

**Draft Private Rented Sector Housing Enforcement Policy 2022**

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## Private Rented Sector Housing Enforcement Policy

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## 1.0 Introduction

1.1 Southend-on-Sea City Council ('The Council') is responsible for enforcing a wide range of statutory provisions relating to private sector housing and environmental conditions affecting health, wellbeing, and safety, these include:

- reducing the number of properties with serious risks to health and safety.
- improving energy efficiency, warmth of homes and help reduce fuel poverty.
- improving standards in private rented sector (PRS) accommodation.
- improving the standards in HMOs (houses in multiple occupation).
- Improving the standards of rented properties within the designated selective licensing area.

1.2 This draft policy is specific to the investigation of housing conditions and enforcement action taken by Regulatory Services; but is intended to be read in conjunction with the overarching Environment and Regulatory Enforcement Policy 2021 (ERP 2021). The policy cannot be absolutely prescriptive because the circumstances of each individual case and the evidence available must be taken into account. However, this policy should leave most readers in little doubt as to what they can expect by way of enforcement.

1.3 In determining this draft policy, stakeholders have been consulted and current government guidance and relevant codes of practices have also been considered. In particular the requirements of the Legislative and Regulatory Reform Act 2006 (the "2006 Act"), the Enforcement Sanctions Act 2008 and the Regulators' Code (2014) made under that Act have been taken into account. In doing so, this draft policy seeks to ensure that the application of any enforcement is founded around the principles of:

- Raising awareness;
- Proportionality and accountability;
- Consistency in approach;
- Transparency and
- Targeted.

1.4 The methodology and reasoning behind investigations, information requirements, Cautions, Prosecutions, Evidential Test, and the Public Interest Test are the same as stated within the ERP 2021.

## 2.0 Purpose and Scope

2.1 This draft policy contributes to the Council's 2050 Safe and Well key priority of ensuring that everyone has a home that meets their needs.

2.2 The Council will utilise a range of delegated powers to deal with statutory nuisance from property, hazards and amenity standards in the home which affect the health, safety, comfort and convenience of occupiers, visitors, and the public.

2.3 The purpose of this draft policy is to outline the areas of legislation used and to set out the Council's policy where the legislation permits discretion. It sets out the:

- investigative pathway associated with different tenures (section 3);
- how the team will respond to service requests in relation to enforcing housing standards, and the situations where a service may not be provided (Section 4);
- the enforcement actions that will be considered to secure housing improvements (Section 5);
- the range of proactive and statutory actions to improve housing standards that are available (Section 6);
- The Charges for Notices, and the use of Civil Penalties (Section 7);
- The complaints process (Section 9).

2.4 The extent of enforcement will be related to the risk posed by the condition or situation and the likely benefits achieved by compliance. In accordance with requirements, a policy and statement of intent on how Civil Penalties and smoke and carbon monoxide alarm requirements will be applied are set out in Appendix 3 (Civil Penalties Policy under the Housing Act 2004 and the Housing and Planning Act 2016), Appendix 4 (The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020) and Appendix 5 (Statement of Principles for the determining of financial penalties – The Smoke and Carbon Monoxide Alarm (England) Regulations 2015) respectively. **The Civil Policy 2022 (Appendix 3) has already been adopted by the Council in February 2022, as such, the details within this appendix do not form part of the consultation of the draft policy.**

### **3. Tenure Groups**

3.1 The Council has investigative and enforcement powers relating to all housing tenure. All enforcement options are available to the Council regardless of whether the premises in question are owner-occupied, privately rented or belong to a Registered Social Landlord (RSL). South Essex Homes (SEH) is not subject to enforcement by the Council as it is an Arm's Length Management Organisation of the Council. Complaints regarding SEH properties are subject to a separate complaints process.

3.2 Generally, the Council considers that owner-occupiers are usually in a position to take informed decisions concerning maintenance and improvement issues that might affect their welfare and are then able to set their financial priorities accordingly; tenants however, are not always able to do so. For this reason, the Council proposes that it is appropriate for its use of powers to be prioritised according to tenure, as follows:

#### **3.3 Owner Occupiers**

As owner occupiers are ordinarily able to make informed decisions about maintenance or safety issues in their homes, formal enforcement action against this tenure group is ordinarily limited, however, there may be exceptions including:

- Vulnerable individuals who require the intervention of the Council to ensure their welfare is best protected.
- Hazards that might reasonably affect persons other than the occupants.
- Serious risk of life-threatening harm such as electrocution or fire.

Unless an identified hazard is judged to pose an imminent risk of serious harm, the Council will contact the owner to confirm its involvement, explain the nature of the hazard and confirm the action it is intending to take. The Council will take account of any proposals or representations made by, or on behalf of the owner. The Council will solicit and take account of the opinion of the relevant Welfare Authority in considering both the vulnerability and capability of such persons as well as in determining what action it will then take.

#### **3.4 Private Tenants**

Legislation covering landlord and tenant issues requires that tenants notify their

landlords of any problems with the property. This reasonably affords landlords an opportunity to carry out their obligations under the legislation. Where the matter appears to present an imminent risk to the health and safety of the occupants, it is expected that tenants will continue to try to contact their landlord, even if this is after they have contacted the Private Sector Housing Team. Copies of correspondence between the landlord and tenant should be provided for Officers. In certain situations, tenants will not be required to write to their landlord first, for example:

- where the matter appears to present an imminent risk to the health and safety of the occupants.
- Where there is a demonstrable history of harassment/threatened eviction/poor management practice.
- where the tenant could not for some other reason be expected to contact their landlord/managing agent.

For private tenants who rent through a Lettings Agency or Property Management company, there is a requirement for those agencies to belong to a Government approved redress scheme in accordance with the Enterprise and Regulatory Reform Act 2013. These tenants therefore have the right to complain to an independent person about the service they receive which should assist in settling disputes.

### **3.5 Registered Social Landlords (“RSL”)**

These are usually housing associations, being a private, non-profit making organisation that provides low cost “social housing” for people in need. Their performance is scrutinised by the Regulator for Social Housing and the Housing Ombudsman. RSL’s have written arrangements for reporting problems and clear response times for addressing these issues, in addition to having systems for registering any complaints about service failure. This service will not normally take action against an RSL, unless the problem in question has been properly reported to the RSL, they have failed to take the appropriate action and the tenant has been to the Housing Ombudsman without a satisfactory result. The Council will consider enforcement action against an RSL where there are significant risks to the health and safety of tenants and/or the wider public.

### **3.6 Leaseholders**

Other than in exceptional cases (on a case-by-case basis), the Council expects long leaseholders to invoke the terms of their lease to remedy problems of disrepair or nuisance themselves. Leaseholders may be able to get advice about how to settle a dispute about repair problems from the:

Leasehold Advisory Service –  
31 Worship Street, London  
E2CA 2DX, Telephone 020  
7374 5380 info@lease-  
advice.org.uk

Leaseholders may need to consult a solicitor specialising in leasehold law.

