costs from the sale proceeds. The Council will hold the balance remaining until claimed by the owner.
Compulsory Purchase	This is a very last option where all other enforcement options have been exhausted for those problematic long term empty properties that have been empty for more than two years.

Management and licensing of houses in multiple occupation (HMOs)

We have powers to ensure that adequate standards in houses in multiple occupation (HMOs) are met and maintained. The Housing Act 2004 introduced a mandatory scheme to licence HMOs, and this was extended in 2018 to include an HMO occupied by five or more people, comprising two or more households in a dwelling of one or more storeys. A mandatory HMO licence is not required for self-contained flats in purpose built blocks of three or more flats.

Determination of whether a HMO is suitable to be licensed is based on whether:

- the property is reasonably suitable for occupation by the specified maximum number of households;
- the licence holder is a 'fit and proper person' and the most appropriate person to be the licence holder;
- the manager is a 'fit and proper' person; and
- there are satisfactory management arrangements in place.

It is a criminal offence for a person controlling or managing a HMO not to have the required licence. Breaking any condition of a licence is also an offence.

A HHSRS inspection of the HMO will be undertaken within the five year licence period. In the majority of cases this will be carried out during the licence application processing stage or otherwise as and when resources allow within the five year period.

Management Regulations made under the Housing Act 2004 impose duties on landlords and managers of HMOs (tenants also have duties) whether or not they are subject to licensing requirements. There is no formal notice serving provision for non-compliance with the Management Regulations only prosecution or the service of a civil penalty notice.

In a licensable HMO enforcement of over occupation is dealt with via the licence conditions, as the licence states the maximum number of occupants for the HMO. For non-licensable HMOs an overcrowding notice can be served which will prohibit new residents occupying or limit the number of people sleeping in the HMO.

Caravan site licensing

The Caravan Sites and Control of Development Act 1960 (as amended by the Mobile Homes Act 2013) requires where land is being occupied as a caravan/mobile home/park home site and planning consent is in place for this, the site will require licensing. The caravan site may be exempt from licensing if it meets one of the exemptions specified under the legislation. As part of licensing the site licence will have conditions attached to protect the health and safety of those on the site. The licence conditions are based on the appropriate latest model conditions published by Government. The Council may prosecute the site licence holder if operating without a licence or not complying with the site licence conditions.

For those relevant protected sites (usually permanent residential sites), there is an additional requirement that the site licence holder or their appointed site manager is a fit and proper person if the site is being operated on a

commercial basis. In addition, on relevant protected sites, compliance notices may be served requiring remedial works undertaken to comply with the site licence conditions or an emergency action notice where an imminent risk of serious harm to health and safety of any person on the site requiring works to remove the imminent risk.

Appendix 1 – Housing Health and Safety Rating System Hazards

The Housing Health and Safety Rating System (HHSRS) assesses 29 housing related hazards and the effect they may have on the health and safety of current or future occupants. The 29 hazards are as follows:

1. damp and mould growth
2. excess cold
3. excess heat
4. asbestos and manufactured mineral fibres (MMF)
5. biocides
6. carbon monoxide and fuel combustion products
7. lead
8. radiation
9. un-combusted fuel gas
10. volatile organic compounds
11. crowding and space
12. entry by intruders
13. lighting
14. noise
15. domestic hygiene, pests, and refuse
16. food safety
17. personal hygiene, sanitation, and drainage
18. water supply
19. falls associated with baths
20. falls on level surfaces
21. falls associated with steps and stairs
22. falls between levels
23. electrical hazards
24. fire
25. flames, hot surfaces, and materials
26. collision and entrapment
27. explosions
28. ergonomics
29. structural collapse and falling elements

Appendix 2 – Civil Penalties Policy

Policy for imposing financial penalties under the Housing Act 2004 and Housing and Planning Act 2016

1.1 Policy for imposing financial penalties under the Housing Act 2004 and Housing and Planning Act 2016

1.1.1 This policy deals with the practical application of imposing financial penalties as an alternative to prosecution.

1.1.2 Section 126 and Schedule 9 of the Housing and Planning Act 2016 ("the 2016 Act") amended the Housing Act 2004 ("the 2004 Act") to allow financial penalties to be imposed by local housing authorities as an alternative to prosecution for certain housing offences. Under section 249A of the 2004 Act, a local housing authority may now impose a financial penalty on a person if satisfied, beyond reasonable doubt that the person's conduct amounts to a "relevant housing offence".

1.1.3 The relevant housing offences are offences under the 2004 Act, namely:

- Failing to comply with an Improvement Notice (section 30);
- Failing to licence a house in multiple occupation ("HMO") under Part 2 (section 72(1));
- Knowingly permitting the over-occupation of an HMO licensed under Part 2 (section 72(2));
- Failing to comply with the condition of an HMO licence issued under Part 2 (section (72(3));
- Failing to licence a house subject to selective licensing under Part 3 (section 95(1));
- Failing to comply with the condition of a selective licence issued under Part 3 (section (95(2));
- Failing to comply with an overcrowding notice in respect of a non-licensable HMO (section 139(7)); and
- Failing to comply with HMO management regulations (section 234(3)).

1.1.4 A person who commits any of the above-mentioned offences without reasonable excuse is liable on summary conviction to a fine of any amount in the Magistrates' Court. A financial penalty imposed by a local housing authority as an alternative must not exceed £30,000.

