Private Sector Housing Enforcement and Licensing Policy.

September 2018
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THE COUNCIL’S FRAMEWORK FOR ENFORCEMENT ACTION

1.1. This Policy sets out the general principles, relevant legislation and guidance which will be applied in relation to enforcement action taken by the Council in respect of private housing in the borough of Dartford. Its implementation and effectiveness will be monitored and reviewed as and when there are changes to the legislation or the environment in which the service is operating.

1.2. The Policy is designed to:
- Set out the legal requirements and the Council’s approach to enforcement, including charges that may be imposed for enforcement
- Enable the Council to make reasoned and consistent decisions regarding enforcement
- Inform the public of the principles by which enforcement action is determined and subsequently taken

1.3. The Council operates with due regard to legislation and statutory guidance issued by the Ministry of Housing, Communities & Local Government (MHCLG) and any enforcement action taken will be compliant with statutory guidance.

1.4. All enforcement action follows four key principles:
- Proportionality in the application of the law and in securing compliance
- Consistency of approach
- Transparency about how the Council operates and what those regulated may expect
- Targeting of enforcement action

1.5. All investigations into alleged breaches of legislation will follow best professional practice and the requirements of the:
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigation Act 1996
- Data Protection Act 2018 (applying the General Data Protection Regulation)
- Human Rights Act 1998
- Criminal Justice and Police Act 2001
- Criminal Justice Act 2003
- Legislative and Regulatory Reform Act 2006
- Regulatory Enforcement and Sanctions Act 2008
- Equalities Act 2010

1.6. It is recognised that there may be circumstances where shared or co-ordinated enforcement action may be taken with other agencies. In these cases, the Council will liaise with the other body to ensure that:
- Any action is effectively co-ordinated;
- Proceedings instituted are for the most appropriate offence; and
- Duplication and inconsistencies are avoided.
1.7. Other bodies may include the Police, the Health and Safety Executive, Kent County Council, Immigration Services and the Council’s internal departments such as planning, building control and the Community Safety Unit. The Council benefits from close working arrangements with the local office of the Kent & Medway Fire & Rescue Service and follows the principals embodied in the “Protocol between Local Housing Authorities in Kent and the Kent & Medway Fire & Rescue Authority “formally adopted in 2013.

1.8. The Housing Act 2004 and the Regulatory Reform (Fire Safety) Order 2005 places duties on both the Council and the local Fire Safety Unit to enforce fire safety provisions within housing in the borough. This protocol document assists in this by providing a framework of property types and guidance on which the enforcing authority should take the lead. In cases of ‘means of escape’ and ‘fire detection’ in Houses of Multiple Occupation (HMOs), the Council will consult with the fire authority as far as practicable.

2. GENERAL PRINCIPLES

2.1. The Council’s aim is to improve the housing conditions in the private sector by use of advice and education. However, there are occasions where these methods are not successful in improving conditions and it may be necessary to consider enforcement action. All remedial work that is required must be sufficient to adequately remove or reduce risks but, subject to having achieved these ends, not so excessive as to be burdensome.

2.2. In carrying out its duties, the Council will follow the framework outlined in Section 1 of this document and will aim for transparency in any decision making and will keep clear and up to date records.

2.3. Officers will use their skill, knowledge, experience and judgement to decide how individual cases should be dealt with and whether a situation should be resolved by informal means or by formal proceedings. Officers will take advice and guidance from managers where appropriate.

2.4. Enforcement will be carried out with due regard to the circumstances of the individual or business and to ensure that the rights of individuals and organisations are safeguarded.

2.5. The Council is committed to the promotion of equal opportunities in all of its activities. Every effort will be made to ensure that everyone is treated equitably and fairly, regardless of sex, colour, race, nationality, ethnic group, regional or national origin, age, marital status, disability, political or religious belief, sexuality or class, as identified in the Council’s Comprehensive Equality Policy.

3. LEGISLATION

3.1. The Council is responsible for enforcing a wide range of statutory provisions relating to housing standards and environmental conditions affecting health and safety. The relevant legislation under which the Council will enforce is:
• Public Health Act 1936 (as amended)
• Caravan Sites and Control of Development Act 1960
• Local Government (Miscellaneous Provisions) Act 1976
• Protection from Eviction Act 1977
• Building Act 1984
• Housing Act 1985
• Landlord & Tenant Act 1985
• Environmental Protection Act 1990
• Housing Act 2004
• The Management of Houses in Multiple Occupation (England) Regs 2006
• The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007
• Mobile Homes Act 2013
• The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
• The Redress Schemes for lettings Agency work and Property management Work (Requirement to Belong to a Scheme etc.) (England) Order
• Housing And Planning Act 2016
• The Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2016 (Amended)
• Regulator’s Code of Practice 2014
• Smoke & Carbon Monoxide Alarm (England) Regs Deregulation Act 2015
• The Housing & Planning Act 2016 (Banning Order Offences) Regs 2017
• De-Regulation Act 2015
• The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licenses) (England) Regulations 2018
• Housing, England The Licensing Of Houses In Multiple Occupation (Prescribed Description) (England) Order 2018

3.2. Relevant guidance underpinning legislation includes:
• DCLG Guidance for Local Housing Authorities “Civil Penalties under the Housing and Planning Act 2016”
• DCLG Guidance for Local Housing Authorities “Rent repayment orders under the Housing and Planning Act 2016”
• DCLG document “Housing Health & Safety Rating System; Enforcement Guidance”.
• Retaliatory Eviction and the Deregulation Act 2015: guidance note
• Banning Order Offences under the Housing and Planning Act 2016 Guidance for Local Housing Authorities
• Database of rogue landlords and property agents under the Housing and Planning Act 2016 Statutory guidance for Local Housing Authorities
• Houses in multiple occupation (HMO) and residential property licensing reform: guidance for local housing authorities
• The Domestic Private Rented Property Minimum Standard - Guidance for landlords and Local Authorities on the minimum level of energy efficiency required to let domestic property under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 October
• Retaliatory Eviction and the Deregulation Act 2015 - A guidance note
• Mobile Homes Act 2013- A Best Practice Guide for Local Authorities on Enforcement of the New Site Licensing Regime
4. SCOPE & SERVICE STANDARDS

4.1. The types of properties dealt with by the Council include HMOs, single dwellings, empty properties and caravans. Cases are assessed and prioritised using professional judgement and knowledge and assigned an appropriate action which may be in the form of advice, information being sent or a visit being made.

4.2. In the case of a complaint, where the Council deems that there is an imminent risk of harm to the health and safety of the occupiers then more immediate action may be taken. Issues falling into this category could include electrical, gas, water and structural issues.

4.3. Non urgent single family accommodation; complainants are initially advised to inform their landlord in writing of any defects and ask for these to be rectified within a reasonable period from the date of the letter. Should the landlord fail to carry out repairs or offer an acceptable response, or the complainant has already followed this process, then the case will be passed to a Private Sector Housing Officer. Informal action may be taken; this could include via telephone or written communication or a full formal Housing Health & Safety Rating System inspection of the property.

4.4. In prioritising demand for action, if the Council, on reviewing housing conditions within the Borough (or following a complaint or for any other reason), considers it appropriate to determine that a Category 1 or 2 hazard exists under the HHSRS, an inspection will be undertaken. Formal enforcement by way of serving of a notice will not be undertaken where only Category 2 (low bands F – J) is evident; with the exception of Hazard Awareness Notices.

4.5. Registered social landlord complaints: The Council often receives complaints from housing association (HA) tenants requesting action against their landlord. Enforcement action will be limited to cases where the tenant is able to show that the internal complaints process of the HA has been exhausted and it would be inappropriate to refer the matter to the Housing Ombudsman because of outstanding health and safety concerns without a timely plan of action being provided by the HA.

In all other situations e.g. dissatisfaction with the HA’s timescales, the tenant will be redirected to;

The Housing Ombudsman Service – Exchange Tower, Harbour Exchange Square, London E14 9GE. Tel: 0300 111 3000, email: info@housing-ombudsman.org.uk

4.6. Leaseholder complaints
The Council often receives complaints from leaseholders requesting assistance in taking action against other leaseholders or freeholders. Enforcement action will be limited to failure to licence enforcement, Category 1 hazards and high Category 2 hazards, where the leasehold flat is tenanted.
4.7. In all other situations e.g. civil disputes between freeholder and leaseholder, the leaseholder will be redirected to; The Leasehold Advisory Service - 31 Worship Street, London E2CA 2DX, telephone 020 7374 5380 info@lease-advice.org.uk.

4.8. **Owner Occupiers**
HHSRS does apply to owner occupiers, however, the Council may choose to take informal action or serve a Hazard Awareness Notice in these cases. However, in circumstances where a hazard has implications for neighbouring properties/area and visitors to the dwelling, formal enforcement action may also be suitable.

4.9. **Houses in Multiple Occupation (HMOs)**
A mandatory licence is currently required for HMOs with three or more storeys with five or more occupiers living in two or more households sharing some facilities. However with effect from 1 October 2018, the scope will be widened to include any HMO regardless of number of storeys (not a purpose-built flat situated in a block comprising three or more self-contained flats). **Full details of the Council’s Licensing Policy can be found in the Council’s Policy Guide to Mandatory Licensing of Houses in Multiple Occupation at Annex 2.**

4.10 Regardless of whether they require to be licensed, HMOs are a priority, because of the increased risk of health and safety issues, and the Council will investigate any information received relating to the condition or management of an HMO that the Council is not aware of.

4.11 Information received regarding an HMO can come from a variety of sources such as other internal departments including Council Tax, Housing Benefit, Planning Enforcement, Housing Solutions, or externally via members of the public, tenants, landlords, agents, Kent Fire & Rescue Service, Immigration Service etc. In the case of an unknown HMO, further desktop investigations will be made which may include:

- Examining historic information held
- Internet resources
- Information provided on a Housing Act 2004 HHSRS Questionnaire
- Information gathered by an Officer whilst conducting an initial external visit/site inspection of a property to verify occupancy/property type etc. (Housing Act 2004 allows access without prior notification where suspected HMO Licensing of Management Regulations offences may have occurred)
- The issuing of a Local Government Miscellaneous Provisions Act 1974 Section 16 Requisition for Information form requiring the owner to declare their interests and occupation of the property

4.11 Where a new HMO is confirmed, a risk assessment will be completed to establish when an inspection will be made. In cases where an immediate inspection does not take place, a letter will be sent to the landlord advising of their responsibilities and standards required in an HMO. It will confirm that an inspection will take place to ensure that all relevant standards are being met and if non-compliant, formal enforcement action may follow.
4.12 After the inspection/enforcement action as outlined in paragraph 4.11, the Council may conduct periodic ‘desk top’ reviews of an HMO by requesting submission of required certification such as annual Gas Safety Certification, fire detection servicing documents and electrical condition reports etc. Any non-compliance of such requests will be dealt with accordingly.

4.13 In the case of complaints received, with regard to a known and established HMO, a similar process to that outlined in paragraph 4.2 to 4.3 is followed. Issues relevant to paragraph 4.3 where imminent risk of harm requires immediate action would include those relating to fire detection and safe route of escape.

4.14 Licensed HMOs will be inspected at least once every 5 years from the date of application and the Council will carry out an annual desk top review to ensure compliance with Licence conditions.

5. LEVELS OF ENFORCEMENT ACTION – GENERAL PRINCIPLES

5.1. Whilst formal enforcement action is a necessary and important part of the enforcement process, it is generally viewed as a last resort. The Council will comply with legislation by one or more of the following methods:

5.2. **Provision of advice and guidance**
Advice and guidance will be given to individuals, existing and prospective businesses and other organisations to comply with their legal obligations. This will be achieved by providing appropriate information, leaflets and may include face-to-face contact to discuss and help resolve potential problems.

5.3. **Informal enforcement**
In most cases, the Council will endeavour to seek the desired improvements or protection of the public’s health and safety by working initially on an informal basis with those involved. Informal action may take a variety of forms, for example:
- verbal requests
- letters or e-mails
- schedules of work

The advice will make clear what is expected to be done to meet a legal requirement. It will be made clear that formal action could follow if there is a failure to meet informal requests to carry out works to meet legal requirements.

5.4. Enforcement will normally progress from advice to formal enforcement. In serious cases, for example where the offence involves a significant breach of the law such that the residents’ health, safety, environment or well-being is or has been put at risk, it may be appropriate to commence formal enforcement immediately. It may also commence immediately where HMOs owners/landlords/agents have already received guidance via a ‘compliance letter’.
5.5. **Formal enforcement**
Formal action may be taken where:
- informal action has failed
- there is a Category 1 hazard
- there is an actionable hazard which puts at risk a person’s health & safety
- there are multiple hazards creating a more serious situation or overall lack of repair/maintenance of a property
- there is a history of non-compliance/poor management

This is not an exhaustive list; each case will be considered individually.

Formal Action includes:
- the use of statutory (legal) notices
- formal cautions
- financial penalties (See Annex 1)
- prosecution

5.6. **Immediate action**
This includes the power to take emergency action by entry to premises (with a warrant if necessary) and making safe areas or articles which cause imminent danger or serious harm.

5.7. **Interim Measures**
In the case of both HMOs and single households, the Council may request that short term interim measures are taken by the appropriate person to improve health and safety at the premises. Types of works may include the installation of battery operated smoke/heat detectors, clearance of escape routes or provision of a 30 minute fire door on a kitchen.

Circumstances where these measures may be requested include when the HMO occupancy is likely to cease within a short period of time (such as 28 days) or whilst a planning application is being considered for a change of use of the premises. These requests are at the discretion of a Manager and may not be appropriate for all HMOs or single households.

6. **ENFORCEMENT POWERS UNDER THE HOUSING ACT 2004**

6.1. The Housing Health and Safety Rating System (HHSRS) is an evidence based risk assessment system utilising statistical data on the impact of housing conditions on health and safety. The system assesses the likelihood of an occurrence that could cause harm and the probable severity of the outcome of such an occurrence within a 12 month period. The first part of the process involves the inspection of a dwelling and identifying whether there are any of 29 hazards present. Each identified hazard is then scored and this score (the hazard rating) places the hazard in one of 10 bands A to J. Any hazards scoring within a band A, B or C are classed as Category 1 hazards, whilst those falling in bands D to J are known as Category 2 hazards.