### **3.7 Caravan Sites**

The use of land as a caravan site usually requires a caravan site licence under the Caravan Sites and Control of Development Act 1960 and the Council may impose site licence conditions. The Council can take enforcement action should a site be operating without a licence or where site licence conditions are not being met.

## **4. Reporting Poor Housing Conditions**

- 4.1 The online reporting form can be used to report housing complaints through the MySouthend portal <https://www.southend.gov.uk>

You can also contact Southend City Council , by telephone on 01702 215000, by email to [privatesectorhousing@southend.gov.uk](mailto:privatesectorhousing@southend.gov.uk) or by letter to the following address:

Southend-on-Sea City Council  
Civic Centre  
Victoria Avenue  
Southend-on-Sea  
Essex SS2 6ER

When reporting an issue, it is useful for the Council to have as much information as possible, such as:

- Description and photographs of the disrepair issue and affected room.
- How long the item of disrepair has been present.
- When the responsible party (i.e. landlord or management agent) for the property was notified of the problem, and copies of the correspondence.
- Following notification, the response (if any) from the responsible party.
- Address of property concerned.
- Name/address/telephone number of owner/landlord/managing agent
- Name/address/telephone number of complainants.
- If rented when they started tenancy & type of tenancy agreement held.

Unless there is an imminent risk or danger, anonymous complaints will not be investigated; on receipt of the above the Council will contact the person responsible, allowing them 14 days to make representations and providing them an opportunity to carry out the works.

#### **4.2 Situations Where a Service May Not be Provided**

There may be occasions where an investigating officer cannot substantiate the complaint. When this arises, the person who has raised the issue will be informed that Council will not take any further action.

There are other circumstances that may result in the cessation of an investigation, or the withdrawal of service, these include (but are not limited to):

- the complaint has been withdrawn and does not warrant further investigation.
- the tenant(s) are, shortly to move out of the property by their own choice.
- the complaint relates to minor disrepair only.
- the landlord of the property has initiated eviction proceedings where there has been a breach of tenancy agreement.
- the tenant(s) unreasonably refuse access to the landlord, managing agent or landlord's builder, for works to be carried out.
- the tenant(s) have, in the opinion of the Council, clearly caused the damage to the property they are complaining about, and there are no other items of disrepair.
- a tenant does not want their present accommodation to be brought up to standard, and the only reason for contacting the Private Sector Housing Enforcement Team is to secure rehousing.



- the tenant(s) has failed to follow the appropriate process.
- the tenant(s) have failed to keep an appointment and not responded to a follow up letter or appointment card.
- the tenant(s) unreasonably refuses to provide the Council with relevant documentation, e.g. a tenancy agreement or notice seeking possession.
- the Complainant has continually submitted additional complaints related in whole or in part to an initial complaint already submitted and under investigation or which has been fully investigated and the Council's duty discharged.
- the tenant(s) have been aggressive, threatening, verbally or physically abusive or shown racist behaviour towards officers, or has made spurious and/or unsubstantiated allegations.
- make repetitive complaints and allegations which disregards the responses the Council has supplied in previous correspondence to the complainant or their representative(s).

## **5. Enforcement Responsibilities and Options**

**5.1** In circumstances where enforcement responsibility is shared between or rests fully with external organisations, officers will have regard to protocols agreed with other enforcement agencies. Where appropriate, officers will ensure that referrals are passed to the appropriate enforcing authority promptly and in accordance with any agreed procedure.

**5.2** The Council will minimise the costs of compliance for residents and landlords by ensuring that any action required is proportionate to the risks involved or seriousness of any breach. As far as the law allows, the circumstances of the case and the attitude of the owner or agent will be considered when determining what action to take. Regard to various courses of remedial action and consideration will be given to what is 'reasonably practicable'.

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

**5.4** HHSRS is set out in Part 1 of the Housing Act 2004 (the Act), and the Council will base enforcement decisions in respect of residential premises on assessments made under that system. It is a risk-based approach consisting of 29 hazards. In undertaking an inspection of a dwelling, an Environmental Health Officer (or other suitably qualified Officer), will undertake an assessment of the potential risks to health and safety from any deficiencies identified in a dwelling. The officer will then determine whether any

enforcement action is required depending upon the severity of the hazard, or whether there is a duty or discretion to act.

5.5 Where a Category 1 hazard exists, The Council has a duty to act, however, with regards to Category 2 hazards, the power to act is discretionary, and there is an option to take informal action with a landlord where there is a low risk to health and safety and where there is no history of non-compliance from the landlord.

5.6 Action by the Council will be based on a three-stage consideration:

- The hazard rating determined under HHSRS;
- Whether the authority 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
- The authority's judgement as to the most appropriate course of action to deal with the hazard.

5.7 The Act contains enforcement options, and the choice of the most appropriate course of action is decided having regard to statutory enforcement guidance.

## **5.8 Legislation, Action and Powers**

5.9 In addition to HHSRS, there are other legislation and regulations under which the team's responsibilities as a Housing Authority will be considered, these include (but are not limited to):

- The Public Health Act 1936 and 1961;
- The Prevention of Damage by Pests Act 1949;
- Caravan Sites Act 1968 (as amended by the Mobile Homes Act 2013);
- The Local Government (Miscellaneous Provisions) Act 1976 and 1982;
- Protection from Eviction Act 1977;
- The Building Act 1984;
- The Housing Act 1985;
- The Environmental Protection Act 1990;
- The Housing Act 2004;
- The Regulatory Reform Order 2005;
- The Management of HMOs (England) Regulations 2006 and 2007;

- Enterprise and Regulatory Reform Act 2013;
- Deregulation Act 2015;
- The Energy Efficiency (Private Rented Property) (England & Wales) Regulation 2015;
- Smoke and Carbon Monoxide Alarm (England) Regulations 2015;
- The Housing and Planning Act 2016;
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

5.10 Authorised officers can inspect and survey the entire premises, take samples, and use equipment to take measurements and photographs where appropriate.

There are several actions officers may take and these will depend on the circumstances of the case:

- **Take no action** – Where premises are found to be satisfactory.
- **Take informal action** – Informal action will be taken where insignificant Category 2 hazards are found and recommendations are being made.
- **Take formal enforcement action** – This action will normally be the first course of action following the inspection where a Category 1 hazard, or where a significant category 2 hazard is identified.

Where an officer identifies an imminent risk of serious harm the officer will make every effort to contact the owner to give them the opportunity to remedy the situation within a short timescale.

### 5.11 Informal Action

This may include:

- Offering advice.
- Making recommendations verbally or by letter.
- Making written requests for action. These will include letter, schedule or a pro-forma requesting timescales for the start and completion of any works.
- Discussing options with owners.

### 5.12 Formal Action

In the case of hazards determined under the HHSRS the Council has a statutory duty to act in the case of Category 1 hazards and a power to act in the case of Category 2 hazards.

