

PRIVATE SECTOR HOUSING ENFORCEMENT POLICY 2024

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INTRODUCTION

1. This enforcement policy relates to the duties and powers vested in the Council and delegated to officers in the Register of Authorities to deal with substandard conditions in and management of private housing, and public health hazards or nuisance arising from private housing. “Private Sector Housing” means domestic dwellings which are not owned or managed by the Council. It may be owned or managed by registered providers of social housing (see paragraphs 68-69), property guardians, or other providers of residential accommodation which is within the definition of a dwelling, that is to say not hotels or short let holiday accommodation.
2. A “dwelling” means a building or part of a building occupied or intended to be occupied as living accommodation, and includes Houses in Multiple Occupation, flats and any common parts of a building containing one or more flats, and any yard, garden, outhouses and appurtenances belonging to the dwelling.
3. This policy has been developed with regard to the Regulator’s Code under Section 22 of the Legislative and Regulatory Reform Act 2006 (“the 2006 Act”) and the Regulatory and Enforcement Sanctions Act 2008 and aims to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. It is intended to ensure that any person exercising a regulatory function to which this policy applies must have regard to the principles that regulatory activities should be carried out in a way which is **transparent, accountable, proportionate and consistent and should be targeted only at cases in which action is needed.**

4. We have considered how best we can:
 - Encourage and promote compliance
 - Focus on high risk issues
 - Provide encouragement for compliant persons and businesses
 - Understand and minimise the negative economic impacts of our activities
 - Minimise the costs of compliance for those we regulate
 - Ensure we discharge our duties with regard to the Equalities Act 2010.

5. Whilst the general principles below will apply in all cases, the policy cannot be absolutely prescriptive because the circumstances of individual cases will vary, and each must be considered on its own merits before a decision is reached. In certain circumstances we may conclude that a provision in the code is either not relevant or is out-weighted by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

6. Legislation which allows the Council's trading standards officers to impose civil penalties on landlords, letting agents, estate agents, property managers or property agents, is covered by the Environmental Services Enforcement Policy and Trading Standards Policies and Procedures. Examples of such powers would be unlawful letting fees, failure to join a redress scheme or issuing sham licences instead of tenancy agreements under the Tenant Fees Act 2019; Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme) Order (SI 2014 No. 2359); Consumer Protection from Unfair Trading Regulations 2008.

PURPOSE AND SCOPE

7. The Private Sector Housing team deals with environmental health and licensing functions in relation to Private Sector Housing properties through the investigation of complaints, carrying out inspections, giving advice, enforcement in relation to offences, breaches of regulations or failure to meet required standards.

8. Within the team there are a variety of separate but interrelated operational/functional areas. These are:
 - Housing standards in the private rented sector, including safety in respect of fire, gas, electricity, and other housing hazards
 - Licensing of Houses in Multiple Occupation and dwellings which are in an area that is for the time being designated as subject to selective licensing ¹
 - Public health hazards and statutory nuisance

¹ See [Housing Act 2004 Part 2 and Part 3](#)

- Energy efficiency in relation to domestic properties
 - Empty dwellings
9. The policy applies to all officers and managers in the Private Sector Housing Team who are involved in taking enforcement action, investigating cases, serving notices and recommending or deciding upon the commencement of legal proceedings.
 10. 'Enforcement' includes any action taken by officers aimed at ensuring that individuals or landlords, including Local Authority managed premises, comply with the law.
 11. In this policy, the term 'landlord' should be read as including letting agents, managing agents and any other person involved in the letting or management of privately rented accommodation.

APPROVAL

12. The Cabinet Member for Housing and Homelessness approved this policy on

REVIEW

13. This Enforcement Policy will be reviewed and updated, if appropriate, in response to new legislation or guidance.

ACCESS TO THE POLICY

14. This Enforcement Policy is publicly available and a copy can be obtained by contacting the Private Sector Housing Team by e-mail at phs@lbhf.gov.uk . It is also available on the Council's website <https://www.lbhf.gov.uk/housing/private-housing>

THE PRINCIPLES OF GOOD REGULATION

15. Officers will seek to adopt efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. As required by section 21 of the 2006 Act this Policy is based on the following Principles:
 - Transparency
 - Accountability
 - Proportionality
 - Consistency
 - Targeted only at those cases where action is needed
16. This document commits us to good enforcement policies and procedures based on those principles. Additional detailed procedures relating to the specialist

operational/ functional areas within the team supplement this document and reinforce these objectives.

17. Enforcement decisions will be made in a fair, independent and objective way. Depending on the seriousness of a situation, in the first instance resolution may be attempted through advice and mutual agreement, progressing through a graduated response to a tougher formal stance if offences are repeated or co-operation cannot be achieved. A tougher stance may be taken from the outset where there is flagrant non-compliance and for serious offences or hazards, for example those likely to result in personal injury or harm or to protect the vulnerable, such as failure to maintain safety standards or to minimise a high level hazard.

TRANSPARENCY

18. Advice from an officer will be provided in plain, accessible language and will be confirmed in writing, on request, explaining why any action is necessary, over what time-scale, and making sure that legal requirements are clearly distinguished from good practice advice.
19. Where immediate action is necessary, we will give an explanation of why such action is to be taken and confirm this in writing.
20. Adequate information will be provided to enable reference to be made to the relevant legal and associated documents.
21. Any service standards such as the content of inspections or when you can expect a response, will be available on request and on our website.
22. Any relevant complaints or appeals procedures will be explained.

We will aim to meet the following service standards:

- Quality – a professional and competent response
- Speed – compliance with corporate standards set by the Council for the timeliness of responses to phone calls, emails, letters and personal visits
- Efficiency – the number of service requests received and opened will be compared to the number of those resolved
- Accuracy – correct and helpful information is provided, and if this is not possible at the first point of contact, a slower time but correct answer will be provided as soon as is possible
- Honesty – officers will be truthful about services, and realistic about what can be delivered
- Availability - the effort made to get an issue resolved, should be proportionate to the urgency of the issue
- Professional and objective – officers should interact with the public in a polite and credible manner.

Data Management

23. The Council's Private Sector Housing Service collects and processes a range of information about property owners, occupiers, landlords, agents and relevant interested parties both directly from the individuals (data subjects) and from publicly accessible data sources such as Companies House and HM Land Registry. Data may be obtained from Council Tax records and Electoral Roll, but only on an as needed basis to establish property owners', landlords' and occupiers' numbers and identities.
24. The service is committed to being transparent about how it collects and uses that data and to meeting its data protection obligations.
25. Data can include:
 - name, address and contact details, email addresses and telephone number
 - date of birth
 - protected characteristics, in order to ensure services are provided in a fair and equitable manner
 - financial information such as bank account and payment card details and transactional data including payments to or from you
 - information about medical or health conditions, including whether or not you have a disability and support needs
 - information about the property you live in and your housing history
 - property ownership details, whether freehold or leasehold

The legal basis for processing personal data

26. The lawful basis for processing your personal data is "legal duty" and "public task".
27. The "legal duty" arises because the Council's Private Sector Housing Service needs to process the personal data to comply with its overall purpose to comply with a legal obligation to:
 - assess housing conditions and amenities
 - deliver the Council's housing licensing services
 - keep a register of licensed properties
 - deliver statutory duties such as dealing with hazardous housing conditions, statutory nuisances, public health hazards,
28. The Council's Private Sector Housing Service processes a special category of personal data, namely character and criminal conviction data for the purposes of assessing whether persons in control of or managing properties are fit and proper persons, in respect of the following:
 - Criminal conviction data is obtained from persons by self-declaration, and if necessary from the Disclosure and Barring Service for offences involving fraud/dishonesty/violence/drugs or certain sexual offences

- Unlawful discrimination on the grounds of protected characteristics
 - Contravention of any Housing/Landlord and Tenant/Planning legislation
29. Processing criminal convictions or offences data to **exercise official authority** (e.g. public functions and powers set out in law) and because there is a **substantial public interest** for us to process it. We have made sure the processing is proportionate to the aim pursued and we have the appropriate safeguards in place for the data subject's rights and interests.
30. The "public task" basis arises because the Council's Private Sector Housing Service needs to process personal data to perform specific tasks in the public interest that are set out in law, such as:
- provide advice and guidance to landlords and tenants, with the aim of increasing housing supply and the prevention of homelessness
 - protection from unlawful eviction
 - deliver government or Council priorities such as energy efficiency, returning empty dwellings to occupation, reducing overcrowding
 - monitor services to ensure they are delivered in a fair and equitable way
 - monitor services to support future service development and delivery
 - monitor services to provide statistical data for statutory returns and governance and compliance purposes
31. Data processing is necessary for compliance with legal obligations primarily (but not exclusively) under the following legislation:
- Housing and Planning Act 2016
 - Housing Acts 1985 and 2004
 - Housing Health and Safety Rating System Regulations 2005
 - Environmental Protection Act 1990
 - Public Health Acts
 - Homelessness Reduction Act 2017
 - Protection from Eviction Act 1977
 - Crime and Disorder Act 1998
 - Anti Social Behaviour, Crime and Policing Act 2014
 - Building Safety Act 2022

HMO Register

32. Housing Act 2004 section 232 states that every local housing authority (ie the Council) must maintain a register of licences for houses in multiple occupation (HMOs) licensed under Part 2 of that Act and houses and flats licensed in areas designated for Selective Licensing under Part 3. The register must contain prescribed particulars which, by virtue of SIS 2006 No.373 and 2007 No.1903, include the name and address of the licence holder and the property manager. Registers must be made available for inspection and a copy of the register (or an extract) must be supplied, subject to payment of a fee, on request.