1.1.5 The 2016 Act also introduced banning orders under Chapter 2 of Part 2. A local housing authority may apply to a First-tier Tribunal for a banning order against a person who has been convicted of a "banning order offence". A banning order offence is an offence set out in

Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 (SI 2018/216). A range of offences under 14 Acts of Parliament are listed, including those listed above as relevant housing offences.

1.1.6 A banning order made by a First-tier Tribunal may prohibit a person from engaging in one or more of the following activities:

- Letting housing
- Engaging in letting agency work
- Engaging in property management work.

1.1.7 A person who breaches a banning order commits an offence under section 21(1) of the 2016 Act and is liable on summary conviction to imprisonment, or to a fine, or to both.

1.1.8 However, a local housing authority may instead impose a financial penalty under section 23 of the 2016 Act of an amount not exceeding £30,000.

1.1.9 A local housing authority cannot both prosecute and impose a financial penalty in respect of the same offence. It must decide which course of action is most appropriate. The same criminal standard of proof is required for a financial penalty as for a prosecution. Before taking formal action, a local housing authority must therefore be satisfied that if the case were to be prosecuted in the Magistrates' Court, there would be a realistic prospect of conviction and that issuing a penalty was in the public interest.

1.1.10 In exercising their functions in respect of financial penalties, local housing authorities must have regard to any statutory guidance issued under section 23(10) and Schedules 1 and 9 of the 2016 Act. In April 2018, the Ministry of Housing, Communities & Local Government issued: *Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities*. The guidance requires local housing authorities to develop and document a policy which sets out when it should prosecute and when it should impose a financial penalty; and the level of financial penalty it should impose in each case.

1.1.11 The guidance states that local housing authorities should consider the following factors to help ensure that any financial penalty is set at an appropriate level:

- Severity of the offence
- Culpability and track record of the offender
- The harm caused to the tenant (actual and potential)

- Punishment of the offender (the penalty should be proportionate to the offence and have a real economic impact)
- Deter the offender from repeating the offence
- Deter others from committing similar offences
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

1.1.12 This policy sets out how Tonbridge and Malling Borough Council ("the council") will impose financial penalties in accordance with relevant legislation and statutory guidance. Significantly, these powers allow local housing authorities to retain the income received from financial penalties to fund private sector housing enforcement activities. This is clearly intended to help local housing authorities take more enforcement action. The council will use the powers robustly whenever it is appropriate to do so.

1.1.13 Each offence will be assessed on a case-by-case basis. However, the starting position is that the council will seek to impose a financial penalty for a relevant offence, unless there are circumstances relating to the offence that advocate pursuing a criminal prosecution instead.

1.1.14 The council may choose to prosecute for a relevant offence if it is of a particularly serious nature. The imposition of a financial penalty in accordance with this policy may not constitute a sanction of sufficient severity in relation to some offences. If the council is of the opinion that an offence is of such serious nature that it warrants a more significant sanction, it will normally seek to prosecute the offender(s).

1.1.15 The breach of a banning order under the 2016 Act is a serious offence, and the council will give careful consideration to the option of prosecution in such cases, as the courts have the power to impose a prison sentence as a punishment.

1.1.16 Prosecution may also be an appropriate course of action when an offender has committed the same offence on more than one occasion in the past. Preventing reoffending is an important consideration and a successful prosecution resulting in a criminal record might be a better deterrent in some circumstances.

1.1.17 Wider public awareness may also be a key consideration. Prosecutions are held in the public domain and can be publicised by the council and local media. Such publicity in respect of an offender may be in the public interest in certain circumstances and helps to deter others from committing similar offences.

1.1.18 There may be other situations in which prosecution may be the most appropriate sanction. Accordingly, the council will carefully review the merits of prosecution for every offence before making a final decision as to an appropriate sanction.

1.1.19 A financial penalty may be of any amount up to the statutory maximum of £30,000. However, local housing authorities are expected to reserve the higher amounts for the worst offenders and take a logical and proportionate approach to setting the level of financial penalties more generally. The overarching principle is that the more serious the offence, the higher the penalty should be. The penalty for each offence must therefore be determined on a case-by-case basis.

1.1.20 Having due regard to the statutory guidance published by Government, the council has developed the Table of Financial Penalties set out below. The table specifies a range of starting points from £1,000 to £30,000. The starting point is determined by the severity of the offence, which is based on an assessment of the following four factors:

1.1.21 **Culpability** is a key factor in determining the severity of an offence. Therefore, the level of any penalty will initially be set by calculating the culpability category, which then determines the culpability premium.

1.1.22 There are four culpability categories, namely:

- Very high - This category applies to offences where the offender has deliberately breached or flagrantly disregarded the law. This category is subject to a 100% culpability premium
- High - This category applies to offences where the offender had foresight of a potential offence, but through willful blindness, decided not to take appropriate and/or timely action. This category is subject to a 80% culpability premium
- Medium - This category applies to offences committed through an act or omission that a person exercising reasonable care would not commit. Any person or other legal entity operating as a landlord or agent in the private rented sector is running a business and is expected to be aware of their legal obligations. This category is subject to a 60% culpability premium
- Low - This category applies to offences where there was fault on the part of the offender, but significant efforts had been made to secure compliance with the law, but those efforts were not sufficient. This category may also apply to situations where there was no warning of a potential offence. This category is subject to a 40% culpability premium.