The Council will exercise its power to deal with Category 2 hazards formally for those hazards that it considers to be significant. Whilst it is not possible to be prescriptive in describing all hazards which the Council would deem to be significant, factors that may be considered to assist in the determination of which hazards are deemed to be significant include one or more of the following:

- Whether the hazard pertains to threats from uncontrolled fire (and smoke).
- Whether there are multiple hazards within the property.
- Whether there is a vulnerable individual or group in occupation or likely to be in occupation.
- Whether or not it is reasonable to assume the conditions are likely to deteriorate in the next 12 months.

Informal action is still an option to the Council where the Category 2 hazard is deemed to be insignificant by the Officer.

**5.13 In relation to the above enforcement options for hazards, the following enforcement notices will be considered, depending on the severity and or number of the hazards identified:**

- Serve a Hazard Awareness Notice.
- 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.
- Serve an Emergency Prohibition Order; \*
- Suspend any of the above, until a date or time specified.
- Take Emergency Remedial Action; \*
- Make a Demolition Order; \*\*
- Declare a Clearance Area\*\*

*\* Only in respect of Category 1 hazards*

*\*\*Circumstances for these Notices are stated in Appendix 1 (Demolition Orders*

*and Clearance Areas)*

5.14 In addition to the above, alternative or additional Notices may be considered under the legislation listed in 5.9 depending on the circumstances. This includes all legislation that pertains to gathering information as part of a PSH enforcement investigation, these include (but are not limited to)

- Section 16 Local Government (Miscellaneous Provisions) Act 1976, (Requisition for Information Notice);
- Section 235 Housing Act 2004 - (Requisition for Documents Notice).

Failure to respond to either of the above notices within the specified time frame is an offence and may lead to prosecution. These notices do not register as a Land Charge and are not included on the Council's Enforcement Register.

#### **5.15 Enforcement Considerations**

5.16 In determining which of the above courses of action to take, the Council may take the following factors into consideration:

- The current occupiers, if any, and their views as to what should happen.
- Likely regular visitors and any vulnerabilities.
- The turnover of tenancies.
- The risk of excluding vulnerable groups of people from the private rented sector.
- The size, type, and location of the property.
- The sustainability of an area – if it has been identified for potential demolition within an Area Action Plan.
- The views of the owner(s).
- In the case of demolition or clearance, the views of residents, businesses and Councillors will also be considered.

5.17 In the event that a Notice is Suspended, these will be reviewed at least annually, and The Council will consider requests to vary or revoke an improvement notice or a prohibition order. In doing so they will have consideration to some or all of the following factors:

- The views of the Fire Authority, where appropriate.
- The risk presented by the hazard and the potential effect of any variation.
- The level of confidence in the recipient to respond and their history

of compliance or otherwise.

- The progress made with any other work specified in the Notice or Order.
- The costs of any works in relation to the benefit to be derived from them.
- Any additional unforeseen works which become apparent during the course of remedial works.

If the Council considers that there are special circumstances in relation to a Prohibition Order or an Improvement Notice, it may revoke the order or notice.

## **5.18 Entering A Property and Powers of Entry**

5.19 Where practicable, landlords and/or agents will be given 24 hours' notice of the Council's intention to carry out an inspection of the property as per the requirements of section 239 Housing Act 2004.

5.20 If the landlord/agent or representative wishes to attend the inspection, they must also provide the tenant with the necessary notice. After the inspection, whilst onsite, the Council will discuss the findings of the inspection and the possible options to reduce or remove the hazards, if requested to do so by the landlord/agent or representative and it is practicable to do so. This is only available when the landlord/agent or representative attends the property for the inspection. The Council will rate the hazards using the HHSRS and serve any relevant notices as soon as is practicable. It should be noted, however, that any works discussed with the landlord/agent or their representative will be before the deficiencies have been scored using the HHSRS and this could impact upon the assessment.

5.21 In the case of a HMO, an authorised officer has a right of entry at any reasonable time, and without giving any prior notice

5.22 There may be times where Officers need to enter a premises without notification to the owner or occupier, in these cases, a warrant will be sought under the appropriate Act being used, this can include powers of entry under:

- The Housing Act 2004 section 239;
- The Environmental Protection Act 1990 – Schedule 3, para. 2;
- Prevention of Damage by Pests Act 1949 – Section 22;
- The Public Health Act 1936 – Section 287;
- The Building Act 1984 – Section 95, and

- The Local Government and Housing Act 1989 – Section 97.

5.23 The power of entry is to enter the land or premises at any reasonable hour for the purpose of carrying out an inspection and/or investigation either required by the legislation or in order to ascertain if any part of the relevant legislation should apply. When using a power of entry, the associated advanced notice as required by the various Acts will be provided to the owner/landlord/responsible party.

5.24 If officers are refused entry, the Council has the right to apply to the Magistrates Court for a warrant to enter the land/property. This course of action will only be taken in cases where it is considered both necessary and proportionate to the matter under investigation. Any person who willfully obstructs an authorised officer acting in exercise of a right of entry commits an offence and may be liable on summary conviction to a fine, the level of which is specified by the respective legislation:

## **6.0 Charges for Notices and Financial and Civil Penalties**

### **6.1 Charges for Notices**

6.2 Enforcement means an action carried out in exercise of or against the background of enforcement powers. This is not limited to formal enforcement action such as prosecution, service of legal notices, and application for a rent repayment order or the issue of civil penalty notices. It includes inspections or investigations related to property or land and any relevant person where the purpose is checking compliance with legislation or to give advice to help comply with the law.

6.3 Having regard to the relevant statutory power, and where the law allows, a financial charge will be made for the service of all Housing Act notices and the making of Prohibition Orders. There is no maximum charges, and the final charge will be based on the full cost to the Council of taking the action including inspection, preparation, and service of the notices. Any action to recover costs and expenses will be in accordance with the requirements of the relevant Acts. (See Appendix 2 Charges for Notices).

6.4 In respect of formal notices served in relation to significant Category 2 hazards, this charge may be waived at the Council's discretion when required works as specified within the Notice are completed to the satisfaction of the Officer within the specified timeframe (See Appendix 2 Charges for Notices).

6.5 Costs incurred carrying out Work in Default or Remedial Action will be charged

separately. When the charge demand becomes operative, the sum recoverable will be a local land charge. Costs will be charged at an hourly rate for the enforcement officer, administration and management costs. For more information see the Council's Works in Default Procedure. (See Appendix 2 Charges for Notices)

## **6.6 Civil Penalties**

The Government has introduced legislation that gives the Council the option to impose a financial penalty of up to £30,000 as an alternative to prosecution for certain housing offences. These powers were introduced to help local authorities take more enforcement action against rogue landlords. The Council adopted a policy for applying Civil Penalties for Housing Offences in February 22.