6.2. In the case of a Category 1 hazard, the Council has a duty to act. For hazards classed as Category 2, the Council has discretion to act.
6.3. There are a number of enforcement tools available to deal with Category 1 and 2 Hazards in privately rented properties. The Council can:

- Serve a Hazard Awareness Notice
- Serve an improvement notice
- Make a prohibition order
- Take emergency remedial action (category 1 only)
- Make an emergency prohibition order (category 1 only)
- Make a demolition order
- Declare a clearance area
- Require the production of documentation

6.4. The Council cannot take more than one of these actions (unless it is an emergency action) at any one time but can vary the action required if one of the actions taken has proved unsuccessful.

6.5. Section 8 of the Act requires that all Notices and Orders should have a statement of reason attached to them. The statement should include why one type of enforcement action was taken over another. A copy of the statement must accompany the notice or order.

6.6. When an Improvement Notice is served and there is a change in ownership of the property, the Notice can be enforced on the new owner or recipient. However any outstanding liabilities such as fines will remain with the original owner or recipient of the notice.

6.7. It is likely that Improvement Notices, Hazard Awareness Notices and Emergency Remedial Action will be the most frequently used courses of action. With the exception of a Hazard Awareness Notice, other notices/orders are registered as a local land charge.

6.8. If an enforcement notice is served on an HMO and it reverts to a single occupation, the Council will consider whether the impact of the hazard has diminished and take appropriate action i.e. to withdraw the Notice or amend.

6.9. See Appendix 1 for a flowchart of the enforcement procedure.

6.10. **Level of remedial works required**

As a minimum, Category 1 hazards must be reduced to a low Category 2. Where this is not possible, all reasonable steps must be taken to reduce the hazards as far as reasonably practicable. In some cases, such as listed buildings, Category 1 hazards may remain. This scenario will have been considered when deciding which course of action is most appropriate and may influence the Council’s decision as to which type of enforcement action to take.

When deciding on the remedial works, regard must be given to the seriousness of the hazard, the ideal that the property should achieve, and the level of work required that is reasonable to reduce the hazard significantly without incurring excessive cost. For the hazard of fire, where the property is an HMO, the Council will consult with the Fire Authority before taking any action as required under section 10 of the Housing Act 2004.
6.11. **Category 1 and Category 2 hazards – Risk Assessment**
Where a Category 1 hazard exists the Council has a duty to take action. The Council aims to prioritise cases in order of greatest risk and taking account of the vulnerability of the occupant. Appendix 2 illustrates prioritisation of hazards and options for action.

In the case of Category 2 hazards regard will be made to:
- The number of individual Category 2 hazards at the property which would appear to create a more serious situation when looked at together
- Whether the Council is already taking action to deal with Category 1 hazards in which case moderate Category 2 (D and E) hazards should be enforced at the same time.
- The potential for the hazard to become a Category 1 hazard within a short duration (under 2 years)

6.12. **Hazard Awareness Notices**
The Hazard Awareness Notice is discretionary and may be used as a response to a minor hazard. There is no appeal and the notice is not registered as a local land charge. It may be considered where the landlord has agreed to carry out repairs informally. It may also be considered for Category 1 hazards where the Council wishes to inform an owner-occupier of a particular hazard. In consideration of this the Council will take account of the likelihood of harm to people who may visit the property and the vulnerability of the occupants. The Council will justify why a more lenient approach was taken. It may not be appropriate to serve a Hazard Awareness Notice where there are risks of falling objects such as slates from a roof. This is because it would be a clear risk to those visiting the premise as well as the owner-occupier.

6.13. **Improvement Notices**
An Improvement Notice can be served on all Category 1 and 2 hazards. It must, as a minimum, remove all Category 1 hazards and the hazard should not reoccur within 12 months of the notice. A Notice can contain more than one hazard and it is the Council’s policy to deal with all Category 1 and Category 2 hazards at the same time.

Timescales for remedial works to start must be 28 days or more from the date of service of a notice. Different deadlines may be set for different hazards; these will be assessed on an individual basis by the Council and consideration will be given to the urgency, complexity and quantity of works required.

In general, **minor works** will be classed as those costing up to £1000 to be completed by a professional tradesperson, and the landlord will be given 28 days for the works to be completed. **Intermediate works** will be classed as those costing up to £5000 to be completed by a professional tradesperson, and the landlord will be given 2 months for the works to be completed. **Major works** will be classed as those costing over £5000 to be completed by a professional tradesperson, and the landlord will be given 3 months for the works to be completed. Once the work has been completed the Notice will be revoked formally in writing. Improvement Notices are registered as local land charges and any appeal must be made within 21 days of the service of a Notice.
6.14. **Prohibition Orders**
A Prohibition Order can be served for both Category 1 and Category 2 hazards and is effective 28 days after it has been served (if no appeal has been submitted). It may prohibit the use of part or all of the premises for some or all purposes or occupation by a particular number of households or individuals. For example:

- Where remedial action is unreasonable or impractical and conditions present a high risk
- To specify the maximum number of persons that should occupy a dwelling
- To specify the maximum number of person or households who should occupy the dwelling where there are insufficient facilities
- To prohibit the use of a dwelling to a specific group of people

In deciding whether a Prohibition Order should be served, regard will be given to the risk of social exclusion, whether the premises are listed or in a conservation area, whether the owner proposes to consider alternative uses, the effects on the community and the effect on the availability of local accommodation for re-housing any displaced occupants.

Prohibition Orders will be registered as local land charges and any appeal against an Order must be made within 28 days.

Compensation may be available in certain cases, for example if an appeal is successful.

6.15. **Suspending a Notice or Order**
The Council may suspend the action specified in an Improvement Notice or Prohibition Order. The notice to suspend may specify certain trigger points such as non-compliance of an undertaking given to the Council or a change in occupancy. The trigger points will be clearly stated in the Notice. The Council needs to consider the likely tenants who, in the next 12 months, could potentially occupy a premise, before deciding to suspend a Notice.

6.16. **Emergency Measures**
Where the Council is satisfied that a hazard presents an imminent risk to the occupants of a premises emergency measures can be taken. It is for the Council to determine what constitutes an imminent risk. Emergency measures include emergency remedial action or an emergency prohibition order. Any appeal must be made within 28 days. An appeal will not prevent emergency action from being taken.

6.17. **Emergency Remedial Action**
Where a Category 1 hazard exists and there is an imminent risk of harm to the occupier, the Council may enter a premise to take remedial action to remove the imminent risk of serious harm. The Council will serve a Notice within 7 days of remedial action.
6.18. **Emergency Prohibition Orders**
If, in the view of the Council, the hazard involves a serious risk of harm to the occupant, the Council may enter a premise to prohibit its use. The Order will take effect immediately. It is for the Council to consider whether the action carried out gives grounds to revoke or vary the order.

6.19. **Demolition Orders**
This is a possible response to a Category 1 hazard. In deciding whether to issue an Order, the Council will:

- Take into account the availability of replacement housing for the occupants
- Take into account the demand for and sustainability of the accommodation if the hazard was remedied
- Consider the prospective use of the cleared site
- Consider the local environment and the impact of a cleared site on the appearance and character of the neighbourhood.

6.20. **Clearance Area**
The Council will declare an area a Clearance Area if it is satisfied that each of the residential buildings in the area contains one or more Category 1 hazards (or these buildings are dangerous/harmful to the health and safety of the occupants as a result of bad arrangements), and any other buildings in the area that are dangerous or harmful to the health of the inhabitants. Significant statutory public consultation forms part of this process.

6.21. **Overcrowding Notices for non-licensable HMOs**
The Council may serve an Overcrowding Notice on one or more of the relevant persons if it considers that an excessive number of persons are, or are likely to be, accommodated in the HMO.

6.22. **Service of formal Notices or Orders**
Notices and Orders will comply with and be served in accordance with the requirements of the relevant legislation and guidance. The person on whom the Notice or Order is served will be informed of the reason that this action is being taken, the timescale for completion of any works, the works that are legally required, representations that may be made, relevant appeal periods, details of any charges (see 6.28) and the consequences of non-compliance. Contact details will be provided so that the detail and requirements of the Notice can be explained.

6.23. **Powers of Entry**
The Council has the power of entry to properties to carry out its duties under the Housing Act 2004 provided that:

- Council officers have written authority stating the purpose for which entry is authorised.
- The Council has given 24 hours’ notice to the owner or occupier of the premises that they intend to enter (Section 239).
6.24. Failure to gain entry to the premises after all the above steps have been taken, may lead to the Council obtaining a warrant from a Justice of the Peace to include the power of entry by force if necessary.

6.25. If prior warning of entry is likely to defeat the purpose of the entry e.g. to establish whether an offence has been committed, then a warrant can also be obtained.

6.26. **Appeals**
All recipients of notices and orders made by the Council will be informed of their right to appeal to the First-Tier Tribunal Property Chamber (Residential Property) if they believe the Notice or Order has been served in error or if the recipient believes the proposed course of action is unjustified.

6.27. **Documents /Information**
The Council also has the power, by Notice, to require documentation to be produced in connection with its enforcement for example Gas Safety Certificates or Fire Detection Installation Certificates under Parts 1–4 of the Housing Act 2004, Section 235. The Notice will specify the consequences of not complying.

The Council may serve Section 16 Local Government (Miscellaneous Provisions) Act 1976 Notices requiring information relating to ownership, occupancy, rents etc.

6.28. **Power to Charge for Enforcement Action**
The Council will make a reasonable charge as specified in Section 49 of the Housing Act 2004, to recover certain administrative and other expenses incurred in taking enforcement action. This charge is currently £400 plus VAT flat rate however an extra charge may be made for any additional works. Charges are reviewed annually. Please note however, additional costs may also be payable if external specialist advice is needed e.g. a structural report. Enforcement action which can incur a charge includes:

- Serving an Improvement Notice
- Making a Prohibition Order
- Taking Emergency Remedial Action
- Making an Emergency Prohibition Order
- Making a Demolition Order

The Council will charge for taking enforcement action unless there are extenuating circumstances. Where this occurs the Head of Housing Services will make the final decision.

Examples of extenuating circumstances are where the Landlords providing accommodation for others and is:

- Vulnerable due to their personal circumstances.
- Financially vulnerable i.e. in receipt of a means tested benefit.
6.29. **Non-Compliance**
If a Notice is complied with, no further action will be necessary and it will be revoked. However if the Notice is not complied with the Council will consider the following options:

- Prosecution
- Carry out the works in default
- Carry out the works in default and prosecute
- Consider whether a formal caution is appropriate
- Consider a Civil Penalty (see Annex 1)
- Rent repayment Order (see section 10)

The Council’s aim is to ensure that instructions to commence legal proceedings are with the Council’s legal service within 8 weeks of the expiry of the time period for complying with a formal Notice, unless an extension is granted.

6.30. **Prosecution**
When there is failure to comply with an Improvement Notice without reasonable excuse, this constitutes an offence and the responsible person may be liable to prosecution. On summary conviction, persons can be fined up to level 5 on the standard scale. The obligation to carry out the remedial works continues despite the fact that the period for completion has expired.

When there is failure to comply with a Prohibition Order, this also constitutes an offence if the premises is used in contravention to the Order, or permission is given for the premises to be used in contravention to the Order. Conviction fines up to level 5 on the standard scale may be levied. In addition there is a further fine of up to £20 per day for every day or part day after conviction that the property is used in contravention.

6.31. **Works in Default**
The Housing Act 2004 makes provisions for the Council to carry out the works to a property where the person responsible has failed to comply with a Notice. Works in default can be carried out instead of a prosecution or in addition to a prosecution. This is a discretionary power. Decisions to carry out works in default will be made in consultation with an appropriate manager. The cost of works plus administration charges will be recovered either as a civil debt or by virtue of a ‘charge’ being placed on the property records. Interest is added to outstanding charges at 4.5% above the current bank rate calculated on a daily basis.

Generally works in default are used where there is an imminent risk to health and safety and where the remedy is relatively easy to achieve. If it is to be used in other circumstances, full justification based on the merits of the case will be required.

It may also be used in conjunction with prosecution where it is appropriate to do so. This will depend on the nature of the hazard but will be considered due to the delays often experienced during the prosecution procedure. The delays often result in the remedial action being postponed leaving the occupier living in unacceptable conditions.
In deciding whether works in default is an option, the Council will consider the imminent risk to health and safety and whether undue delay would put the occupier(s), visitors or the public at increased risk. The Council will also consider what the minimum works required would be to remove the risk. Works in default cannot be carried out if, as a result of the action a second, different hazard will result. Any remedial works must be extensive enough to remove the Category 1 hazard and reduce the level of Category 2 hazards to an acceptable level.

6.32. **Action by Agreement**
The Housing Act 2004 also makes provision for remedial works to be carried out by agreement. The Council will arrange for the works to be carried out at the request of the person responsible. The person will be charged the full cost (including administration charges).

If the above action is taken, the Council will aim to ensure that the cost of the works will be repaid in full once the work is complete. If the costs incurred cannot be paid they will be placed as a charge against the property. The Enforced Sale Procedure may then be used if considered appropriate (see paragraph 7).

6.33. **Management Orders**
Orders can be varied or revoked in accordance with the provisions of Part 4 of the Housing Act 2004. If a property is a licensable HMO, but, for whatever reason(s), there is no reasonable prospect of granting a licence, the Council will introduce a Management Order. The Council also has a duty to make an Order where the health and safety conditions (as described in Section 104 of the Act) are met.

Management Orders effectively mean that the Council (or its Agent) will take over the running of the property as if it were the landlord, including collecting rents, forming tenancies, carrying out repairs and other management matters. Duties can vary between different Orders, however, the owner retains certain rights depending on the type of Order including receipt of surplus rental income. Relevant costs are recoverable by the Council.

6.34. **Interim Management Orders (IMO)**
The Council will make an IMO if it is anticipated that the HMO will be licensed in the near future or because the Council has revoked the license. An IMO lasts no longer than 12 months and the expiry date of the IMO will be determined by the Council when it is made.