33. The Council will make names and addresses of licence holders and property managers publicly available as part of the HMO Register on request, but will not publish them on the website and will only provide copies of the Register on payment of a fee (currently £54).

Rogue Landlords' Database

34. Both national government and the Greater London Authority maintain public registers, administered by them, of landlords and agents convicted or who receive financial penalties for certain housing related offences. The Council will supply names and addresses of landlords and agents, together with details of the offences, to these databases, when it is appropriate to do so. There is a right to make representations for data not to be published on these databases, and the Council will assess representations on a case by case basis. Publication decisions will be made on the basis of fairness and public interest, and will not be made maliciously.

Who we may share your information with

35. Your information will be shared with other Council departments or third parties and external partners who deliver these services for the purposes stated above.
36. We will share personal information with law enforcement or other authorities if required by applicable law such as:
- The Cabinet Office
 - Government agencies
 - Greater London Assembly
 - Specified anti-fraud organisations (SAFOs)
 - The Police
 - Judicial agencies e.g. Courts
 - Department of work and pensions
 - HMRC
 - Local authorities
 - In certain circumstances employers
37. We will only share information with these organisations where it is appropriate and legal to do so. We may also share information, for example, if there is a risk of serious harm or threat to life.

How long the data will be stored for

38. We will keep information for as long as is required by law and to provide the necessary services.
39. We may also anonymise some personal data you provide to us to ensure that you cannot be identified and use this data to allow the Council to effectively target and plan the provision of services.

What rights does the data subject have?

40. To request a copy of the information that we hold.
41. The General Data Protection Regulation also gives additional rights about the information we hold and how we use it, including the right to:
 - Withdraw consent and the right to object and restrict further processing of personal data
 - Request to have personal data deleted where there is no compelling reason for its continued processing and provided that there are no legitimate grounds for retaining it
 - Request personal data to be rectified if it is inaccurate or incomplete.
 - Not be subject to automated decision-making including profiling.
 - To request information that we hold visit our [Subject Access Request](#) page.

How can the data subject raise a complaint?

42. If there are grounds to believe the Council has not complied with its obligation for handling personal information; visit our [Compliments and Complaints](#) page.
43. There is a right to complain to the Information Commissioner's Office (ICO) if the response to a complaint about data handling is not satisfactory. [Report a concern by visiting the ICO website](#)

Developing and testing business applications

44. Housing and their service delivery partners (see above) may use information to maintain and improve the services, this includes developing and upgrading the systems which we use to process information.

Corporate business intelligence

45. Information may be shared with other council services and service delivery partners (see above) for research and analysis purposes, to help us design services and to identify and contact those who may benefit from them.

Legal requirements

46. The Council will use information held for the purposes of law enforcement, regulation and licensing, criminal prosecutions and court proceedings.

ACCOUNTABILITY

47. We will provide a courteous and efficient service and staff will identify themselves by name and give a contact point, telephone number and e-mail address for further correspondence. Officers will encourage residents and businesses to seek advice and information from officers who will deal with representations and applications efficiently and promptly.

48. We will provide well-publicised, effective and timely complaints procedures easily accessible to residents or businesses. All complaints will be investigated in accordance with written procedures. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.
49. We will seek opportunities to receive feedback landlords, agents and residents about the service generally or about how their case was handled. This may be in the form of individual feedback, surveys, forums, as examples of how this could be done.

Compliance with delegated authority

50. All enforcement officers will be authorised and have the necessary training and competency to enable them to exercise the powers available to them. Officers are required to produce their authorisation and ID cards at the time of inspection/visits if required.
51. Formal Enforcement Action must be authorised by the appropriately delegated level of officer. Some more serious enforcements must be authorised at manager level.

PROPORTIONALITY

52. We will minimise the costs of compliance by ensuring that any action required is proportionate to the risks involved or the seriousness of the breach. The type of enforcement action taken by officers will, in part, depend on the risk of, or actual, negative impact on others arising from the activity in question.
53. Where the law requires that risks should be controlled “as far as reasonably practicable” officers, will take into account the cost and the ease of any suggested action as well as the degree of risk. However, some irreducible risks may be so serious that they cannot be permitted irrespective of the economic consequences.
54. In deciding what course of action to take, officers will have regard to various factors including:
 - the risk to the public presented by the breach
 - whether it is a Category 1 or high-risk Category 2 hazard under the Housing Act 2004
 - whether any harm was caused
 - the degree of urgency of action to remedy the breach
 - representations by persons affected, such as victim impact statements
 - views of any victim/injured party, financial gain or benefit from a non-compliance
 - whether the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance
 - previous compliance history of the duty holders or businesses concerned

- whether the defendant has previous convictions or cautions which are relevant to the present offence
 - likelihood of continuation or recurrence
 - the general cooperativeness of the offender
 - whether there has been a blatant/reckless disregard for the law
 - whether there has been poor management
 - the level of premeditation or prior knowledge the responsible person is believed to have had about the breach
 - the likely future consequences of non-compliance
 - the need to deter others
 - whether the offence, although not serious in itself, is widespread in the area where it was committed
 - the impact of the enforcement choice in encouraging others to comply with the law or change the behaviour of the offender
 - whether the cumulative effect of such breaches would be serious even if the breach in itself was not
 - the need to counter any benefits which may have accrued from the breach
 - the likely effectiveness of the various enforcement options
 - whether a conviction is likely to result in a significant penalty
 - whether a prosecution will have a significant deterrent effect
 - the availability of other appropriate remedies
 - any relevant legal provisions, policy or official, professional guidance or advice
 - whether an officer has been obstructed
 - local priorities of the Service and the Council
 - whether any party has been the victim of modern slavery exploitation or human trafficking.
55. Officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference.
56. We will take particular care to work with individuals, small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

CONSISTENCY

57. Decisions on enforcement always entail a degree of personal judgement by officers and the circumstances of each case will inevitably differ in detail.
58. Furthermore, guidance upon which officers act does change over time and a decision made one day may differ from one made the next for that reason.
59. Consequently, there may be instances when over time, enforcement may appear to be inconsistent. Officers will try to ensure that enforcement action is as consistent as possible by:

- Following current internal procedural and guidance notes
 - Taking account of appropriate guidance from other authoritative or professional bodies e.g. Chartered Institute of Environmental Health or London Fire and Emergency Planning Authority (LFEPA) and LACORS (Local Authority Coordinators of Regulatory Services)
 - Taking due account of new case law relating to enforcement
 - Taking account of any new legislation or guidance which impacts on their duties
 - Liaising with other enforcement agencies as necessary
 - Actively participating in joint local authority schemes to achieve greater consistency
 - Having due regard to the Housing Health and Safety Rating System
 - Carrying out benchmarking exercises from time to time
 - Sharing of enforcement information between officers and across different teams
60. The above measures will be supplemented by specific enforcement training officers and managerial checks on performance.

PRIORITISATION (TARGETED WHERE IT IS NEEDED MOST)

61. Enforcement will be targeted to those persons, premises and/or companies whose activities give rise to the risks that are the most serious or least well controlled. Enforcement action is most likely to be taken when someone acts (or fails to act) in a way which is unreasonable and / or:
- is an offence prescribed in law or regulation
 - causes a significant hazard to health or is a nuisance

Requests from leaseholders

62. Other than in exceptional cases, the council expects long leaseholders to invoke the terms of their lease to remedy problems of disrepair or nuisance themselves.
63. Leaseholders will normally need to consult a solicitor specialising in leasehold law but may be able to get advice about how to settle a dispute about repair problems from the Leasehold Advisory Service, 31 Worship Street, London E2CA 2DX, Telephone 020 7374 5380 email: info@lease-advice.org.uk
64. In exceptional circumstances we may take housing enforcement action on owner occupiers or long lease holders. Examples of when this might be appropriate are:
- Where there is a significant risk to the health and safety of occupiers or third parties
 - When the person having control of the property is considered to be particularly vulnerable
 - Where a statutory nuisance has been identified.