6.7 Specifically, the Housing and Planning Act 2016 Act gives the Council the power to issue Civil Penalty notices of up to £30,000 as an alternative to prosecution, where there is evidence beyond reasonable doubt of certain offences i.e. failure to:

- Comply with an improvement notice;
- License a property which requires a licence;
- Comply with licence conditions or occupancy requirements;
- Comply with an overcrowding notice;
- Comply with HMO management regulations requirements;
- Failing to licence a house in multiple occupation ("HMO");
- Knowingly permitting the over-occupation of a licensed HMO;
- Failing to comply with the condition of an HMO licence;
- Failing to comply with an overcrowding notice in respect of a non-licensable HMO;
- Failing to comply with HMO management regulations; and
- Breaching a banning order.

6.8 Local authorities are entitled to retain any monies collected, provided they are used to fund private sector housing enforcement functions. However, before any financial penalties can be issued, statutory guidance requires the Council 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.

6.9 Civil Penalties can be used where a breach is serious and the Council may determine



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. The government have issued statutory guidance to Councils on the use of Civil Penalty notices under the 2016 Act. The Council has published its own policy on how it will decide on the level of financial penalty which is in accordance with the government guidance. This policy has already been adopted by the Council in February 22, and is included in this policy at Appendix 3 (Civil Penalties Policy for imposing financial penalties under the Housing Act 2004 and the Housing and Planning Act 2016). **However, as it has already been adopted, this element will not be considered again in the consultation for this draft policy.**

The decision when to prosecute, agree a simple caution or when to issue a civil penalty will be made on a case-by-case basis in line with this adopted policy and current guidance.

- 6.10 The upper limit for fines in the magistrates' court has been removed; this means if found guilty of an offence, there is no maximum fine. In some cases, the Council can apply to court to recover rent from a landlord if a property has been let illegally. Officers will provide Legal Services with all the relevant information to enable the recovery of costs to be sought at court. Any costs application made is likely to include the time officers have spent investigating a case and the legal costs involved.
- 6.11 Verdicts and sentences in criminal cases are given in open court and are a matter of public record. The Council will decide whether to publicise sentences following prosecution on a case-by-case basis. Publicising guidance has a presumption in favour of publicising outcomes of criminal cases and basic personal information about convicted offenders.
- 6.12 In addition to charges for Notices served under the Housing Act 2004 other Notices served under other legislation or regulations have penalties attached, usually where the Notice served has been contravened. These include (but are not limited to):
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (£30,000 maximum) (See Appendix 4);
  - The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (£5000 maximum) (See Appendix 5 Statement of Intent);
  - The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (£5000 maximum).

- 6.13 Each case will be considered on its own merits and the relevant statutory appeal rights are provided with any notice served.

## **7.0 Options Regarding Licensing of Houses in Multiple Occupation (HMO)**

- 7.1 Southend-on-Sea City Council currently operates the Mandatory HMO Licensing scheme. From 1st October 2018 HMO licences are required for all HMOs of any storey height that are occupied by five or more persons, who form two or more households and share facilities (such as kitchens, living rooms and bathrooms), unless they are exempt. OR Purpose-built flats where there are up to two flats in the block and one or both flats are occupied by 5 or more persons in 2 or more separate households. This will apply regardless of whether the block is above or below commercial premises.

- 7.2 The HMO licensing regime includes arrangements for assessing the suitability of the premises for the number of occupants, including the adequacy of the amenities. It also provides for the assessment of the fitness of a person to be the licence holder and the potential management arrangements of the premises.

## **7.3 Licensable HMOs operating without a licence**

- 7.4 It is a criminal offence if a person controlling or managing a licensable HMO does not have the required licence. Failure to comply with any condition attached to a licence is also an offence. The Council will consider all available enforcement options when dealing with unlicensed HMOs and breaches of the licence conditions.

- 7.5 The Council has an intelligence-led, targeted approach to housing enforcement and the identification of licensable HMOs that are operating without a licence. It will vigorously pursue anyone who is controlling or managing a licensable HMO without a licence and, where appropriate, it will prosecute them or impose a civil penalty.

- 7.6 Consideration will be given to any representations that are received from landlords in relation to exceptional circumstances that may have resulted in a 'duly made' HMO licence application not being submitted on time.

- 7.7 If a landlord responds quickly to the Council's notification that an HMO requires an HMO licence and they co-operate fully with the Council to ensure that the HMO is licensed as soon as practicable, the Council may decide (at its sole discretion) not to prosecute the landlord or impose a civil penalty. Each case will be determined on its individual

merits and circumstances.

7.8 As mentioned above, it is an offence to operate a HMO without a licence and penalties are set out in Appendix 3 (Civil Penalties Policy for imposing financial penalties under the Housing Act 2004 and the Housing and Planning Act 2016).

7.9 All decisions in respect of HMO licensing will be taken in accordance with the Council's published policy and the appropriate legislation and guidance.

## **8.0 Options Regarding Selective Licensing (SL)**

8.1 Southend-on-Sea City Council has adopted a selective licensing scheme. From 1st December 2021 SLs licences are required for all rented properties within the designated area. Where a property is an HMO, the mandatory licensing of HMO regime will apply (see Section 7.0).

8.2 The SL regime includes arrangements for assessing the suitability of the premises for the number of occupants, including the adequacy of the amenities. It also provides for the assessment of the fitness of a person to be the licence holder and the potential management arrangements of the premises.

## **8.3 Licensable properties with the adopted area operating without a licence**

8.4 It is a criminal offence if a person controlling or managing a property within a selective licensable area does not have the required licence. Failure to comply with any condition attached to a licence is also an offence. The Council will consider all available enforcement options when dealing with unlicensed SL property and breaches of the licence conditions.

8.5 The Council has an intelligence-led, targeted approach to housing enforcement and the identification of properties within the selective licensing area that are operating without a licence. It will vigorously pursue anyone who is controlling or managing a licensable property without a licence and, where appropriate, it will prosecute them or impose a civil penalty.

8.6 Consideration will be given to any representations that are received from landlords in relation to exceptional circumstances that may have resulted in a 'duly made' licence application not being submitted on time.

- 8.7 If a landlord responds quickly to the Council's notification that a property requires a licence and they co-operate fully with the Council to ensure that the property is licensed as soon as practicable, the Council may decide (at its sole discretion) not to prosecute the landlord or impose a civil penalty. Each case will be determined on its individual merits and circumstances.
- 8.8 As mentioned above, it is an offence to rent a property within a selective licensing areas without a licence and penalties are set out in Appendix 3 (Civil Penalties Policy for imposing financial penalties under the Housing Act 2004 and the Housing and Planning Act 2016).
- 8.9 All decisions in respect of selective licensing will be taken in accordance with the Council's published policy and the appropriate legislation and guidance.