6.35. **Final Management Orders (FMO)**
FMOs will last for no longer than 5 years and will be made on expiry of the IMO where a licence cannot be granted. When a FMO expires a new one may be issued if necessary.

6.36. **Special Interim Management Orders (SIMO)**
SIMOs are Orders authorised after a successful application to a First-Tier Tribunal Property Chamber (Residential Property). Where circumstances fall within a category prescribed by the national authority and it is necessary to protect the health, safety and welfare of occupants, visitors or neighbours. A FMO can follow a SIMO to protect persons on a long-term basis.
6.37. **Empty Property Management Orders**
Similarly, the Council can decide to take over the management of some empty properties in order to bring them back into use (see the Council's Empty Property Strategy).

6.38. **Interim Empty Dwelling Management Orders (interim EDMO)**
These are authorised after a successful application to a First-Tier Tribunal Property Chamber (Residential Property). The dwelling must have been wholly unoccupied for at least six months and there is no reasonable prospect that the dwelling will become occupied in the near future. An interim EDMO enables the Council to take steps to ensure, with the consent of the proprietor, an empty dwelling becomes occupied. An interim EDMO lasts no longer than 12 months.

6.39. **Final Empty Dwelling Management Orders (Final EDMO)**
These may replace an Interim EDMO if the Council believes that the dwelling will become or remain empty and all appropriate steps have been taken under the Interim Order. A final EDMO lasts for 7 years. Once a Final EDMO expires a new one may be issued if necessary. The Council has a duty to issue Interim and Final Management Orders where necessary but only as a last resort.

6.40. **Other Actions for Empty Properties**
In addition to actions available under the Housing Act 2004 the following actions may be considered when dealing with empty properties and these may be instigated by other Departments within the Council:

- **Town and Country Planning Act 1990, Section 215.** Notices can be served where a property is said to be “detrimental to the amenities of the neighbourhood”.

- **Building Act 1984, Sections 76 – 79** provides powers to tackle “dangerous and ruinous structures”.

- **Local Government (Miscellaneous Provisions) Act 1982, Section 29** gives power to the local Council to secure empty properties against access, where there is considered to be a danger to public health.

- **Environmental Protection Act 1990, Sections 79 – 82** gives power to enforce remedy of a condition prejudicial to health or that constitutes a statutory nuisance.

- **Housing Act 1985, Sections 17, 289, and Local Government and Housing Act 1989, Section 93** provide the basis for the commencement of a compulsory purchase order.

- **Law of Property Act 1925, Section 101** – enforced sales can be used when costs incurred as part of enforcement action cannot be paid and have been placed as a charge against the property. It can be an effective way of dealing with long term empty properties where the owner cannot be traced or is unwilling to work with the Council to bring the property back into occupation.
An enforced sale can only be carried out when the Council has placed a local land charge on the property. This would be carried out if the Council has undertaken Works in Default action (where the Council has paid for works to be done in lieu of the owner who is unwilling to act or is untraceable), or other debts to the Council such as non-payment of Council Tax.

The owner is given the opportunity to repay the debt prior to sale. If the monies are not paid within a specified period of time the Council can effectively act as a mortgagee and bring the property to sale on the open market at an auction or to a preferred buyer. All charges would be cleared from the proceeds of the sale, allowing the council to recover the cost of the works previously carried out and the remainder would be paid to the owner.

7. CIVIL PENALTIES

7.1 Under the Housing Act 2004 and the Housing and Planning Act 2016, the Council may impose a Civil Penalty, as an alternative to prosecution, up to a maximum of £30,000 in respect of the following offences:

- Failure to comply with an Improvement Notice (Housing Act 2004).
- Failure to license or other licensing offences relating to HMOs (Housing Act 2004), which applies to both mandatory and additional HMO Licensing Schemes.
- Failure to comply with an Overcrowding Notice (Housing Act 2004).
- Failure to comply with a regulation in respect of an HMO (Housing Act 2004).
- Breaching a Banning Order (Housing and Planning Act 2016) (see section 8).

7.2 In setting the amount for the Civil Penalty the Council will have regard to relevant statutory guidance.

Full details of the Council’s statement of principles for the issuing of Civil Penalties can be found in Annex 1.

8. BANNING ORDERS

8.1 Banning Orders
Section 15(1) of the Housing and Planning Act 2016 provides for local authorities to apply for a Banning Order against a person who has been convicted of a Banning Order offence.

8.2 A Banning Order First-Tier Tribunal Property Chamber (Residential Property) bans a landlord from:

- Letting housing in England
- Engaging in English letting agency work
- Engaging in English property management work or
- Doing two or more of those things
8.3 A landlord subject to a Banning Order is also unable to hold a licence for a HMO) and their property may also be subject to a Management Order.

**Full details of Banning Orders can be found in Annex 3.**

### 9 ROGUE LANDLORD DATABASE

9.1 The Rogue Landlord Database records landlords and agents that are subject to a Banning Order or have committed a Banning Order offence. Only local authorities can make entries to the database.

9.2 Under the Housing and Planning Act 2016, local authorities have a **mandatory duty** to make an entry on the database where a landlord or property agent has received a Banning Order. They have the **discretion** to make entries where a landlord or property agent has been convicted of a Banning Order offence or has received 2 or more Civil Penalties within a 12 month period.

9.3 When considering its discretionary powers to make an entry, the Council will have regard to the following factors:

- The severity of the offence
- Any mitigating factors
- Culpability and serial offending
- How it may act as a deterrent for repeat offending

9.4 The final decision on these issues will be made by the Head of Housing.

9.5 Before making an entry on the database, the Council must issue the person with a decision notice of at least 21 days before making an entry, specifying the period for which the entry will be maintained.

9.6 When deciding the length of time the entry will be maintained, the Council will have regard to all the above factors.

9.7 All entries in the database are subject to variation or removal by the Council.

9.8 The Council will remove an entry if it was made on the basis of one or more convictions for a Banning Order offence, all of which have been overturned on appeal.

9.9 The Council may also remove an entry or reduce the period it is on the database, if:

- One or more convictions for a Banning Order offence, but not all, have been overturned on appeal.
- One or more convictions for a Banning Order offence are spent.
- At least a year has elapsed since an entry was made because the landlord/agent received two or more Civil Penalties in a 12-month period.
9.10 **Appeals**

A landlord or agent has no right to appeal to the First-Tier Tribunal Property Chamber (Residential Property) when an entry has been made after a Banning Order has been obtained.

A landlord or agent has the right to appeal to the First-Tier Tribunal Property Chamber (Residential Property) against the Council’s decision to make an entry on the database under its discretionary powers. The appeal must be made before the end of the period in the Council’s notice. An entry must not be made until the appeal is decided or withdrawn.

**10. RENT REPAYMENT ORDERS**

10.1 The *Housing and Planning Act 2016* revised the powers local authorities have in respect of Rent Repayment Orders (RRO). A RRO requires a landlord to repay a specified amount of rent (up to 12 months) in certain circumstances.

10.2 The Council can make an application to the First-Tier Tribunal Property Chamber (Residential Property) for a RRO to recover benefit payments related to housing, where the landlord has:

- Failed to comply with an Improvement Notice under the Housing Act 2004.
- Failed to license a property requiring a license under the Housing Act 2004.
- Failed to comply with a Prohibition Order under the Housing Act 2004.
- Breached a Banning Order under the Housing and Planning Act 2016.
- Used violence to secure entry to premises under the Criminal Law Act 1977.
- Illegally evicted or harassed occupiers under the Protection of Eviction Act 1977. (see section 14)

10.3 The Council will consider making an application for a RRO when investigating the above offences. An application to the First-Tier Tribunal Property Chamber (Residential Property) for a RRO can be made if a conviction has been secured or a Civil Penalty issued or where there is no prior conviction.

10.4 Where there is a prior conviction, or a Civil Penalty has been issued (where there is no prospect of appeal), the full amount of rent (up to a maximum of 12 months) will be applied for and the First-Tier Tribunal Property Chamber (Residential Property) is compelled by law to make an Order for that amount (if it has been correctly calculated).

10.5 Where a conviction hasn’t been secured the First-Tier Tribunal Property Chamber (Residential Property) will determine whether the Council has met the criminal standard in relation to the relevant offence. The Council will have regard to government statutory guidance and will consider the following before deciding to make an application:

- **Punishment of the offender** – the Council will consider if making an application for an RRO will have a real economic impact on the offender. Where this is unlikely, i.e. where the amount of rent paid over the preceding 12 months is minimal and doesn’t reflect the severity of the offence, the Council will consider prosecution or the issue of a Civil Penalty (where it can do so) as well as applying for an RRO.
• **Deterrence** – The Council will consider whether the impact of a RRO is just financial or whether it will substantially deter and dissuade the offender and others from committing similar or repeat offences by making the RRO publicly available. Where this is unlikely, the Council will consider prosecution or the issuing of a Civil Penalty (where it can do so) as well as applying for an RRO.

• **Removal of financial benefit** – The Council will only consider making an application for a RRO where the impact of such an Order will reflect any benefit gained from not being a responsible landlord. E.g. not carrying out necessary works to improve standards. Where it is unlikely that the amount recoverable is sufficient to mitigate the benefit, the Council will consider prosecution or the issue of a Civil Penalty (where it can do so) as well as applying for an RRO.

10.6 Before making an application, the Council will serve a Notice of its intention to make an application, which will state the reasons for doing so. This will cover the above issues (where a conviction hasn’t already been secured), the amount being sought and invite representations to be made within 28 days. The Council will consider any representations before making an application to the First-Tier Tribunal Property Chamber (Residential Property).

10.7 A tenant of a property, where a relevant offence has been committed by their landlord, can also make an application to the First-Tier Tribunal Property Chamber (Residential Property) for a RRO. The Council will inform tenants of this right and will assist tenants in preparing an application if necessary.

10.8 Failure to pay the amount required by an RRO will result in the Council pursuing recovery of the debt through the county court.

### 11. RE-DRESS SCHEME FOR LETTINGS AGENCY WORK AND PROPERTY MANAGEMENT WORK

11.1 Introduced in October 2014, it is a legal requirement for all lettings agents & property managers to belong to a Government approved Redress Scheme.

11.2 The 2 approved Redress Schemes are:
- Property Redress Scheme
- The Property Ombudsman

11.3 The Council is the enforcing authority for this requirement and government guidance states a £5,000 penalty for contravention should be the norm. A lower penalty will only be charged if the Council is satisfied that there are extenuating circumstances.

11.4 Any representations the lettings agent or property manager makes during the 28 day period following the Council’s notice of intention to issue a fine will be taken into account, including whether the penalty would be disproportionate to the turnover/ scale of the business or would lead to an organisation going out of business.
11.5 The decision as to whether a fine should be reduced and by how much will be made by the Head of Housing. A final appeal can be made by the landlord to the First-Tier Tribunal Property Chamber (Residential Property).

11.6 Appendix 3 outlines the enforcement process in more detail.

12 MINIMUM ENERGY EFFICIENCY STANDARDS

12.1 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended) requires that landlords:
- Have an Energy Performance Certificate (EPC) and provide a copy to tenants whenever they rent their properties out; and
- Ensure all rented homes have at least an E rating on the EPC.

Full details of the Standards can be found at Annex 4.

13 THE SMOKE & CARBON MONOXIDE ALARM (ENGLAND) REGULATIONS 2015

13.1 Private sector landlords are required to have:
- At least one smoke alarm installed on every storey of their properties
- A carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire, wood burning stove).
- Landlords must make sure the alarms are in working order at the start of each new tenancy.

13.2 The Council can impose a fine of up to £5,000 where a landlord fails to comply with a Remedial Notice.

13.3 As required by Regulation 13, the Council has issued a ‘Statement of Principles for Determining Financial Penalties as prescribed under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015’ (see Appendix 4).

13.4 Where the Council undertakes remedial action, the type of smoke detection fitted will, if reasonable and practical, meet the ideal standard. Normally the ideal standard would meet the minimum requirements contained in British Standard 5839 part 6:2013

14 ILLEGAL EVICTION & HARASSMENT & RETALIATORY EVICTIONS

14.1 The Council has the legal power to investigate and prosecute under the provisions of the Protection from Eviction Act 1977.

14.2 The law makes it an offence to:
- Act in a manner likely to interfere with the peace or comfort of a tenant or anyone living with him or her;
- Persistently withdraw or withhold services for which the tenant has a reasonable need to live in the premises as a home;
- Take someone’s home away from them without following the due process of the law.
14.3 The Council has a staged approach to enforcement wherever possible to ensure solutions are initially sought through education, co-operation and agreement.

14.4 Where mediation/negotiation is not successful, formal action will be necessary, which may ultimately lead to the issuing of a formal caution, prosecution or other summary action. The decision to prosecute will be made by the Head of Housing.

14.5 Retaliatory eviction was introduced by the Deregulation Act 2015 and applies to all new assured shorthold tenancies that started on or after 1 October 2015. Retaliatory eviction is where a tenant makes a legitimate complaint to their landlord about the condition of their property and, in response, instead of making the repair, their landlord serves them with an eviction notice (Section 21).

14.6 If the tenant receives a section 21 notice, a court will refuse to order an eviction if:
   - The tenant contacted their landlord or letting agent in writing before they received a section 21 notice
   - The tenant complained to the Council because the landlord didn't take steps to fix the problem
   - the Council sent the landlord a notice telling them to make improvements or saying it will do emergency work

14.7 A Section 21 notice served between the time of the written complaint, and the Council issuing an improvement or emergency work notice, will also be treated as invalid.

14.8 In these circumstances, the Council will support the tenant with relevant evidence to support their claim of retaliatory eviction.

15 MOBILE HOMES


15.2 All relevant sites must have a licence to operate and the Mobile Homes Act 2013 legislates for a site licensing regime for relevant protected sites, giving councils more effective control of conditions. In appropriate cases, it provides councils with the tools required to take enforcement action including the power to serve Compliance Notices in relation to breaches of site licence conditions, emergency action powers, and the ability to carry out works in default and recover expenses.

