Private Sector Housing Enforcement Policy

1. Aim of Policy

1.1. This policy details how the Council will regulate housing standards and tackle empty homes in Bexley

The council aims to protect public health, reduce antisocial behaviour and safeguard housing standards by ensuring compliance with the relevant legislation, whilst recognising the needs of local businesses.

This policy is based on 5 guiding principles set out below:

1. **Consistency**: to ensure that similar issues are dealt with in the same way.
2. **Proportionality**: to ensure that action taken relates directly to the actual or potential risk to health, safety, the environment, or significant economic disadvantage to the consumer or business.
3. **Openness**: to ensure that the enforcement action that will be taken by the Council is easily understood by individuals, organisations and businesses having to comply with legislation, and that clear distinctions are made between legal requirements and advice or guidance about what is desirable but not compulsory. Unless immediate action is required there will generally be an opportunity to discuss the circumstances and if possible resolve points of difference before taking enforcement action.
4. **Objectivity**: to ensure that decisions are not influenced:
    - By age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation of the offender, victim or witnesses.
    - By Contractual or other relationship to the Council, its Members or officers.
    - Matters will be brought to the attention of the Head of Service, and where appropriate will also be reported to the Chief Executive.
5. **Sensitivity** -sensitive consideration will be given where persons involved are children, elderly, infirm or suffering from a mental disorder.

1.2. Duties fall under four headings as follows:

- Undertaking inspections/audits and providing guidance to ensure that residential accommodation meets minimum legal standards. Taking formal action as necessary to secure compliance with statutory requirements
- The administration and enforcement of the mandatory licensing of prescribed HMO accommodation.
- The administration and enforcement of the council's selective licensing scheme.
- Maximising the use of the existing housing stock through a range of measures to bring empty properties back into use.

1.3. Authorisation of officers

All Housing and Licensing Officers are fully trained, competent and authorised to carry out their duties. All investigations will be carried out in accordance with the requirements of the relevant legislation, in particular and not confined to the following :

1.3.1. Human Rights Act 1998

1.3.2. Regulation of Investigatory Powers Act 2000

1.3.3. Police and Criminal Evidence Act 1984

1.3.4. Criminal Procedure and Investigations Act 1996

1.3.5. Equality Act 2010

1.3.6. Enforcement Guidance issued under section 9 Housing Act 2004

1.3.7. The Code for Crown Prosecutors

1.3.8. The Enforcement Concordant

1.3.9. Regulators Code of Compliance

2. Overview of approach to enforcement

2.1. In safeguarding housing conditions and wider environmental issues arising from rented homes and residential properties in Bexley, the Council wants to work with responsible landlords and homeowners to help them to reduce antisocial behaviour and raise housing standards. However, where appropriate and necessary, the Council will instigate appropriate enforcement action against landlords and homeowners who fail to comply with their legal requirements.

2.2. The Council will expect landlords to have a good understanding of the housing standards and management issues that should be met in privately rented accommodation; it would expect landlords to liaise with Council officers or other professionals to confirm the extent to which additional requirements apply to any addresses let out as HMOs.

2.3. Generally, it is the Council's preference that landlords and property owners are first given the opportunity, wherever possible, to investigate any reported problems at their properties. The Council expects responsible owners to undertake necessary repairs and improvements without the need for the Council to instigate formal action.

2.4. In making enforcement decisions the Council will have due regard to the need to eliminate discrimination and advance equality of opportunity. The Council will carefully consider any equalities impacts arising out of enforcement decisions and consider whether the approach proposed is a proportionate means of achieving a legitimate end. The Council will seek to mitigate any adverse equalities impacts where possible.

3. Informal action

In most cases, following a complaint about housing conditions, the Council will contact the tenant or complainant and discuss the issues, if the officer then decides that a visit is required they will arrange this with the tenant. Prior to visiting, the officer will usually contact the landlord or owner and inform them of the issues and their intention to visit the property. If there are minor deficiencies then written or verbal advice may be deemed sufficient.

Where written advice is deemed necessary and is provided, suggested timescales will normally be included to undertake any specified works or actions.