## **9. Related policies and Supporting Documents**

- 9.1 **A copy of the guidance on civil penalties can be accessed via:**  
**[https://www.gov.uk/government/publications/civil-penalties-under-the- housing-  
andplanning-act-2016](https://www.gov.uk/government/publications/civil-penalties-under-the-housing-andplanning-act-2016)**

A copy of the Guidance on rent repayment orders can be accessed via:  
[https://www.gov.uk/government/publications/rent-repayment-orders-under- the-  
housingand-planning-act-2016](https://www.gov.uk/government/publications/rent-repayment-orders-under-the-housingand-planning-act-2016)

A copy of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015: Q&A booklet for the private rented sector – landlords and tenants can be downloaded from:  
[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](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)

A copy of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 <https://www.legislation.gov.uk/ukdsi/2020/9780111191934>

A copy of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 <https://www.legislation.gov.uk/ukdsi/2015/9780111128350/contents>

A copy of the Regulators Compliance code can be downloaded from:

<https://www.gov.uk/government/publications/regulators-code>

A copy of the Enforcement Concordat: Good Practice Guide can be downloaded from

[http://webarchive.nationalarchives.gov.uk/http://www.berr.gov.uk/files/file101\\_50.pdf](http://webarchive.nationalarchives.gov.uk/http://www.berr.gov.uk/files/file101_50.pdf)

## **10.0 Complaints Relating to this Draft Policy**

**10.1** Should you feel that your request for service or that undertakings in relation to housing enforcement from the Council has not been adequately considered, you may make a formal service complaint by contacting our Corporate Complaints Team.

Prior to doing, the Council must have received your complaint directly and you are encouraged to discuss the matter initially with your case Officer first and where necessary the Service Manager or Head of Service.

Corporate complaints may be contacted via:

Corporate Complaints  
[GH-NE-Complaints@southend.gov.uk](mailto:GH-NE-Complaints@southend.gov.uk)  
Southend-on-Sea City Council  
Victoria Avenue  
Southend-on-Sea  
Essex SS2 6ER  
Tel: 01702 215000

## **Appendix 1 Demolition Orders and Clearance Areas**

### **Making a Demolition Order under section 265 (Housing Act 1985 as amended by section 46 Housing Act 2004)**

This action will be taken when it is considered to be the most appropriate course of action, usually when there are one or more serious category 1 hazards, the property is usually detached or there is a building line separating it from other properties, the adjacent properties will be stable and weatherproof or can readily be made so, it is in a potentially unsustainable area or it is causing severe problems to the amenity of the neighbourhood and repair would be very costly, it is not listed or of other historical interest.

### **Declaring a Clearance Area under section 289 (Housing Act 1985 as amended by section 47 Housing Act 2004)**

This action will be considered where similar circumstances to those for determining if a demolition order exist but where it is necessary for the Council to acquire the land either for its own purposes or to sell on for either new build or other purposes favoured by the majority of persons affected. Area committee views will be relevant to any decision to declare a clearance area. This action will be followed by seeking a compulsory purchase order or voluntary acquisition.

## Appendix 2 Charges for Notices

### Section 1: Enforcement Fees

Section 49 of the Housing Act 2004 provides the Council with a power to make such reasonable charge as it considers appropriate as a means of recovering certain administrative and other expenses incurred in connection with its enforcement activities under the Act. Other legislation, detailed within this Draft policy, also imposes fees and penalties:

<p><b>Service of Statutory Notices – Housing Act 2004*</b> <i>In respect of formal notices served in relation to significant Category 2 hazards, this charge may be waived at the Council’s discretion when required works as specified within the Notice are completed to the satisfaction of the Officer within the specified timeframe</i></p>	<p style="text-align: right;">PRICE OF NOTICE</p> <p style="text-align: center;">Charges contained on Fees and Charges published on Council’s webpage.</p>
<p><b>Works in Default and Remedial Action</b></p>	<p>Based on cost - charged at an hourly rate for the enforcement officer, administration and management costs, in addition to the cost of the works. For more information see the Council’s Works in Default Procedure</p>
<p><b>HMO Management Order including Interim Order</b></p>	<p>Based on cost- charged at an hourly rate for the enforcement officer, administration and management costs,</p>
<p><b>Variation Notices</b></p>	<p>No charge unless there are additional units.</p>
<p><b>Revocation Notice</b></p>	<p>No charge</p>
<p><b>Energy Efficiency Contravention Penalties</b></p>	<p>See Part 7 and regulation 38 of the Regulations</p>
<p><b>Housing Offences subject to a Civil Penalty Notice</b></p> <p><b>Section 30 – Failure to comply with an Improvement Notice.</b></p> <p><b>Section 72 – Licensing of HMOs (House in Multiple Occupation).</b></p>	<p>See Appendix 3 Civil Penalties Policy for imposing financial penalties under the Housing Act 2004 and the Housing and Planning Act 2016</p>

<p><b>Section 95 – Licensing of houses under Part 3.</b></p> <p><b>Section 139(7) – .Failure to comply with overcrowding notice.</b></p> <p><b>Section 234 – Management regulations in respect of HMOs.</b></p>	
<p><b>Maximum fine if convicted in court for these offences</b></p>	<p>If the offender was to be prosecuted and convicted of the same offence for which, the financial penalty could be imposed as an alternative, the maximum fine the court could consider is unlimited.</p>



## **Appendix 3 Civil Penalties Policy for imposing financial penalties under the Housing Act 2004 and the Housing and Planning Act 2016 (Adopted February 2022)**

### **Civil Penalties Policy for Housing Offences**

#### **1. Introduction and Overview**

The Council's Regulatory Services team regulates the private rented sector for Southend-on-Sea City Council. Landlords of privately rented properties are required to comply with the law, to ensure the health, safety and welfare of occupiers are protected and their properties, and activities at their properties, are not having a negative effect on the neighbouring population.

Landlords will be assisted by Regulatory Services to comply with the law through the provision of advice, guidance, and signposting. Where landlords are not complying with the law, or proactively managing their properties, Regulatory Services can use enforcement powers to require landlords to take the necessary action to do so. The main legislation that Regulatory Services have available to use is the Housing Act 2004. Amendments to this Act were introduced by Section 126 and Schedule 9 of the Housing and Planning Act 2016. This amendment enabled Councils to impose a Civil Penalty, as an alternative to prosecution, for specific offences. These offences are detailed in section 3 on specific offences below.

The process that the Council must follow for Civil Penalties to be applied is detailed in statutory guidance (April 2018). This outlines the factors that must be considered when determining the level of Civil Penalty to be imposed, which can be up to £30,000. A Civil Penalty (or Penalties if there have been several breaches), can be used if the Council considers their use the most appropriate and effective sanction in a particular case.

The purpose of this policy is to set out the framework within which decisions will be made by the Council regarding issuing Civil Penalties for these specific cases. The Civil Penalties Policy is a supplement of the Council's Environment and Regulatory Services Policy.

***This policy may be departed from where the circumstances so justify and each case will be dealt with on its own merits, having regard to those circumstances.***

#### **2. Aim of the Use of Civil Penalties**

The aim of the service is to develop landlords to become more professional and knowledgeable in their role of protecting the health, safety, and welfare of their tenants.