15.3 The Act gives the Council powers to enforce site licence conditions against owners. If an owner is in breach of any of its site licence conditions, the Council may serve a Compliance Notice on the owner. A Compliance Notice must:
   - Set out the condition which, in the opinion of the Council, has been breached and the details of the failure;
   - Detail the steps the site operator must take to remedy the breach of the site licence condition(s); and
   - Specify a time scale for completion and
   - Explain the right of appeal to the First-Tier Tribunal Property Chamber (Residential Property) against the Notice.
15.4 Failure to comply with a Compliance Notice within the period specified in the Notice is an offence which on summary conviction carries a level 5 fine.

15.5 As a last resort, and where the licence holder has been convicted on two or more previous occasions of failing to comply with a Compliance Notice, the Council may apply to the court for revocation of the site licence.

15.6 Following a successful prosecution for breaching a Compliance Notice the Council may enter the site and carry out the necessary works and recharge the owner. Unpaid charges can be placed as a charge against the site owner’s land.

15.7 The Council may take emergency action where the site operator has failed or is failing to comply with a site licence condition and, as a result of such failure, there is an imminent risk of serious harm to the health or safety of any person who is or may be on the land.

15.8 Where the Council proposes to take emergency action a notice must be served, giving the site operator reasonable notice of intended entry.

15.9 The emergency works carried out by the Council should be those works necessary to remove the imminent risk. It is possible that these works fall short of the standard required to comply with the site licence conditions. In those cases the emergency action would need to be followed up by a Compliance Notice.

15.10 Within seven days of any emergency action being started the Council must serve another notice on the site operator.

15.11 The site operator has the right of appeal to the First-Tier Tribunal Property Chamber (Residential Property) on the grounds there was no imminent risk of serious harm or the action taken was not necessary to remove the imminent risk.

15.12 Subject to any appeal decision, the Council is entitled to recover, from the site operator, expenses incurred, including interest.

15.13 Expenses include the cost incurred in:
   • deciding whether to take the action
   • preparing and serving any notice or a demand for expenses and taking the action

15.14 The debt will be registered as a local land charge from the time it becomes payable (after the end of the period for appealing the demand, if no appeal is brought) and removed on payment.

15.15 **Fees and charges**
The Council can charge for functions associated with licensing and enforcement. The Council’s fee setting policy can be found on the Council’s website [www.dartford.gov.uk](http://www.dartford.gov.uk) Fees and Charges are updated annually.
16 COMPLAINTS PROCEDURE

Dissatisfaction with any actions or decisions must in the first instance be dealt with through the Council’s Corporate Complaints Procedure www.dartford.gov.uk

17 HOW TO CONTACT US

For all enquiries relating to this document and for general enquiries please call 01322 343152 or write to: Dartford Borough Council, Private Sector Housing Team, Civic Centre, Dartford DA1 1DR.

Email: privatesectorhousing@dartford.gov.uk
APPENDIX 1

ENFORCEMENT PROCEDURE

INSPECTION OF PROPERTY
For adequate amenities - fire precautions compliance with the Housing Health & Safety standard and satisfactory management

Assessment of risk to tenants
Housing Health and Safety Rating System

- Property meets the required standard or property assessed as low risk
  - No further action at present. Property is programmed for re-visit dependent on score

- Category 1 or 2 hazards are identified
  - Authority considers appropriate action
    - Letter detailing the works and timeframe sent to landlord
      - Landlord carries out the works
        - If works satisfactory -- no further action
        - If works not satisfactory -- further action taken
          - LA checks the works
            - Landlord ignores the recommendation
              - If this is ignored formal notice is issued for which there is a charge. Right of appeal to RPT
                - If this is ignored landlord is prosecuted and work may be carried out in default

Discussions with the Landlord through the whole process

La Consults with the landlord regarding the scope of the works and a time frame
### Prioritisation of Hazards and Options for Action

<table>
<thead>
<tr>
<th>Priority (P)</th>
<th>Main options for Action</th>
<th>Other options available for consideration</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Category one</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Immediate action</td>
<td>P1 - Highest band A+ Imminent risk to health and safety.</td>
<td>Emergency Remedial Action&lt;br&gt;Emergency Prohibition Order&lt;br&gt;Prohibition Order&lt;br&gt;Demolition Order</td>
</tr>
<tr>
<td>High Priority</td>
<td>P2 – Hazard Bands A – C</td>
<td>As Above</td>
</tr>
<tr>
<td><strong>Category two</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medium Priority</td>
<td>P3 - Hazard Bands High bands D - E</td>
<td>Improvement Notice&lt;br&gt;Suspended action&lt;br&gt;Hazard Awareness Notice</td>
</tr>
<tr>
<td>Low Priority</td>
<td>P4 – Hazard Bands Low bands F - J</td>
<td>Hazard Awareness Notice&lt;br&gt;Suspended action</td>
</tr>
</tbody>
</table>
Dartford Borough Council - Statement of principles for determining financial penalties

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

1. **Introduction**

1.1 This statement sets out the principles that Dartford Borough Council (the Council) will apply in exercising its powers to require a landlord to pay a financial penalty for non-compliance with the Regulations.

2 **Purpose of the Statement of Principles**

2.1 The Council is required under these Regulations to prepare and publish a statement of principles and it must follow these principles when deciding on the amount of a penalty charge.

2.2 The Council may revise its statement of principles at any time, but where it does so, it must publish a revised statement.

2.3 When deciding on the amount for the penalty charge, the Council will have regard to the statement of principles published at the time when the breach in question occurred.

3 **The legal framework**

3.1 The Council’s powers are derived from the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations), which came into force on 1 October 2015.

3.2 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.

3.3 The duty requires that landlords ensure:

- 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 contains 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/her behalf, that the alarm(s) is/are in proper working order on the day the tenancy starts.

3.4 Landlords need to take steps to demonstrate that they have met the testing requirements at the start of the tenancy. This can be achieved for example by supplying dated photographs of alarms, together with installation records and by tenants signing an inventory form confirming that the alarm was tested and in working order at the start of the tenancy.
3.5 Tenancy agreements can specify the frequency that a tenant should test the alarm to ensure it is in proper working order.

3.6 Where the Council believes that a landlord is in breach of one or more of the duties referred to in paragraph 3.3 above, the Council must serve a Remedial Notice on the landlord under Regulation 5 of the Regulations.

3.7 If the landlord then fails to take the remedial action specified in the notice within the specified timescale, the Council can require the landlord to pay a penalty charge under Regulation 8 of the Regulations.

3.8 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 at the address given at the bottom of this document, within 28 days of the date the Remedial Notice is served.

3.9 The Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the requirements specified in the Remedial Notice within the specified timescale.

4 The purpose of imposing a financial penalty

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

4.2 The aim of financial penalties on landlords is to:
   - Lower the risk to tenant’s health and safety
   - Reimburse the costs incurred by the Council in arranging remedial action 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 so, under notice
   - Eliminate financial gain or benefit from non-compliance with the Regulations
   - Be proportionate to potential harm outcomes, the nature of the breach, and the cost benefit to comply with these legal requirements.

5. Criteria for the imposition of a financial penalty

5.1 A failure to comply with the requirements of a Remedial Notice allows the Council to require payment of a penalty charge.

5.2 In considering the imposition of a penalty, the Council will look at the evidence concerning non-compliance with the requirements of the Remedial Notice. This could be obtained from a property inspection, or from information provided by the tenant or agent that no remedial action has been undertaken by the landlord.

5.3 For example, landlords can demonstrate compliance with the Regulations by supplying dated photographs of alarms, together with installation records or confirmation by the tenant that a system is in proper working order.

5.4 In deciding whether it would be appropriate to impose a penalty, the Council will take full account of the particular facts and circumstances of the breach under consideration.
6. **Criteria for determining the amount of a financial penalty**

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

6.2 The penalty charge comprises two parts, a punitive element for failure to comply with the absolute requirement to comply with a Remedial Notice and a cost element relating to the investigative costs, Council officer time, administration and any remedial works arranged and carried out by the Council’s contractors.

6.3 The penalty charge is payable within 29 days beginning with the day on which the penalty charge notice is served.

6.4 The Council has discretion to offer an early payment reduction if a landlord pays the penalty charge within 14 days beginning with the day the penalty charge notice is served.

The charges are as follows:

<table>
<thead>
<tr>
<th>Penalties</th>
<th></th>
<th>Early payment reduction (50%) if paid within 14 days</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st breach</td>
<td>£2500</td>
<td>£1250</td>
</tr>
<tr>
<td>Subsequent</td>
<td>£5000 per breach</td>
<td>£2500</td>
</tr>
</tbody>
</table>

7. **Procedural matters for Penalty Charge Notices**

7.1 The Regulations impose a number of procedural steps which must be taken before the Council can impose a requirement on a landlord to pay a penalty charge.

7.2 When the Council is satisfied that the landlord has failed to comply with the requirements of the Remedial Notice, the penalty charge notice must be served within 6 weeks.

7.3 Where the landlord requests a review of the Council’s decision within 29 days from when the penalty charge notice is served, the Council must consider any representations made by the landlord. All representations are to be sent to the address at the bottom of this document. The Council will notify the landlord of its decision by notice, which will be either to confirm, vary or withdraw the penalty charge notice.

7.4 A landlord who has requested a review of a penalty charge notice and has been served with a notice confirming or varying the penalty charge notice, may appeal to the First-Tier Tribunal Property Chamber (Residential Property) against the Council’s review decision. Appeals should be made within 28 days from the date the notice is served.

7.5 Where a landlord appeals to the First-Tier Tribunal Property Chamber (Residential Property), the operation of the penalty charge notice is suspended until the appeal is finally determined or withdrawn. The First-Tier Tribunal Property Chamber (Residential Property) may quash, confirm or vary the penalty charge notice, but may not increase the amount of the penalty charge.
7.6 If the penalty charge notice is not paid, then the Council may recover the penalty charge by an order of the court. Proceedings for recovery will not commence earlier than 31 days from the date the penalty charge notice is served.

7.7 However, in cases where a landlord has requested a review of the penalty charge notice, recovery will not commence earlier than 30 days from the date the notice giving the Council’s decision to vary or confirm the penalty charge notice is served. Where landlords appeal to the First-Tier Tribunal Property Chamber (Residential Property), recovery will not commence earlier than 30 days from when the appeal is finally determined or withdrawn.

8. **Remedial Action taken in default of the landlord**

Where the Council is satisfied that a landlord has not complied with the requirements of the Remedial Notice within the required timescale and consent is given by the tenant, the Council is required by law to 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.

8.1 Smoke Alarms – In order to comply with the Regulations, where the property is considered to be high risk because of:

- its mode of occupancy such as a house in multiple occupation or building converted into one or more flats;
- having an unsafe internal layout where fire escape routes pass through a living rooms or kitchens; or
- is 3 or more storeys high,

As a temporary measure, smoke alarms will be installed at every storey of residential accommodation.

8.2 A full fire risk assessment will subsequently be undertaken, having regard to the Housing Act 2004 (as amended), Housing Health & Safety Rating System and LACORS Housing - fire safety guidance. Consultation with Kent Fire and Rescue Service will also be undertaken.

8.3 The full fire risk assessment will consider the adequacy of the type and coverage of the smoke alarm system, fire escape routes, including escape windows and fire separation measures such as fire doors and protected walls and ceilings. Where further works required to address serious fire safety hazards in residential property cannot be undertaken through informal agreement, the Council will use its enforcement powers under the Housing Act 2004 (as amended), in accordance with its Enforcement Policy.

8.4 Carbon Monoxide Alarms – In order to comply with the Regulations, a carbon monoxide alarm will be installed in every room containing a solid fuel combusting appliance.

9. **All communications** for representations made against the Remedial Notice (Regulation 5) or the Penalty Charge Notice (Regulation 8) are to be sent to:

Marie Gerald
Housing Solutions and & Private Sector Manager.
Dartford Borough Council, Civic Centre, Home Gardens, Dartford, DA1 1DR.
Or by email to: housingprivatesector@dartford.gov.uk
APPENDIX 4

Compliance and Enforcement Flow Chart - MEES

Local Authority (LA) checks if property appears to be in breach of Regulations where:
- from 1 April 2018 a property has been privately let to new or existing tenant, or
- from 1 April 2020 a property is privately let, or
- the landlord has registered an exemption on the PRS Exemptions Register and provided false or misleading information.

Property appears in breach of Regulations

LA serves compliance notice on landlord requesting information where a property appears in breach of

Property in breach or landlord does not comply with compliance notice

LA satisfied that landlord is in breach of Regulations. May serve penalty notice on landlord and publish details of the breach

Landlord does not agree with penalty notice

Landlord may request review of penalty notice decision

Enforcement authority upholds penalty notice

Landlord may appeal penalty notice decision to First-tier Tribunal

Tribunal rejects landlord appeal

Penalty affirmed

Penalty paid

Property in compliance with Regulations

No further action taken by enforcement authority

Landlord accepts penalty notice

Penalty paid

LA review finds in landlords favour

Penalty quashed

Tribunal finds in landlords favour

Penalty quashed

Penalty not paid and debt recovery action taken

Enforcement authority recovers unpaid debt
APPENDIX 5

Property Redress Scheme

Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014

Enforcement Process:

Step 1: Notice of Intent
The Council must give written notice of their intention to impose a penalty, setting out:

a. The reasons for the penalty;
b. The amount of the penalty; and
c. That there is a 28 day period to make written representations or objections, starting from the day after the date on which the notice of intent was sent.

This written notice must be served within 6 months of the date on which the Council is in the position to issue the fine (having gathered sufficient evidence and be satisfied that a fine is appropriate).

The Council may withdraw the notice of intent or reduce the amount specified in the notice at any time by giving notice in writing.

Step 2: Representations and Objections
The person who the notice of intent was served on has 28 days starting from the day after the date the notice of intent was sent to make written representations and objections to the Council in relation to the proposed fine.