If there are more substantial issues to be addressed, the Council will detail the actions to be taken and timescales. A clear distinction will be made in between what is required by law and anything included that is recommended good practice.

4. Formal action

Formal action will be considered in the following circumstances:-

- Where there is a serious risk to public health
- Where there is a blatant or deliberate contravention of the law
- Where there is history of non-compliance, or cooperation with an informal approach is not forthcoming.
- Where landlords or property owners fail to take action in the timescales agreed within an informal process.

Statutory Notices

These are notices used when a landlord /owner is failing to comply with housing or other health and environmental legislation. They normally require that necessary remedial action is taken at a specified property by the landlord/owner within a specified time period, which will vary depending on the nature and scale of the works.

Legal Notices served by the Council will detail any rights of appeal and an extension of time to comply with any notices requiring works can be requested if there are legitimate reasons. However, failure to comply with the requirements of any issued Notice without good reason is an offence and will normally result in prosecution or, where appropriate, the issuing of a civil penalty. (See Section 13 for enforcement options)

5. Housing Act 2004 - Powers of Entry and Power to Require information

5.1. Powers of Entry

The Council has the power of entry to properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004 provided that:

- The Officer has written authority from an appropriate Officer stating the particular purpose for which entry is authorised
- The Officer has given 24 hours' Notice to the owner (if known) and the occupier (if any) of the premises they intend to enter

No Notice is required where entry is to ascertain whether an offence has been committed under Sections 72 (offences in relation to licensing of HMOs), 95 (offences in relation to selective licensing) or 234(3) (offences in relation to HMO Management Regulations).

If admission is refused, premises are unoccupied or prior warning of entry is likely to defeat the purpose of the entry, then a warrant may be granted by a Justice of the Peace on written application. A warrant under this section includes power to enter by force, if necessary.

5.2. Power to Require Information

The Council also has powers under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with:

- Any purpose connected with the exercise of its functions under Parts 1-4 of the Housing Act 2004.
- Investigating whether any offence has been committed under Parts 1-4 of the Housing Act 2004.

The Council also has powers under Section 237 of the Housing Act 2004 to use the information obtained above and Housing Benefit and Council Tax information obtained by the authority to carry out its functions in relation to these parts of the Act.

6. Housing Act 2004 - Housing Health and Safety Rating System (HHSRS)

The underlying principle of the HHSRS is that "*any residential premises should provide a safe and healthy environment for any potential occupier or visitor".* A dwelling should be capable of satisfying the basic fundamental needs for the everyday life of a household. It should provide shelter, space and facilities for the occupants.

The HHSRS assesses 29 categories of housing hazard divided into four parts, Physiological requirements, Psychological requirements, Protection against infection and Protection against accidents. Examples of the hazards covered by the rating system are excess heat or cold, noise, food safety and falls.

The hazards are assessed in a two-stage process, looking first at the likelihood of an occurrence and then the range of probable harm outcomes. These two factors are combined using a standard method to give a score in respect of each hazard. A score is not produced for the whole of the house, just the individual 29 hazards.

Those hazards that score more than 1000 on the Housing Health and Safety Rating System are classed as a Category 1 hazard, less than 1000 are Category 2.

- **Category Two Hazards**

  The Council would not normally take formal action if the identified defects equated only to minor or moderate Category 2 hazards. Where written advice is deemed necessary and is provided, suggested timescales will normally be included to undertake any specified works or actions.

  The Council will exercise its discretion and consider individual cases and circumstances when deciding whether to take action in response to Category 2 hazard

  If the most appropriate course of action is to serve an Improvement Notice (see 6.1), and the hazards do not pose an immediate risk to the tenants, the council will write to the landlord. The letter will set out the deficiencies, the works needed to remedy them and a date to complete the works. No formal action will be taken providing the landlord gives a written undertaking to complete the works and completes the works specified on the letter.

- **Category One Hazards**

  The Council has a duty to take appropriate action in response to a Category 1 hazard. (When a Category 1 hazard is identified, the Council must decide which of the available enforcement options it is most appropriate to use. These are explained in more detail in 6.1.