1.1.23 **Track Record:** The council would expect a good landlord or agent to have very little contact with the council's Private Sector Housing Team, other than for advice or for licensing obligations. They would be

expected to maintain their properties in a good and safe condition and keep up-to-date and comply with all relevant legal requirements. Unfortunately, there are landlords and agents who are regularly subject to enforcement action owing to their failure to maintain their properties in an acceptable condition. A historically non-compliant landlord or agent should be subject to a more significant penalty on the basis that they have yet to change their behaviour. A penalty amount adjustment relating to the offender's track record is therefore appropriate. This should help deter repeat offending.

1.1.24 The council will review all relevant records to identify any previous evidence of legislative failings. However, only evidence relating to the five years immediately prior to the offence date will be taken into account. The evidence reviewed will include:

- Any previous convictions for housing related offence
- Whether previously subject to a financial penalty for a housing related contravention
- Whether previously subject to, or associated with, statutory enforcement action (e.g. Improvement Notice, Emergency Prohibition Order, etc.); and
- The number of genuine housing condition complaints received in respect of properties associated with the offender.

1.1.25 Following the review, the offender's track record will be classed as one of the following three categories:

1.1.26 **Significant:** Where there is evidence of multiple enforcement interventions by the council's Private Sector Housing Team, together with evidence of non-compliance, the significant category will be used. In most cases, this category will also be used for any offender who has been successfully prosecuted for a housing offence or been subject to a housing related-financial penalty.

1.1.27 **Some:** This category will be used where the offender is associated with more evidence than would normally be expected of a good landlord or agent having regard to the size and nature of their portfolio. There is likely to be evidence of statutory enforcement action.

1.1.28 **None or negligible:** This category will be used if, following a review of the council's records, there is no relevant evidence associated with the offender. Any unsubstantiated housing condition complaints will be disregarded. The council may also exercise its discretion to disregard any evidence where the issues were minor in nature and there was no reluctance on the part of the landlord or agent to resolve the issues within reasonable timescales. The descriptor "Negligible" has been

included to allow for a fair and reasonable review of evidence in respect of landlords and agents with larger portfolios. Therefore, if the evidence is negligible having regard to the size of the portfolio in Tonbridge and Malling, this category will be used.

1.1.29 **Portfolio size** - The size of an offender's property portfolio will be taken into account when determining the amount of financial penalty. While all landlords and agents are expected to be aware of their legal obligations, the larger the business is, the more proficient and professional the landlord or agent should be. Furthermore, offenders with a larger portfolio will have more assets and a higher rental income and as such the penalty should have regard to their ability to pay. Taking into account the size of the offender's portfolio helps ensure that the penalty is set at a high enough level to have a real economic impact, such that it serves as an appropriate punishment as well as a deterrent.

1.1.30 There are four size categories which relate to the number of units of accommodation the offender has ownership of, responsibility for, or association with. The size categories are:

- One unit of accommodation
- 2 - 4 units of accommodation
- 5 - 19 units of accommodation
- 20 or more units of accommodation.

1.1.31 A unit of accommodation is a single dwelling house, a flat (whether self-contained or not) or a room or bedsit within a house in multiple occupation ("HMO").

1.1.32 The common parts of a building containing one or more flats will also be counted as one unit of accommodation for the purposes of determining the portfolio size, if the landlord or agent concerned is only responsible for the common parts and not for any flats within the building. If the landlord or agent concerned is responsible for one or more flats within the building, the common parts will be disregarded.

1.1.33 Some offenders own properties directly; some are directors of companies which own property. It is also not uncommon for an offender to be strongly associated with the management of a rented property, but actual ownership, for whatever reason, is in the name of a husband, wife or partner. All units of accommodation that are clearly associated with the offender will be taken into account when determining the portfolio size.

1.1.34 The council will determine which category to place the offender in using the information it already holds and any information it can reasonably obtain in making the assessment. If the council cannot ascertain any information as to whether the offender has any other properties, an assumption will be made, with the default position being two to four units of accommodation. However, if an agent is the offender, it will be assumed that they are responsible for 20 or more units of accommodation.

1.1.35 **Risk of Harm** - The nature of the exposure to a harmful occurrence is an important factor when considering the severity of an offence. The council will assess the risk of harm by having regard to the seriousness of the harm risked as well as the likelihood of that harm occurring. To assist in determining the level of risk, potential harm outcomes are classified as serious, severe or extreme and the likelihood classified as low, medium or high. The offence will be placed into one of the following four categories:

1.1.36 **Level 1:** This category will be used when the risk of harm does not fall within the Level 2, Level 3 or Level 4 categories. Any offence associated with the operation of an unlicensed premise under the HMO and selective licensing regimes will usually fall into this category if there is no particular risk of harm associated with the condition or management of the property concerned.

1.1.37 **Level 2:** The use of this category may infer that the offence was associated with an extreme harm outcome, but the likelihood of a harmful event occurring was low. This category may be used when the risk of harm related to a severe harm outcome and the likelihood of a harmful event occurring was medium. This category may also be used when the risk of harm related to a serious harm outcome and the likelihood of a harmful event occurring was high.

1.1.38 **Level 3:** The use of this category may infer that the offence was associated with an extreme harm outcome and the likelihood of a harmful event occurring was medium. This category may also be used when the risk of harm related to a severe harm outcome and the likelihood of a harmful event occurring was high.

1.1.39 **Level 4:** The use of this category will usually infer that the offence was associated with an extreme harm outcome and the likelihood of a harmful event occurring was high.