A lower penalty should only be charged if the Council is satisfied that there are extenuating circumstances. It will be up to the Council to decide what such circumstances might be, taking into account any representations the lettings agent or property manager makes during the 28 day period following the authority’s notice of intention to issue a fine. Guidance states that such matters could include whether a £5,000 fine would be disproportionate to the turnover/scale of the business or would lead to an organisation going out of business. The decision as to whether a fine should be reduced will be made by the Head of Housing.

Step 3: Final Notice
At the end of the 28 day period the Council must decide, having taken into account any representations received, whether to impose the fine and, if so, must give at least 28 days for payment to be made. When imposing a fine, the Council must issue a final notice in writing which explains:

a. Why the fine is being imposed;
b. The amount to be paid;
c. How payment may be made;
d. The consequences of failing to pay;
e. That there is a right to appeal against the penalty to the First-Tier Tribunal and that any appeal must be made within 28 days after the imposition of the fine.
The Council may withdraw the final notice or reduce the amount specified in the notice at any time by giving notice in writing.

**Step 4: Appeals**
If an appeal is lodged the fine cannot be enforced until the appeal is disposed of. Appeals can be made on the grounds that:

a. The decision to impose a fine was based on a factual error or was wrong in law;
b. The amount of the fine is unreasonable; or
c. That the decision was unreasonable for any other reason.

The First-Tier Tribunal Property Chamber (Residential Property) may agree with the enforcement authority’s notice to issue a penalty or may decide to quash or vary the notice and fine.

**Step 5: Recovery of the penalty**
If the lettings agent or property manager does not pay the fine within the period specified the Council can recover the fine with the permission of the court as if payable under a court order. Where proceedings are necessary for the recovery of the fine, a certificate signed by the Council’s Section 151 Officer stating that the amount due has not been received by a date stated on the certificate will be taken as conclusive evidence that the fine has not been paid.
Statement of Principles for the Issuing of Civil Penalties

1. Purpose
This statement sets out the principles that the Council will apply when considering the imposition of civil penalties under the following statutes:

- The Housing Act 2004 (as amended)
- The Housing and Planning Act 2016.

The Government has issued statutory and non-statutory guidance, which the Council will consider when deciding whether to issue civil penalties.

2. Overarching Principles for Issuing a Civil Penalty
These principles are:

- To lower or remove the risk to tenant’s/occupant’s health and safety.
- To remove financial gain or benefit from non-compliance.
- To protect the interests of the public.
- To penalise the perpetrator for the offence(s).
- To change the behaviour of the perpetrator and to prevent future non-compliance.
- To dissuade others from offending.

[The Council considers points I. and II. to be the most significant and in-line with the objectives of the Council in protecting the health, safety and welfare of private tenants and improving standards in the private rented sector.]

The Council may impose a Civil Penalty, as an alternative to prosecution, up to a maximum of £30,000 in respect of the following offences:

- Failure to comply with an Improvement Notice (Housing Act 2004).
  Where there is a successful prosecution the courts can impose an unlimited fine.
- Failure to license or other licensing offences relating to HMOs (Housing Act 2004), which applies to both mandatory and additional HMO Licensing Schemes.
  Where there is a successful prosecution the courts can impose an unlimited fine.
- Failure to comply with a regulation in respect of an HMO (Housing Act 2004).
- Breaching a Banning Order (Housing and Planning Act 2016).
  Where there is a successful prosecution the courts can impose an unlimited fine and up to 51 days imprisonment.
In setting the amount of the Civil Penalty the Council will have regard to statutory guidance.

The level of penalty levied will reflect the severity of the offence and the offenders previous record of offending. The factors that guidance requires the Council to consider are:

a. **Severity of the offence** - The more serious the offence, the higher the penalty should be.

b. **Culpability and track record of the offender** - A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate, and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

c. **The harm caused to the tenant** - This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a Civil Penalty.

d. **Punishment of the offender** - A Civil Penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

e. **Deter the offender from repeating the offence** - The goal is to prevent any further offending and help ensure that the landlord fully complies with all their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

f. **Deter others from committing similar offences** - While the fact that someone has received a Civil Penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a Civil Penalty. An important part of deterrence is the realisation that (a) the Council is proactive in levying civil penalties where the need to do so exists and (b) that the level of Civil Penalty will be set at a high enough level to both punish the offender and deter repeat offending.

g. **Remove any financial benefit the offender may have obtained because of committing the offence** - The guiding principle here should be to ensure that the offender does not benefit because of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

**3. Civil Penalties Matrix**

The Ministry of Housing, Communities and Local Government (MHCLG) have provided guidance on a methodology for setting the level of Civil Penalty, which the Council has had regard to in devising its own methodology for determining the level of Civil Penalty to impose.
The Council operates a 9-stage process in determining the level of Civil Penalty:

**Stage 1 – The culpability of the offender**

For example, was the offence committed deliberately, the length of time the offence continued, whether the offence was repeated, whether the offence was premeditated.

In making this assessment the Council considers that renting is a business activity to make a profit and therefore should be treated as any other business and that ignorance of the law is not an excuse. However, it expects landlords/letting/managing agents with larger portfolios of properties and those that are members of professional organisations and/or accredited to have a higher-level knowledge and experience and therefore will be considered more culpable in setting the level of penalty.

**Stage 2 – The seriousness and level of harm caused by the offence**

The Council will consider:

a. The legislative level of punishment that can be imposed. All the offences carry an unlimited maximum fine. However, breaching a Banning Order can also result in a prison sentence of up to 51 weeks.

b. The number of people affected.

c. Whether the impact on the victim(s) (actual or potential) is serious, long-term, life-altering or potentially fatal.

d. Whether the victim(s) were vulnerable, e.g. families with children, a vulnerable adult, discrimination (protected characteristics under the Equalities Act 2010), etc.

e. Whether there was harm (actual or potential) caused to the surrounding area or community.

[The Council considers this aspect particularly significant and therefore applies extra weighting to this category to reflect its seriousness.]

**Stage 3 – Punishment of the offender**

The Council will consider:

a. Whether there was any attempt to cover up evidence of the offence, mislead officers or harass occupants and witnesses.

b. A landlords/agent’s refusal to accept or respond to the Local Authorities (or other enforcement agency) advice and recommendations regarding their responsibilities.

c. Did the offence relate to other crime, e.g. illegal eviction, harassment, enviro crimes, modern slavery, prostitution or drug production/distribution.

**Stage 4 - Remove any financial benefit gained in committing the offence(s)**

The Council considers this aspect particularly significant and will make a financial assessment of the costs associated with committing the offence(s). The level of penalty applied will always be higher (subject to the maximum level of £30,000) than the financial benefit gained from committing the offence. Where the financial benefit exceeds the maximum amount, the Council will also, where legislatively possible, apply to the First-Tier Tribunal Property Chamber (Residential Property) for a RRO and/or assist a tenant to do so.
Stage 5 - Deter the offender from repeating the offence and from others committing similar offences

The Council will consider whether the level of penalty imposed would act as a deterrent to the offender and others. Where this is unlikely the Council will consider prosecution and/or the application, where legislatively possible, to the First-Tier Tribunal Property Chamber (Residential Property) for a RRO and/or assist a tenant to do so.

Stage 6 – Assessment of assets and income

In setting the level of penalty, the Council will take account of the offender’s income and assets and adjust accordingly. The guiding presumption will be that the penalty will not automatically be revised downwards simply because an offender has (or claims to have) a low income. The value of an offender’s assets, e.g. their rental portfolio, as well as their income, will be considered when determining an appropriate penalty. For example, a landlord with a large portfolio where a low-level penalty is initially assessed will have the penalty level adjusted upward to reflect the value of their assets.

Stage 7 – Mitigation

The Council will consider:

a. Steps voluntarily taken to remedy problem (see the discounts available).

b. The offender is fully co-operative with the investigation.

c. Good record of maintaining property and compliance with legislation, statutory standards prior to the offence(s).

d. The offender self-reports (e.g. for failing to license), co-operates with the Council and accepts responsibility.

e. The offender has a mental disorder or learning disability, which is linked to the commission of the offence.

f. The offender has a serious medical condition(s) requiring urgent, intensive or long-term treatment, which was linked to the commission of the offence.

g. Age and/or lack of maturity where it affects the responsibility of the offender.

h. Any further factors that the offender wishes to draw to the Local Authorities attention.

In determining mitigating factors and how they will apply to the level of Civil Penalty the Council will consider any that they are aware of as part of the assessment process. The offender can also use the ‘Notice of Intent’ stage to inform the Council of any other mitigating factor they believe relevant. The Council will expect any mitigating factors pleaded to be accompanied by supporting evidence.

Stage 8 – Totality principle

This applies where there is the possibility of imposing more than one Civil Penalty. Where there are multiple offences resulting from the same incident/conduct the Council will take account of each offence as set out in the previous stages and add up the penalties and apply the aggregate total as one Civil Penalty to reflect the most serious of the offences found from the incident/conduct (subject to the maximum of £30,000). Where aggregate total exceeds the maximum amount, the Council will consider prosecution and/or the application, where legislatively possible, to the First-Tier Tribunal Property Chamber (Residential Property) RO and/or assist a tenant to do so.
Where there are multiple offences arising from separate incidents/conduct the Council will assess each individually as set out in the previous stages and apply separate civil penalties, where it is proportionate to do so.

**Stage 9 – Review and check**

Prior to the issue of a ‘Notice of Intent’ the process and level of penalties will be reviewed and checked. The purpose of this is to check the process has been correctly applied and that the resulting level penalty/penalties is/are reasonable and proportionate. The Case Officers Line Manager will be responsible for this review with the final decision to proceed taken by the Head of Housing.
Quick Guide Flow Chart – Civil Penalties

1. Does the case meet the evidential and public interest tests?
   - No: Case Can’t Proceed
   - Yes: Prepare Notice of Indented Proceedings
     - Manager Check
     - Serve Notice of Indented Proceedings

2. Legal check

3. Complete CP Matrix

4. Representations?
   - Yes: Complete Review?
     - Yes: Prepare Final Notice
       - Manager Check
       - Serve Final Notice
     - No: Manager Check
     - Modify: Send letter setting out reasons
     - No change: Send letter setting out reasons
   - No: Consider Prosecution

5. Appeal?
   - No: Confirm or Vary
   - Yes: Quash
     - Consider Prosecution

6. Recovery

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40
### Civil Penalty Scoring Matrix

<table>
<thead>
<tr>
<th>Factors</th>
<th>Not Applicable</th>
<th>Minor</th>
<th>Moderate</th>
<th>Serious</th>
<th>Severe</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Score = 1</td>
<td>Score = 5</td>
<td>Score = 10</td>
<td>Score = 15</td>
<td>Score = 20</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Breach of a Banning Order?</strong> - this offence carries the greatest possible punishment upon a successful prosecution and therefore extra weighting is applied to reflect the severity of the offence – additional score of 10**</td>
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<tr>
<td>The culpability of the offender</td>
<td>Short term offence, no premeditation and no previous history.</td>
<td>First time offence. The offence has been ongoing for a short time. Minor prior infractions, which may include a repeat of the current offence.</td>
<td>Second or third time offender. No premeditation. The offence has been ongoing for a moderate period of time. A case history of non-cooperation and relevant prior offending which may include a repeat of the current offence.</td>
<td>Multiple offender. Some premeditation. The offence has been ongoing for a significant period of time. A case history of non-cooperation and relevant prior offending which may include a repeat of the current offence.</td>
<td>Serial offender (10 + times). Premeditation. The offence has been ongoing for a significant period of time. A case history of non-cooperation and relevant prior offending which may include a repeat of the current offence.</td>
<td></td>
</tr>
<tr>
<td><strong>Portfolio landlord (more than 5 properties) or letting agent?</strong> - Multiplier of 2</td>
<td>Very little or no harm caused. One victim household. No vulnerable occupants.</td>
<td>Low-level health risk(s)/harm(s) identified. One victim household. No vulnerable occupants.</td>
<td>Moderate-level health risk(s)/harm(s) identified. Two to four victim households. Vulnerable occupants potentially exposed.</td>
<td>Severe-level health risk(s)/harm(s) identified. Two to four victim households.</td>
<td>Severe-level health risk(s)/harm(s) identified. Five or more victim households.</td>
<td></td>
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<tr>
<td>Weighting multiplier of 2</td>
<td>Punishment of the offender</td>
<td>Financial benefit</td>
<td>Weighting multiplier of 2</td>
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<tr>
<td><strong>Punishment of the offender</strong></td>
<td>No other crime, no perversion and a willingness to adhere to advice</td>
<td>Negligible financial impact</td>
<td>No or little deterrence likely. Repeat offending possible.</td>
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<tr>
<td></td>
<td>Minor previous infractions, no perversion and a willingness to adhere to advice</td>
<td>Low to moderate financial impact.</td>
<td>Low level offence, unlikely to be reported on. Mild deterrence</td>
<td></td>
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<tr>
<td></td>
<td>Minor previous infractions, attempts to pervert, unwilling to cooperate</td>
<td>Medium level financial impact.</td>
<td>Some publicity may result. Will act as a mid-term deterrent from repeating offence(s).</td>
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<tr>
<td></td>
<td>Significant other crime. Offender made attempts to pervert and hostile to cooperation</td>
<td>Large financial impact.</td>
<td>Publicity will be sought. Large deterrence to offender and landlord community</td>
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<tr>
<td></td>
<td>Severe harm resulting from other crime. Offender made attempts to pervert and hostile to the Council and others</td>
<td></td>
<td>Publicity inevitable via numerous methods. Massive deterrence to re-offending and to wider landlord community</td>
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<tr>
<td><strong>Financial benefit</strong></td>
<td>Negligible financial impact</td>
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<td></td>
<td>Low to moderate financial impact.</td>
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<td>Low asset value (e.g. single property landlord). Doesn't apply to agents</td>
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<td></td>
<td>Medium level financial impact.</td>
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<td>Small portfolio landlord/agent (less than 5 properties) and/or other moderate assets/income. One major or multiple minor mitigating factors</td>
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<tr>
<td></td>
<td>Large financial impact.</td>
<td></td>
<td>Small/medium portfolio landlord/agent (between 3 – 10 properties) with other assets/incomer. Two or more major mitigating factors</td>
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<td></td>
<td></td>
<td></td>
<td>Multiple major mitigating factors</td>
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<td><strong>Weighting multiplier of 2</strong></td>
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<td><strong>Deter the offender &amp; others</strong></td>
<td>No or little deterrence likely. Repeat offending possible.</td>
<td>No demonstrable or significant assets. Doesn't apply to agents</td>
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<td>Low level offence, unlikely to be reported on. Mild deterrence</td>
<td>Low asset value (e.g. single property landlord). Doesn't apply to agents</td>
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<td>Some publicity may result. Will act as a mid-term deterrent from repeating offence(s).</td>
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<td>Publicity will be sought. Large deterrence to offender and landlord community</td>
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<td>Publicity inevitable via numerous methods. Massive deterrence to re-offending and to wider landlord community.</td>
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<td><strong>Assets and income</strong></td>
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<td>Small/medium portfolio landlord/agent (between 3 – 10 properties) with other assets/incomer. Two or more major mitigating factors</td>
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<td>Multiple major mitigating factors</td>
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Notes:

I. Each offence will be assessed and then the totality principle applied.

II. Assessments will be carried out prior to the issue of a ‘Notice of Intent’. A reassessment will then be carried out following any representations received by the offender.
Civil Penalties Enforcement Process

The prosecution principle

The Council will carry out the investigation into the case as it would any other case it considers for criminal proceedings. The Council will satisfy themselves that there would be a reasonable expectation of securing a conviction and that the case would be proven 'beyond a reasonable doubt' (the criminal standard).