  If the most appropriate course of action is to serve an Improvement Notice (see 6.1), and the hazards do not pose an immediate risk to the tenants, the council will write to the landlord or owner. The letter will set out the deficiencies, the works needed to remedy them and a date to complete the works. No formal action will be taken providing the landlord or owner gives a written undertaking to complete the works and completes the works specified on the letter.

6.1. Formal Notices, Orders and Actions

- **Improvement Notice**

  This can be used for Category 1 or 2 hazards and can be served to cover a range of hazards. The Council may carry out works in default and recover expenses. The Council also has the option of suspending the notice for a specific time or the occurrence of an event. The following are situations where it may be appropriate to suspend an improvement notice:

- The need to obtain planning permission (or other appropriate consent) that is required before repairs and/or improvements can be undertaken.
- Works which cannot properly be undertaken whilst the premises are occupied and which can be deferred until such time as the premises falls vacant or temporary alternative accommodation can be provided.
- Personal circumstances of occupants; for example, temporary ill health, which suggests that works ought to be deferred.

When deciding whether it is appropriate to suspend an Improvement Notice, the Council will have regard to:

- The level of risk presented by the hazard(s).
- The turnover of tenants at the property.
- The response or otherwise of the landlord or owner.
- Any other relevant circumstances (e.g. whether the vulnerable age group is present).

Suspended Improvement Notices will be reviewed on an ongoing basis, at least every 6 months.

- **Prohibition Notice**

  This may be used for Category 1 or 2 hazards and may prohibit the use of part or all of a premises for some or all purposes or occupation by particular numbers or descriptions of persons. The Council also has the option of suspending the notice for a specific time or the occurrence of an event.

  The Council has the power to suspend a Prohibition Order once served and will consider this course of action where it is reasonable in the circumstances to do so.

  Suspended Prohibition Orders will be reviewed on an ongoing basis, at least every 6 months.

  The Council will consider any written requests made for alternative uses of premises or part-premises which are subject to a Prohibition Order, and will not withhold its consent unreasonably. Any such consent will be confirmed in writing.

- **Emergency Remedial Action**

  This is available when a Category 1 hazard is considered to involve an imminent risk of serious harm to the health or safety of any occupiers. The authority may carry out remedial works immediately and where necessary obtain a warrant. A Notice must be served within 7 days of taking the emergency action detailing the hazard and the remedial measures taken.

- **Emergency Prohibition Order**

  This is available when a Category 1 hazard is considered to involve an imminent risk of serious harm to the health or safety of any occupiers. The Order has the effect of preventing occupation of all or part of the premises with immediate effect.

- **Hazard Awareness Notice**

  This discretionary action has the effect of notifying the responsible person of the presence of a hazard. It can be used for Category 1 or 2 hazards. The service of a Hazard Awareness Notice does not prevent the use of other formal action.

- **Demolition Orders**

  These remain available under the provisions of the Housing Act 1985 and may be used where a Category 1 hazard is found.

- **Clearance**

  This remains available under the provisions of the Housing Act 1985 and may be used where each of the residential buildings in the area contains one or more Category 1 hazards.

6.2. **Power to charge for Enforcement Action**

The local authority has powers under section 49 of the Housing Act 2004, to make a reasonable charge as a means of recovering certain administrative and other expenses incurred in taking the following courses of action:

- Section 11 & 12 Improvement Notices
- Section 20 & 21 Prohibition Order
- Section 28 & 29 Hazard Awareness Notices
- Section 40 Emergency Remedial Action
- Section 43 Emergency Prohibition Order
- Making a demolition order under section 265 of the Housing Act 1985

6.3. **Power to Revoke and Vary Notices**

The council must revoke an Improvement Notice, Prohibition Order and Emergency Prohibition Order if they are satisfied that the requirements of the notice have been complied with.

The council may revoke or vary an Improvement Notice, Prohibition Order and Emergency Prohibition Order.