Where Civil Penalties are used as enforcement action the aim will be to protect the health of occupiers and improve housing standards by:

- Promoting professionalism and resilience with the private rented sector.
- Providing transparent and consistent regulation within a private market.
- Providing a 'light touch' for compliant landlords and create a level playing field by tackling non-compliant landlords within the sector.
- Changing behaviours, by seeking legal punishment of those who flout the law.
- Eliminating financial gain or benefit from non-compliance.

The statutory guidance is clear that the intention of a Civil Penalty is to act as a deterrent. The Council will apply Civil Penalties to ensure that landlords (as defined by the Housing Act 2004 as the owner, person having control or the licence holder) and HMO managers do not benefit from their failure to comply with the relevant legislation.

### **3. Specific offences where a Civil Penalty can be used**

Civil Penalties can only be used as alternative to prosecution for the following specific offences:

- Section 30 - failure to comply with an improvement notice
- Section 72 – mandatory licensing of houses in multiple occupation (HMO)
- Section 95 – licensing under Part 3 of the Housing Act 2004 (Selective Licensing)
- Section 139 – failure to comply with an overcrowding notice
- Section 234 – breach of management regulations in respect of HMO.

### **4. Determination of Level of Civil Penalty to be applied.**

The statutory guidance details the factors that must be considered when determining the level of Civil Penalty to be applied. The Council has developed a matrix (Appendix 1) from this guidance having considered the following:

- Level of culpability
  - Level of harm
  - Severity of the offence
  - Aggravating factors
  - Mitigating factors
  - Penalty to be fair and reasonable
  - Penalty to be a deterrent and remove the gain derived through the failure to comply
  - Landlord's income (as appropriate)
-

- Financial gain from failure to comply.

Determination of the level of Civil Penalty to be applied will be on a case-by-case basis and have regard to the Environment and Regulatory Services Enforcement Policy, local circumstances, and the relevant statutory guidance.

Each of the rows in the matrix considers the factors set out in the guidance. At the end of every row the officer will have to justify the most appropriate score chosen based on evidence in each case. The final total of the scores from each of the 4 rows determines the actual fee to be applied.

<b>Score Range across all 4 dimensions</b>	<b>Fee</b>
<b>1 – 5</b>	£1,000
<b>6 – 10</b>	£1,500
<b>11 – 20</b>	£2,500
<b>21 – 30</b>	£3,500
<b>31 – 40</b>	£5,000
<b>41 – 50</b>	£8,000
<b>51 – 60</b>	£12,000
<b>61 – 70</b>	£16,000
<b>71 – 80</b>	£20,000
<b>81 – 90</b>	£25,000
<b>91 – 100</b>	£30,000

Officers using the matrix will at no point be setting the Penalty amount themselves as it is calculated by the matrix, dependent on their assessment and scores in each of the 4 rows.

The fee to be applied from the total calculated in the matrix is detailed in the table below.

For example, a matrix total of 17 would result in a Penalty of £2,500, a score of 55 would result in a Penalty of £12,000 etc.

## **5. When to use a Civil Penalty**

When determining the appropriate sanction, the Council will satisfy itself that if the case were to be prosecuted there would be a realistic prospect of a conviction. This is determined by adhering to the Code for Crown Prosecutors. The Code requires two tests

to be applied:

- the evidential test; and
- the public interest test.

Regulatory Services will use the attached flow diagram (Appendix 2) to assist with the decision making on whether to apply a Civil Penalty or to proceed with to prosecution.

## **6. Burden of Proof for Prosecution**

The same criminal standard of proof is required for a Civil Penalty as for a criminal prosecution. This means that before a Civil Penalty can be imposed, the Council will have satisfied itself beyond reasonable doubt that the landlord or manager committed the offence(s) and that if the matter were to be prosecuted in the Magistrates' Court, there would be a realistic prospect of conviction.

In doing this the Council will satisfy itself that:

- Enforcement is in accordance with the Environment and Regulatory Services Enforcement Policy
- There is sufficient evidence to prove beyond reasonable doubt that the offence was committed by the landlord in question
- The public interest is properly served by imposing a Civil Penalty
- Evidence has been reviewed by a senior manager and where required legal services.

## **7. The Totality Principle**

Where a landlord has committed multiple offences, and a Civil Penalty could be imposed for each one, consideration will be given to whether it is just and proportionate to impose a Penalty for each offence. Where there are multiple similar offences, or offences which arose from the same incident consideration will be given to whether it would be more appropriate only to impose Penalties for the more serious offences being considered and to prevent any double-counting. Only one Penalty can be imposed in respect of the same offence.

Having regard to the above considerations, a decision will be made about whether a Civil Penalty should be imposed for each offence and, if not, which offences should be pursued.

## **8 Notice of Intent**

Before imposing a Civil Penalty, the Council will give notice of intention of the authority's proposal to do so.

The notice of intent will set out:

- The amount of the proposed financial Penalty
- The reasons for proposing to impose the Penalty
- Information about the right of the landlord to make representations.

## **9. Representations**

Any landlord who is in receipt of a notice of intent has the right to make representations against that notice within 28 days of the date on which the notice was given. Representations can be against any part of the proposed course of action. All representations from landlords will be considered by the local authority and responded to.

Where a landlord challenges the amount of the Civil Penalty, it will be for the landlord to provide documentary evidence (e.g., tenancy agreements, rental income, etc) to show that the calculation of the Penalty amount is incorrect. Where there is no such supporting evidence provided, the representation against the amount will not be accepted.

Written responses will be provided to all representations made by the recipients of a notice of intent. No other parties have an automatic right to make representations but if any are received, they will be considered on a case-by-case basis and responded to where the Council considers it necessary.

## **10. Final Notice**

Once the representation period has ended, the Council must decide, taking into consideration any representations that were made, whether to impose a Civil Penalty and the final Penalty fee. This can be a lower amount that was proposed in the notice of intent, but it cannot be a greater amount.

The imposing of a Civil Penalty requires the service of a final notice, which must contain the following information:

- 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 (28 days)
- Information about the rights of appeal, and
- the consequences of failure to comply with the notice.

The period of payment for the Civil Penalty must be 28 days beginning with the day after that on which the final notice was given.

## **11. Withdrawing or Amending Notices**

The Council may withdraw the notice of intent or a final notice or reduce the amount of Civil Penalty at any time. This is done by giving notice in writing to the person on whom the notice was served.

Where a Civil Penalty has been withdrawn, and there is a public interest in doing so, the Council can still pursue a prosecution against the landlord for the conduct for which the Penalty was originally imposed. Each case will be considered on a case-by-case basis.