A case file will be developed in line with the Local Authorities internal procedures for criminal investigations. Each case will be required to satisfy:

a. **The evidential stage** – The Council will be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. In doing so the Council will also consider any defence there may be, and how it is likely to affect the prospects of conviction.

b. **The public interest stage** – even if the evidential stage is met the Council will also consider whether a prosecution would be in the public interest and will consider the following factors in determining this; the circumstances of and the harm caused to the victim, whether the suspect is under the age of 18 at the time of the offence, the impact on the community, whether a prosecution is a proportionate response and whether sources of information require protecting (this usually only applies to issues of international relations and national security).

Each case will be presented to the Housing Solutions & Private Sector Manager and the Local Authorities Legal Services to review and confirm these stages have been satisfactorily met before considering the imposition of a Civil Penalty.

The Notice process

Before imposing a Civil Penalty, the Council will serve a Notice of Intent. This will be served within 6 months of determining whether an offence(s) has been committed. The recipient of notice may make written representations to the Council. Any representations must be made within a 28-day period and will be fully considered by the Council. It is recommended that that any representations made are accompanied by supporting evidence. After the end of the period for representations the Council will:

a. Decide whether to impose a financial penalty.

b. If it decides to impose a financial penalty, decide the amount of the penalty.

c. In determining whether to impose a financial penalty, and the level of any penalty, the Council will consider any representations received.

The Local Authorities expectation is that a landlord/letting agent will also use the ‘Notice of Intent’ stage to set out their financial circumstances and supply supporting evidence of this, which will then be considered in whether to proceed to a ‘Final Notice’ and the amount of penalty to impose.

If the Council decides to impose a financial penalty a Final Notice will be served. This will set out:

a. The amount of the financial penalty (and any relevant discount),

b. The reasons for imposing the penalty,

c. Information about how to pay the penalty,
d. The period for payment of the penalty (28 days),

e. Information about rights of appeal,

f. The consequences of failure to comply with the notice.

**Discounts**

The Council will apply the following discounted rates to any imposed financial penalty in the following circumstances:

a. Compliance Discount - A 20% discount will be applied if the offender complied with the identified breach, e.g. carrying out the works required by the Improvement Notice, within the 28 days given to make representations at the ‘Notice of Intent’ stage.

b. Early Payment Discount - A 50% discount of the original calculated amount (before any compliance discount is applied) should the penalty be paid within 14 days.

The Council may at any time withdraw a notice of intent or final notice; or reduce the amount specified in a notice of intent or final notice.

**Appeals**

A recipient of a Final Notice may appeal to the First-Tier Tribunal Property Chamber (Residential Property) against the decision to impose a penalty, or the amount of the penalty within 28 days of receiving the Final Notice.

If an appeal is lodged the Final Notice is suspended until the appeal is determined or withdrawn.

The First-Tier Tribunal Property Chamber (Residential Property) has the power to confirm, vary (increase or reduce) the size of the Civil Penalty imposed or to cancel the Civil Penalty.

Where an appeal results in the First-Tier Tribunal Property Chamber (Residential Property) confirming or varying the Civil Penalty the Council will offer the recipient the early payment discount of 50% if the penalty is paid within 14 days of receipt of written confirmation of the First-Tier Tribunal (Property Chamber’s (Residential Property)) decision.

**Recovery**

Where the Civil Penalty is not paid the Council will seek to recover the amount (and any legal costs for doing so) through the County Court.
This document contains the policy and procedural information for the Licensing of Houses in Multiple Occupation (HMOs) in the Borough of Dartford in accordance with Housing Act 2004 Part 2. All applications will be dealt with in accordance with the Act, government guidance and this policy.

1. **Purpose and Aims of Licensing**

The private rented sector has a valuable role to play in meeting demand and offering choice and flexibility in the housing market. However, historically, there have been concerns regarding the condition, safety and reputation of the sector.

It is against this backdrop that licensing seeks to ensure that:

- Landlords or their agents are fit and proper persons
- standards of tenancy relations management and property management employed by a landlord or agent are adequate
- Councils have measures available to ensure that landlords are encouraged to cooperate with licensing
- Properties of Landlords who are unwilling to or unable to meet the required criteria, are managed by Councils
- Vulnerable tenants, in HMOs, are protected

2. **Application of the Scheme**

A full definition of what constitutes an HMO is contained in sections 254 and 258 of the Housing Act 2004 (see Annex 2 - Appendix 1). With effect from 1 October 2018 this scheme will apply to all HMOs that meet the following criteria:

- is occupied by five or more persons
- is occupied by persons living in two or more separate households; and meets:
  a. (The standard test under section 254(2) of the Act; any building in which two or more families/individuals share basic amenities

  b. The self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or

  c. The converted building test under section 254(4) of the Act, any converted building which comprises of one or more units of accommodation that are not self-contained

The scheme will apply to the whole of the Borough of Dartford currently administered by Dartford Borough Council (‘the Council’).
**HMO Declarations**
Where it is unclear whether households are occupying the building as their only or main residence, the Council can declare the building to be an HMO to remove any doubt.

The Council must serve a notice under section 255 on the landlord or manager of the property within 7 days of deciding to make the declaration stating:

- The date of the Council’s decision to serve the notice
- The date on which the notice will come into force (which must be not less than 28 days from the date the notice is served)
- The recipients right to appeal to the First-tier Tribunal (Property Chamber)(FFT) within 28 days of the Council’s decision

If no appeal is made within 28 days, the notice comes into force on the day stated on the notice. If an appeal is made in time, the notice does not come into force until the appeal procedure has been completed.

3. **Revocation of HMO Declaration**
An HMO declaration can be revoked if:

- The Council determines the declaration no longer applies
- OR
- The relevant person applies to have declaration revoked and it is granted by the Council

If an application to revoke an HMO declaration is refused the Council must without delay serve a notice on the applicant informing them of the:

a. Decision
b. The reasons for it and the date made and,
c. The right to appeal to the First-Tier Tribunal Property Chamber (Residential Property) within 28 days of date of decision.

4. **Exemptions**
Certain buildings cannot be defined as HMOs, irrespective of whether they meet the definitions above:

- If it is occupied by only two people.
- If it is occupied by the owner (and their family if any) and one or two lodgers.
- If it is occupied by a religious community.
- If the occupiers have their main residence elsewhere
- If no one in the property is required to pay rent.
- If the owner or manager is a public body.
- If the owner or manager is an educational institution.
- A building of self-contained flats if two thirds or more of the flats are owner-occupied.
- If the property is part of a guest house or hotel (unless an ‘HMO Declaration’ is made).

(Further details are listed in Appendix 1.1)

The Housing Act 2004 gives the Council a general duty to take all reasonable steps to secure that those whose properties fall within a licensing scheme apply for a licence. Every property subject to the mandatory licensing must be licensed unless:

- A temporary exemption notice is in force (see appendix 2), or
- An interim or final management order is in force (see section 6.33 of the Private Sector Housing Enforcement and Licensing Policy)
5. **Processing a Licence/Renewal application**
   A person having control of, or managing a licensable HMO must apply for a licence.

   For the purposes of the application, the proposed licence holder will be:

   a. the applicant, or  
   b. some other person, if both he/she and the applicant agree

   The proposed licence holder must complete, sign and return, with all relevant Information, an application form as supplied by the Council.

6. **Valid Applications (new licences)**
   An application will **not** be accepted as valid or be processed until the following is received:

   a. A fully completed application form  
   b. All required supporting documentation  
   c. Current i.e. within last 12 months Gas Safety Certificate  
   d. Current (i.e. within last 5 years) Electrical Installation Condition Report completed by a competent person such as NAPIT,ELECSA, NICEIC contractor  
   e. Fire Detection systems – for systems less than 12 months old – the design, installation and commissioning certificates for the system  
   f. Or if older than 12 months, the most recent servicing/maintenance certification for the system  
   g. Emergency lighting – for systems less than 12 months old, the installation certificate  
   h. For systems older than 12 months, the most recent servicing/maintenance certification  
   i. Copy of a Tenancy Agreement  
   j. Proof of address of the applicant  
   k. Annotated floor plan showing rooms sizes and fire safety measures  
   l. Proof of payment of licence fee is provided

7. **Licensing Process**
   The Council aims to process an application within 12 weeks of a valid application being received, occasionally, the Council make request a Landlord’s agreement for an extension to this processing time. Each application will be processed in accordance with the Licensing Application Flowchart found in Appendix 3.

8. **Property Inspection**
   The Council will assess when an HHSRS inspection of the HMO is required using a risk assessment matrix based on information already held and provided within the licence application (see appendix 4).

   Those assessed as posing a high risk to occupiers will be inspected as soon as possible during the licensing application process. All licensed HMOs will be inspected during their licence period. Any Category 1 Hazards will be dealt with as outlined in this Policy.

   An annual desktop review/risk assessment will be undertaken. The Council will prioritise works according to the level of risk. The Council cannot attach conditions to the licence on the expectation of the works being carried out. Where applicable, the owner will be informed by a variation to the initial licence of works required and timescales for completion in accordance with these aforementioned policies/legislation.
9. **Standards**

HMOs should be free of any Category One Hazards, meet the standards outlined in the Council’s Amenity Standards found in Appendix 5 and comply with legislation and Statutory guidance issued. With effect from 1 October 2018 additional legislation will impose minimum room sizes and requirements relating to the storage and disposal of household waste, which will be included in an updated Amenity Standards document.

A Licence shall be granted for a period of five years unless special circumstances are identified where it is appropriate for a licence to be issued for a shorter amount of time, or refused.

On or before expiry of the licence, the licence holder must apply to renew the Licence. Where a licence has been issued for a period less than 5 years, no additional monies will be payable until the expiration of a 5 year period from the date of the first instance, except on change of a licence holder where an administration charge would apply.

On renewal, the licence holder will complete an application form detailing any Changes, in respect of the HMO, using a Licence Renewal Application Form; a fee is payable.

During any period of the licence, the licence holder shall notify the Council of any changes to any particulars relating to the house and/or the licence.

The licence holder or an interested party may request in writing for the licence to be revoked or varied at any time.

The Council may also revoke or vary a licence at any time

10. **Public Register**

The Council must establish and maintain a public register of all the licences granted by them, of all temporary exemption notices served by them and of all Management Orders that are in effect. An edited version is available on the Council’s website, whilst an unedited version is available on written request.

11. **Refusal to Grant a Licence**

The Council may refuse to grant a licence if it is not satisfied that the house is reasonably suitable for occupation by the maximum number of households or persons specified in the application for the licence, and the house cannot be made suitable by the imposition of conditions in the licence and/or it fails to provide adequate amenities in accordance with the Council’s Amenity Standards Policy found in Appendix 5.

The Council may refuse a licence if:

- The proposed licence holder is not a fit and proper person. (see below)
- The proposed licence holder is not the most appropriate person to hold the licence.
- The proposed manager of the house is not a fit and proper person.
- The proposed management arrangements for the house are not satisfactory.
12. **Fit and Proper Person Criteria**

The Council must consider evidence relating to whether the proposed licence holder or the manager is a fit and proper person. They must also consider any evidence regarding any person associated or formally (previously) associated with the proposed licence holder or manager, whether on a personal, work or other basis if this is relevant.

The Council will consider offences regarding:
- Fraud, or other dishonesty
- Violence
- Drugs
- Sexual Offences Act Schedule 3

(See Appendix 6 for details of spent offences)

The Council will also consider any unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in connection with a business.

The Council will consider if there has been a contravention of any provision of housing or landlord and tenant law. In particular, within the last five years, whilst in control of any property that:
- Has been subject to a control order
- Has been subject to proceedings by a local authority
- Has had to have works in default carried out by any local authority
- Has been subject to a management order under the Housing Act 2004
- Has been refused a licence or breached conditions of a licence.
- Is subject to a banning order – Housing and Planning Act 2016
- Is listed on the rogue landlord data base -Housing and Planning Act 2016

The final decision as to whether an applicant is unfit will be made by the Head of Housing.

13. **Management Orders**

Where there is no prospect of an HMO being licensed, the Act requires that the Council use its Interim Management Order (IMO) powers. This enables the council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. In appropriate cases this can be extended via a Final Management Order (FMO) to five years, with the council also having the power to grant tenancies. FMO may be applied beyond the five year period.

14. **Licence Fee**

Section 63 (3) of the Act states that the authority may require the application to be accompanied by a fee fixed by the authority.