Situations where we may not provide a service

65. We may decide not to provide a service or to cease providing a service where:

- The tenant(s) are, shortly to move out of the property by their own choice
- The tenant(s) unreasonably refuse access to the landlord, managing agent or landlord's builder, in order for works to be carried out
- The tenant(s) have, in the opinion of the council, caused the damage to the property they are complaining about, and there are no other items of disrepair
- A tenant does not want their present accommodation to be brought up to standard, and the only reason for contacting the Private sector housing team is to secure re-housing
- The tenant(s) have failed to keep appointments and or not responded to follow up letters or appointment card.

66. Where the tenant unreasonably refuses to provide the council with relevant documentation, e.g. a tenancy agreement or notice seeking possession.

67. The tenant(s) have been aggressive, threatening, verbally or physically abusive or shown racist or other inappropriate behaviour towards officers

Tenants of Registered Providers of Social Housing

68. Tenants of Housing Associations have standard procedures to follow if their landlord does not carry out repairs in a satisfactory manner, including a complaints procedure and a final right of appeal to the Housing Ombudsman Service.

69. We will assist tenants if the property contains a Category 1 Hazard, a statutory nuisance, or is a House in Multiple Occupation which does not comply with current fire safety and amenity standards, and where the Housing Association's own procedures have not resolved the issue. We will mediate where there are continuing disputes or difficulties, encouraging tenants to follow the RP's complaint procedures, and will intervene where we foresee an immediate risk to health or safety.

Council Tenants

70. We will investigate complaints relating to conditions in former council-owned properties that have been sold into private ownership and are now rented by landlords to tenants. Complaints relating to the council's own stock are redirected to the appropriate Housing Management Team. Council tenants are advised to contact their area Housing Office directly <https://www.lbhf.gov.uk/housing/council-tenants> .

Empty Properties

71. The Council' objective is that where privately owned dwellings in the borough have been empty for more than two years, they are brought back into use.
72. Where owners are not willing to engage with the council we will use appropriate enforcement powers. We will carry out any works to remedy any defects affecting neighbouring properties or which may be considered to be a nuisance or a danger to the public. The council will consider the use of Enforced Sale in appropriate cases to facilitate bringing a property back into use and may use Compulsory Purchase Orders under Section 17 of the Housing Act 1985, but only in exceptional circumstances as the consent of the Secretary of State is required and compensation provisions for the owner apply.
73. Interim and Final Empty Dwelling Management Orders can be made on empty properties and also allows the Council to take control and rent the property out. Rights of appeal exist in relation to these powers and compensation provisions also arise in some cases.

ENFORCEMENT OPTIONS

74. Under normal circumstances, a process of escalation will be used until compliance is reached. Exceptions may occur where there is a serious risk to safety or the environment or the offences have been committed deliberately or negligently or involve deception, or where there is significant financial detriment.
75. The options that are available to officers, having considered all the relevant information and in accordance with written procedures, are:
 - to take no action
 - to give advice either verbal or written
 - to take informal action
 - to exercise the power of entry
 - to serve a preliminary notice or warning letter
 - to serve a statutory notice
 - to carry out works in default
 - to impose a financial penalty
 - to prosecute
 - to apply for a rent repayment order
 - to apply for a banning order
 - to notify the Greater London Authority of entries onto the London Landlord and Agent Checker
76. Further options are available regarding the Licensing of Houses in Multiple Occupation:
 - to serve a notice of intention to refuse, grant, revoke or vary a licence

- to refuse, grant, revoke or vary a licence
- to serve a notice of intention to apply for an Interim Management Order
- to apply to the First Tier Tribunal Property Chamber for an Interim Management Order
- to serve notice of intention to make a Final Management Order
- to make a Final Management Order.

Option to take no action

77. No further action by the Council may be required in certain circumstances, for example if on investigation it is found that:

- there is no breach of relevant legislation or significant nuisance
- the health and well-being of residents is not particularly at risk or
- there is no risk to public health generally
- it is a minor or technical non-compliance that was rectified immediately
- or there are extenuating circumstances such as a public health or other major emergency which over-rides the need to take action on a housing issue.

Option to take informal action

78. Formal action will normally be pursued in the enforcement of proper standards of housing, because it would be wrong to leave tenants in unhealthy or unsafe housing conditions, which may be prolonged if informal action is taken. Only in specified or exceptional circumstances will informal action be considered, such as:

- when a tenant will not consent to works being carried out by their landlord, or if their complaint is vexatious
- where a deficiency or hazard is not the landlord's responsibility
- where a registered social landlord has a planned programme of works (including the works required by the Council) and the programme will be implemented within a short time and achieve a better overall result
- the defect or breach of duty is not serious enough to warrant formal action
- the consequences of non-compliance will not pose a significant risk to the residents or the public at large
- the complainant or resident elects to take up an alternative remedy
- previous history of the resident or landlord involved suggests that informal action will achieve compliance within a suitable time
- confidence in the landlord is high or they are members of the accreditation scheme for landlords and they continue to adhere to proper standards of management.

79. This option may involve providing advice, verbal warnings, recommendations for action contained in a letter or referral to another agency for action or an alternative remedy.

Option to use Powers of Entry

80. In order to enforce the various statutory provisions regarding Statutory Nuisance or the condition of private sector housing, Parliament has also made

provision for powers of entry allow certain officers of the Private Sector Housing Team who are properly authorised in writing to require entry to:

- survey
 - conduct an estimate of costs
 - determine if the Council should use enforcement powers
 - determine if a notice has been complied with
 - carry out work in default
 - determine if an offence has been committed.
81. These powers of entry usually involve the giving of notice to an occupier and/or owner that an authorised officer wishes to gain entry for a specified purpose on a specified day. On other occasions informal requests for access may result in access being provided. Failure to provide access as requested may result in an offence of obstruction being committed. There are specific purposes in law where a power of entry exists without a requirement to give notice, in which case the council may not give notice and may make an “unannounced visit”.
82. Formal requests for access under powers of entry requiring notice will state the purpose for which entry is required.
83. Obstruction of an officer or of a worker or contractor employed by the Council to carry out work in default will be considered for prosecution in accordance with the policy set out above.
84. Certain powers of entry also provide for a Magistrate to issue a warrant authorising entry by force, if needed. The Magistrate must be shown sworn information in writing, that such entry is necessary for the purpose of survey and examination to determine if any powers should be exercised by the Council under the law for the purpose of ascertaining if an offence has been committed or to carry out works in default.
85. The Magistrate can only grant the warrant if satisfied that admission to the premises has been refused, or would be refused, or cannot be obtained. Evidence will also be required that the appropriate notice before entry has been given. Alternatively the Magistrate must be satisfied that an application for admission would defeat the purpose of the entry.
86. Application for a warrant to enter will be made when at least one of the following applies:
- there has been a history of failure to provide access in response to informal and formal requests
 - the owner or occupier of the premises cannot be found or contacted
 - the alleged offence involves a flagrant breach of the law such that the safety, health or wellbeing of residents or others is put at risk.
 - the alleged offence involves knowingly or wilfully failing to comply in full or in part with the requirements of a statutory notice, statutory instrument or other legal duty

- the alleged offence involves a failure to comply with a requirement after reasonable notice
 - there is a history of similar offences involving risk to the safety, health or well being of residents or others or breach of legal duty
 - the purpose of the inspection would be defeated by the service of a notice.
87. Execution of warrants for entry will be notified to the relevant police and where appropriate the police may be asked to assist in the execution or to prevent a breach of the peace. Entry may be undertaken by force if necessary.
88. If the premises subject to the warrant is unoccupied or the occupier is temporarily absent, the Council will leave the premises as effectively secured against trespassers as it was found if it was entered by force. If new locks have been fitted to secure the premises, information will be left on how to obtain the keys.

Option to serve a preliminary notice or warning letter

89. In most cases formal action under the Housing Act 2004 will be preceded by the service of preliminary notices or warning letters by which the Council sets out a proposed schedule of works and time scales for completion of the work. These invite landlords to make representation if they disagree with the requirements or if they wish to suggest an alternative course of action. If representation is made and the alternatives are not agreed, the landlord will be advised of the reasons for this.
90. The preliminary notice or warning letter invites landlords to complete an undertaking stating that they agree to the required works and the proposed timescales. If an undertaking is received, no further action will be taken unless the agreement is not adhered to.
91. The preliminary notice or warning letter advises the landlord that a statutory notice will be served in 14 days if an undertaking is not received or if they do not make a representation.
92. The statutory notice will normally list the same works as outlined in the preliminary notice or warning letter, unless a further inspection reveals additional remedial work required.
93. For non-Housing Act 2004 enforcements there is no provision for preliminary notices. In cases where action is required immediately we will serve a notice in the first instance.