## **12. Appeals to the Tribunal**

If a Civil Penalty is imposed on a landlord or manager, that person can appeal to the First-tier Tribunal (Property Chamber) against the decision to impose a Penalty or the amount of the Penalty. The Tribunal has the power to confirm vary (increase or reduce) the size of the Penalty imposed by the Council, or to cancel the Civil Penalty. The Penalty can only be increased to the maximum of £30,000.

The appeal must be made to the First-tier Tribunal within 28 days of the date the final notice was issued. Where an appeal has been made, this suspends the Civil Penalty until the appeal is determined or withdrawn.

## **13. Consequence of having a Civil Penalty imposed.**

Where two or more Civil Penalties are given to a person over a 12-month period the Council may include the person's details in the database of rogue landlords and property agents. The rogue landlord's database is viewable by local housing authorities to help them to target their enforcement activities. The person will be advised where this is the case as this may be used to determine whether they are a fit and proper person to be a licence holder.

Where a landlord or manager receives a Civil Penalty, this action can be considered when assessing whether they are a fit and proper person to be the licence holder for a House in Multiple Occupation or property within a Selective Licensing area.

#### **14. Recovering an unpaid Civil Penalty**

The Council has a Debt Collection and Recovery Policy. Through this Policy all legal options available for the collection of unpaid Civil Penalties will be considered. Unpaid Penalties will be pursued through the County Courts. Some of the orders available to the Council through the County Courts are as follows:

- A warrant of control for amounts up to £5,000
- A third-party debt order
- A charging order
- Bankruptcy or insolvency.

A certificate, signed by the Chief Finance Officer for the Council and stating that the amount due has not been received by the date of the certificate, will be accepted by the Court as conclusive evidence of the payment due.

Where a Civil Penalty is appealed and the Council has a tribunal decision, confirming or varying the Penalty, the decision will be automatically registered on the Register of Judgements, Orders and Fines, once accepted by the County Court. Inclusion on this Register may make it more difficult for the Landlord to obtain financial credit.

#### **15. Income from Civil Penalties**

Any income from the Civil Penalties will be retained by the Council's Regulatory Services team. The Council will spend any income from Civil Penalties on its enforcement function in relation to the private rented sector.

Factors	Score = 1	Score = 5	Score = 10	Score = 15	Score = 20
<b>1. Deterrence and Prevention</b>	High confidence - that financial penalty will deter repeat offending. Informal publicity not required as a deterrence	Medium confidence that a financial penalty will deter repeat offending. Minor or informal publicity required for mild deterrence in the landlord community	Low confidence that a low financial penalty will deter repeat offending (e.g., no contact from offender) Some informal publicity will be required to prevent similar offending in the landlord community	Little confidence that a low financial penalty will deter repeat offending. Likely informal publicity will be required to prevent similar offending in the landlord community	Very little confidence that a low financial penalty will deter repeat offending. Informal publicity will be required to prevent similar offending in the landlord community
<b>2. Removal of Financial Incentive</b>	No significant assets. No or very low financial profit made by offender	Little asset value. Little profit made by offender	Small portfolio landlord (between 2-3 properties). Low asset value. Low profit made by offender	Medium portfolio landlord (between 4-5 properties) or a small Managing Agent. Medium asset value.	Large portfolio landlord (over 5 properties) or a medium to large Managing Agent. Large asset value. Large profit made by offender.
<b>3. Offence and History</b>	No previous enforcement history. Single low-level offence.	Minor previous enforcement Single offence	Recent second time offender. Offence has moderate severity or small but	Multiple offender. Ongoing offences of moderate to large severity or a single instance of a	Serial offender. Multiple offences over recent times. Continuing serious offence



			frequent impact(s)	very severe offence	
<b>4. Harm to Tenant(s) (Score is doubled on this section in line with Statutory guidance)</b>	Very little or no harm caused. No vulnerable occupants. Tenant provides no information on impact	Likely some low-level harm / health risk(s) to occupant. No vulnerable occupants. Tenant provides poor quality information on impact	Likely moderate level health / harm risk(s) to occupants potentially exposed. Tenant provides some information on impact but with no primary or secondary evidence.	High level of health / harm risk(s) to occupant. Tenant(s) will be affected frequently or by occasional high impact occurrences. Vulnerable occupants more than likely exposed. Small house of multiple occupancy (HMO) (3-4 occupants), multiple occupants exposed. Tenant provides good information on impact with primary evidence (e.g., prescription drugs present, clear signs of poor health witnessed) but no secondary evidence	Obvious high-level health / harm risk(s) and evidence that tenant(s) are badly and / or continually affected. Multiple vulnerable occupants exposed. Large HMO (5+ occupants), multiple occupants exposed. Tenant provides excellent information on impact with primary and secondary evidence provided (e.g., medical, social services reports).

## **Appendix 4 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020**

1.0 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 apply to private landlords in respect of any specified tenancy and require all private landlords to:

- ensure that the electrical safety standards (currently the 18th edition of the Wiring Regulations, published by the Institution of Engineering and Technology and the British Standards Institution as BS 7671: 2018) are met during any period when their property is occupied by a tenant as their main or only home;
- ensure every electrical installation in the property is inspected and tested at least every 5 years by a qualified person who will provide a written report;
- ensure the first inspection and testing is carried out before the tenancy and provide the inspection/testing report to tenants; and to the local authority within 7 days of receiving a written request for the report.;
- carry out any further or investigative work recommended by the report within 28 days or any lesser period specified in the report and obtain written confirmation that the work has been done to the correct standard.

1.1 Electrical Safety Enforcement

1.2 Southend on Sea City Council is responsible for enforcing the Regulations. Where the Council has reasonable grounds to believe that a private landlord is in breach of the regulations, it may, within 21 days of arriving at this belief, serve a remedial notice on the landlord setting out the breaches and action required to remedy them. That action must then be taken within 28 days of the notice being served. The landlord may make written representations in respect of the notice, in which case the notice will be suspended until the Council has considered those representations and informed the landlord of the outcome. If a landlord fails to carry out the required works, the Council may, with the tenant's consent, carry them out itself and charge the cost back to the landlord, to be paid within 21 days.

1.3 The landlord has a right of appeal against the authority to the First Tier Tribunal and there is dispensation for landlords who are prevented by tenants from gaining entry to the property to carry out works. The Council may impose a civil penalty, up to a maximum of £30,000 if satisfied beyond reasonable doubt that a landlord has breached the Regulations. These penalties may be appealed to the First Tier Tribunal,

## **Appendix 5 Statement of Principles – The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

### **1.0 Introduction**

- 1.1 This statement sets out the principles that the Southend-on-Sea City Council will apply in exercising its powers under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (“the Regulations”).

### **2.0 Purpose**

- 2.1 The Council is required under the Regulations to prepare and publish a Statement of Principles which it must follow when determining the amount of a penalty charge for failure to comply with a Notice.

