Private Sector Housing Enforcement Policy

The Private Sector Housing Enforcement Policy sets out the general principles, relevant legislation and guidance, which will be applied in relation to enforcement action taken by Dartford Borough Council in respect of private housing in the borough of Dartford.

August 2026

DARTFORD
BOROUGH COUNCIL

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1. 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 Dartford Borough Council ('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 document sets out what owners, landlords, their agents or any other person involved in the letting or management of privately rented accommodation, and tenants of private rented sector properties, can expect from officers when dealing with non-compliance.

1.3. It provides guidance for officers within the Private Sector Housing ("PSH") team to ensure enforcement action is taken in line with the Regulators Code and the principles of good regulation where required by The Legislative and Regulatory Reform (Regulatory Functions) Order 2007.

1.4. It also provides guidance to ensure enforcement action is taken in line with the provisions of the Renters' Rights Act (RRA) 2025 and mandatory guidance to local authorities, as the S107 RRA 'duty to enforce landlord legislation' sits outside of the Regulators' Code (see paragraph 1.8), and its provisions do not apply. Part 1 of the Housing Act 2004 is also outside of the code's scope.

1.5. All enforcement action taken will be in accordance with relevant statutory Codes of Practice, Council procedures and protocols, and official guidance from central and local government bodies.

1.6. This latest version of the Policy has been updated to incorporate the enforcement powers and duties introduced by the Renters' Rights Act 2025 (RRA 2025) and June 2026 update to the Housing Health & Safety Rating System (HHSRS) while continuing to apply to all other relevant housing and environmental legislation enforced by the Council's Private Sector Housing Team.

1.7. Section 3 of the Housing Act 2004 imposes a duty on Councils to keep housing conditions in their district under review with a view to identifying any action that may need to be taken by them.

1.8. Section 107 of the Renters' Rights Act 2025 imposes a duty on the Council to enforce the Landlord Legislation. The Landlord Legislation is comprised of the following:

- Chapters 3 and 6 of Part 1 of the Renters' Rights Act 2025
- Part 2 of the Renters' Rights Act 2025
- Sections 1 and 1A of the Protection from Eviction Act 1977, and
- Chapter 1 of Part 1 of the Housing Act 1988.

1.9. Section 110 of the Renters' Rights Act 2025 imposes a duty on the Council to report to the Secretary of State on the exercise of its functions under the Landlord Legislation.

1.10. In this policy, the term 'landlord' should be read as including letting agents, managing agents, licensors, property owners, directors of corporate landlords and any other person involved in the letting or management of privately rented accommodation.

1.11. In this policy, the terms 'House of Multiple Occupation' or 'HMO' are as defined by the Housing Act 2004.

1.12. Certain private sector housing enforcement functions are "regulatory functions" for the purpose of the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 and are therefore subject to the Regulators' Code.

The following pieces of legislation are subject to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007:

- Parts 8, 9 and 10 of the Housing Act 1985
- Part 8 of the Housing Act 1996
- Parts 2 to 5 of the Housing Act 2004

Where enforcement falls within a regulatory function, the Council will ensure that this enforcement activity is proportionate, consistent, risk-based and transparent, providing clear information and engagement opportunities for those we regulate. Where specific statutory guidance directs a different approach, the Council will record the reasons for departing from any particular Code provision. The Regulators' Code can be found at https://www.gov.uk/government/publications/regulators-code.

1.13. 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

1.14. 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
- UK GDPR
- Human Rights Act 1998
- Regulation of Investigatory Powers Act 2000
- Criminal Justice and Police Act 2001

- Criminal Justice Act 2003
- Legislative and Regulatory Reform Act 2006
- Regulatory Enforcement and Sanctions Act 2008
- Equality Act 2010

During all investigations into possible offences and in deciding on enforcement action, the Council will have regard to the general principles set out in the Code for Crown Prosecutors:

“The Evidential Test – Stage one of the code is the Evidential Test. To pass this stage, the council must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction. It must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage will not proceed, no matter how serious or sensitive it may be.

The Public Interest Test – Stage two of the code is the Public Interest Test. A case passing the Evidential Test is not automatically prosecuted. However, a prosecution will usually take place unless the council is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour.”

1.15. 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.

1.16. Relevant intelligence relating to regulatory matters will be shared with other regulatory bodies and enforcement agencies. Other bodies may include the Police, the Health and Safety Executive, Kent County Council (including Trading Standards), Immigration Services, Kent Fire & Rescue Service (KFRS), government agencies and the Council’s internal departments such as Planning, Building Control and the Community Safety Unit.

1.17. The Housing Act 2004 and the Regulatory Reform (Fire Safety) Order 2005 place duties on both the Council and KFRS to enforce fire safety provisions within housing in the borough. The Housing Act 2004 (Section 10) places a duty on local authorities to consult with the Local Fire Authority where they intend to take action to remedy a fire safety hazard found in any HMO or common parts of a building containing one or more flats. Close working arrangements alongside the legislation helps to promote efficient use of resources, identify specific areas for inspection and enforcement and allow for appropriate monitoring and reviewing arrangements. It also provides for urgent or complex requests for assistance from either party.

2. GENERAL PRINCIPLES

2.1. The Council's aim is to improve the housing conditions and tenancy rights in the private sector by the provision of advice and education. However, there are occasions where these methods are not successful or appropriate in improving conditions or enforcing rights and it may be necessary to take formal 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, professional judgement as well as relevant legislation, guidance and policies 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 decisions will be fair, independent and objective. They will not be influenced by ethnicity, national origin, gender or gender identity, religion or belief, political views, disability, age or sexual orientation of any party involved. Decisions will not be affected by improper or undue pressure from any source. Where relevant, the Council will consider the views of any injured party or relevant person in assessing harm, loss, and the significance of non-compliance.

2.5. The Council expects landlords providing accommodation to be aware of the statutory obligations placed upon them, recognising their responsibility for the health, safety and welfare of occupants.

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) Regulations 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 Amendment Regulations 2022
- 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 2015 (amended)
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
- Regulator's Code of Practice 2014
- The Housing & Planning Act 2016 (Banning Order Offences) Regulations 2017
- Deregulation 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
- Renters Rights Act 2025

4. SCOPE AND SERVICE STANDARDS

4.1. The Private Sector Housing Team inspect residential properties in the private sector and non-council owned social housing to ensure they are safe and legally compliant. These will include HMOs, single dwellings and empty properties. 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. Tenants are required to ensure they have taken appropriate steps to inform their landlord of any defects (usually in written form) and ask for these to be rectified within a reasonable period from the date of the letter (in emergency situations, this may not be required). Should the landlord fail to carry out repairs or offer an acceptable response, or the complainant has already followed this process prior to contacting the Council, then the case will be passed to a Private Sector Housing Officer for further investigation and appropriate action.

4.3. The Council will ensure that our resources are targeted where they will be most effective and that intelligence and risk assessment informs all aspects of our approach to regulatory activity, including:

- Data collection and other information requirements
- Inspection programmes
- Advice and support programmes
- Enforcement activity and sanctions.

The Council will focus our efforts on property where intelligence and risk assessment show a higher likelihood of non-compliance, or which pose a more serious risk.

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 routinely be undertaken where there are only low hazards found; with the exception of Hazard Awareness Notices.

4.5. In instances where the Council receives complaints from housing association (HA) tenants requesting action against their landlord, residents will be encouraged to follow the internal complaints process of the HA but in addition to this, the Council will take enforcement action as appropriate.

4.6. Leaseholder Complaints

The Council may receive complaints from leaseholders requesting assistance in taking action against other leaseholders or freeholders. Enforcement action will be limited to failure to licence an HMO enforcement, Category 1 hazards and medium Category 2 hazards, generally where the leasehold flat is tenanted.

In all other situations, for example, civil disputes between freeholder and leaseholder, the leaseholder will be redirected to The Leasehold Advisory Service.

4.7. 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 be suitable.

4.8. Houses in Multiple Occupation (HMOs)

The Houses in Multiple Occupation (HMO) Policy is a separate policy which sets out the housing standards a House in Multiple Occupation (HMO) is required to meet, the licensing requirements for HMOs and the Council's enforcement approach.

5. INVESTIGATORY POWERS AND POWERS OF ENTRY

5.1. In addition to the Council's informal and formal powers of enforcement, there are investigatory powers relating to the collection of information and relating to the entry of premises including, but not limited to, the powers detailed below.

5.2. Power to Investigate

Section 114 of the Renters' Rights Act 2025 gives the Council power to issue a notice to a relevant person to require the person to provide specified information to the Council.

This notice may be given to any person with an estate or interest in the land; the licensor; their agents; or a marketer of a property. It may be given in regard to any offence under the following legislation:

- Sections 1 and 1A of the Protection from Eviction Act 1977;
- Chapter 1 of Part 1 of the Housing Act 1988;
- Section 83(1) or 84(1) of the Enterprise and Regulatory Reform Act 2013;
- Sections 21 to 23 of the Housing and Planning Act 2016;
- Chapter 3 of Part 1 and Part 2 of the Renters' Rights Act 2025.

- Failure to comply with a Section 114 notice is an offence under Section 131 of the Renters' Rights Act 2025, as is being obstructive and intentionally or recklessly making false or misleading statements in response to a Section 114 notice.