Option to serve a statutory notice

94. Statutory housing notices will be served in the first instance when one of the following situations apply:
- there is no provision in the legislation for the service of a preliminary notice

- there is a lack of confidence in the individual or residents or landlords to respond to an informal approach
 - the consequences of non-compliance present a serious risk to residents or the public
 - effective action needs to be taken as quickly as possible to remedy conditions that present a serious risk and are deteriorating or likely to deteriorate e.g. gas or electrical hazards
 - immediate action is required to deal with a public health matter or statutory nuisance e.g. blocked drains
95. Statutory notices will only be served by officers who are authorised under the scheme of delegation. Notices will be served in accordance any relevant statutory guidance and codes of practice. Authorised officers will be in possession of sufficient evidence to enforce any statutory notice and be prepared to pursue non-compliance, for example through prosecution, the issuing of financial penalties or works in default.
96. Wherever possible, the officer serving the notice will attempt to discuss the requirements of the notice with the person responsible for compliance. All notices will specify realistic time limits for compliance.
97. Failure to comply with a statutory notice will, in general, result in the further legal proceedings and/or the carrying out of works in default of the person responsible for compliance.
98. Statutory notices will set out details of the right of appeal against the notice as well as the time scale for an appeal and details of where to make the appeal.
99. A charge may be made to recover the cost of the work involved in preparing a statutory notices under the Housing Act 2004, according to the fees and charges schedule.

Option to Carry Out Work in Default

100. Failure to comply with a notice may also result in the Council deciding to carry out works required by a notice and recovering the cost incurred.
101. Where it is legally possible, the Council will consider the need for work in default in each case where a statutory notice is not complied with. Such consideration may be in addition to or instead of the prosecution policy set out above. There will be situations that arise when it is appropriate to carry out work in default because of the urgent nature of the required work or because work has still not been carried out after a previous prosecution.
102. Notification of the intention of the Council to carry out work in default will be given to all interested parties in accordance with relevant statutory provisions. Tendering processes and contractors engaged by the Council to carry out work in default will be in accordance with the Council's Financial Limits and Procedures. The schedule of rates for the relevant works will apply when determining the reasonableness of any estimate from a contractor and

professional and administration fees will be added to determine the final cost on completion of the work in default.

Option to Prosecute or Impose a Financial Penalty

103. Civil Financial Penalties for housing offences were established under Housing Act 2004 s.249A (as amended by Housing and Planning Act 2016 Schedule 9). Civil Financial Penalties are also available for failure to comply with the:
- Smoke Alarm and Carbon Monoxide Regulations 2015
 - Energy Efficiency Regulations 2015.
 - Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
 - Tenant Fees Act 2019
104. Detailed procedures for determining the level of a financial penalty are in Appendices 2-7.
105. Where multiple offences are committed and the offender is issued with more than one financial penalty, the council should consider the following guidance from the Definitive Guideline in relation to Offences Taken into Consideration and Totality.
106. *“The total financial penalty is inevitably cumulative. The council should determine the financial penalty for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the council. The council should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate total is not just and proportionate the council should consider how to reach a just and proportionate financial penalty.”*
107. The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017 SI 2017/367 prescribe that local authorities can use any money recovered under a housing financial penalty to meet the costs and expenses incurred in connection with carrying out any of their enforcement functions in relation to the private rented sector.
108. The Council has discretion whether or not to prosecute for an offence or impose a financial penalty and the decision will be based on the circumstances of each individual case. Regard will also be had to the Code for Crown Prosecutors.
109. Prosecution will be related to risk, serious nuisance or other similar situations affecting any individual or the environment, and needs to pass the test that prosecution is “in the public interest” for one of the following reasons. Generally, prosecution will be used instead of a civil financial penalty where one or more of the following criteria apply:
- Aggravating features such as non co-operation, hostility or aggression towards tenants, third parties or officers
 - Two previous financial penalties imposed by the same Council on the subject

- Multiple offences relating to the same or different properties committed by the same subject
 - Belief by officer that a financial penalty will have little or no deterrent effect or impact on changing behaviour
 - Serious injury or death caused by the offence(s)
 - In all other cases where a financial penalty is available in law, the financial penalty will normally be more appropriate than prosecution, provided there is believed to be sufficient evidence that a specified offence has been committed and that it will act as a sufficient deterrent against re-offending.
110. Officers investigating offences will seek to ensure that their investigations and decision making is not unduly prolonged and that complainants, witnesses and other parties are kept informed of progress with the case.

Option to apply for Rent Repayment Orders

111. The Council must apply to a First-tier Tribunal (Property Chamber) for an RRO to recover housing benefit or housing costs element of universal credit paid (to any person) where a landlord has been convicted of one of the offences set out in s.40(3) Housing and Planning Act 2016.
112. The Council will serve a notice of intended proceedings which will:
- inform the landlord/agent that the authority intends to apply for an RRO and set out the reasons
 - state the amount that the authority seeks to recover
 - invite the landlord/agent to make representations within a specified period (of not less than 28 days), and
 - relate to a period of maximum 12 months of the landlord/agent committing the offence.
113. The amount the Council seeks to recover cannot exceed the amount of housing benefit or universal credit paid (directly or indirectly) to the landlord/agent in the relevant period.
114. The authority can apply for an RRO after the expiry of the notice of intended proceedings and after it has considered any representations made.
115. Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017 SI 2017/367 prescribe that local authorities can use any money recovered under an RRO to meet the costs and expenses incurred in connection with carrying out any of their enforcement functions in relation to the private rented sector.

Option to apply for a Banning Order

116. After considering any representations, the Council may apply for a Banning Order to the First-tier Tribunal (Property Chamber) after a landlord has been convicted of a Banning Order offence. The Council will consider the following

factors when deciding whether to apply for a banning order and, if so, the length of the order it will apply for: ²

- The seriousness of the offence
- Previous convictions
- The harm caused to the tenant
- Punishment of the offender
- Deter the offender from repeating the offence
- Deter others from committing similar offences

117. The Council will serve a notice on the landlord or agent stating why it is applying for a banning order; the length of order it will apply for and that s/he has at least 28 days to make representations in their defence. The notice must be served within six months of the conviction for the banning order offence. After considering any representations the authority must apply to a First-tier Tribunal.

Option to Publicise Offences

118. Media coverage will normally be sought in the following circumstances:

- Where the offence is widespread in the area and coverage will assist in securing compliance by others; to draw attention to particularly serious hazards.
- The offence is serious and/or was committed wilfully and the council wishes to draw attention to their willingness to deal with offenders. Coverage is otherwise in the public interest.
- Where it is considered that publicity will have the desired effect by promoting compliance with enforcement standards

Option to notify the Greater London Authority of entries onto the London Landlord and Agent Checker, and to notify the National Rogue Landlord Database

119. Under the Housing and Planning Act 2016, the Council must make an entry on the database where a landlord or property agent has received a Banning Order. The Council may 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. The Council may also make entries onto the GLA's London Landlord and Agent Checker when a landlord or agent has been convicted or received a financial penalty for any housing related offence. These entries will always be made, after which the landlord or agent may make representations why the information should not be made public. If the

2

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697643/Banning_order_guidance.pdf

representation is accepted by the Council as exceptional reasons not to publish, the Council will agree to the information not being published.

Options regarding Licensing of Houses in Multiple Occupation (HMOs) and Selective Licensing

120. All decisions in respect of licensing will be taken in accordance with the appropriate legislation and guidance.
121. A notice of intention will be served on the licence applicant setting out our decision to refuse, grant or vary a licence. These notices invite landlords to make representation if they disagree with the conditions of the licence. If representation is made against the licence conditions and an alternative proposal is agreed, another notice of intention will be served with the agreed amendments. If representation is made and the alternatives are not agreed, the landlord will be advised of the reasons for this in writing.
122. The notice of intention will be followed by a notice to refuse, grant or vary the licence. A notice of refusal will set out the grounds for the decision not to license the house. When a licence is granted or varied, specific conditions will be imposed and set out with the notice. In most cases a licence will be valid for five years.
123. If the Council intends to apply for an Interim Management Order to take control of a house which cannot be licensed, the Private Sector Housing Manager must agree that this course of action is appropriate. A notice of intention will be served on the landlord before an application is to be made to the Property Tribunal for such an Order. These notices invite landlords to make representation if they disagree with the Council's intention. If representation is made against the decision to apply for an Order, and an alternative proposal is agreed the application will not proceed. If representation is made and the alternatives are not agreed, the application for an Order will be made.
124. If the Council is satisfied that an Interim Management Order is the only suitable course of action, the notice of intention will be followed by an application to the Tribunal for an Interim Management Order.
125. If the Council intends to make a Final Management Order to take control of a house which has an Interim Management Order in place, the Private Sector Housing Manager must agree that this course of action is appropriate. A notice of intention will be served on the landlord before the Order is made. These notices invite landlords to make representation if they disagree with the Council's intention. If representation is made against the decision to apply for an Order, and an alternative proposal is agreed the application will not proceed. If representation is made and the alternatives are not agreed, the Order will be made.
126. If the Council is satisfied that a Final Management Order is the only suitable course of action, the notice of intention will be followed a Final Management Order.