1.1.40 Having made the four-step assessment described above, the council will determine the starting point for the financial penalty using the Table of Financial Penalties set out below. This table was developed by

Thanet District Council and has been widely adopted throughout Kent to ensure consistency in application.

1.1.41 Table of Financial Penalties

Culpability	Track Record	Portfolio Size	Risk of Harm			
			Level 1	Level 2	Level 3	Level 4
Very High (100% Premium)	Significant	1	£7,500	£10,000	£12,500	£20,000
		2 to 4	£10,000	£12,500	£15,000	£22,500
		5 to 19	£15,000	£17,500	£20,000	£27,500
		20 +	£17,500	£20,000	£22,500	£30,000
	Some	1	£5,000	£7,500	£10,000	£17,500
		2 to 4	£7,500	£10,000	£12,500	£20,000
		5 to 19	£12,500	£15,000	£17,500	£25,000
		20 +	£15,000	£17,500	£20,000	£27,500
	None or negligible	1	£2,500	£5,000	£7,500	£15,000
		2 to 4	£5,000	£7,500	£10,000	£17,500
		5 to 19	£10,000	£12,500	£15,000	£22,500
		20 +	£12,500	£15,000	£17,500	£25,000
High (80% Premium)	Significant	1	£6,000	£8,000	£10,000	£16,000
		2 to 4	£8,000	£10,000	£12,000	£18,000
		5 to 19	£12,000	£14,000	£16,000	£22,000
		20 +	£14,000	£16,000	£18,000	£24,000
	Some	1	£4,000	£6,000	£8,000	£14,000
		2 to 4	£6,000	£8,000	£10,000	£16,000
		5 to 19	£10,000	£12,000	£14,000	£20,000
		20 +	£12,000	£14,000	£16,000	£22,000
	None or negligible	1	£2,000	£4,000	£6,000	£12,000
		2 to 4	£4,000	£6,000	£8,000	£14,000
		5 to 19	£8,000	£10,000	£12,000	£18,000
		20 +	£10,000	£12,000	£14,000	£20,000
Medium (60% Premium)	Significant	1	£4,500	£6,000	£7,500	£12,000
		2 to 4	£6,000	£7,500	£9,000	£13,500
		5 to 19	£9,000	£10,500	£12,000	£16,500
		20 +	£10,500	£12,000	£13,500	£18,000
	Some	1	£3,000	£4,500	£6,000	£10,500
		2 to 4	£4,500	£6,000	£7,500	£12,000
		5 to 19	£7,500	£9,000	£10,500	£15,000
		20 +	£9,000	£10,500	£12,000	£16,500
	None or negligible	1	£1,500	£3,000	£4,500	£9,000
		2 to 4	£3,000	£4,500	£6,000	£10,500
		5 to 19	£6,000	£7,500	£9,000	£13,500

		20 +	£7,500	£9,000	£10,500	£15,000
Low (40% Premium)	Significant	1	£3,000	£4,000	£5,000	£8,000
		2 to 4	£4,000	£5,000	£6,000	£9,000
		5 to 19	£6,000	£7,000	£8,000	£11,000
		20 +	£7,000	£8,000	£9,000	£12,000
	Some	1	£2,000	£3,000	£4,000	£7,000
		2 to 4	£3,000	£4,000	£5,000	£8,000
		5 to 19	£5,000	£6,000	£7,000	£10,000
		20 +	£6,000	£7,000	£8,000	£11,000
	None or negligible	1	£1,000	£2,000	£3,000	£6,000
		2 to 4	£2,000	£3,000	£4,000	£7,000
		5 to 19	£4,000	£5,000	£6,000	£9,000
		20 +	£5,000	£6,000	£7,000	£10,000

1.1.42 The level of financial penalty should, in a fair and proportionate way, meet the objectives of punishment, deterrence and the removal of gain. As such, the council will, once the starting point has been determined, review the proposed financial penalty and consider whether there are any other mitigating or aggravating factors that should be considered when setting the amount of financial penalty. If there are none, no adjustment will be made to the starting point identified by the Table of Financial Penalties. Some examples of mitigating and aggravating factors are given below. However, the list is not exhaustive, and the council may take into account any factor deemed to be relevant.

1.1.43 Hardship (Landlord) - If at this stage of the process, the council is aware of the offender's personal situation and financial position, and is of the view that there are exceptional circumstances, it may be appropriate to reduce the amount of financial penalty.

1.1.44 Hardship (tenant) - If, owing to the imposition of a financial penalty on a landlord, the tenant will - through no fault of their own - experience hardship, the council may consider reducing the amount of financial penalty, but only in exceptional circumstances.

1.1.45 Previous Offences - While the Table of Financial Penalties takes into account the offender's track record, there may be circumstances in which the nature of previous offences requires a more robust approach to punishment. For example, if a historically non-compliant landlord persists in operating unlicensed premises, the starting point may not be sufficiently high enough in certain circumstances. Such circumstances could include when there are no significant hazards associated with the unlicensed premises. If a Significant track record category is already in use for a certain offender, repeated offences where the Culpability is

very high would be restricted owing to the Risk of Harm categorisation. However, the repeated offences would be demonstrating a complete disregard for the law. Therefore, for any repeated offence so restricted, the council may consider increasing the amount of financial penalty.