Section 115 of the Renters' Rights Act 2025 permits the Council when it reasonably suspects a breach of the Rented Accommodation legislation to issue a notice to any person requiring them to provide the information specified. This may only be done to investigate whether a breach has occurred under the Rented Accommodation legislation, or to determine the amount of a penalty. For the purposes of this section, the Rented Accommodation legislation means:

- Sections 1 and 1A of the Protection from Eviction Act 1977;
- Chapter 1 of Part 1 of the Housing Act 1988;
- Parts 1 to 4 and 7 of the Housing Act 2004;
- Section 83(1) or 84(1) of the Enterprise and Regulatory Reform Act 2013;
- Sections 21 to 23 of the Housing and Planning Act 2016;
- Chapter 3 of Part 1 and Part 2 of the Renters' Rights Act 2025.

Where an individual has not complied with a Section 115 notice, Section 116 of the Renters' Rights Act 2025 enables the Council to make an application to the Court to enforce the provisions of the notice and seek reimbursement for the costs of the application.

Section 131 of the Renters' Rights Act 2025 provides that, in addition to the offence of non-compliance with a Section 114 notice, it is an offence for an individual to obstruct a Council officer seeking to exercise their powers without reasonable excuse. It is also an offence to fail to give an officer any additional assistance or information which they reasonably require without reasonable excuse.

Section 235 of the Housing Act 2004 allows the Council to issue a notice to relevant individuals, including occupiers, directing them to provide specified documents under their control for the purpose of investigating whether an offence has been committed under Parts 1 to 4 of the Housing Act 2004 or exercising the Council's functions under Parts 1 to 4 of the Housing Act 2004.

Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 also permits the Council to issue a notice to an occupier, manager, or individual with an interest in the land to compel them to provide the Council with information on the nature of their interest and the names and addresses of current occupiers and of any others with an interest in the land.

5.3. Entry and seizure

In circumstances where access to premises or records is necessary to carry out an investigation, the Council may use statutory powers of entry and, where permitted, seize relevant documents or materials.

The Renters' Rights Act 2025 introduces enhanced investigatory powers enabling authorised officers to obtain documents, access premises, and secure evidence for enforcement purposes. These powers support the Council in determining whether landlord legislation has been breached and allow officers to act swiftly where documentation or access is obstructed or at risk of destruction. These are:

- Entry to business premises for documents (without warrant) (s118) - permits Council officers to enter business premises of relevant people (including landlords, letting agents, and marketers) if it is necessary for the production or seizure of documents under section 122 - 123 Renters' Rights Act 2025. This power will be exercised without a warrant.

- Entry to other non-residential premises under warrant (s121) – Section 121 of the Renters' Rights Act 2025 allows a Council officer named in a warrant to enter premises used for a rental sector business which is not mainly accommodation if there are documents on the premises which the officer could require under section 122 or seize under section 123. In addition, for this power to be exercised, one of the following conditions must be met:

    - Entry to the premises has been or is likely to be refused, and the Council has provided notice of their intention to apply for a warrant to the occupier;
    - Entry to those documents on the premises would likely be concealed or interfered with if notice of entry were to be given;
    - Entry that no occupier is present, and waiting for their return might defeat the purpose of the entry.

- Power to require production of documents (s122) – Following a section 118 or section 121 Renters' Rights Act 2025 entry, section 122 allows an officer at any reasonable time to require a relevant person on the premises to produce any documents relating to the business and to take copies of them. This may only be exercised to ascertain whether there has been a breach of the Rented Accommodation legislation where an officer reasonably suspects there has been a breach or an offence; or to ascertain whether the documents may be required in evidence for proceedings regarding a breach or offence.

- Power to seize documents (s123) – Following a section 118 or section 121 Renters' Rights Act 2025 entry, section 123 authorises Council officers to seize and detain documents that the officer reasonably suspects may be required as evidence in proceedings relating to a breach of, or an offence under, the Rented Accommodation legislation. When doing so, the officer will provide evidence of the officer's identity and authority if reasonably practicable. The officer will take reasonable steps to inform the person from whom documents have been seized that they have been seized, and will provide that person with a written record of what has been taken.

- Entry to residential premises as part of an investigation (normally with 24 hours' notice) unless an exception applies (s126) – Permits the Council to enter residential premises used for a tenancy at a reasonable time if the officer considers it necessary as part of an investigation into potential offences specified in subsection 1(b). Where required, the Council will give at least 24 hours' notice of this to the occupier and individuals with an interest in the property as per subsection 1(c), detailing in writing why the entry is necessary and the suspected offences. Where there are occupiers found on the premises, the officer will provide evidence of the officer's identity and authority to at least one of the occupiers if reasonably practicable.

In addition, Section 239 of the Housing Act 2004 permits Council officers to enter, if necessary and at a reasonable time, a property in order to carry out a survey or examination. This may be done if any one of the following is met:

- To determine if any Part 1-4 enforcement functions should be exercised;
- The premises are part of an Improvement Notice or Prohibition Order;
- A management order is in force under Chapter 1 or 2 of Part 4 on the premises.

In most circumstances this power requires 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)

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.

However, if prior warning of entry is likely to defeat the purpose of the entry, for example, to establish whether an offence has been committed, the service of a s239 Notice may not be required or a warrant may be obtained.

In certain circumstances the Council may obtain a warrant to enter, by force if necessary, under Section 240 of the Housing Act 2004.

6. LEVELS OF ENFORCEMENT ACTION – GENERAL PRINCIPLES

6.1. Whilst formal enforcement action is a necessary and important part of the enforcement process, where appropriate, advice and guidance may be an alternative. The Council will comply with legislation by one or more of the following methods:

6.2. 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.

6.3. Informal enforcement

Where appropriate, the Council will endeavour to seek the desired improvements or protection of the public's health and safety or rights by working initially on an informal basis with those involved. Informal action may take a variety of forms, for example:

- Verbal
- Letters or e-mails
- Visits
- 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.

Enforcement may progress from advice or informal to formal enforcement.

While the Council will use its discretion on whether to carry out informal action for a Category 2 hazard, it does not need to provide written or verbal advice before commencing formal action.

For breaches and offences covered by the section 107 enforcement duty under the Renters' Rights Act 2025, there is no expectation that we will issue informal advice or warnings before taking formal action (civil penalties or prosecution), in line with MHCLG guidance.

6.4. Formal enforcement

Formal enforcement action will be taken at the outset where the circumstances justify an immediate regulatory response, including situations such as:

- Where a Category 1 hazard exists under HHSRS
- There is a risk to public health or an imminent risk of serious harm.
- There is a blatant or deliberate contravention of the law.
- There is a history of non-compliance or non-cooperation.
- There has been non-compliance with previous formal or informal action.
- Offences that relate to the licensing of HMOs or management regulations.
- Unlawful eviction or harassment is suspected.
- Breaches or offences of the landlord legislation covered by the enforcement duty under the RRA 2025. There is an actionable hazard which puts at risk a person’s health and safety.
- There are multiple hazards creating a more serious situation or overall lack of repair/maintenance of a property.

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 including Civil Penalties (see Section 8)
- Prosecution
- Rent Repayment Orders
- Management Orders
- Banning Orders
- Injunctive actions
- Enforced sales

6.5. 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.

6.6. 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 smoke/heat detectors, clearance of escape routes and 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 (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.

7. ENFORCEMENT POWERS – HOUSING ACT 2004

7.1. 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 was updated in June 2026 and this policy refers to enforcement action under the new version. 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 21 hazards present. Each identified hazard is then scored and this score (the hazard rating) places the hazard in one of 3 bands high, medium or low risk. Any hazards scoring within the high risk are classed as Category 1 hazards, whilst those falling in bands medium and low are known as Category 2 hazards.

7.2. 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.

7.3. 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

7.4. 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.

7.5. 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.

7.6. 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.

7.7. 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.

7.8. 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 vary.

7.9. 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, medium Category 2 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 or relates to common parts of a building including containing one or more flats, the Council will consult with the Fire Authority before taking any action as required under section 10 of the Housing Act 2004.

7.10. 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. Annex 1 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 medium Category 2 hazards may be enforced at the same time.
- Medium hazards – The general presumption is that action under the Housing Act 2004 will be considered unless another course of action is more appropriate. This includes Hazard No 11 damp and mould growth in line with national direction and good practice. The potential for the hazard to become a Category 1 hazard within a short duration (under 2 years).
- Exceptional circumstances – Where justified, the Private Sector Housing Manager may authorise action for Category 2 hazards outside the above criteria.

7.11. 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.

7.12. <u>Improvement Notices</u>

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 usually the Council will address all Category 1 and medium 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.

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.

7.13. <u>Prohibition Orders</u>

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 significant 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.

7.14. 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.

7.15. 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.

7.16. 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.

7.17. 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.

7.18. 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.

7.19. 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.

7.20. 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.

7.21. 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 7.23) and the consequences of non-compliance. Contact details will be provided so that the detail and requirements of the Notice can be explained.

7.22. 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.

7.23. 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 £490 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 Private Sector Housing Manager will make the final decision.