Options in relation to Higher Risk Buildings

127. As defined in the Building Safety Act 2022, a higher risk building is one containing residential accommodation which is at least 7 storeys or 18 metres high. Council officers will work in partnership with the Fire and Rescue Service, which has enforcement powers under Regulatory Reform (Fire Safety) Order 2005 and the Health and Safety Executive which is the Building Safety Regulator to assess and enforce remedial action with regard to building safety risks including (but not limited to) fire safety hazards. The Council will also work with the Local Government Association Joint Inspection Team to assess risks in higher risk buildings, and may use the results of assessments to support enforcement actions, which may include (but not limited to) enforcement powers under Housing Act 2004 and powers available on application to a Tribunal such as Remediation Orders and Remediation Contribution Orders.

IMPLEMENTATION OF THE ENFORCEMENT POLICY

128. Relevant Team Managers and Heads of Service will be responsible for ensuring that all enforcement officers are familiar with the requirements and carry out their duties in accordance with this Enforcement Policy.
129. If anyone wishes to complain about enforcement action they may do so initially by contacting the relevant Team Manager by telephone on 020 8753 1081 or by e-mail at phs@lbhf.gov.uk (or by writing to them at: Environmental Health, Private Housing, 43 Beavor Lane W6 9AR).
130. Where possible, a complaint will be investigated within 15 working days. A complainant will be advised at the outset about how the complaint will be dealt with and when to expect information on the progress of the investigation.
131. If a complainant is dissatisfied with the result of their complaint to the Team Manager, the complaint will be reviewed at a higher level, and may ultimately be dealt with by the Director or their nominated deputy. The formal complaints procedure is on the Council's website: <https://www.lbhf.gov.uk/councillors-and-democracy/complaints>

5 April 2024

REGISTER OF AUTHORISATIONS DELEGATED TO PRIVATE HOUSING STANDARDS OFFICERS AND MANAGERS		
LEGISLATION	FUNCTION	AUTHORISED OFFICERS
GENERAL		
Local Government (Miscellaneous Provisions) Act 1976	Section 16 Power to obtain particulars of persons interested in land	Private Housing Standards Officers and Private Sector Housing Team Leaders and Managers
Protection from Eviction Act 1977	Section 7 Power to require name and address of landlord to be provided Section 1 Power to initiate proceedings for unlawful eviction or harassment	Private Housing Standards Officers and Private Sector Housing Team Leaders and Managers
Local Government (Miscellaneous Provisions) Act 1982	Section 29 Power to undertake works to a building to prevent unauthorised entry	Private Housing Standards Officers and Private Sector Housing Team Leaders and Managers
DRAINAGE AND CLEANSING; UTILITIES		
Local Government (Miscellaneous Provisions) Act 1976	Section 33 Power to reinstate gas, electricity and water supplies. Section 35 Power to serve notices requiring removal of obstructions from private sewers	Private Housing Standards Officers and Private Sector Housing Team Leaders and Managers
Building Act 1984	Section 59 Provision as to drainage of existing buildings - service of notices requiring satisfactory provisions, etc. Section 60 Provisions as to soil pipes and ventilation shafts - service of notices requiring remedial works. Section 64 Buildings having insufficient closet accommodation or closets so defective as to require reconstruction - Service of notices requiring remedial works. Section 84 Yards and passages to be paved and drained - service of notices requiring remedial works.	Private Housing Standards Officers and Private Sector Housing Team Leaders and Managers

Public Health Act 1936	<p>Section 45 Building having defective closets capable of repair – power to serve of notices requiring remedial works.</p> <p>Section 48 Power to examine and test drains believed to be defective.</p> <p>Section 79 Removal of noxious matter from premises - service of notices requiring remedial works, carrying out works in default and requiring payment for the costs of works in default.</p>	Private Housing Standards Officers and Private Sector Housing Team Leaders and Managers
Public Health Act 1961	<p>Section 17(3) Power to serve notice requiring the remedy of stopped-up drains and the repair of drains and private sewers.</p> <p>Section 22 Power to cleanse or repair drains.</p>	Private Housing Standards Officers and Private Sector Housing Team Leaders and Managers
Public Health Act 1936 as amended by Section 35 of the Public Health Act 1961	<p>Section 83 Cleansing of filthy and verminous premises – power to serve notices requiring remedial works, carrying out works in default and requiring payment for the costs of works in default.</p> <p>Section 84 Power to take remedial action in respect of cleansing of verminous articles.</p> <p>Section 85 Power to take action in respect of verminous persons.</p>	Private Housing Standards Officers and Private Sector Housing Team Leaders and Managers
NUISANCES AND PEST CONTROL		
Prevention of Damage by Pests Act 1949	<p>Section 4 Power to serve notices requiring action by owners or occupiers in respect of rats and mice.</p> <p>Section 5 Power to carry out works in default and require payment for the costs of works in default.</p> <p>Section 6 Power to take action in relation to groups of premises for the destruction of rats and mice, etc.</p>	Private Housing Standards Officers and Private Sector Housing Team Leaders and Managers

Anti-Social Behaviour, Crime and Policing Act 2014	Power to serve Community Protection Warnings and Notices under sec 43 Part 4 of the Anti-Social Behaviour, Crime and Policing Act 2014.	Private Housing Standards Officers and Private Sector Housing Team Leaders and Managers
Environmental Protection Act 1990	Power to investigate s.79 Statutory Nuisances and to serve notices under s.80; and power of entry and default powers in Schedule 3	Private Housing Standards Officers and Private Sector Housing Team Leaders and Managers
GAS, ELECTRICITY AND ENERGY EFFICIENCY		
The Gas Safety (Installation and Use) Regulations 1998	Power to refer to HSE for it to investigate offences, serve notices and initiate proceedings under s.35 and 36 (duty of employers and landlords to check gas appliances for safety and keep records)	Private Housing Standards Officers and Private Sector Housing Team Leaders and Managers
The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (Section 150(1) of the Energy Act 2013)	Sec 5 Power to serve a remedial notice, serve notices and initiate proceedings for non-compliance	Private Housing Standards Officers and Private Sector Housing Team Leaders and Managers
	Power to impose a financial penalty for non-compliance with these regulations	Private Sector Housing Team Leaders and Managers
Electrical Safety Standards in the Private Rented Sector Regulations 2020 (Sections 122/123 Housing and Planning Act 2016)	Power to investigate offences, serve notices and initiate proceedings for non-compliance	Private Housing Standards Officers and Private Sector Housing Team Leaders and Managers
	Power to impose a financial penalty for non-compliance with these regulations	Private Sector Housing Team Leaders and Managers
Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (Chapter 2 of the Energy Act 2011)	Power to investigate offences, serve notices and initiate proceedings for non-compliance with regulations 23 and 27 (prohibition on letting of sub-standard property)	Private Housing Standards Officers and Private Sector Housing Team Leaders and Managers
	Power to impose a financial penalty for non-compliance with these regulations	Private Sector Housing Team Leaders and Managers

HOUSING CONDITIONS AND LICENSING		
Housing and Planning Act 2016	<p>Part 2 Take action regarding rogue landlords and property agents in England</p> <p>Section 41 Power to apply for a Rent Repayment Order</p> <p>Section 15 Power to apply for a Banning Order</p> <p>Power to apply for an entry in the national rogue landlords database</p>	Private Sector Housing Team Leaders and Managers
Housing Act 1985	<p>OVERCROWDING</p> <p>Section 335 Power to require information about persons sleeping in dwelling.</p> <p>Section 336 Power to require production of rent book, or similar document.</p> <p>Section 338 Power to serve notices to abate overcrowding.</p> <p>Section 139 Power to serve an overcrowding notice in respect of an HMO.</p> <p>Section 144 Power to revoke or vary an overcrowding notice</p>	Private Housing Standards Officers and Private Sector Housing Team Leaders and Managers
Housing Act 2004	<p>IMPROVEMENT NOTICES, HAZARD AWARENESS NOTICES AND EMERGENCY REMEDIAL ACTION</p> <p>Section 11 Power to serve Improvement Notice relating to Category 1 hazards.</p> <p>Section 12 Power to serve Improvement Notice relating to category 2 hazards.</p> <p>Section 14 Power to suspend an Improvement Notice.</p> <p>Section 16 Power to revoke or vary an Improvement Notice.</p> <p>Section 17 Power to review a suspended Improvement Notice</p> <p>Section 28 Power to serve Hazard Awareness Notice relating to Category 1</p>	Private Housing Standards Officers and Private Sector Housing Team Leaders and Managers