Paragraph (7) of this section allows Local Housing Authorities when fixing fees under this section, to take into account all costs incurred in carrying out their function to grant licences for certain HMO's. The fees for licensing and re-licensing are calculated using a matrix which includes Officer time, as well as administrative costs. The Council will require an application for a licence to be accompanied by a fee. Licence fees are reviewed annually and published on the Council's website.
15. **Conditions of the Licence**

Each licence must contain the following standard conditions:

- The licence holder must supply, for the Council's inspection, a valid current gas-safety certificate, obtained in regard to the property which is renewed annually
- The licence holder must keep electrical appliances and furniture made available by the landlord in the house in a safe condition and to submit, on demand, a declaration of their safety
- The licence holder must ensure that smoke alarms are correctly positioned and installed in the house, and to keep them in proper working order. They will submit, on demand, a declaration of their condition and location in the property.
- To supply to the occupants a written statement of the terms on which they occupy it.

**Minimum sleeping room sizes:**

a) 6.51 m² for one person over 10 years of age  
b) 10.22 m² for two persons over 10 years of age  
c) 4.64 m² for one child under the age of 10 years

The licence holder must comply with any scheme which is provided by the local housing authority to the licence holder and which relates to the storage and disposal of household waste at the HMO pending collection.

The Council has the power to include further conditions as necessary that regulate the management, use and occupation of the house and the condition and contents of the house. These conditions will be specific to the circumstances found in each individual HMO.

16. **Breach of Conditions**

Where a person managing or having control of an HMO permits another person to occupy the house and this results in the house being occupied by more households or persons than is authorised by the licence, the person in control or managing will be liable on summary conviction to a fine up to level 5 on the standard scale or a civil penalty (see Civil Penalty Procedure at Annex 1).

A person managing or having control of an HMO that is required to be licensed under this scheme, will be committing an offence if he/she does not licence the HMO, and will be liable, on summary conviction, to a fine up to level 5 on the standard scale or a civil penalty.

The licence holder or a person, on whom restrictions or obligations under a licence have been imposed, will have committed an offence if he/she fails to comply with any of the conditions on the licence and will be liable on summary conviction to a fine up to level 5 on the standard scale or a civil penalty.

17. **Ending the Licence**

There are a number of ways in which the licence can be ended. However, if the licensed property ceases to require a licence (because it no longer falls within the mandatory, discretionary or selective licensing regimes), the licence continues in force.
This is important because the conditions applicable to the licence will continue and will have to be adhered to by the licence holder. The licence can only end in one of the following ways:

- **Passage of time** - The licence expires on the date stated within it, unless a new licence is granted following a fresh application.

- **Death of the licence holder** - The licence ceases to be in force upon the death of the licence holder. However, for a period of 3 months from the date of the licence holder’s death, the property is to be treated as if, on the date of death, a Temporary Exemption Notice (TEN) had been served (see Temporary Exemption Notices see appendix 2). This ensures that, although the licence is no longer in force, there is no immediate threat of enforcement proceedings.

- During the initial 3 months, the personal representatives of the licence holder can request the service of a further TEN, to take effect as the first period of exemption comes to an end. If the Council refuses to serve a further TEN, they must comply with the notice provisions explaining their reasons (see Appendix 2 for further details).

- **Sale of the property** - If the property is sold and the licence holder is no longer the landlord or manager of the property, the licence is no longer effective (since licences are non-transferable). The new owner will need to make arrangements to apply for a new licence or a Temporary Exemption Notice (see Appendix 2), as the case may be.

18. **Revocation**
   The Council may revoke a licence (i.e. bring it to an end before it expires by passage of time) in the following circumstances:

   a. With the agreement of the licence holder
   b. There has been serious or repeated breaches of a licence condition
   c. The licence holder is no longer a fit and proper person to hold the licence e.g. in receipt of a Banning Order
   d. The management of the property is no longer being carried out by persons who are fit and proper persons to be involved in its management
   e. In respect of a property subject to selective licensing, a HMO license has been granted (allowing for the selective licence to be revoked)
   f. The property ceases to fall within the mandatory, discretionary or selective licensing regimes and the Council considers, were a new application to be made for a licence, the structure of the property is such that a new licence would not be granted

A licence is non-transferable and applies to the named licence holder at the given address only. If the property is sold or transferred or the licence holder changes, a new application will be necessary and fees will be charged in accordance with Officer time spent processing this.
19. **Rights of Appeal**
Where the Council has refused an application for a licence the applicant, or any relevant person, may appeal to the First-Tier Tribunal Property Chamber (Residential Property) against the decision within 28 days of the date specified in the appropriate notice.

Where the Council has granted a licence the applicant, or any relevant person, may appeal to the First-Tier Tribunal Property Chamber (Residential Property) against the decision or the conditions that apply, within 28 days of the date specified in the appropriate notice.

Where the Council has made a decision to either vary or revoke a licence, or has refused to vary or revoke a licence, the licence holder, or any relevant person, may appeal to the First-Tier Tribunal Property Chamber (Residential Property) against the decision within 28 days of the date specified in the appropriate notice.

The First-Tier Tribunal Property Chamber (Residential Property) may allow an appeal outside of these periods if it is satisfied there is a good reason.

Contact details: First-tier Tribunal (Property Chamber) Residential Property, Havant Justice Centre, The Court House, Elmleigh Road, Havant, Hampshire, PO9 2AL
Telephone No: 01243 779394

20. **Unlicensed HMOs**
Unlicensed HMOs may be identified during pro-active investigations by the Council or brought to the attention of the Council. Where such premises are identified, formal action such as civil penalty/legal proceedings/rent repayment order may be considered and the Landlord will be invited to make representations. They will also be encouraged to make a Licence application as soon as possible. Licences will only be issued following receipt of a valid application and to ‘fit and proper’ persons.

Landlords who fail to reapply for a licence in properties that require a renewal of their licence or fail to provide the required information or the appropriate fee within 28 days may also be investigated for failing to licence a licensable property.

All practical steps will be taken to assist the owner of the property to satisfy the licensing requirements

The Council or tenant may make an application for a Rent Repayment Order (see section 10 of the Private Sector Housing Enforcement Policy) to the First-Tier Tribunal (Property Chamber (Residential Property), where a landlord has failed to license a property requiring a licence under the Housing Act 2004.
Annex 2 - Appendices

Appendix 1

Housing Act 2004 Section 254
Meaning of "house in multiple occupation"


Appendix 1.1

SCHEDULE 14 Section 254

BUILDINGS WHICH ARE NOT HMOS FOR PURPOSES OF THIS ACT (EXCLUDING PART 1)


Section 258

HMO’s; persons not forming a single household

Appendix 2

Temporary Exemption Notices

The Council may, if it thinks fit, serve a Temporary Exemption Notice (TEN) where a person who is required to be licensed notifies the Council that they propose to take steps to secure that the property is no longer required to be licensed. The TEN is served on that person. A TEN may also be used on death of a licensee/sale of a property.

The TEN exempts that property from being licensed for a period of 3 months (from the date the notice is served). In exceptional circumstances, the Council may serve a second TEN, that last for a further 3 months and that takes effect when the first TEN ends. No further TEN can be served after the expiry of the second TEN.

If the Council decide not to serve a TEN, they must serve on the person requesting the TEN a notice informing them of:

a. Their decision
b. The reasons for it and the date on which it was made
c. The right to appeal against that decision to the FFT (Property Chamber)
d. The time limit for appealing (28 days from the date the decision was made)

Where a TEN is not served, it is a defence to any enforcement proceedings (see page 28) for failing to hold a licence that the time limit for appealing is still running or, as the case may be, an appeal is being pursued.
## Appendix 4

### Risk Assessment Form

**H.H.S.R.S. RISK ASSESSMENT FORM**

**HMO & SINGLE HOUSEHOLD PROPERTIES**

### PROPERTY DETAILS

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**Date of Assessment:**

**OFFICER:**

**YEAR VISIT REQUIRED:**

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<td>4) Number of Occupants</td>
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</tr>
</tbody>
</table>

| Total |  


Appendix 5

Guidance to HMO Amenity Standards


Appendix 6

Information on Disclosure and Spent Offences

Under the Housing Act 2004, licence holders and managers of houses in multiple occupation must be fit and proper persons to undertake the responsibilities of running them. In order to assist the Council in making proper assessment of your suitability, you are asked to provide details about previous convictions for criminal offences. Under the Rehabilitation of Offenders Act 1974, you are not required to provide details about previous convictions which are "spent". A conviction becomes spent after a certain length of time, which changes depending upon the sentence and your age at the time of conviction. (The periods are halved if the conviction took place when you were aged 17 or less).

<table>
<thead>
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<th>Period of good conduct needed for conviction to be spent</th>
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</thead>
<tbody>
<tr>
<td>6 months to 2½ years imprisonment</td>
<td>10 years</td>
</tr>
<tr>
<td>Less than 6 months' imprisonment</td>
<td>7 years</td>
</tr>
<tr>
<td>Borstal Training</td>
<td>7 years</td>
</tr>
<tr>
<td>A fine or Community Services Order</td>
<td>5 years</td>
</tr>
<tr>
<td>Probation Order, Conditional Discharge, or Bind Over</td>
<td>1 year</td>
</tr>
<tr>
<td>An Absolute Discharge</td>
<td>6 months</td>
</tr>
</tbody>
</table>

**Note:**

If a person is sentenced to more than 2½ years in prison, his/her conviction can never become "spent".

59
BANNING ORDERS – POLICY AND PROCEDURE

Banning Orders
1. Section 15(1) of the Housing and Planning Act 2016 provides for Councils in England to apply for a Banning Order against a person who has been convicted of a Banning Order offence.

2. A Banning Order is an Order by the First-Tier Tribunal (Property Chamber (Residential Property) that bans a landlord from:
   - Letting housing in England
   - Engaging in English letting agency work
   - Engaging in English property management work or
   - Doing two or more of those things

3. A landlord subject to a Banning Order is also unable to hold a licence for a HMO) and their property may also be subject to a Management Order.

4. Appendix one outlines banning order offences.

5. There are some conditions on what constitutes a banning order offence; these are set out in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017:
   - If a person has received an absolute and/or conditional discharge for a relevant housing offence then that offence cannot be regarded as a Banning Order offence (items 1-5 of the Schedule of offences).
   - If a person has committed a serious criminal offence they must have been sentenced in the Crown Court in order for that offence to be regarded as a Banning Order offence (items 7-14 of the Schedule).
   - Certain offences are only Banning Order offences where the offence can be linked to the tenant or other occupier or the property owned or rented out by the landlord.

6. Decision to apply for a Banning Order:
The Council will pursue a Banning Order for the most serious offenders only and the decision will be made by the Head of Housing. Any decision will be made on a case by case basis but the following factors will be taken into account:

7. The seriousness of the offence
The Council will consider the sentence imposed by the Court in respect of the Banning Order offence itself. The more severe the sentence imposed by the Court, the more appropriate it will be for a Banning Order to be made. Consideration will be given as
to whether the offender received a maximum or minimum sentence or received an absolute or conditional discharge.

8. **Previous convictions/rogue landlord database**
The Council will check the Rogue Landlord Database in order to establish whether a landlord has committed other Banning Order offences or has received any civil penalties in relation to Banning Order offences. A Banning Order may be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities.

9. The Council will also consider the likely effect of the Banning Order on the person and anyone else that may be affected by the Banning Order. These factors include;

- The potential harm that may be caused to the tenant if no Banning Order were imposed
- The proportionality of the punishment depending on the severity and previous offending
- The length of the ban to act as a deterrent from future offending
- Deterring others from committing similar offences

10. Section 198 of the Housing and Planning Act 2016 provides that the Council can require a landlord to provide information for the purpose of enabling it to decide whether to apply for a Banning Order. This could include requiring a landlord to provide information on all properties in his/hers ownership.

11. It is an offence for a landlord not to comply with this request, unless they can provide a reasonable excuse. It is also an offence to provide information that is false or misleading. Failure to provide information or providing false or misleading information is punishable on summary conviction to a fine.

**Procedure for making a Banning Order**

12. The Council will issue a Notice of Intent within 6 months of conviction of an offence, then:

- The landlord has 28 days to make representations
- The Council will consider representations during the Notice period
- The Council will decide whether to issue the Banning Order

13. If the Council proceeds an application will be made to the First-Tier Tribunal.

14. The First-Tier Tribunal (Property Chamber (Residential Property)) will issue a Banning Order if it minded to do so and determine the length of the Banning Order.

15. A Banning Order must specify the duration of the Order and it must last for at least 12 months. A breach of a Banning Order, upon summary conviction, is punishable by either a fine, or imprisonment, for a period not exceeding 51 weeks or both.
16. Only the First-Tier Tribunal (Property Chamber (Residential Property) can revoke or vary a Banning Order - section 20 Housing and Planning Act 2016.

17. A landlord is prevented from transferring the property to certain persons whilst the Banning Order is in force including family members, business partners and their associates or a corporate body for which the landlord is an officer.

18. A Banning Order does not invalidate any tenancy agreement held by occupiers in the property, regardless of whether the agreement was issued before or after the Banning Order was made. This is to ensure an occupier of the property does not lose their rights under the terms and conditions of their tenancy agreement.

19. A landlord may appeal to the Upper Tribunal against the decision of the First-Tier Tribunal (Property Chamber (Residential Property) to make the Banning Order under Section 53 of the Housing and Planning Act 2016. An appeal cannot be made unless permission is granted by either the First-Tier Tribunal (Property Chamber (Residential Property) or the Upper Tribunal.

1. The Ministry of Housing, Communities & Local Government ‘ Banning Order Offences under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities’ encourages local housing authorities to publicise successful Banning Orders for individual landlords. As recommended in this guidance document, the Council will have regard to Ministry of Justice guidance which sets out the factors a Council should consider when deciding whether to publicise sentencing outcomes.

2. **Breach of Banning Orders**
   
   Breach of a Banning Order is a criminal offence. Where a landlord or agent breaches a Banning Order:
   
   - S/he can be prosecuted by the Council (using its powers under section 222 Local Government Act 1972) or the police. If convicted s/he can be imprisoned for a period not exceeding 51 weeks and/or fined
   - The Council can impose a civil penalty of up to £30,000 as an alternative to prosecution see Annex 1 of the Private Sector Housing Enforcement Policy.
   - If the breach continues after conviction, the person commits a further offence and is liable on summary conviction to a fine not exceeding one-tenth of level 2 on the standard scale for each day or part of a day on which the breach continues.