Examples of extenuating circumstances are where the landlord's providing accommodation for others and is:

- Vulnerable due to their personal circumstances
- Financially vulnerable

7.24. 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
- Issue a Financial Penalty
- Carry out the works in default
- Carry out the works in default and prosecute
- Carry out the works in default and issue a Financial Penalty
- Consider whether a formal caution is appropriate
- Rent Repayment Order (see Section 11)

7.25. 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 (unlimited maximum). The obligation to carry out the remedial works continues despite the fact that the period for completion has expired.

7.26. 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 (unlimited maximum) 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.

7.27. Civil and Financial Penalties

Local housing authorities may impose civil penalties as an alternative to prosecution for a range of offences in relation to housing conditions, management and licensing provisions. The maximum penalty was £30,000; however, the Renters' Rights Act 2025 has increased that amount to £40,000.

A new penalty of Failure by the responsible person to secure the removal of a Category 1 hazard at qualifying residential premises, other than the common parts of a building containing one or more flats, where it would have been reasonably practicable for them to do so (Section 6A of the Housing Act 2004), has been introduced by the Renters' Rights Act 2025 with a maximum fine of £7,000.

For more details see section 8.

7.28. 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 civil penalty or prosecution or in addition to these. This is a discretionary power.

Decisions to carry out works in default will be made in consultation with the Assistant Director of Housing. The cost to the landlord will usually be more than if the landlord carries out the works, because the Council will seek to recover all costs incurred, including the cost of the works, officer time, and its administrative costs. The debt 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% above the current Bank of England rate calculated on a daily basis.

In deciding whether works in default is an option, the Council will consider if:

- There is no prospect of the landlord carrying out the work for example the person responsible is absent or obstructive.
- there is an imminent risk to the health, safety or welfare of the occupants or neighbours.
- whether undue delay would put the occupier(s), visitors or the public at increased risk
- A prosecution is not appropriate.
- a prosecution has been brought and works have still not been carried out
- a Civil Penalty has been issued and works have still not been carried out

7.29. 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 7.38).

7.30. 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.

7.31. Interim Management Orders

The Council will make an Interim Management Order (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.

7.32. Final Management Orders

Final Management Orders (FMO) 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.

7.33. Special Interim Management Orders

Special Interim Management Orders (SIMO) 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.

7.34. 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).

7.35. Interim Empty Dwelling Management Orders

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 Empty Dwelling Management Order (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.

7.36. Final Empty Dwelling Management Orders

These may replace an Interim Empty Dwelling Management Order (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.

7.37. Injunctive Actions

In some circumstances the Council may seek a direction from the court (an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

7.38. Enforced Sales

If a charge has been recorded in the local land charges register, we may opt to recover the charged debt by way of an enforced sale of the property. This action combines the Housing Act 2004 and the Law of Property Act 1925. The criteria for this course of action are:

- The total debt on the property should normally exceed £500.
- The property is vacant and has been empty for more than one year.
- The necessary enforcement notices and documents have been served.

If the first two criteria are not met, then a compulsory purchase order or an empty dwelling management order may be considered. However, if an empty property is derelict and causing a major problem but does not meet the above criteria, the owner is missing or refusing to co-operate, the use of an enforced sale would still be considered providing there was justification for doing so.

Upon disposal of the property the Council will recover all debts and costs from the sale proceeds. The balance will be held by the Council until it is claimed by the owner.

7.39. 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:

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

- Sections 76 – 79 of the Building Act 1984 - Provides powers to tackle “dangerous and ruinous structures”.
- Section 29 of the Local Government (Miscellaneous Provisions) Act 1982 – Gives power to the Council to secure empty properties against access, where there is considered to be a danger to public health.
- Sections 79-82 of the Environmental Protection Act 1990 – Gives power to enforce remedy of a condition prejudicial to health or that constitutes a statutory nuisance.
- Section 17 and 289 of the Housing Act 1985 and Section 93 of the Local Government and Housing Act 1989 – Provide the basis for the commencement of a compulsory purchase order.
- Section 101 of the Law of Property Act 1925 – enforced sales

8. CIVIL PENALTIES

Civil Financial Penalties for certain offences are outlined in an independent standalone policy. The policy provides a clear and transparent framework for issuing a wide range of civil penalties of up to £40,000 for the following:

- Unlawful eviction and harassment of occupier as defined under the Protection from Eviction Act 1997
- Failure to comply with an Improvement Notice [s30 Housing Act 2004]
- Offences in relation to licensing of Houses in Multiple Occupation (HMOs) [s72 Housing Act 2004]
- Offences in relation to the Selective Licensing of ‘houses’ [s95 Housing Act 2004]
- Failure to comply with an Overcrowding Notice [s139 Housing Act 2004]
- Failure to comply with a management regulation in respect of an HMO [s234 Housing Act 2004]
- Offences in relation to Regulation 3 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
- Failure to comply with a banning order [s21 Housing and Planning Act 2016]
- Failure to give a written statement of terms under section 16D of the Housing Act 1988
- Failure to give an existing tenant information about changes made by the Renters’ Rights Act under paragraph 7(2) of schedule 6 to the Renters’ Rights Act 2025
- Attempting to let a property for a fixed term under section 16E of the Housing Act 1988
- Attempting to end a tenancy orally or by service of a notice to quit under section 16E of the Housing Act 1988
- Serving an eviction notice that attempts to end a tenancy outside the prescribed section 8 process under section 16E of the Housing Act 1988

- Relying on a ground where the person does not reasonably believe that the landlord is/will be able to obtain possession under section 16E of the Housing Act 1988
- Relying on a ground knowing the landlord would not be able to obtain possession or being reckless as to whether they would under section 16J of the Housing Act 1988
- Failing to provide a tenant with prior notice that a ground which requires it may be used under section 16E of the Housing Act 1988
- Reletting or remarketing a property before expiry of the 12 month no-let period after using the moving and selling grounds under sections 16E and 16J of the Housing Act 1988
- Discriminating against prospective tenants during the letting process on the grounds that those tenants are in receipt of benefits or have children under sections 33 and 34 of the Renters' Rights Act 2025
- Marketing a letting without stating the proposed rent under section 56 of the Renters' Rights Act 2025
- Inviting or encouraging any person to offer to pay an amount of rent under the proposed letting that exceeds the stated rent under section 56 of the Renters' Rights Act 2025
- Accepting an offer from any person to pay an amount of rent under the proposed letting that exceeds the stated rent under section 56 of the Renters' Rights Act 2025

The Renters' Right Act 2025 will be implemented in phases. Once fully enacted, the following additional provisions will also apply:

- Offences in relation to the PRS database (Part 2, Chapter 3 Renters' Rights Act 2025 – expected to be enacted in late 2026)
- Offences in relation to the landlord ombudsman (Part 2, Chapter 2 Renters' Rights Act 2025 – expected to be enacted in 2028)
- Breach of the Decent Homes Standard (Part 3, Renters' Rights Act 2025 – expected to be enacted in mid-2030s)

The Council must publish a civil penalty policy to comply with statutory guidance. It applies to both civil breaches, and criminal offences when a civil penalty can be issued as an alternative to prosecution. The primary purpose of the policy is to ensure that those who fail to meet their legal obligations to protect tenants' rights and safety are duly punished. It will also act as a deterrent to prevent other such offending behaviour.

The purpose of this policy is therefore to set a clear and transparent framework that the Council can use to impose civil penalties, having regard to the factors set out above.

Once the Council has established, beyond reasonable doubt, that an offence has occurred and that it is in the public interest to take enforcement action, it must first decide whether to prosecute or to impose a civil penalty. The policy outlines this decision-making process.

The Council cannot impose a civil penalty and prosecute for the same offence. If a person has been convicted (or acquitted) or is currently being prosecuted, the Council cannot impose a civil penalty in respect of the same offence. Conversely, if a civil penalty has been imposed, a person cannot then be convicted for the same offence.

9. BANNING ORDERS

9.1. Part 2, Chapter 2 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 one or more of the relevant offences.

9.2. A Banning Order is an Order by the First-Tier Tribunal Property Chamber (Residential Property) which 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

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

9.4. Full details of Banning Orders can be found in Annex 2.

10. ROGUE LANDLORD DATABASE

10.1. 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.

10.2. 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 two or more Civil Penalties within a 12-month period.

10.3. 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

10.4. The Assistant Director of Housing will make the final decision on these issues.

10.5. 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.

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

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

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

10.9. 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

10.10. <u>Appeals</u>

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.

11. RENT REPAYMENT ORDERS

11.1. Part 2 of the Housing and Planning Act 2016 permits the Council to seek a Rent Repayment Order (RRO) An application at the First-Tier Tribunal Property Chamber to require the landlord of the property where the offence(s) has been committed to refund rent to the tenants or the Council. Section 48 of the Housing and Planning Act 2016 places a duty on the Council to consider applying for Rent Repayment Orders. A RRO requires a landlord to repay a specified amount of rent (up to 2 years if committed after 1 May 2026) in certain circumstances.