	<p>hazards. Section 29 Power to serve Hazard Awareness Notice relating to Category 2 hazards.</p> <p>Section 40 Power to take Emergency Remedial Action in respect of Category 1 hazards. Section 49 Power to charge for certain enforcement action. Section 235 Power to require documents to be produced.</p>	
Housing Act 2004 (continued)	<p>LICENSING OF HMOs</p> <p>Section 62 Power to grant temporary exemptions from licensing requirement. Section 64 and 88 Power to grant or refuse a Licence. Section 67 and 90 Power to require Licence conditions. Section 69 and 92 Power to vary Licence. Section 70 and 93 Power to revoke Licence.</p>	Private Housing Licensing Officers, Private Housing Standards Officers and Private Sector Housing Team Leaders and Managers
Housing Act 2004	<p>Section 20 and 21 Power to make Prohibition Orders relating to Category 1 or 2 hazards.</p> <p>Section 23 Power to suspend a Prohibition Order. Section 26 Power to review a suspended Prohibition Order</p> <p>Section 25 Power to revoke or vary a Prohibition Order.</p> <p>Section 43 Power to make Emergency Prohibition Order in respect of Category 1 hazards.</p> <p>Section 249A and Schedule 13A Power to impose a financial penalty for a relevant housing offence under Housing Act 2004 (as amended by the Housing and Planning Act 2016, namely:</p> <p>(a) section 30 (failure to comply with improvement notice) (b) section 72 (licensing of HMOs) (c) section 95 (licensing of houses under Part 3) – selective</p>	Private Sector Housing Team Leaders and Managers

	<p>licencing (d) section 139(7) (failure to comply with overcrowding notice), or (e) section 234 (management regulations in respect of HMOs).</p> <p>Power to initiate prosecution proceedings for any offences in the Housing Act 2004</p> <p>Power to carry out works in default and recover expenses under Schedule 3</p>	
Housing Act 2004	<p>Section 102 Power to make Interim Management Order. Section 111 Power to vary Interim Management Order. Section 112 Power to revoke Interim Management Order. Section 113 Duty and power to make a final Management Order. Section 121 Variation of final Management Order. Section 122 Revocation of final Management Order.</p>	Private Sector Housing Team Leaders and Managers
Management of Houses in Multiple Occupation (England) Regulations 2006	<p>Reg 6 – Power to make written request for gas safety record Power to initiate proceedings for breach of the regulations</p>	Private Housing Standards Officers and Private Sector Housing Team Leaders and Managers
HIGHER RISK BUILDINGS		
Building Safety Act 2022 Sections 123 and 124	Power to make an application for a Remediation Order or a Remediation Contribution Order	Private Sector Housing Team Leaders and Managers
EMPTY DWELLINGS		
Housing Act 2004 sections 133 to 137	<p>Power to make applications for Interim Empty Dwelling Management Orders and to make Final EDMOs</p> <p>Power to make management arrangements and carry out works in default and carry out the Council's duties under Interim and</p>	Private Sector Housing Team Leaders and Managers

	Final EDMOs	
Housing Act 1985 section 17	Power to initiate proceedings with a view to Compulsory Purchase of empty dwellings for housing purposes	Private Sector Housing Team Leaders and Managers
Town and Country Planning Act 1990 Section 215	Power to require proper maintenance of land	Private Sector Housing Team Leaders and Managers

Appendices 2 to 7

Procedures for determining the level of a Financial Penalty:

- Appendix 2 Smoke Alarm and Carbon Monoxide Regulations 2015
- Appendix 3 Energy Efficiency Regulations 2015
- Appendix 4 Electrical Safety Standards in the Private Rented Sector Regulations 2020
- Appendix 5 Housing Act 2004 Schedule 13A
- Appendix 6 Procedure to determine the level of the offence within the band
- Appendix 7 Consequences of receiving a financial penalty and appeals

Enforcement Policy: Private Sector Housing 2024

Procedure for Establishing Level of Financial Penalty

Smoke Alarm and Carbon Monoxide Regulations 2015 (as amended by the Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022 (“the regulations”))

A landlord must ensure that during any period when the premises are occupied under a tenancy

1. A smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation;
2. A carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a fixed combustion appliance other than a gas cooker; and
3. Checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.
4. Where, following a report made on or after 1st October 2022 by a tenant or by their nominated representative to the landlord, a prescribed alarm is found not to be in proper working order, the alarm is repaired or replaced. The determination (following a report) as to whether the prescribed alarm is in proper working order and any required repair or replacement must be carried out by or on behalf of the landlord as soon as reasonably practicable ¹.

Unless the landlord can show that he, she or it has taken all reasonable steps, other than legal proceedings, to comply with the duty to comply with a remedial notice, the Council may require the landlord to pay a penalty charge of such amount as the authority may determine not exceeding £5,000.

Regulation 13 requires the Council to prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge. The Council may revise its statement of principles and, where it does so, it must publish the revised statement.

The principles which the Council will follow when exercising its powers under Regulation 8 of these Regulations are set out the Private Housing Enforcement Policy, to which this procedure is appended.

If the Council decides to impose a penalty charge, the authority must serve notice of that fact on the landlord (“a penalty charge notice”) within six weeks beginning with the day on which the authority is first satisfied, on the balance of probabilities, that a landlord on whom it has served a remedial notice is in breach of the duty to comply with the remedial notice.

If the landlord served with a penalty charge notice requests a review the Council must consider any representations made by the landlord, and serve notice of its decision whether to confirm, vary or withdraw the penalty charge. Where the landlord makes written representations the remedial notice is suspended from the beginning of the day following the day on which the representations were received until the local housing authority has (within

¹ Para 4 added by the the Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022

7 days beginning with the day specified in paragraph 3. namely 28 days beginning with the day on which this notice is served)

- a. considered the representations

and

- b. where the outcome of the consideration is to confirm the remedial notice, has informed the landlord in writing that the remedial notice is confirmed (with or without amendment)

or

- c. where the outcome of the consideration is to withdraw the remedial notice, has informed the landlord in writing that the remedial notice is withdrawn.

A landlord who, having requested a review of a penalty charge notice, is served with a notice confirming or varying the penalty charge may appeal to the First-tier Tribunal against the Council's decision.

The process for determining the financial penalty to be imposed has two steps.

Step 1:

Determine the **Band** of the offence (the more serious the offence the higher the penalty).

Decide which seriousness band the offence sits within, according to the chart

Offence	Band 1	Band 2	Band 3
Smoke Alarm and Carbon Monoxide Regulations	Alarms are present but missing on one storey; or alarms present but were not checked to be in working order on first day of a new tenancy but were repaired within 7 days of start of new tenancy	Alarms present but missing on more than one storey; or alarms not checked to be in working order on first day of a new tenancy but were repaired within 7 to 14 days of start of new tenancy	No alarms present; alarms present but not checked to be in working order on first day of new tenancy and not repaired within 14 days of start of tenancy
Level			
Low	£1,000	£2,500	£4,000
Default	£1,500	£3,000	£4,250
High	£2,000	£3,500	£4,500
Very high	£2,500	£4,000	£5,000

Step 2:

Follow the process in Appendix 6 to determine the level of the offence within the band:

- Low
- **Default**
- High or
- Very high

The level within the allotted band determines the level of the financial penalty

Enforcement Policy: Private Sector Housing 2024

Procedure for Establishing Level of Financial Penalty

Energy Efficiency Regulations 2015

Regulation 23: Prohibition on letting of sub-standard property

A landlord of a sub-standard domestic property must not let the property unless he has made all the relevant energy efficiency improvements for the property, or there are no relevant energy efficiency improvements that can be made to the property, or one or more of the exemptions applies. A “tenancy” is one which is an assured tenancy for the purposes of the Housing Act 1988 or is a regulated tenancy for the purposes of the Rent Act 1977.

Where a landlord appears to it to be, or to have been at any time within the preceding 12 months, in breach of regulation 23 “Prohibition on letting of sub-standard property”, the Council may under **Regulation 37** serve a compliance notice on a landlord requesting such information as it considers necessary to enable it to monitor compliance.

The Council may serve a penalty notice on a landlord in any case where it is satisfied that the landlord is, or has been at any time in the 18 months preceding the date of service of the penalty notice, in breach of one or more of regulations 23 or 37 imposing a financial penalty, a publication penalty, or both a financial penalty and a publication penalty.