1.1.46 Scale of exposure - The greater number of people exposed to the risk of harm, the more significant the offence. While the Table of Financial Penalties takes into account the risk of harm, it does not take into account the number of persons exposed to that harm. Accordingly, if the number of persons exposed is higher than average, the council may consider increasing the amount of financial penalty. A risk of harm associated with a typical family unit would not usually necessitate an increase. However, if the risk of harm was in an HMO or the common parts of a building occupied by numerous persons, an increase in the amount of financial penalty may be appropriate.

1.1.47 Actual harm - If actual harm has occurred, the council may consider increasing the amount of financial penalty. If the harm outcome is of a serious nature, it is likely the council will seek to review the financial penalty upwards.

1.1.48 The adjustment range will be limited to an amount equal to 50% of the starting point. The maximum 50% variance may be above or below the initial starting point. For example, if the starting point is £9,000, the maximum 50% variance is £4,500. As such, the financial penalty could be reduced to an amount not lower than £4,500 or increased to an amount not greater than £13,500. The council will not, under any circumstances, vary the financial penalty by more than 50%, and is restricted by the statutory maximum of £30,000.

1.1.49 If the council decides to vary the proposed financial penalty away from the starting point identified in the Table of Financial Penalties, it will make a record of its decision and notify the offender of the reasons for that decision. To ensure fairness and transparency, the decision to vary a financial penalty will be subject to review by a senior manager of the council. In the first instance, the variation will be proposed by the Private Sector Housing Manager. The proposal will be reviewed by the Head of Housing and Health (Planning, Housing & Environmental Health), or an officer of similar or higher seniority, and a final decision made by that senior manager. From time to time, the job titles of officers are altered by the Council and any reference to the Private Sector Housing Manager or the Head of Housing and Health (Planning, Housing & Environmental Health) may be deemed to include a reference to any future equivalent post.

1.1.50 Before imposing a financial penalty, the council must first give the offender notice of its intention to impose such a penalty. This type of

notice is known as a “Notice of Intent”. The Notice of Intent must be served within six months of the offence date. However, if the offence is ongoing, the Notice of Intent may be served at any time while the conduct is continuing. If the conduct stops, the Notice of Intent must be served within six months of the date the conduct ceased. For example, if a person fails to licence an HMO subject to mandatory licensing without reasonable excuse, the council may at any time while the HMO remains unlicensed, serve a Notice of Intent. If such a person makes a valid licence application, the council will still have the option to serve a Notice of Intent, but if it chooses to do so, it must serve the Notice of Intent within six months of the date the valid licence application was made.

1.1.51 The Notice of Intent must set out:

- The amount of the proposed financial penalty;
- The reasons for proposing to impose the financial penalty, and
- Information about the right to make representations.

Any person served with a Notice of Intent may make written representations to the council about the proposal to impose a financial penalty. Any representations must be made within 28 days of the date the Notice of Intent was served. The offender may wish to submit information as to their financial position. If the council was aware of the financial position of the offender before serving the Notice of Intent, the council may have already made adjustments to the proposed financial penalty. However, this may not be the case and offenders are advised to use the 28-day period for submitting written representations to make the council aware of their financial situation, particularly if they would have difficulties in paying the proposed financial penalty. It is important to note that any person who supplies information to the council that is false or misleading, whether knowingly or recklessly, in connection with any proposed financial penalty, commits an offence and is liable on summary conviction in the Magistrates’ Court to an unlimited fine.

1.1.52 The council will carefully review any written representations received during the 28-day period before taking any further action. There is no statutory timeframe for the review process, but the council will seek to make a decision as to its proposed course of action as soon as possible. The council will take one of the following courses of action:

- Withdraw the proposal to impose a financial penalty;
- Impose a financial penalty of an amount lower than that proposed in the Notice of Intent;
- Impose the financial penalty proposed in the Notice of Intent; or

- Propose to impose a financial penalty of an amount higher than that specified in the Notice of Intent.

1.1.53 If the council decides to withdraw the proposal to impose a financial penalty, it will confirm its decision in writing. If the council decides to impose a financial penalty of a lower or equal amount to that proposed in the Notice of Intent, it will serve a Final Notice. If the offender has provided written representations that increase the severity of the offence committed, the council may seek to impose a higher financial penalty. If the council decides to take that course of action, it will withdraw the original Notice of Intent and serve a revised Notice of Intent proposing an increased financial penalty. The offender would then receive an additional 28 days in which to make further written representations.

1.1.54 A reduction in the amount of financial penalty to be imposed may arise from the council altering the starting point on the Table of Financial Penalties. Whether the council decides to alter the starting point or not following any written representations, the council will not reduce the financial penalty by more than 50% of the finalised starting point. If the council decides not to alter the starting point after its review of any written representations received, and it has already used its discretion to make the maximum 50% reduction from that starting point prior to serving the Notice of Intent, no further reduction will be made.

1.1.55 To ensure fairness and transparency, every decision to impose a financial penalty will be subject to review by a senior manager of the council. In the first instance, the imposition of a financial penalty will be proposed by the Private Sector Housing Manager, who will provide an assessment of any written representations received. The proposal will be reviewed by the Head of Housing and Health (Planning, Housing and Environmental Health), or an officer of similar or higher seniority, and a final decision made by that senior manager. From time to time, the job titles of officers are altered by the Council and any reference to the Private Sector Housing Manager or the Head of Housing and Health (Planning, Housing and Environmental Health) may be deemed to include a reference to any future equivalent post.