11.2. An application to the First-Tier Tribunal Property Chamber (Residential

Property) for a RRO to recover payments related to housing can be made where the landlord has committed a qualifying offence:

- Unlawful eviction and harassment of occupier as defined under the Protection from Eviction Act 1977
- Failure to comply with an Improvement Notice [Section 30 Housing Act 2004]
- Offences in relation to unlicensed HMOs [Section 72(1) Housing Act 2004]
- Offences in relation to unlicensed houses [Section 95(1) Housing Act 2004]
- Failure to comply with an Improvement Notice [Section 30(1) Housing Act 2004]
- Failure to comply with a Prohibition Order [Section 32(1) Housing Act 2004]
- Breach of a Banning Order [Section 21 Housing and Planning Act 2016]
- Using Violence to secure entry [Section 6(1) Criminal Law Act 1977]
- Knowingly or recklessly misusing a possession ground [Section 16J(1) Housing Act 1988]
- Letting or marketing of a property within twelve months of using the 'moving in' or 'selling' ground of eviction [Section 16J(2) Housing Act 1988]
- Continuous breach of certain tenancy reform requirements [Section 16J(3) Housing Act 1988]

The Renters' Rights Act 2025 will be implemented in phases. Once fully enacted, the following additional provisions will also apply:

- Landlord's failure to become a member of a landlord redress scheme (Section 67 of the Renters' Rights Act 2025 – expected to be enacted in 2027)
- Landlord's failure to join a PRS database (Section 92 of the Renters' Rights Act 2025 – expected to be enacted in late 2026)
- Landlord's failure to comply with the requirements of a PRS database, or in providing false or misleading information to the database operator (Section 92 of the Renters' Rights Act 2025 – expected to be enacted in late 2026)
- Offences in relation to the landlord ombudsman (Section 67 of the Renters' Rights Act 2025 – expected to be enacted in 2028)

11.3. The Tribunal must be satisfied beyond reasonable doubt that an offence has been committed. A rent repayment order does not require the landlord to have been convicted of a criminal offence.

11.4. An application for an RRO may be in addition to other formal action, such as prosecution proceedings or the imposition of a Civil Penalty. Where the Council has issued a Civil Financial Penalty or pursued prosecution, it will usually apply for a Rent Repayment Order where public funds have been paid to a landlord who has committed a qualifying offence.

11.5. Section 49 of the Housing and Planning Act 2016 enables the Council to assist tenants in applying for Rent Repayment Orders. Where appropriate, the Council will usually support tenants by referring or signposting them to a relevant advice or representation service.

11.6. 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 include a full explanation of why the authority intends to apply, detailing the specific housing offence committed (e.g., failure to comply with an improvement notice or managing an unlicensed HMO/property) and the factual basis or conduct underpinning it, 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). A notice of intended proceedings cannot be served more than two years after the landlord committed the relevant offence.

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

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

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

12.2. The two approved Redress Schemes are:

- Property Redress Scheme
- The Property Ombudsman

12.3. 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.

12.4. 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.

12.5. The decision as to whether a fine should be reduced and by how much will be made by the Assistant Director of Housing. A final appeal can be made by the landlord to the First-Tier Tribunal Property Chamber (Residential Property).

12.6. Annex 3 outlines the enforcement process in more detail.

13. MINIMUM ENERGY EFFICIENCY STANDARDS

13.1. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended) requires that private sector 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 (unless a valid exemption has been registered on the PRS Exemptions register)

13.2. Details of the Council's procedure in respect of the Minimum Energy Efficiency Standards can be found in Annex 4.

13.3. Full details of the Council's statement of principles for the issuing of financial penalties under the Minimum Energy Efficiency Standards can be found in Annex 5.

14. THE SMOKE AND CARBON MONOXIDE ALARM AMENDMENT REGULATIONS 2022

14.1. 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 used as living accommodation which contains a fixed combustion appliance (excluding gas cookers)
- Landlords must make sure the alarms are in working order at the start of each new tenancy

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

14.3. 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 Annex 6).

14.4. 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 6:2019.

15. THE ELECTRICAL SAFETY STANDARDS IN THE PRIVATE RENTED SECTOR (ENGLAND) REGULATIONS 2020

15.1. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force from the 1 June 2020. The Regulations apply to new tenancies from 1 July 2020 and existing tenancies from 1 April 2021.

15.2. Under the Regulations, private sector landlords are required to have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at least every 5 years. Landlords must provide a copy of the electrical safety report to their tenants, and if requested, provide a copy to the Council.

15.3. Under these Regulations, the Council can issue a Remedial Notice to require landlords to carry out remedial works or arrange for the works to be carried out by the Council with the costs recovered from the landlord.

15.4. The Council can impose a financial penalty of up to £30,000 where it is satisfied, beyond reasonable doubt, that a landlord has breached a duty under the Regulations.

15.5. Details of the Council's procedure in respect of the Electrical Safety Standards in the Private Rented Sector can be found in Annex 7.

15.6. Full details for the issuing of financial penalties under the Electrical Safety Standards in the Private Rented Sector can be found the Council's Civil Penalties Policy.

16. ILLEGAL EVICTION AND HARASSMENT

16.1. The Council has the legal power to investigate, prosecute or impose financial penalties under the provisions of the Protection from Eviction Act 1977.

16.2. 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.

16.3. Section 107 of the Renters' Rights Act 2025 imposes a duty on the Council to enforce Sections 1 and 1A of the Protection from Eviction Act 1977; Unlawful eviction and harassment of occupier; Financial penalty for offence under section 1.

16.4. Formal action may lead to the issuing of a formal caution, prosecution or Civil Penalty or other summary action. The decision to prosecute will be made by the Assistant Director of Housing.

17. MOBILE HOMES AND CARAVAN SITES

17.1. The Mobile Homes Act 2013 amends the Caravan Sites and Control of Development Act 1960 (CSCD), the Caravan Sites Act 1968 and the Mobile Homes Act 1983 which the Council enforce.

17.2. 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.

17.3. Section 5A (5) of the amended act defines a “relevant protected site” means land in respect of which a site licence is required under this part, other than land in respect of which the relevant planning permission under Part 3 of the Town and Country Planning Act 1990 or the site licence is, subject to subsection(6) (a) expressed to be granted for holiday use only, or (b) otherwise so expressed or subject to such conditions that there are times of the year when no caravans may be stationed on the land for human habitation (6) For the purpose of determining whether land is a relevant protected site, any provision of the relevant planning permission or site licence which permits the stationing of a caravan on the land for human habitation all year is to be ignored if the caravan is to be occupied by: (a) the occupier (b) a person employed by the occupier but who does not occupy the caravan under an agreement to which the Mobile Homes Act 1983 applies (see section 1 (1) of that Act.”

17.4. Under Section 269 of the Public Health Act 1936 a site licence is required if a person allows any land occupied by them to be used for camping (tents only) purposes on more than 42 consecutive days or more than 60 days in any twelve consecutive months. There are exceptions for organisations that hold camping exemption certificates.

17.5. A caravan is any structure, designed or adapted for human habitation, which is capable of being moved from one place to another (towed or transported), provided its dimensions, when assembled, do not exceed 18m in length, 6m wide and 3m in height. Tents and railway stock on rails within the railway system are not included in the definition of a caravan.

17.6. A caravan site licence is not required for:

- Incidental use within the curtilage of a dwelling house
- Single caravan used by a person for not more than two nights and 28 days in 12 months
- Holdings of five acres or more, if not more than 28 days in 12 months, and a maximum of three caravans at any time
- Sites occupied and supervised by exempted organisation
- Sites approved by exempted organisations for up to five caravans
- Meetings organised by exempted organisations

- Agricultural and forestry workers
- Building and engineering sites
- Travelling showmen
- Sites operated and owned by a local council, county councils or regional councils

17.7. 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 timescale for completion; and
  - Explain the right of appeal to the First-Tier Tribunal Property Chamber (Residential Property) against the Notice.

17.8. 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.

17.9. 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.

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

17.11. 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.

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

17.13. 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.

17.14. Within seven days of any emergency action being started, the Council must serve another Notice on the site operator.

17.15. 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.

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

17.17. 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

17.18. 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.

17.19. The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 (the Regulations), require the manager of a site to be a fit and proper person. A local authority must be satisfied that the site owner "is a fit and proper person to manage the site" or, if the owner does not manage the site, "that a person appointed" to do so by the site owner "is a fit and proper person to do so" or has, with the site owner's consent, "appointed a person to manage the site." The Fit and Proper Persons Determination Policy sets out the Council's approach in respect of the mobile homes' fit and proper person test, which applies to relevant protected sites requiring a licence.

17.20. Fees and charges

The Council can charge for functions associated with licensing, fit and proper checks and enforcement. The Council's fee setting policy can be found on the Council's website. Fees and Charges are updated annually.

18. EQUALITY AND DIVERSITY

18.1. The Council is committed to welcoming and valuing diversity, promoting equality of opportunity, tackling unlawful discrimination and fostering good relations in accordance with the Equality Act 2010 and the Council's Comprehensive Equality Policy. The Council, in delivering this policy, will ensure that no individual is discriminated against based on their sex, sexual orientation, marital status, pregnancy and maternity, gender reassignment, race, religion, belief, disability or age.

18.2. In carrying out its functions, the Council must have regard to the Public Sector Equality Duty and the need to achieve the objectives set out under s149 of the Equality Act 2010 to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

This a duty on the Council and that responsibility cannot be delegated to a contractor/service provider and is a continuing duty.

18.3. This Private Sector Housing Enforcement Policy has been subject to a Customer Access Review. The review identified positive impacts for protected characteristic groups and the policy will be applied equally to tenants and private sector landlords, regardless of protected characteristic group.

19. DATA PROTECTION

19.1. The Data Protection Act 2018 and UK GDPR regulate the processing of information relating to individuals, which includes the obtaining, holding, using or disclosing of such information.