The “publication penalty” means publication for a minimum period of 12 months, or such longer period as the the Council may decide, on the Exemptions Register of such of the following information in relation to a penalty notice as the Council decides:

- Where the landlord is not an individual, the landlord’s name
- Details of the breach of these Regulations in respect of which the penalty notice has been issued
- The address of the property in relation to which the breach has occurred, and
- The amount of any financial penalty imposed.

Where the landlord has registered false or misleading information under regulation 36

A financial penalty not exceeding £1,000, and (b) the publication penalty

Where the landlord has breached regulation 23 and, at the time the penalty notice is served has, or had, been in breach for less than three months

A financial penalty not exceeding £2,000, and (b) the publication penalty

Where the landlord has failed to comply with a compliance notice in breach of regulation 37

A financial penalty not exceeding £2,000, and (b) the publication penalty

Where the landlord has breached regulation 23 and, at the time the penalty notice is served has, or had, been in breach for three months or more

A financial penalty not exceeding £4,000, and (b) the publication penalty

Where the Council imposes financial penalties on the landlord in relation to a breach of regulation 23 **the total of the financial penalties imposed on the landlord must be no more than £5,000.**

The amount of an unpaid financial penalty is recoverable from the landlord as a debt owed to the Council unless the notice has been withdrawn or quashed.

The process for determining the financial penalty to be imposed has two steps.

Step 1:

Determine the **Band** of the offence (the more serious the offence the higher the penalty).

Decide which seriousness band the offence sits within, according to the chart

Offence	Band 1	Band 2	Band 3
Energy Efficiency Regulations 2015	Registered false or misleading information	Breach for less than three months; failed to comply with a compliance notice	Breach for three months or more
Level			
Low	£400	£800	£2,500
Default	£600	£1,200	£3,000
High	£800	£1,600	£3,500
Very high	£1,000	£2,000	£4,000

Step 2:

Follow the process in Appendix 6 to determine the level of the offence within the band:

- Low
- **Default**
- High or
- Very high

The level within the allotted band determines the level of the financial penalty

Enforcement Policy: Private Sector Housing 2024

Procedure for Establishing Level of Financial Penalty

Electrical Safety Standards in the Private Rented Sector Regulations 2020

Regulation 3 Duties of private landlords in relation to electrical installations

A private landlord who grants or intends to grant a specified tenancy, which is not an excluded tenancy¹ must:

- Ensure that the electrical safety standards are met during any period when the premises are occupied
- Ensure every electrical installation in the premises is inspected and tested at intervals of no more than 5 years by a qualified person; and
- Ensure the first inspection and testing is carried out
 - i. before the tenancy commences in relation to a new specified tenancy; or
 - ii. by 1st April 2021 in relation to an existing tenancy.

Following the inspection and testing required a private landlord must:

- Obtain a report from the person conducting that inspection and test, which gives the results of the inspection and test and the date of the next inspection and test
- Supply a copy of that report to each existing tenant of the premises within 28 days of the inspection and test
- Supply a copy of that report to the local housing authority within 7 days of receiving a request in writing for it from that authority
- Retain a copy of that report until the next inspection and test is due and supply a copy to the person carrying out the next inspection and test; and
- Supply a copy of the most recent report to any new tenant before that tenant occupies those premises; and any prospective tenant within 28 days of receiving a request in writing for it from that prospective tenant.

Where a report giving the results of the inspection and test indicates that a landlord is or is potentially in breach of the duty to ensure that the electrical safety standards are met during any period when the premises are occupied, and the report requires the landlord to undertake further investigative or remedial work, the private landlord must:

- ensure that further investigative or remedial work is carried out by a qualified person within 28 days (or the period specified in the report if less than 28 days) starting with the date of the inspection and testing
- obtain written confirmation from a qualified person that the further investigative or remedial work has been carried out

¹ Schedule 1 Excluded tenancies <http://www.legislation.gov.uk/ukxi/2020/312/schedule/1/made>

- supply that written confirmation, together with a copy of the report under sub-paragraph (3)(a) which required the further investigative or remedial work to each existing tenant of the residential premises and to the Council within 28 days of completion of the further investigative or remedial work

Where further investigative work is carried out and the outcome of that further investigative work is that further investigative or remedial work is required, the landlord must repeat the steps above in respect of that further investigative or remedial work.

Where the Council is satisfied, beyond reasonable doubt, that a private landlord has breached a duty above, or has failed to comply with a remedial notice served under Regulation 3(1)(a), (1)(b), (1)(c), (4) or (6) the Council may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach. The financial penalty may be of such amount as the authority imposing it determines; but must not exceed £30,000.

Before imposing a financial penalty on a person the local housing authority must give the person notice of the authority's intention to do so. The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates but if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given at any time when the conduct is continuing, or within the period of 6 months beginning with the last day on which the conduct occurs. For the purposes of this paragraph a person's conduct includes a failure to act.

Step 1:

Determine the **Band** of the offence (the more serious the offence the higher the penalty).

Decide which seriousness band the offence sits within, according to the chart

Offence	Band 1	Band 2	Band 3
Electrical Safety Standards Regulations 2020	Reports not obtained and supplied within required timescales	Inspection and testing not completed at intervals of no more than 5 years; before tenancy commences; by 1/4/2021	Electrical safety standards not met; failure to carry out remedial work required by an inspection report; failure to comply with a Remedial Notice
Level			
Low	£1,000	£5,000	£6,000
Default	£2,000	£10,000	£14,000
High	£3,000	£15,000	£22,000
Very high	£4,000	£20,000	£30,000

Step 2:

Follow the process in Appendix 6 to determine the level of the offence within the band:

- Low
- **Default**
- High or
- Very high

The level within the allotted band determines the level of the financial penalty

Enforcement Policy: Private Sector Housing 2024

Procedure for Establishing Level of Financial Penalty

Housing Act 2004 Schedule 13A - “Financial penalties under section 249A”

The Housing Act 2004 is amended to include section 249A “Financial penalties for certain housing offences in England”. The local housing authority (ie “the Council”) may impose a financial penalty on a person if satisfied, beyond reasonable doubt that the person’s conduct amounts to a relevant housing offence in respect of premises in England. “Relevant housing offence” means an offence under:

1. **section 30 (failure to comply with improvement notice)**
2. **section 72 (offences in relation to licensing of HMOs)**
3. **section 95 (offences in relation to licensing of houses under Part 3 selective licensing)**
4. **section 139(7) (failure to comply with overcrowding notice); or**
5. **section 234 (failure to comply with HMO management regulations)**

Only one financial penalty under this section may be imposed on a person in respect of the same conduct but a penalty can be issued for each separate breach of the House in Multiple Occupation management regulations.

Where both a landlord and a letting or managing agent have committed the same offence, a financial penalty can be imposed on both as an alternative to prosecution. The amount of the penalty may differ depending on the circumstances of the case.

The Council may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if the person has been convicted of the offence, or if there are ongoing criminal proceedings in respect of that conduct.

Before imposing a financial penalty on a person under section 249A the Council must give the person notice of its proposal to do so (a “notice of intent”).

The notice of intent must be given before the end of the period of 6 months beginning with the first day on which the Council has sufficient evidence of the conduct to which the financial penalty relates. However, if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the notice of intent may be given at any time when the conduct is continuing, or within the period of 6 months beginning with the last day on which the conduct occurs.

For the purposes of this paragraph a person’s conduct includes a failure to act.

After the end of the period for representations the Council must

- (a) decide whether to impose a financial penalty on the person, and
- (b) if it decides to impose a financial penalty, decide the amount of the penalty.

If the Council decides to impose a financial penalty on the person, it must give the person a notice (a “final notice”) imposing that penalty. The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given.

The amount of a financial penalty imposed under this section is to be determined by the Council, but must not be more than £30,000.

Procedure

Before imposing the financial penalty the officer in the case must assemble sufficient evidence to be able to substantiate that an offence has been committed and its severity at a First Tier Tribunal if the penalty is appealed.

The officer should therefore, before imposing the penalty, collect all documentary and other evidence and keep it securely either in electronic or paper form, to an evidential standard and consider the need to undertake a PACE interview under caution before making a decision to impose a penalty. The officer should write a “statement of reasons” and keep it in two forms – one which can be disclosed to the recipient of the notice at the time the notice of intent is sent, and one in witness statement form, signed and dated.

The authority to impose a financial penalty is delegated only to Private Sector Housing Manager and Team Leaders, not officers. This is to ensure as far as possible that there is consistency on when financial penalties are imposed and the level of the penalty. The Manager or Team Leader should scrutinise the evidence presented by the officer before agreeing to impose the penalty.

The process for determining the financial penalty to be imposed has two steps.