1.1.56 If the council decides to impose a financial penalty following its review of any written representations received, it will serve a “Final Notice” on the offender. The Final Notice will set out:

- The amount of the financial penalty;
- The reasons for imposing the penalty;
- Information about how to pay the penalty;
- The period for payment of the penalty;

- Information about rights of appeal; and
- The consequences of failure to comply with the notice.

1.1.57 The period in which a financial penalty must be paid has been determined by statute. All financial penalties must be paid within 28 days of the date the Final Notice was served. A person on whom a Final Notice has been served may appeal within 28 days of the date the Final Notice was served to the First-tier Tribunal against the decision to impose the financial penalty or the amount of the financial penalty.

1.1.58 Once an appeal has been lodged, the Final Notice is suspended until the appeal has been finally determined or withdrawn. The First-tier Tribunal have the power to confirm, vary (reduce or increase), or cancel the Final Notice. If the First-tier Tribunal decides to increase the financial penalty, it may only do so up to the statutory maximum of £30,000.

1.1.59 As of 25 February 2020, the address and contact details of the First-tier Tribunal (Southern Region) were:

First-tier Tribunal - (Property Chamber) Residential Property

Havant Justice Centre
The Court House
Elmleigh Road
Havant
Hampshire PO9 2AL

Email: rpsouthern@justice.gov.uk | Tel: 01243 779 394 | Fax: 0870 7395 900

The address of the First-tier Tribunal changes from time to time, but the latest address will be detailed on any Final Notice served and can be found at:

https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber

1.1.60 As with criminal prosecutions, the Council is of the opinion that an early payment of the financial penalty is in the public interest as it saves on Council resources and public money in chasing up late and non-payment. An offender can demonstrate an early payment by paying the financial penalty within 21 days of the date the Final Notice was served. If cleared payment is made within this time period, the offender can benefit from a 25% reduction in the amount of financial penalty payable. A Final Notice will set out the finalised financial penalty amount determined having regard to this policy and an amount equal to

75% of that sum, which would be accepted if received within the 21-day period.

1.1.61 If the council is required to defend its decision at the First-tier Tribunal, there will inevitably be additional costs in officer time and expenses. As such, no reduction is available for cases subject to an appeal to the First-tier Tribunal. If an offender makes an early payment at the reduced rate, but then decides to appeal at a later date, the council will seek the full finalised amount during the appeal proceedings.

1.1.62 The council will take robust action to recover any financial penalty (or part thereof) not paid within 28 days of the date the Final Notice was served. An application for an order of the County Court will be made in respect of all unpaid financial penalties. A certificate signed by the Chief Finance Officer of the council stating that the financial penalty (or part thereof) has not been paid will be accepted by the court as conclusive evidence of that fact, in accordance with Paragraph 11 of Schedule 13A to the 2004 Act (relevant housing offences) and Paragraph 11 of Schedule 1 to the 2016 Act (breaches of banning orders). In taking court action, the council would seek to recover interest and any court expenses incurred, in addition to claiming the full amount of unpaid financial penalty.

1.1.63 If an offender does not comply with an order of the court, the council will make an application to enforce the judgement. The type of enforcement action pursued would depend on the circumstances of the case and the amount owed. The most likely types of enforcement action are shown below.

1.1.64 **Court bailiffs:** A court bailiff will ask for payment. If the debt is not paid, the bailiff will visit the offender's home or business address to establish whether anything can be seized and sold to pay the outstanding debt.

1.1.65 **Charging order /order of sale:** The council can apply to place a charging order on any property owned by the offender. If a debt remains outstanding after a charging order has been registered, the council can make an application for an order of sale. The property would then be subject to an enforced sale and the proceeds used to settle the debt owed to the council.

1.1.66 **Attachment to earnings order:** If the offender is in paid employment, the council can apply to the court for an attachment to earnings order. Such an order would require the offender's employer to make salary deductions. Amounts would be deducted regularly at the direction of the court until the debt owed to the council has been fully discharged.

1.1.67 When considering imposing more than one financial penalty on an offender as a consequence of that offender committing more than one offence, the council will carefully consider whether the cumulative financial penalty would be just and proportionate in the circumstances having regard to the offending behaviour as a whole. Taking into account the principle of totality ensures that the cumulative effect of any sanctions imposed by the council does not constitute an unjust and disproportionate punishment.

1.1.68 The council will initially determine the amount of financial penalty that should be imposed in respect of each offence having regard to this policy. The council will then add up the financial penalties and make an assessment as to whether the cumulative total is just and proportionate. If the council considers the cumulative total to be just and proportionate, it will normally impose a financial penalty for each offence. However, if the council considers the cumulative total to be unjust and disproportionate, it will take one or both of the following actions to ensure that the cumulative total is reduced to an amount that does constitute a just and proportionate punishment.

1.1.69 The council may use its discretion to reduce the amount of a financial penalty at the review and adjustment stage, irrespective of whether there are other mitigating or aggravating factors. Any reduction would be similarly limited to an amount equal to 50% of the starting point identified in the Table of Financial Penalties. The additional reduction may be applied to one or more of the offences under consideration. The council may use its discretion to not impose a financial penalty in respect of every offence under consideration. If the council decides to take this course of action, the offence or offences disregarded will usually be of a lower severity. In consideration of totality, the council will also take into account any proposal to pursue a Rent Repayment Order in respect of the same behaviour.