19.2. The Council needs to collect and use certain types of information about its service users in order to carry out its everyday business and to fulfil its objectives and its statutory functions.

The Council's:

- Data Protection Policy sets out how it will protect special category and criminal convictions personal data; and
- The Private Sector Housing Privacy Notice explains that the Council collects your personal information to administer these services.

19.3. The Council is signed up to the Kent and Medway Information Sharing Agreement and will abide by the conditions set out in the Agreement to ensure that information is used appropriately in accordance with the Data Protection Act 2018, UK GDPR and the Human Rights Act 1998.

19.4. The Council will treat all information received with the strictest of confidence wherever possible. Information relating to complainants and perpetrators may however be shared with other agencies for lawful purposes such as the purpose of preventing anti-social behaviour, crime or if there is a serious safeguarding concern.

20. COMPLAINTS PROCEDURE

20.1. Dissatisfaction with any actions or decisions must in the first instance be dealt with through the Council's Corporate Complaints Procedure. Complaints leaflets are also available from the Council offices.

21. HOW TO CONTACT US

21.1. For all enquiries relating to this document and for general enquiries please call 01322 343152, email housingprivatesector@dartford.gov.uk or write to: Dartford Borough Council, Private Sector Housing Team, Civic Centre, Home Gardens, Dartford, Kent, DA1 1DR.

ANNEX 1

PRIORITISATION OF HAZARDS AND OPTIONS FOR ACTION

Priority (P)		Main options for Action	Other options available for consideration
Category one			
High Priority	P1 – Hazard Bands A - C	Improvement Notice Emergency Remedial Action Emergency Prohibition Order Prohibition Order Demolition Order	 Clearance Order Suspended action Hazard Awareness Notice
Category two			
Medium Priority	P2 – Medium hazard score	Improvement Notice Suspended action Hazard Awareness Notice	Prohibition Order
Low Priority	P3 – Low Hazard Score	Hazard Awareness Notice Suspended action	Improvement Notice Prohibition Order

ANNEX 2

BANNING ORDERS POLICY AND PROCEDURE

1. **Banning Orders**

1.1. 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.

1.2. 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

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

1.4. Annex 2.1 outlines Banning Order offences.

1.5. 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

2. Decision to apply for a Banning Order

2.1. The Council will pursue a Banning Order for the most serious offenders only and the Assistant Director of Housing will make the decision. Any decision will be made on a case-by-case basis with regard to the following factors:

3. The seriousness of the offence

3.1. 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.

4. Previous convictions/rogue landlord database

4.1. 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.

4.2. 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

4.3. 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/her ownership.

4.4. 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.

5. Procedure for making a Banning Order

5.1. 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

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

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

5.4. 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.

5.5. Only the First-Tier Tribunal Property Chamber (Residential Property) can revoke or vary a Banning Order - Section 20 Housing and Planning Act 2016.

5.6. 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.

a. 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.

b. 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.

c. 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.

6. Breach of Banning Orders

6.1. 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 4 and Annex 5)
- 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.

6.2. 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.

6.3. 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 2.1

BANNING ORDER OFFENCES UNDER SCHEDULE 1 OF THE HOUSING AND PLANNING ACT 2016 (BANNING ORDER OFFENCES) REGULATIONS [2017]

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

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)

Immigration Act 2014	Section 33A(1) and (10)	Residential tenancies – landlord offences
Immigration Act 2014	Section 33B(2) and (4)	Residential tenancies – agent offences

Serious Criminal Offences -
These are serious criminal offences for which an offender may have received a custodial sentence upon conviction.

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

ANNEX 3

PROPERTY REDRESS SCHEME ENFORCEMENT PROCESS

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

1. **Step 1: Notice of Intent**

1.1. The Council must give a written Notice of Intent 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.

1.2. This 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).

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

2. **Step 2: Representations and objections**

2.1. 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.

2.2. 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 Intent 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 Assistant Director of Housing will make the decision as to whether a fine should be reduced.

3. **Step 3: Final Notice**

3.1. 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.

3.2. The Council may withdraw the Final Notice or reduce the amount specified in the Notice at any time by giving notice in writing.

4. Step 4: Appeals

4.1. 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.

4.2. The First-Tier Tribunal Property Chamber (Residential Property) may agree with the Council's Notice to issue a penalty or may decide to quash or vary the Notice and fine.

5. Step 5: Recovery of the penalty

5.1. 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.

ANNEX 4

MINIMUM ENERGY EFFICIENCY STANDARDS ENFORCEMENT PROCEDURE

1. **<u>Introduction</u>**

1.1. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended) requires that private sector 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.

1.2. Since 1 April 2016, tenants can request energy efficiency measures and landlords may not unreasonably refuse consent.

1.3. 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.

1.4. 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.

1.5. The Regulations apply to all properties that are:

- Legally required to have an EPC; and
- On an assured, regulated or agricultural tenancy type.

1.6. A recommended energy efficiency measure will only be a 'relevant energy efficiency improvement' for the purposes of the Regulations if:

- Third-party funding is available to cover the full cost of purchasing and installing the improvement(s) (for example, Energy Company Obligation, a Green Deal Finance Plan, or where local authority funding is available); or
- Where third-party funding is unavailable, the improvement(s) can be purchased and installed for £3,500 or less (inclusive of VAT) using the landlord's own funding; or
- The improvement(s) can be installed through a combination of landlord self-funding and third party funding with a total cost of £3,500 or less (inclusive of VAT).

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

2. <u>Exemptions</u>

2.1. 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:

- All the relevant energy efficiency improvements have been installed within the cost cap of £3,500 (inc. VAT) (or there are no energy efficiency improvements that can be made) and the property remains below an E rating;
- A recommended measure is not a relevant energy efficiency improvement because the cost of purchasing and installing it would exceed the £3,500 cap (inc. VAT);
- 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;
- The landlord cannot obtain required third party 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 more than 5%;
- Temporary exemption due to recently becoming a landlord in certain circumstances (six month exemption):
  - The grant of a lease due to a contractual obligation;
  - Where a tenant becomes insolvent and the landlord has been the tenant's guarantor;
  - The landlord having been a guarantor or a former tenant has exercised the right to obtain an overriding lease of a property under section 19 of the Landlord and Tenant (Covenants) Act 1995);
  - A new lease has been deemed created by operation of law;
  - A new lease has been granted under Part 2 of the Landlord and Tenant Act 1954;
  - A new lease has been granted by a court order, other than under Part 2 of the Landlord and Tenant Act 1954;
- When a person becomes a private landlord on purchasing a property, and on the date of purchase it was let to an existing tenant, a valid temporary exemption may be registered.

3. **The PRS Exemptions Register**

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

- 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.

3.2. If a let property is sold, any exemption registered on the PRS Exemptions Register by the previous owner is not transferable to the new owner. The new owner will be required to improve the property or register their own valid exemption.

3.3. Annex 4.1 shows the Minimum Level of Energy Provisions Flowchart.

4. **Enforcement**

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

- Where 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;
- Where the landlord has failed to comply with a Compliance Notice, (see Section 5).

4.2. Annex 4.2 **shows a Minimum Level of Energy Efficiency Provisions Compliance and Enforcement Flow Chart.**

5. Compliance Notices

5.1. The Council will issue a Compliance Notice where it believes that a landlord may be in breach of the prohibition on letting a sub-standard property (currently or during the past 12 months). A Compliance Notice may request either the original or copies of the following information:

- The EPC that was valid at the time 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 Council requires in order to carry out its compliance and enforcement functions.

5.2. The Compliance Notice may also require the landlord to register copies of the requested information on the PRS Exemptions Register. The Compliance Notice will specify:

- The name and address of the person that a landlord must send the requested information to;
- The date by which the requested information must be supplied (the Notice must give the landlord at least one calendar month to comply).

5.3. A Compliance Notice will be made in writing and may be sent in hard copy or electronically.

5.4. 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 PRS Exemptions Register as required by a Compliance Notice, may result in a financial penalty being issued (see Section 6).

5.5. 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.

6. Financial Penalty

6.1. The Council may issue a financial and/or publication penalty on a private landlord who breaches a duty under the Regulations. Where the Council decides to impose a financial penalty, it has 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 Assistant Director of Housing.

6.2. The maximum penalties are outlined in the below table:

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

6.3. Annex 5 **details the Council's statement of principles for the issuing of financial penalties under Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.**

7. **Publication of Penalties**

7.1. A publication penalty under Regulation 39 consists of publishing the details of the landlord's breach on the PRS Exemptions Register.

7.2. The Council has determined to impose a publication penalty in respect of all breaches that are subject to a Penalty Notice, unless there are exceptional circumstances.

7.3. Under Regulation 39(2), local authorities may decide how long the details of each breach should stay on the PRS Exemptions Register, subject to a minimum period of 12 months. The Council has determined that all breaches will be registered on the PRS Exemptions Register for a period of three years, with the option to reduce this period in exceptional circumstances.

7.4. The information the Council may publish is:

- The landlord's name (except where the landlord is an individual);
- Details of the breach;
- The address of the property in relation to which the breach occurred; and

- The amount of any financial penalty imposed.