### **3.0 Duties**

- 3.1 The Regulations impose the following duties on certain landlords (Residential Social Landlords, HMO’s, long leaseholders, student halls, healthcare residences, hostels and live in landlords by agreement are excluded) of a residential property of a specified tenancy (defined in Section 2 of the Regulations), namely, to ensure that:

- a smoke alarm is installed on each storey of the premises where there is living accommodation (for these purposes living accommodation includes bathrooms and lavatories)
- a carbon monoxide alarm is installed in any room of the premises which is used wholly or partly as living accommodation and which contains a solid fuel burning combustion appliance.
- that at the start of any new tenancy, checks are made by the landlord, or someone acting on his behalf, that the alarm(s) serving the premises is/are in proper working order

- 3.2 Properties subject to Part 2 or Part 3 licensing under the Housing Act 2004 (i.e. as licensable Houses in Multiple Occupation or Selective Licensing) are exempt from the Regulations.

## **4.0 The Legal Framework**

4.1 Where the Council has reasonable grounds for believing that a landlord is in breach of one or more of the above duties, we have a duty to serve that person with a Remedial Notice within 21 days detailing the actions that must be taken to comply with the Regulations.

4.2 For the purposes of this provision, 'reasonable grounds' may include being informed by a tenant, letting agent or Officer that the required alarms are not installed. The Regulations do not require that the Council enter the property or prove non-compliance in order to issue a remedial notice, however, the Council will aim to visit such properties to confirm that the required works have not been undertaken. Where the Council is satisfied on the balance of probabilities that a landlord has not taken the remedial action specified in the Notice, within the timescale stipulated in that document, the Council will:

- Arrange (where the occupier consents) to undertake the remedial action specified in the Notice within 28 days; and  
Require the landlord to pay a penalty charge of such amount as the Authority may determine, not exceeding £5,000.

## **5.0 The purpose of imposing a financial penalty**

5.1 The primary purpose of the Council exercising its regulatory power is to promote and protect the public interest. The primary aims of financial penalties are to: -

- lower the risk to tenant's health and safety by ensuring that the property has a safe means of escape in the event of a fire
- eliminate any financial gain or benefit from non-compliance
- reimburse the costs incurred by the Council in enforcing the regulations
- change the behaviour of the landlord and deter future non-compliance
- penalise the landlord for not installing alarms in line with the Regulations and after being required to do so, under notice
- proportionately address potential harm outcomes and the nature of the breach.

## **6.0 Principles to be followed in determining the amount of a Penalty Charge**

- 6.1 Any penalty charge imposed should be proportionate to the risk posed by non-compliance, the nature of the breach in the individual case and set at such a level as to sufficiently deter the offender and others. It should also cover the costs incurred by the Council in administering and implementing the legislation.
- 6.2 Fire and Carbon Monoxide poisoning are two of the 29 hazards prescribed by the Housing Health and Safety Rating System. These risks are real and substantial: A bulletin issued by the Home Office in 2017 (Fire Statistics: England April 2015 to March 2016) reports that: “Fires where a smoke alarm was not present accounted for 28 per cent of all dwelling fires and 33 per cent (76) of all dwelling fire-related fatalities in 2015/16” and that, “Fires where a smoke alarm was present but either did not operate or did not raise the alarm, accounted for 31 per cent of all dwelling fires...” Moreover, according to the Office for National Statistics, there were 53 deaths from accidental carbon monoxide poisoning in England and Wales in 2015.
- 6.3 The Department of Communities and Local Government conducted an impact assessment prior to the introduction of the Regulations. That assessment suggested that the cost of the requirements imposed on landlords (i.e. the purchase of smoke detectors and carbon monoxide alarms) was £25 and estimated that the provision of smoke alarms would, over ten years, prevent 231 deaths and 5860 injuries, accruing a saving of almost £607.7 million, and that the provision of Carbon Monoxide Alarms would, over the same period, prevent a total of six to nine deaths and 306 to 460 injuries, accruing a saving of almost £6.8 million.
- 6.4 The Council considers that compliance with the Regulations do not place an excessive or unreasonable burden on a landlord. The cost of the alarms is low and, in many cases, can be self-installed without the need for a professional contractor. The risk and impact on occupiers resulting from a fire or carbon monoxide poisoning event far out-weighs the cost of compliance. While the imposition of the maximum potential fixed penalty charge of £5,000 may present an excessive financial burden on some landlords, this has to be balanced against the risk, the low cost of compliance, the fact that the offender will have been given all reasonable opportunity to comply prior to any penalty charge being levied and the offenders statutory rights of appeal.
- 6.5 For all of the above reasons, and so as to ensure that there is an effective incentive for landlord's to comply with the Regulations, the Council proposes to impose a penalty

charge of £5,000 for non-compliance with a Remedial Notice, with a reduction of 50% where payment is received within 14 days of service of the penalty charge notice.

- 6.6 Notwithstanding the above, the Council may, following a representation made by the landlord, exercise discretion and reduce the penalty charge further if it considers there to be extenuating circumstances.

This discretion will not however apply when:

1. The person served has obstructed the Council in the carrying out of its duties; and/or
2. The person served has previously received a penalty charge under this legislation.

## **7.0 Review and Appeals in relation to a penalty charge notice**

- 7.1 If a landlord disputes the issue of a penalty charge notice, they can make a request to the Council for it to be reviewed. This request must be in writing and within the time specified in the penalty charge notice. Any representation received will be considered on its individual merit. Any extenuating circumstances will be considered by the Council in deciding whether to reduce the level of the penalty charge levied.

- 7.2 Potential mitigating factors –

- No previous convictions / charges
- Self-reporting, high level of co-operation with the investigation – where this goes beyond what would normally be expected
- The age health and other vulnerabilities of the offender
- Voluntary steps taken to address issue – submission of license application.

7.3 A landlord will not be in breach of their duty to comply with the remedial notice, if he can demonstrate that he has taken all reasonable steps to comply with the requirements of the remedial notice.

7.4 The Council may, on consideration of any representation and evidence, chose to confirm, vary, or withdraw a penalty charge notice and we are required to communicate that determination by issuing a decision notice on the landlord. If varied or confirmed, the decision notice must state that a further appeal can be made to a First Tier Tribunal on the following grounds:

- 1) the decision to confirm or vary the penalty charge notice was based on an error of fact.
- 2) the decision was wrong in law.
- 3) the amount of penalty charge is unreasonable; or
- 4) the decision was unreasonable for any other reason

7.5 Where a landlord raises an appeal to the Tribunal, the operation of the penalty charge notice is suspended pending its determination or its withdrawal. The Tribunal may quash, confirm or vary the penalty charge notice, but may not increase the amount of the penalty charge.

## **8.0 Recovery of Penalty Charge**

8.1 The Council may recover the penalty charge on the order of a court, as if payable under a court order however such proceedings may not be started before the end of the period by which a landlord may give written notice for the Council to review the penalty charge notice and where a landlord subsequently appeals to the Tribunal, not before the end of the period of 28 days beginning with the day on which the appeal is finally determined or withdrawn.