1.2 Help and Advice

1.2.1 If you would like further advice or clarification, the Housing Improvement Team can help. Please ring us on 01732 844522 and speak to one of our officers. We can also be contacted by email on: privatesectorhousing@tmbc.gov.uk

1.2.2 Alternatively, you can write to us at:

Housing Improvement Team
Tonbridge and Malling Borough Council
Gibson Building
Gibson Drive
Kings Hill, West Malling
Kent
ME19 4LZ

1.3 Making a complaint

1.3.1 The Housing Improvement Team aims to provide the best possible service. However, if you are not happy with the service you receive you can make a formal complaint.

1.3.2 More information about how to make a formal complaint can be found on the Council's website at: www.tmbc.gov.uk. Alternatively, you can call, email or write to us:

Telephone: 01732 844522
Email: privatesectorhousing@tmbc.gov.uk

Address: Housing Improvement Team, Tonbridge and Malling Borough Council, Gibson Building, Gibson Drive, Kings Hill, West Malling, ME19 4LZ

1.3.3 If, after having gone through the council's formal complaints process, you believe that the Council has not handled your complaint properly, you have the right to request an independent investigation by the Local Government and Social Care Ombudsman. The Ombudsman Service will review your complaint and decide if it is appropriate to carry out an investigation. The service is free of charge.

1.3.4 You can make a complaint by phone or online at:

The Local Government and Social Care Ombudsman
Telephone 0300 061 0614
Website: www.lgo.org.uk
Address: Local Government Ombudsman, PO Box 477, Coventry, CV4 0EH

Appendix 3 - The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 - statement of principles

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Statement of Principles for the Issue of Civil Penalty Charges Under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015

1. Introduction

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 ("The Regulations"), Statutory Instrument 2015 No. 1693 came into force on the 1 October 2015. The regulations require private sector landlords from that date to have at least one smoke alarm installed on every storey of their premises and a Carbon Monoxide alarm in any room containing a solid fuel burning appliance, for example a coal fire or wood burning stove. After that, the landlord must ensure all alarms are in working order at the start of each new tenancy.

Tonbridge & Malling Borough Council ("The Council") as an enforcing authority under the Regulations can impose a civil penalty charge of up to £5,000 on landlords who do not comply with the Regulations. The Council is required under the Regulations to prepare and publish (for example on the Council website) a statement of principles (regulation 13) and it must have regard to these when determining the amount of a penalty charge.

2. Overview of the Regulations

The Regulations place a duty on landlords, which include freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence. The Regulations exclude registered providers of social housing.

The duty (regulation 4) requires that landlords ensure that:
- a smoke alarm is installed on each storey of premises where there is living accommodation
- a Carbon Monoxide alarm is installed in any room of premises used as living accommodation, which contain a solid fuel burning appliance.

AND for tenancies starting from 1 October 2015

- that checks are made by the landlord, or someone acting on his behalf, that the alarm(s) is/are in proper working order on the day the tenancy starts.

Where the Council believe that a landlord is in breach of one or more of the above duties, the Council must serve a remedial notice under regulation 5 of the Regulations on the landlord.

If the landlord fails to take the remedial action specified in the notice within the specified timescale, the Council can require a landlord to pay a penalty charge. The power to charge a penalty is under regulation 8 of the Regulations.

A landlord will not be considered to be in breach of their duty to comply with the remedial notice, if they can demonstrate they have taken all reasonable steps to comply. This can be done by making written representations to the Council within 28 days of when the remedial notice is served.

The Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in the remedial notice within the required timescale.

3. The purpose of imposing a financial penalty

The purpose of the Council exercising its regulatory powers is to protect the interests of the public.

The aims of financial penalties for landlords are to:

- Lower the risk to tenant's health and safety
- Reimburse the costs incurred by the Council in arranging remedial works in default of the landlord
- Change the behaviour of the landlord and aim to prevent future non-compliance
- Penalise the landlord for not installing alarms after being required to do so under notice
- Eliminate financial gain or benefit from non-compliance with the regulations.
- Be proportionate to potential harm outcomes given the nature of the breach and the cost benefit to comply with these legal requirements.

4. Overview of each stage of the civil penalty process

Step	Decision	Description
1	Issue a remedial notice	If the Council has reasonable grounds to believe there is a breach of the requirements of regulation 4 it must serve a remedial notice on the landlord.
2	Breach	The landlord has failed to comply with the remedial notice within the relevant period of 28 days and the Council has arranged for remedial action to be taken.
3	Decision	Decision is made on liability for the civil penalty charge. The civil penalty process starts when the Council is satisfied on the balance of probabilities that a landlord on whom it has served a remedial notice has failed to comply with the terms of that notice (regulation 6(1)). If there is a reasonable excuse for non-compliance, for example tenants not co-operating, no further action will be taken. In deciding whether it would be appropriate to impose a civil penalty charge the Council will take full account of the particular facts and circumstances of the breach into consideration. The penalty charge comprises two parts, a punitive element for failure to comply with the remedial notice and a cost element relating to the investigative costs, officer time, administration and any remedial works arranged and carried out by contractors instructed by the Council.
4	Payment	Payment of penalty or request for review. Penalty charges are to be paid in full within the period specified (this will not be less than 28 days) in the penalty charge notice unless within that specified period the landlord has given written notice to the Council that the penalty charge notice be reviewed. The Council may reduce the specified charge under an early payment option which reduces the amount of the civil penalty by 50 percent if payment is received in full within 14 days of the civil penalty notice being served. The reduced penalty amount and the final date by which it must be paid will be clearly shown on the civil penalty notice.
5	Review	Penalty notice is confirmed, varied or withdrawn. Review decision notice issued together with appeal information. If the landlord requested a review within the required penalty charge notice period they will continue to be eligible for the early payment option under the review decision notice.
6	Payment	Payment of penalty or appeal to First-tier Tribunal.
7	Appeal	First-tier Tribunal will determine if the penalty charge notice is quashed, confirmed or varied.
8	Enforcement of debt recovery	Enforcement action to recover the debt may be taken if payment is not received within the required time frame. This may include action in the civil court to recover the unpaid debt. This action may have an adverse impact on the landlord's ability to obtain future credit and act in the capacity of a company director.