7.5. Information cannot be published whilst a Penalty Notice could be, or is being, reviewed by the Council (see Section 9), or while the decision to uphold the Penalty Notice could be, or is being, appealed (see Section 10).

8. **Penalty Notices**

8.1. If the Council decides to impose a financial and/or publication penalty, it will serve a Penalty Notice on the private landlord. A Penalty Notice may be served in respect of an ongoing breach or a breach that occurred in the 18 months preceding the date of the service of the notice. A further Penalty Notice may be issued if the action required in the Penalty Notice is not taken in the period specified.

8.2. The Penalty Notice will set out:

- The provisions of the Regulations the Council believes the landlord has breached;
- The details of the breach;
- The action the Council requires the landlord to take to remedy the breach, and the date within which this action must be taken (the date must be at least a month after the Penalty Notice is issued);
- The amount of the financial penalty imposed and how it has been calculated;
- Whether a publication penalty has been imposed;
- The date by which payment of the penalty must be made, the name and address of the person to whom it must be paid and the method of payment (the date must be at least a month after the penalty notice is issued);
- The right to request a review of the Council's decision to serve the Penalty Notice, including the name and address of the person to whom the review request must be sent (see Section 9);
- The right of appeal against any decision to uphold the decision to serve the Penalty Notice following a review (see Section 10); and
- That if the landlord does not pay any financial penalty within the specified period, the Council may bring court proceedings to recover the money from the landlord

9. **Right to request a review of the Council's decision to serve a Penalty Notice**

9.1. The Council may decide to review its decision to serve a Penalty Notice, for example, when new information comes to light.

9.2. A landlord also has the right to ask the Council to review its decision to serve a Penalty Notice. This request must be made in writing within 28 days of the service of the Penalty Notice. When the Council receives the request, it must consider everything the landlord has said in the request and decide whether or not to withdraw the Penalty Notice. The final decision will be made by the Private Sector Housing Manager within 28 days of receipt.

9.3. 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.

9.4 If the Council does not decide to withdraw the Penalty Notice, it may decide to waive or reduce the penalty, 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. The landlord will be informed of the decision in writing.

10. Appeals

10.1. If on review, the Council decides to uphold the Penalty Notice, the landlord may then appeal to the First-Tier Tribunal (General Regulatory Chamber) against that decision on the grounds that:

- the Penalty Notice was based on an error of fact or an error of law;
- the Penalty Notice does not comply with a requirement imposed by the Regulations; or
- It was inappropriate to serve a Penalty Notice on them in the particular circumstances.

10.2. A landlord has 28 calendar days to submit an appeal from the date of the Council's decision. Completed notices of appeal should be sent to:

First-Tier Tribunal (General Regulatory Chamber)
HM Courts and Tribunals Service
PO Box 9300
Leicester
LE1 8DJ

10.3. The General Regulatory Chamber can be contacted on 0300 123 4504 and at grc@justice.gov.uk for advice on the process.

10.4. If a landlord does appeal, the Penalty Notice will not have effect while the appeal is ongoing. A landlord may also wish to seek legal advice as part of considering or making an appeal, if they have not already done so.

10.5. Based on the facts of the case, the First-Tier Tribunal may decide to quash the Penalty Notice or affirm the Penalty Notice in its original or a modified form. If the Penalty Notice is quashed, the Council must reimburse the landlord for any amount paid as a financial penalty under the Notice.

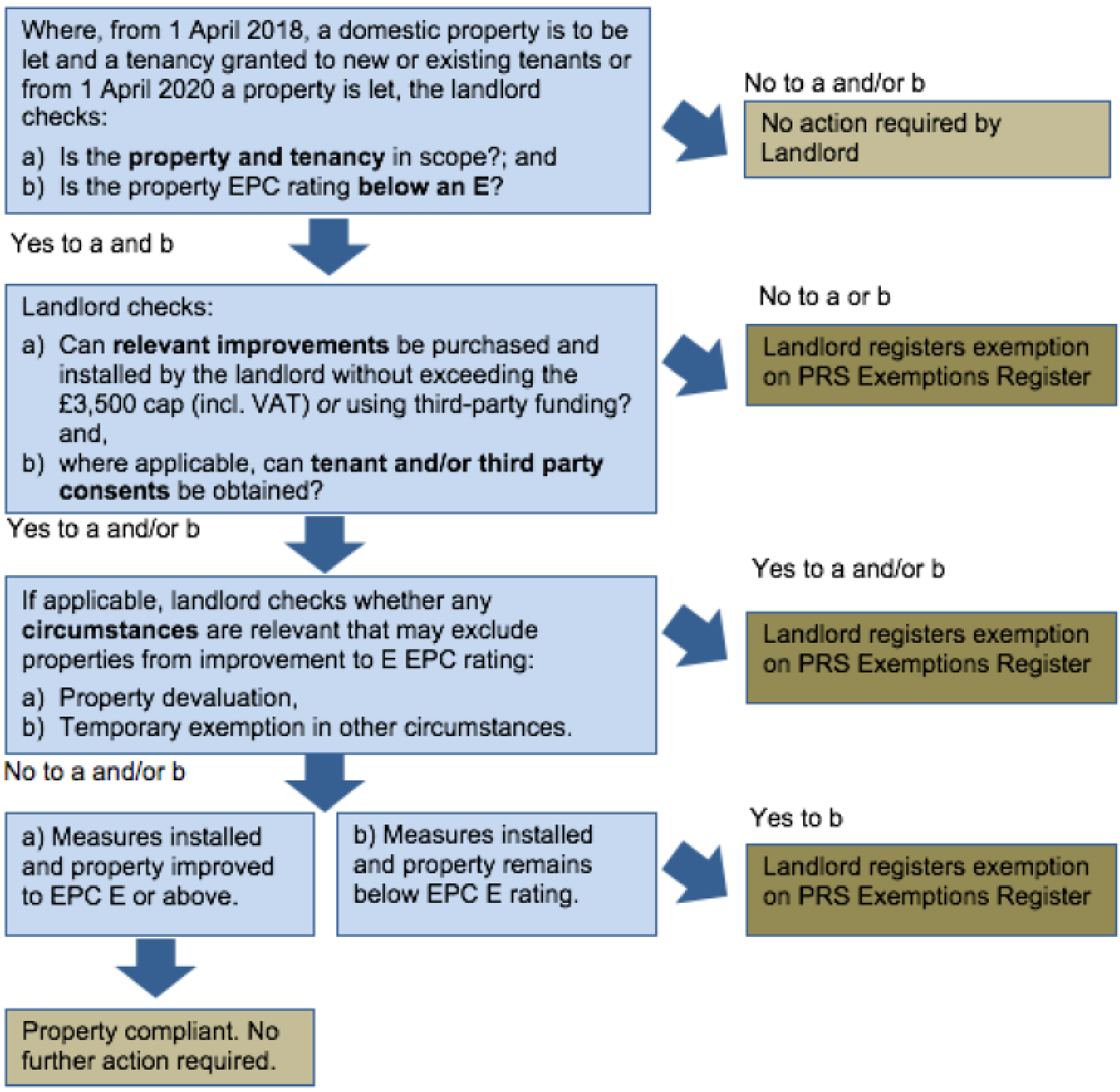
11. Guidance

11.1. The following amended non-statutory guidance was issued by the Department for Business, Energy & Industrial Strategy in April 2020 in respect of the Minimum Energy Efficiency Standards:

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, as amended

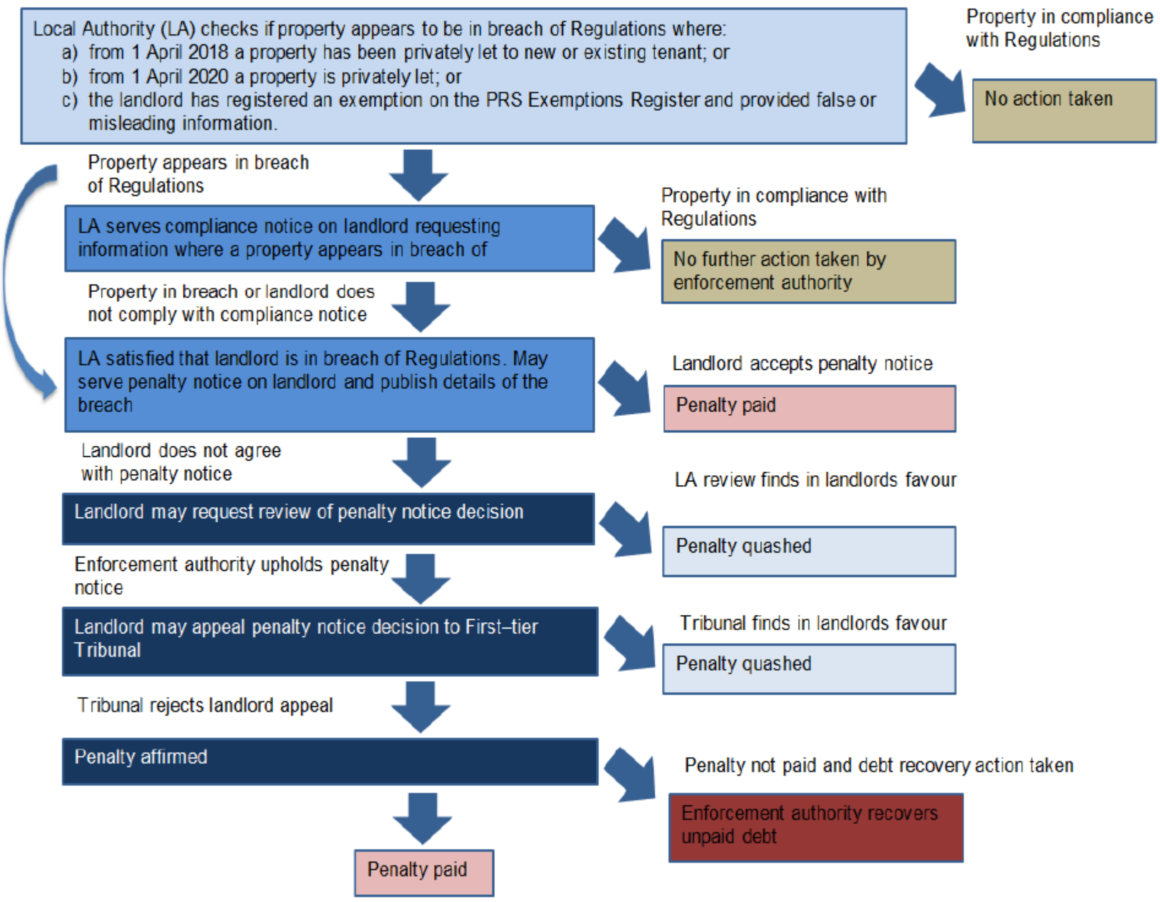
ANNEX 4.1

MINIMUM LEVEL OF ENERGY EFFICIENCY PROVISIONS FLOWCHART



ANNEX 4.2

ENERGY EFFICIENCY STANDARDS – COMPLIANCE AND ENFORCEMENT FLOWCHART



ANNEX 5

STATEMENT OF PRINCIPLES FOR THE ISSUING OF FINANCIAL PENALTIES UNDER ENERGY EFFICIENCY (PRIVATE RENTED PROPERTY) (ENGLAND AND WALES) REGULATIONS 2015

1. **<u>Purpose</u>**

1.1. This statement sets out the principles that the Dartford Borough Council ('the Council') will apply when exercising its powers to issue financial penalties under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended).

1.2. The Council's approach ensures that the financial penalty should be proportionate and reflect the severity of the breach, and should be set high enough to help ensure that it has a real economic impact on the landlord and demonstrates the consequences of not complying with their responsibilities. The landlord's track record will be taken into account in each case.

2. **<u>The maximum level of financial penalties</u>**

2.1. Where the Council decides to impose a financial penalty, it has the discretion to decide the amount of the penalty, up to maximum limits set by the Regulations. The maximum penalties are as follows:

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

2.2. The Council may not impose a financial penalty under both paragraphs (a) and (b) above in relation to the same breach of the Regulations. However, it 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.

3. **<u>Financial penalty policy</u>**

3.1. The Council has determined to take the following approach when imposing financial penalties under the Regulations:

3.2. **Early payment reduction** – The Council has discretion to offer an early payment reduction of 25% in the amount of financial penalty payable if a landlord can demonstrate an early acceptance of guilt by paying the penalty charge within 21 days beginning with the day the Penalty Notice is served.

3.3. A landlord would not be demonstrating an early acceptance of guilt if they decided to request a review of the Council's decision to serve a Penalty Notice. If the Council confirms a Penalty Notice after such a request, the full amount of the financial penalty will be payable and the option to make a payment in the reduced sum will not be available.

3.4. The financial penalties are set out as follows:

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

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

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

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

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

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

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

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

4. **<u>Criteria for determining the amount of the financial penalty</u>**

4.1. **First breach** – When determining the financial penalty the Council will take the landlord's track record into account as to whether it is their first breach under these Regulations or not. For the purposes of this statement, the "first breach" means the first breach by the private landlord of any duty under the Regulations, and does not refer to the first breach under each specific type of breach.

4.2. For the purposes of identifying a first breach, only penalty notices that have been served on the private landlord within the previous five-year period will be taken into account.

4.3. **Multiple breaches** – In respect of any single tenancy, the Council may not impose a combination of financial penalties on a landlord that in total exceeds the statutory maximum of £5,000. However, when considering imposing more than one Penalty Notice on a landlord as a consequence of that landlord committing one or more breaches at multiple properties, the Council will carefully consider whether the cumulative financial penalty would be just and proportionate in the circumstances having regard to the offending behaviour as a whole.

4.4. The Council will initially determine the amount of financial penalty that should be imposed in respect of each of the breaches identified at the properties under consideration. Subject to the statutory maximum for each tenancy, the Council will then add up the financial penalties and make an assessment as to whether the cumulative total is just and proportionate.

4.5. If the Council considers the cumulative total to be just and proportionate, it will normally impose a financial penalty for each breach identified. However, if the Council considers the cumulative total to be unjust and disproportionate, the Council may use its discretion and decide not to impose a financial penalty in respect of every breach under consideration.

4.6. **Repeat breaches** – If there are repeat breaches the Council may use its discretion to apply the full penalty with no reduction for early payment. This decision will be made by the Housing Solutions & Private Sector Housing Manager.

5. **Unpaid financial penalties**

5.1. **County Court** – The Council will take robust action to recover any financial penalty (or part thereof) not paid within the period set out in a Penalty Notice.

5.2. An application for an order of the County Court will usually be made in respect of all unpaid financial penalties.

5.3. In taking court action, the Council would seek to recover interest and any court expenses incurred, in addition to claiming the full amount of unpaid financial penalty.

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

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

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

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

ANNEX 6

STATEMENT OF PRINCIPLES FOR DETERMINING FINANCIAL PENALTIES UNDER THE SMOKE AND CARBON MONOXIDE ALARM (ENGLAND) REGULATIONS 2015

1. **<u>Introduction</u>**

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 Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

2. **<u>Purpose of the Statement of Principles</u>**

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. **<u>The legal framework</u>**

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. **<u>The purpose of imposing a financial penalty</u>**

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. **<u>Criteria for the imposition of a financial penalty</u>**

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:

	Penalty Charge	**Early payment reduction (50%) if paid within 14 days**
1st breach	£2,500	£1,250
Subsequent breaches	£5,000 per breach	£2,500

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. <u>Remedial action taken in default of the landlord</u>

8.1. 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.

8.2. 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.

8.3. 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.

8.4. 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

8.5. 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. Communications

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

Private Sector Housing Manager
Dartford Borough Council, Civic Centre, Home Gardens, Dartford, DA1 1DR
Or by email to: housingprivatesector@dartford.gov.uk

ANNEX 7

THE ELECTRICAL SAFETY STANDARDS IN THE PRIVATE RENTED SECTOR ENFORCEMENT PROCEDURE

1. **Introduction**

1.1. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force from the 1 June 2020. The Regulations apply to new tenancies from 1 July 2020 and existing tenancies from 1 April 2021.

1.2. Under the Regulations, private sector landlords are required to have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at least every 5 years. Landlords must provide a copy of the electrical safety report to their tenants, and if requested, provide a copy to the Council.

1.3. Under these Regulations, the Council can issue a Remedial Notice to require landlords to carry out remedial works or arrange for the works to be carried out by the Council with the costs recovered from the landlord

1.4. The Council can impose a financial penalty of up to £30,000 where it is satisfied, beyond reasonable doubt, that a landlord has breached a duty under the Regulations.

2. **Specified tenancies**

2.1. The Regulations apply to all specified tenancies. A ‘specified tenancy’ means a tenancy of residential premises in England which:

- Grants one or more persons the right to occupy all or part of the premises as their only or main residence;
- Provides for payment of rent (whether or not market rent); and
- Is not an excluded tenancy as set out in Schedule 1 of the Regulations.

3. **Excluded tenancies**

3.1. The excluded tenancies set out in Schedule 1 of the Regulations relate to:

- Private registered providers of social housing;
- Shared accommodation with landlord or landlord’s family;
- Long leases;
- Student halls of residence;
- Hostels and refuges;
- Care homes;
- Hospitals and hospices; and
- Other accommodation relating to health care provision.

4. **Duties on private landlords in relation to electrical installations**

4.1. Under the Regulations, private sector landlords are required to:

- Ensure national standards for electrical safety are met. These are set out in the 18th edition of the 'Wiring Regulations', which are published as British Standard 7671;
- Ensure all electrical installations in their rented properties are inspected and tested by a qualified and competent person at least every 5 years;
- Obtain a report from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test;
- Supply a copy of this report to the existing tenant within 28 days of the inspection and test;
- Supply a copy of this report to a new tenant before they occupy the premises;
- Supply a copy of this report to any prospective tenant within 28 days of receiving a request for the report;
- Supply the Council with a copy of this report within 7 days of receiving a written request for a copy;
- Retain a copy of the report to give to the inspector and tester who will undertake the next inspection and test;
- Where the report shows that further investigative or remedial work is necessary complete this work within 28 days or any shorter period if specified as necessary in the report*;
- Supply written confirmation of the completion of the further investigative or remedial works from the electrician to the tenant and the Council within 28 days of completion of the works.

* Results of the inspection and testing:

Inspectors will use the following classification codes to indicate where a landlord must undertake remedial work. More information can be found in the 18th edition of the Wiring Regulations.