Step 1:

Determine the **Band** of the offence (the more serious the offence the higher the penalty).

Decide which seriousness band the offence sits within, according to the charts below:

Maximum Levels of Financial Penalty under Housing Act 2004 s.249A				
Offence	Band 1	Band 2	Band 3	Band 4
s.95 (offences in relation to licensing of houses under Part 3 “selective licensing”) failure to licence (<u>not</u> HMOs)	Studio or 1 bed house or flat	2 or 3 bed house or flat	4 or more bed house or flat	Large property with 5 or more bedrooms or 6 or more occupiers
Level				
Low	£1,000	£2,500	£4,500	£6,500
Default	£1,500	£3,000	£5,000	£7,000
High	£2,000	£3,500	£5,500	£7,500
Very high	£2,500	£4,000	£6,000	£8,000

Maximum Levels of Financial Penalty under Housing Act 2004 s.249A				
Offence	Band 1	Band 2	Band 3	Band 4
s.30 (failure to comply with improvement notice)	Category 2 Hazards (1 to 4 hazards all scored F - J)	Category 2 Hazards (1 to 4 hazards where one is scored D or E or 5 or more hazards scored D-J)		
		Category 1 Hazard scored C	Category 1 Hazard scored B or 2 Cat 1 hazards (scored B or C)	Category 1 Hazard Scored A (except loft insulation) ¹ or 3 or more Cat 1 hazards (A, B or C)
s.72 (offences in relation to licensing of HMOs) failure to licence	Failure to obtain HMO licence where less than 5 persons reside in the HMO at the time of the offence	Failure to obtain HMO licence where 5 persons reside in the HMO at the time of the offence	Failure to obtain HMO licence where 6 or 7 persons reside in the HMO at the time of offence	Failure to obtain HMO licence where 8 or more persons reside in the HMO at the time of the offence
s.72 breach of licence condition – occupier numbers Overcrowding according to Housing Act 1985	Occupancy maximum exceeded temporarily (more than one week but less than 3 months) <u>and</u> by no more than one occupier	Occupancy maximum exceeded by 2 occupiers for more than one week <u>or</u> by one occupier for more than 3 months	Occupancy maximum exceeded by 3 or more occupiers for more than one week but less than 6 months	Occupancy maximum exceeded by 3 or more occupiers for more than 6 months
Level	Band 1	Band 2	Band 3	Band 4
Low	£2,000	£4,000	£12,500	£22,500
Default	£2,500	£6,000	£15,000	£25,000
High	£3,000	£8,000	£17,500	£27,500
Very high	£3,500	£10,000	£20,000	£30,000

¹ an A-rated hazard, where the lack of loft insulation is the main contributing deficiency, will be treated as a B-rated hazard for the purposes of setting the Band of penalty, as it is accepted that there are more serious deficiencies which could give rise to an A grade Cat 1 hazard, other than loft insulation alone

Maximum Levels of Financial Penalty under Housing Act 2004 s.249A				
s. 234 (failure to comply with management regulations in respect of HMOs) Amended 7/6/2021	Conditions related to signage or information for tenants	Conditions related to: procedures for dealing with complaints or ASB; waste receptacles, maintenance of common parts, living areas, decoration etc	Where breach relates to provision of safe gas, electricity or water supplies	Band 3 offence in a 7 or more person HMO or where breach relates to provision of fire safety measures in <u>any size</u> HMO
s.72 or s.95 breach of licence condition – other conditions	Conditions related to signage or information for tenants	Conditions related to: procedures for dealing with complaints or ASB; waste receptacles, maintenance of common parts, living areas, decoration etc	Conditions related to provision of documentation regarding fire detection, emergency lighting, gas, electricity installations; minor repairs or alterations (except those covered by Band 4)	Conditions related to condition of smoke alarms, carbon monoxide alarms, emergency lighting, gas, electricity installations or fire detection and prevention including provision of safe means of escape
Level	Band 1	Band 2	Band 3	Band 4
Low	£1,250	£2,500	£12,500	£22,500
Default	£1,500	£5,000	£15,000	£25,000
High	£1,750	£7,500	£17,500	£27,500
Very high	£2,000	£10,000	£20,000	£30,000

Step 2:

Follow the process in Appendix 6 to determine the level of the offence within the band:

- Low
- **Default**
- High or
- Very high

The level within the allotted band determines the level of the financial penalty

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Procedure to determine the level of the offence within the band

The level of severity within the allotted band determines the level of the financial penalty.

Points will be allocated from 1 (low) to 4 (high) for each of the 6 categories from a. to f. below. The total of these points (minimum 6 maximum 24) will determine the severity level:

Severity score	Level
6 - 12	1. Low
13-15	2. Default
16-20	3. High
21-24	4. Very high

Default score in the absence of evidence to the contrary is 14 giving the default penalty within the band. 16 or more points would increase the penalty within the band and 12 or fewer points would reduce it.

a) Culpability:

1 = Offence was error of omission only, not deliberate non-compliance, and may have been shared responsibility

2 = *Offence was careless or negligent and not deliberate non-compliance - sole responsibility* *Default score in the absence of evidence to the contrary*

3 = Offence was deliberate failure to comply with obligations but may have been shared actions or responsibility

4 = Offence was deliberate action or failure to act by a sole person who was or should have been aware of their legal obligations

b) Offence History:

1 = *No previous history of contravening any provision of the law relating to housing or of landlord and tenant law ("previous history")* *Default score in the absence of evidence to the contrary*

2 = Previous history for a contravention of any provision of the law relating to housing or of landlord and tenant law

3 = Previous history for more than one contravention of any provision of the law relating to housing or of landlord and tenant law

4 = Previous history for a contravention of any provision of the law relating to housing or of landlord and tenant law, including a financial penalty or conviction

c) Harm to tenants:

- 1 = Little or no actual impact on occupiers or third parties
- 2 = Effect on occupiers or third parties was primarily inconvenience, financial loss, stress or anxiety *Default score in the absence of evidence to the contrary*
- 3 = Effect on occupiers or third parties was primarily physical or mental harm; also as per 2 but more than 4 persons affected
- 4 = Effect on occupiers or third parties was medically diagnosed illness or injury; also as per 3 but more than 4 persons affected

d) Mitigating Factors:

- 1 = Significant (such as serious illness, bereavement)
- 2 = More than a little (such as minor illness, stress; belated attempts to remedy)
- 3 = A little (such as let down by a third party)
- 4 = *None Default score where landlord does not respond to enquiries or the response is hostile or unco-operative*

e) Proportionality:

- 1 = Subject only has one rented property
- 2 = *Small business or subject has two or three properties Default score in the absence of evidence to the contrary*
- 3 = Medium size business or subject has more than three properties
- 4 = Subject has a large portfolio of rented properties (six or more)

f) Financial Impact on Landlord

- 1 = Significant (eg subject in administration or near bankrupt)
- 2 = More than some (eg subject has serious financial problems)
- 3 = *Some (eg subject comfortable financially) Default score in the absence of evidence to the contrary*
- 4 = Minor (eg subject has assets in excess of £1 million)

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Procedure for Establishing Level of Financial Penalty

Consequences of receiving a financial penalty and appeals

If a person receives a financial penalty, that fact can be taken into account if considering whether the person is a fit and proper person to be the licence holder or manager of a House in Multiple Occupation or any other property subject to licensing.

It may also be entered into the Greater London Assembly Landlord and Agent Check Service database, so that other local housing authorities are made aware that formal action has been taken against the person.

Where a person receives two or more financial penalties over a 12 month period, the Council may make an application to a Property Tribunal include that person's details in the national database of rogue landlords and property agents so that other local housing authorities are made aware that formal action has been taken against the person.

Consequences of non-payment of a financial penalty

If a person fails to pay the whole or any part of a financial penalty which the person is liable to pay, the Council may recover the penalty through the county court as if it were payable under an order of that court. If necessary, the Council may use county court bailiffs to enforce the order and recover the debt. A certificate signed by the chief finance officer of the Council which states that the amount due had not been received by a specified date will be treated by the courts as conclusive evidence of that fact.

Withdrawal or amendment of notice

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

Works in default

The Council may carry out works in default where a financial penalty is imposed for failure to comply with a statutory notice or regulation, where the legislation or regulation permits it.

Appeals

Appeals against a Final Notice to impose a Financial Penalty must be made to

Residential Property London Region - First Tier Tribunal (Property Chamber)

10 Alfred Place, London WC1E 7LR

Telephone 0207 446 7700

email: London.Rap@justice.gov.uk

Its website address is www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber

An appeal is generally a re-hearing of the Council's decision, but may be determined having regard to matters of which the Council was unaware. On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice but the final notice may not be varied so as to make it impose a financial penalty of more than the Council could have imposed.