3. The Council can also apply for a Management Order in respect of a HMO, in order to protect the health, safety or welfare of residents.

4. In addition, a Council or a tenant (or licensee of the landlord) can apply to a First-Tier Tribunal (Property Chamber (Residential Property) for a Rent Repayment Order where a landlord has breached a Banning Order.
## Annex 3 – Appendix 1

### Banning Order Offences under Schedule 1 of the Housing and Planning Act 2016 (Banning Order Offences) Regulations [2017]

<table>
<thead>
<tr>
<th>Relevant housing offences Protection from Eviction Act 1977</th>
<th>Section 1(2), (3) and (3A)</th>
<th>Unlawful eviction and harassment of occupier</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal Law Act 1977</td>
<td>Section 6(1)</td>
<td>Violence for securing entry</td>
</tr>
<tr>
<td>Housing Act 2004</td>
<td>Section 30(1)</td>
<td>Failing to comply with an Improvement Notice</td>
</tr>
<tr>
<td>Housing Act 2004</td>
<td>Section 32(1)</td>
<td>Failing to comply with a prohibition order</td>
</tr>
<tr>
<td>Housing Act 2004</td>
<td>Section 72(1), (2) and (3)</td>
<td>Offences in relation to licensing of Houses in Multiple Occupation</td>
</tr>
<tr>
<td>Housing Act 2004</td>
<td>Section 95(1) and (2)</td>
<td>Offences in relation to licensing of houses under Part 3 of the Act</td>
</tr>
<tr>
<td>Housing Act 2004</td>
<td>Section 139(7)</td>
<td>Contravention of an overcrowding notice</td>
</tr>
<tr>
<td>Housing Act 2004</td>
<td>Section 234(3)</td>
<td>Failure to comply with management regulations in respect of Houses in Multiple Occupation</td>
</tr>
<tr>
<td>Housing Act 2004</td>
<td>Section 238(1)</td>
<td>False or misleading information</td>
</tr>
<tr>
<td>Regulatory Reform (Fire Safety) Order 2005</td>
<td>Article 32 paragraphs (1) and (2)</td>
<td>Fire safety offences</td>
</tr>
<tr>
<td>Health and Safety at Work Act 1974</td>
<td>Section 33(1)(c) where a person contravenes Regulation 36 of the Gas Safety (Installation and Use) Regulations 1998(6)</td>
<td>Gas safety offences- duties on landlords</td>
</tr>
</tbody>
</table>

### Immigration Offences

Letting to someone disqualified from renting as a result of their immigration status, resulting in an offence under Part 3 of the Immigration Act 2014 (as amended)

<table>
<thead>
<tr>
<th>Immigration Act 2014</th>
<th>Section 33A(1) and (10)</th>
<th>Residential tenancies – landlord offences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Immigration Act 2014</td>
<td>Section 33B(2) and (4)</td>
<td>Residential tenancies – agent offences</td>
</tr>
</tbody>
</table>
Serious Criminal Offences -
These are serious criminal offences for which an offender may have received a custodial sentence upon conviction.

<table>
<thead>
<tr>
<th>Act</th>
<th>Section(s)</th>
<th>Offence Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fraud Act 2006</td>
<td>Section 1(1), Section 6(1), Section 7(1), Section 9(1), Section 11(1),</td>
<td>Fraud offences</td>
</tr>
<tr>
<td></td>
<td>Section 12(2)</td>
<td></td>
</tr>
<tr>
<td>Criminal Justice Act 2003</td>
<td>Schedule 15</td>
<td>Specified violent and sexual offences</td>
</tr>
<tr>
<td>Misuse of Drugs Act 1971</td>
<td>Section 8, Section 9, Section 9A(1) and (3), Section 18(1), (2), (3) and (4), Section 19, Section 20, Section 21</td>
<td>Offences involving the misuse of drugs</td>
</tr>
<tr>
<td>Proceeds of Crime Act 2002</td>
<td>Section 327</td>
<td>Concealing criminal property</td>
</tr>
<tr>
<td>Proceeds of Crime Act 2002</td>
<td>Section 328</td>
<td>Arrangements</td>
</tr>
<tr>
<td>Proceeds of Crime Act 2002</td>
<td>Section 239</td>
<td>Acquisition, use and possession</td>
</tr>
<tr>
<td>Protection from Harassment Act 1997</td>
<td>Section 2</td>
<td>Offence of harassment</td>
</tr>
<tr>
<td>Protection from Harassment Act 1997</td>
<td>Section 2A</td>
<td>Offence of Stalking</td>
</tr>
<tr>
<td>Anti-social behaviour, Crime and Policing Act 2014</td>
<td>Section 30</td>
<td>Breach of criminal behaviour order</td>
</tr>
<tr>
<td>Anti-social behaviour, Crime and Policing Act 2014</td>
<td>Section 48</td>
<td>Failure to comply with Community Protection Notice</td>
</tr>
<tr>
<td>Damage Act 1971</td>
<td>Section 1(1)</td>
<td>Destroying or damaging property</td>
</tr>
<tr>
<td>Criminal Damage Act 1971</td>
<td>Section 2</td>
<td>Threats to destroy or damage property</td>
</tr>
<tr>
<td>Criminal Damage Act 1971</td>
<td>Section 3</td>
<td>Possessing anything with intent to destroy or damage property</td>
</tr>
<tr>
<td>Theft Act 1968</td>
<td>Section 7</td>
<td>Theft</td>
</tr>
<tr>
<td>Theft Act 1968</td>
<td>Section 9</td>
<td>Burglary</td>
</tr>
<tr>
<td>Theft Act 1968</td>
<td>Section 21</td>
<td>Blackmail</td>
</tr>
<tr>
<td>Theft Act 1968</td>
<td>Section 22</td>
<td>Handling stolen goods</td>
</tr>
</tbody>
</table>
Minimum Energy Efficiency Standards

1. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (amended 2016) requires that landlords:
   - Have an Energy Performance Certificate (EPC) and provide a copy to tenants whenever they rent their properties out and
   - Ensure all rented homes have at least an E rating on the EPC:

2. Since 1 April 2016 tenants can request energy efficiency measures and landlords may not unreasonably refuse consent.
3. From 1 April 2018 – all tenancies starting new or renewing after this date MUST have at least an E-rating on the property’s EPC by law.
4. From 1 April 2020 – all other privately rented homes (i.e. those on continued tenancies) MUST have at least an E-rating on the EPC to be lawfully let out.
5. The Regulations apply to all properties that are:
   - Legally required to have an EPC, and
   - On an assured, regulated or agricultural tenancy type.

6. At present, improvements can only be required if they can be made using Green Deal, Energy Company Obligation (ECO) or third party grant funding (improvements to non-domestic property must be made if they meet a 7 year payback test). It is a Landlord’s duty to ensure the property complies with the regulations.

7. Compliance with the Regulations means landlords improving a property to **EPC band E or registering an exemption** where applicable.

8. **Exemptions**
   Exemptions are available where it is not possible or practical to get the property to EPC band E. The majority of exemptions are valid for 5 years.
   Exemptions are available where:
   - A recommended measure is not a relevant energy efficiency improvement because it cannot be wholly financed at no cost to the landlord
   - All the relevant energy efficiency improvements have been installed and the property remains below an E;
   - Wall insulation (cavity wall, external wall or internal wall insulation) is not appropriate for the property due to its potential negative impact on the fabric or structure of the property;
   - Landlord cannot obtain required consents/permissions for improvement work, or consent is provided with unreasonable conditions;
   - The landlord has obtained written advice from a qualified expert that the measures will reduce a property’s value by 5%;
   - The landlord has only recently become the landlord (six month exemption).
9. Appendix 1 shows a Minimum Level of Energy Efficiency Provisions Flow Chart

10. Enforcement
The Council has the power to check for different forms of non-compliance with the Regulations including:

- Whether the property is sub-standard and let in breach of the regulations
- Where the landlord has registered any false or misleading information on the PRS Exemptions Register,
- Has failed to comply with a Compliance Notice (see section 12 below).

11. The Exemptions Register
This enables landlords to register exemptions against relevant exemption types and upload supporting evidence. This:

- Provides access to local authorities to support monitoring and enforcement;
- Allows members of the public to access high level (non-personal) data related to exemptions; and
- Enables local authorities to publish (non-personal) information related to breaches and penalties.

12. Compliance Notices
The Council may issue a Compliance Notice where it believes that a landlord may be in breach of the Regulations (currently or during past 12 months). A Compliance Notice may request either the original or copies of the following information:

- The EPC that was valid for the time when the property was let;
- Any other EPC for the property in the landlord’s possession;
- The current tenancy agreement used for letting the property;
- Any Green Deal Advice Report in relation to the property;
- Any other relevant document that the enforcement authority requires in order to carry out its compliance and enforcement functions.

13. The Compliance Notice may also require the landlord to register copies of the requested information on the Private Rented Sector Exemptions Register.

14. A landlord must comply with the Compliance Notice by sending the requested information to the Council and allow copies of any original documents to be taken. Failure to provide documents or information requested by a Compliance Notice, or failure to register information on the Private Rented Sector Exemptions Register as required, may result in a Penalty Notice being served (see section 1.16).

15. The Council may withdraw or amend the Compliance Notice at any time in writing, for example where new information comes to light. The Council may also use the documents provided by the landlord or any other information it holds to decide whether a landlord is in breach of the Regulations.

16. Financial Penalty
Where the Council 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
decision as to whether to impose a financial penalty will be made by the Head of Housing.

17. The maximum penalties are:

   a. Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, the Council 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 Council 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 Private Rented Sector Exemptions Register, the Council 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 Council may impose a financial penalty of up to £2,000 and may impose the publication penalty.

18. The Council may not impose a financial penalty under both paragraphs (a) and (b) above in relation to the same breach of the Regulations. But they may impose a financial penalty under either paragraph (a) or paragraph (b), together with financial penalties under paragraphs (c) and (d), in relation to the same breach. Where penalties are imposed under more than one of these paragraphs, the total amount of the financial penalty may not be more than £5,000. The maximum amount of £5,000 applies per property, and per breach of the Regulations (please see table below).

<table>
<thead>
<tr>
<th>Infringement</th>
<th>Penalty (less than three months in breach)</th>
<th>Penalty (three months or more in breach)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Renting out a non-compliant property</td>
<td>• Up to £2,000, and/or Publication penalty.</td>
<td>• Up to £4,000, and/or Publication penalty.</td>
</tr>
<tr>
<td>Providing false or misleading information on the PRS Exemptions Register</td>
<td></td>
<td>Up to £1,000, and/or Publication penalty</td>
</tr>
<tr>
<td>Failing to comply with a compliance notice</td>
<td></td>
<td>Up to £2,000, and/or Publication penalty</td>
</tr>
</tbody>
</table>

19. **Publication of Penalties**

The Council will publish details of the landlord’s breach on a publicly accessible part of the Private Rented Sector Exemptions Register. It will also decide how long to leave the information on the Register, but it will be available for view by the public for at least 12 months. Information cannot be published whilst a Penalty Notice is/could be reviewed or could/is being appealed.
20. **Penalty Notices**
The Council may serve a Penalty Notice (relating to a financial penalty, a publication penalty or both) on the landlord where they are satisfied that the landlord is, or has been in the last 18 months:

- In breach of the prohibition on letting sub-standard property (which may include continuing to let the property after 1 April 2020)
- In breach of the requirement to comply with a Compliance Notice
- Has uploaded false or misleading information to the Exemptions Register

21. The Penalty Notice may include a financial penalty, a publication penalty or both. A further Penalty Notice may be issued if the action required in the Penalty Notice is not taken in the time specified.

22. **Appeals & Reviews**
The Council may decide to review its decision to serve a Penalty Notice, for example, when new information comes to light.

23. A landlord also has the right to ask the enforcement authority to review its decision to serve a Penalty Notice. This request must be made in writing. The Council will consider everything the landlord has said in the request, and decide whether or not to withdraw the Penalty Notice.

24. The Council will withdraw the Penalty Notice if:

- It is satisfied that the landlord has not committed the breach set out in the Penalty Notice
- Although the Council believes the landlord committed the breach, it is satisfied that the landlord took all reasonable steps, and exercised all due diligence to avoid committing the breach, or
- it decides that because of the circumstances of the landlord’s case, it was not appropriate for the Penalty Notice to be served

25. If the Council does not decide to withdraw the Penalty Notice, it may decide to waive or reduce the penalty to allow the landlord additional time to pay, or modify the publication penalty, and will explain the appeals process and how financial penalties can be recovered.

26. If on review, the Council decides to uphold the Penalty Notice, the landlord may then appeal to the First-Tier Tribunal Property Chamber (Residential Property) against that decision.
Annex 4 - Appendix 1

Compliance and Enforcement Flow Chart

Local Authority (LA) checks if property appears to be in breach of Regulations where:
- a) from 1 April 2018 a property has been privately let to new or existing tenant; or
- b) from 1 April 2020 a property is privately let; or
- c) the landlord has registered an exemption on the PRS Exemptions Register and provided false or misleading information.

- Property in compliance with Regulations
  - No action taken

- Property in breach of Regulations
  - LA serves compliance notice on landlord requesting information where a property appears in breach of
  - Property in breach or landlord does not comply with compliance notice
    - LA satisfied that landlord is in breach of Regulations. May serve penalty notice on landlord and publish details of the breach
      - Landlord accepts penalty notice
        - Penalty paid
      - LA review finds in landlords favour
        - Penalty quashed
    - Landlord does not agree with penalty notice
      - Landlord may request review of penalty notice decision
        - Enforcement authority upholds penalty notice
          - Landlord may appeal penalty notice decision to First-tier Tribunal
            - Tribunal rejects landlord appeal
              - Penalty affirmed
                - Penalty paid
          - Tribunal finds in landlords favour
            - Penalty quashed
      - Penalty not paid and debt recovery action taken
        - Enforcement authority recovers unpaid debt
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