- Code 1 (C1): Danger present. Risk of injury
- Code 2 (C2): Potentially dangerous
- Further Investigation (FI): Further investigation required without delay
- Code 3 (C3): Improvement recommended. Further remedial work is not required for the report to be deemed satisfactory

If the report contains a code C1, C2 or FI, then the landlord must ensure that further investigative or remedial work is carried out by a qualified person within 28 days, or less if specified in the report.

5. **Remedial Notice**

5.1. Where the Council has reasonable grounds to believe that a landlord is in breach of one or more of the duties under Regulations and the recent report indicates remedial or further investigative work is required and it is not urgent remedial work, the Council will serve a Remedial Notice on the landlord. The Notice must be served within 21 days of the decision that the landlord has not complied with their duties.

5.2. The Remedial Notice will:

(a) specify the premises to which the notice relates;
(b) specify the duty or duties that the Council considers the landlord has failed to comply with;
(c) specify the remedial action the Council considers should be taken;
(d) require the landlord to take that action within 28 days beginning with the day on which the notice is served;
(e) explain that the landlord is entitled to make written representations against the notice within 21 days beginning with the day on which the notice is served;
(f) specify the person to whom, and the address, or email address to which, any representations may be sent; and
(g) explain the effect of the financial penalties for breach of duties, including the maximum financial penalty which the Council may impose, and that there is a procedure for appeals against financial penalties.

5.3. The landlord has the right to make written representations within 21 days of the issue of a Remedial Notice. The Notice is suspended while the Council considers the representations; these will be considered by the Housing Solutions & Private Sector Manager. The Council will inform the landlord in writing of the outcome of its consideration of the representations within 7 days beginning from the day on which the appeal period expires. Where a Remedial Notice is confirmed the suspension is lifted and the landlord has 21 days to take the remedial action specified in the Notice.

5.4. The Council may withdraw the Remedial Notice at any time.

5.5. A landlord is not in breach of the duty to comply with a Remedial Notice if the landlord can show they have taken all reasonable steps to comply with the Notice.

5.6. Where a landlord is prevented from entering the property by the tenant, the landlord will not be considered to have failed to have taken all reasonable steps to comply with the duty solely because of a failure to bring legal proceedings with a view to securing entry to the property.

6. Remedial action following non-compliance with a Remedial Notice

6.1. The Council may, with the consent of the tenant, arrange an authorised person to carry out remedial work if the landlord does not comply with the Remedial Notice.

6.2. Before the remedial action is taken the Council will service a notice on the landlord specifying:

(a) the address of the property where the work will be undertaken;
(b) the power under which the remedial action is to be taken;
(c) the date when the remedial action will be undertaken (at least 28 days from the date served);
(d) the right of appeal against this decision.

6.3. A landlord may appeal to the First-Tier Tribunal against the decision of the Council to take remedial action (see Section 10).

6.4. The Council will arrange for an authorised person to take the remedial action within 28 days of the end of the notice period. Where there is an appeal, remedial action must be arranged within 28 days of the appeal decision confirming or varying the decision of the Council.

6.5. When undertaking remedial work, the authorised person must give at least 48 hours' notice to the tenant and if required by the landlord or tenant, produce evidence of identity and authority.

7. Urgent remedial action

7.1. The Council may, with the consent of the tenant, arrange an authorised person to carry out remedial work if the landlord is in breach of one or more of their duties under the Regulations and the report indicates urgent remedial action is required.

7.2. Within 7 days of the authorised person starting to take the urgent remedial action, the Council will either:

- serve a Notice on the landlord and the occupiers of the property in relation to which the authorised person is taking urgent remedial action; or
- affix the Notice to the property.

7.3. The Notice will specify:

(a) the nature of the urgent remedial action required;
(b) the property in relation to which that urgent remedial action was (or is being or is to be) taken by the Council;
(c) the power under which that urgent remedial action was (or is being or is to be) taken by the Council;
(d) the date when that urgent remedial action was (or is to be) started;
(e) the right to appeal against the decision of the Council to take the urgent remedial action;
(f) the period within which an appeal may be made; and
(g) the effect of the financial penalties for breach of duties, including the maximum financial penalty which the Council may impose, and that the there is a procedure for appeals against financial penalties

7.4. A landlord may appeal to the First-Tier Tribunal against the decision of the Council to take remedial action (see Section 10).

7.5. When undertaking emergency remedial work, the authorised person must give at least 48 hours' notice to the tenant and if required by the landlord or tenant, produce evidence of identity and authority.

8. Recovery of costs

8.1. The Council may recover costs reasonably incurred in taking action to carry out remedial works following non-compliance with a Remedial Notice or for urgent remedial works.

8.2. A demand for recovery of costs will be served on the landlord to be payable at the end of the period of 21 days beginning with the day on which the demand is served.

8.3. A landlord may appeal to the First-tier Tribunal against the demand (see Section 10).

9. **<u>Financial penalties</u>**

9.1. Where the Council is satisfied, beyond reasonable doubt, that a landlord has breached a duty under the Regulations, the Council may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach.

9.2. A financial penalty may be of such amount as the Council determines; but must not exceed £40,000.

9.3. The proceeds of the financial penalties can be re-used to fund private rented sector related enforcement work. Any amount that is not used in this way must be paid into the Consolidated Fund, the government's general bank account at the Bank of England.

9.4. The Civil Penalties Policy details the Council's statement of principles for the issuing of financial penalties under the Electrical Safety Standards in the Private Rented Sector.

9.5. Before issuing a financial penalty on a landlord, the Council will serve a Notice of Intent on the landlord before the end of the period of 6 months beginning with the first day on which the Council is satisfied, beyond reasonable doubt, that a landlord has breached a duty under the Regulations ('the relevant day'). If the breach continues beyond the end of the relevant day, the Notice of Intent may be served at any time the breach is continuing or within the period of 6 months beginning on the last day on which the breach occurs.

9.6. The Notice of Intent will specify:

(a) the amount of the proposed financial penalty;
(b) the reasons for proposing to impose the penalty; and
(c) information about the right to make representations.

9.7. The landlord has the right to make written representations within 28 days of the Notice of Intent was serviced. The Private Sector Housing Manager will consider these representations and the Council will inform the landlord in writing of the outcome of its consideration of the representations within 7 days.

9.8. If after receiving any written representations (if any), the Council decides that it remains in the public interest to impose a financial penalty, the Council will serve a Final Notice to the landlord imposing the penalty, which will require the penalty to be paid within 28 days beginning with the day after that on which the notice was served.

9.9. The Final Notice will specify:

(a) the amount of the financial penalty;
(b) the reasons for imposing the penalty;
(c) information about how to pay the penalty;
(d) the period for payment of the penalty;
(e) information about rights of appeal; and
(f) the consequences of failure to comply with the notice.

9.10. A landlord may appeal to the First-tier Tribunal against the decision to impose a financial penalty or the amount of the penalty (see section 10).

9.11. The Council may at any time withdraw a Notice of Intent or Final Notice; or reduce the amount specified in the Notice of Intent or Final Notice.

9.12. Where a landlord fails to pay the whole or any part of the financial penalty, the Council will recover the penalty or part on the order of the county court as if it were payable under an order of that court.

10. <u>**Appeals to the First-Tier Tribunal**</u>

10.1. Landlords have the right of appeal to the First-Tier Tribunal (Property Chamber) for appeals relating to remedial action, urgent remedial action, recovery of costs and financial penalties.

10.2. Appeals must be made in the following timescales:

- Remedial action – within 28 days from the day on which a Remedial Notice is served;
- Urgent remedial action – within 28 days from the date the urgent remedial action was, or was to be, started;
- Demands for the recovery of costs – within 21 days from the day on which the demand is served;
- Decision to impose a financial penalty or the amount of the penalty – within 28 days beginning with the day after that on which a Final Notice to impose a financial penalty was served.

10.3. The current address of the First-Tier Tribunal (Property Chamber Residential Property (Southern Region) is:

First-Tier Tribunal - (Property Chamber) Residential Property
Havant Justice Centre
The Court House
Elmleigh Road
Havant
Hampshire PO9 2AL

The Property Chamber can be contacted on 01243 779 394 and at rpsouthern@justice.gov.uk for advice on the process.

10.4. In the case of appeals regarding remedial action, urgent remedial action or the recovery of costs, the Tribunal may allow an appeal to be made after the required timescale if it is satisfied there are good reasons for the failure to appeal on time. An appeal may be brought on the grounds that all reasonable steps had been taken to comply with the Remedial Notice, or reasonable progress had been made towards compliance with that Notice.

10.5. In the case of appeals regarding remedial action (not including urgent remedial action), if a landlord appeals, the Remedial Notice is suspended until the appeal is finally determined or withdrawn.

10.6. In the case of appeals regarding financial penalties, the appeal will be a re-hearing of the Council's decision but may be determined having regard to matters of which the Council was unaware when it made that decision. The Final Notice is suspended until the appeal is finally determined or withdrawn.

10.7. The Tribunal may confirm, quash or vary the decision of the Council.

11. Guidance

11.1 Non-statutory Electrical Safety Standards in the Private Rented Sector: Guidance for Landlords, Tenants and Local Authorities; was issued by the Ministry of Housing, Communities & Local Government in June 2020 in respect of the Electrical Safety Standards in the Private Rented Sector.