5. The amount of financial penalty

The Regulations state the amount of the penalty charge must not exceed £5,000.

The charges are as follows:

- £2,500 for the first breach to comply with a remedial notice
- £1,250 for early payment, representing 50 percent reduction, for the first breach to comply with a remedial notice
- £5,000 for each subsequent breach to comply with a remedial notice
- £2,500 for early payment, representing 50 percent reduction, for each subsequent breach to comply with a remedial notice

6. Remedial action

Where the Council is satisfied that a landlord has not complied with a specification described in the remedial notice in the required timescale and consent is given by the occupier, the Council will arrange for remedial works to be undertaken in default of the landlord. This work in default will be undertaken within 28 days of the Council being satisfied of the breach. In these circumstances, battery operated alarms will be installed as a quick and immediate response.

In order to comply with these Regulations a Carbon Monoxide alarm will be installed in every room containing a solid fuel combusting appliance or smoke alarms will be installed at every storey of residential accommodation. This may provide only a temporary solution as the property may be high risk because of:

- its mode of occupancy such as a house in multiple occupation or a building converted into one or more flats;
- having an unsafe internal layout where fire escape routes pass through living rooms or kitchens; or
- is three or more storeys high.

Any further works required to address serious fire safety or Carbon Monoxide hazards in residential property, that are not undertaken though informal agreement will be enforced using the Housing Act 2004, in accordance with the Council's Enforcement Policy.

7. Information regarding this statement

The Council has prepared and published this statement in line with its duties under regulation 13. This statement may be revised and where this happens any revised statement will be published.

When determining the amount of a penalty charge the Council will have regard to the most recent prepared and published statement of principles at the time when the breach in question occurred.

Appendix 4 - The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended) Charging Policy

Policy for determining the level of financial penalty for non-compliance with the Domestic Minimum Energy Efficiency Standards (MEES) Regulations in the Tonbridge & Malling Borough Council area.

The Council's approach ensures that the financial penalty should be proportionate and reflect the severity of the breach, and should be set high enough to help ensure that it has a real economic impact on the landlord and demonstrate the consequences of not complying with their responsibilities. The landlord's track record will be taken into account in each case. The maximum level of penalty varies according to the type of breach under the Regulations as follows:

*Financial penalties (**Regulation 40)***

Where the Local Authority decides to impose a financial penalty, they have the discretion to decide on the amount of the penalty, up to maximum limits set by the Regulations. The maximum penalties are as follows:

(a) Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.

(b) Where the landlord has let a sub-standard property in breach of the regulations for 3 months or more, the Local Authority may impose a financial penalty of up to £4,000 and may impose the publication penalty.

(c) Where the landlord has registered false or misleading information on the PRS Exemptions Register, the Local Authority may impose a financial penalty of up to £1,000 and may impose the publication penalty.

(d) Where the landlord has failed to comply with compliance notice, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.

When determining the financial penalty the Council will take the landlord's track record into account as to whether it is their first breach under these Regulations or not as per the following:

a) **Breaching the prohibition on letting a sub-standard (EPC rated F or G) property for less than three months (Regulation 23) (Statutory maximum: £2,000)**

	Penalty	Early payment within 21 days
First breach	£1,000	£750
Other breaches	£2,000	£1,500

b) Breaching the prohibition on letting a sub-standard (EPC rated F or G) property for three months or more (Regulation 23) (Statutory maximum: £4,000)

	Penalty	Early payment within 21 days
First breach	£2,000	£1,500
Other breaches	£4,000	£3,000

c) Registering false or misleading information on the PRS Exemptions Register (Regulation 36 (2)) (Statutory maximum: £1,000)

	Penalty	Early payment within 21 days
First breach	£500	£375
Other breaches	£1,000	£750

d) Failing to comply with a Compliance Notice (Regulation 37 (4) (a)) (Statutory maximum: £2,000)

	Penalty	Early payment within 21 days
First breach	£1,000	£750
Other breaches	£2,000	£1,500

The Council may not impose a financial penalty under both paragraphs (a) and (b) above in relation to the same breach of the Regulations. They may impose a financial penalty under either (a) or (b), together with financial penalties under (c) and (d) in relation to the same breach. Where penalties are imposed under more than one of the tables above the total amount of the financial penalty may not be more than £5,000 per property, and per breach of the Regulations.

If there are repeat breaches the Council may use its discretion to apply the full penalty with no reduction for early payment.

Appendix 5 - The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

Level of Financial Penalty for Non-compliance

The level of financial penalty is up to a maximum of £30,000. The process for determining the level of financial penalty for a breach of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 will be as set out in the Council's adopted Private Sector Housing 'Policy for imposing financial penalties under the Housing Act 2004 and Housing and Planning Act 2016' as shown in Appendix 2.