6.4. **Policy for taking action under Part 1 Housing Act 2004 (Part One)**

Below is the enforcement framework for housing conditions according to the tenure of the property, although the decision will be made case-by-case based on individual circumstances.

- **Private rented and Houses in Multiple Occupation (HMOs)**

  For all Category 1 hazards, the full range of formal notices, orders and actions will be used. For Category 2 hazards the full range of enforcement options will be used depending on the severity and nature of the hazard.

- **Owner Occupied**

  For both Category 1 and 2 hazards, the council will give advice to the owners. If there is significant risk to the occupier or others or where the hazard prevents the occupier receiving suitable care in the home then the full range of enforcement options will be considered.

- **Registered social landlords of non HMO properties**

  For both Category 1 and 2 hazards, the council will contact the registered social landlord to inform them of the hazard. If the registered social landlord fails to take action and the hazard poses a risk to the occupiers or others then the council may consider taking action using the full range of enforcement options.

- **Empty properties**

  For both Category 1 and 2 hazards, the council will inform the owner and inform them of the hazards. Should the owner be unable to provide sufficient reassurance that the property will be brought back into use or if the hazards pose a risk to the public then the council may consider taking action using the full range of enforcement options.

  In addition to the powers set out in 6.1, the council may also take the following courses of action:

  Compulsory Purchase Orders CPO) is a legal function that allows certain bodies which need to obtain land or property to do so without the consent of the owner. This would be used as a last resort.

  Empty Dwelling Management Orders enable local authorities to put an unoccupied property back into use as housing.

  Enforced Sale can be used to recover outstanding debt owed to The London Borough of Bexley.

7. Housing Act 2004 – Mandatory and Selective Licensing (Part Two and Part Three)

Currently unless there is an exemption all HMOs that are three or more storeys and occupied by five or more people are required to be licensed. From the 1st October 2018, all HMOs occupied by five or more people, regardless of the number of storeys must be licensed.

The council has introduced a Selective Licensing Scheme that becomes operational from the 1st October 2018 applying to all private rented properties, which will include HMOs not covered by the new mandatory scheme, in four defined areas: Thamesmead North, Abbey Wood, Lower Belvedere and parts of Erith.

In determining an application for any property licence, the Council must decide whether to grant or refuse a licence. The council will carry out a test to decide whether the licence holder or the person managing the property is a fit and proper person. Section 66 of the Housing act 2004, sets out the evidence that the council must have regard to in determining fit and proper which is whether the licence holder or person managing the property has:

Committed an offence involving fraud or other dishonesty, or violence or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003.

- Practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins, or in connection with the carrying on of a business.
- Contravened any provision of the law relating to housing or landlord and tenant law.
- The code of practice set out in section 233 of the Housing Act 2004.

The council must also consider whether any person associated or previously associated with the licence holder has done any of the things listed above.

Where the Council is minded to grant a licence, the licence period should not exceed 5 years for Mandatory HMO Licences. Selective Licences for the scheme designated to commence on 1st October 2018 and will expire on the 31st August 2023. Landlords and managing agents who have a previous poor management record or have failed in the past to comply with the Council's requirements to manage their properties may not be able to hold a licence or may be given a shorter term licence and subjected to more frequent checks. In the event that the council grants a licence on shorter terms or refuses to grant a licence the decision may be appealed and details of how to appeal to the residential property tribunal will be provided.

If someone is found not to be a fit and proper person, this will usually remain the case for a period of 5 years. In cases where the person is not considered fit and proper and the property is to continue to be rented, an alternative person will have to apply to be the licence holder, such as a suitable management agent. If a suitable licence holder cannot be found then under part 4 of the Housing Act 2004 the council has powers to take over the management of the property by making an interim management order initially and then a final management order.

7.1. Unlicensed properties

Failure to license a property is a criminal offence and the Council may take prosecution proceedings or impose a financial penalty of up to £30,000. On conviction, the Court may impose an unlimited fine.

If convicted of operating a property without a licence (or the council is satisfied that the offence has been committed even though the landlord has not been prosecuted), the council can reclaim any benefits paid when they were operating without a licence by applying for a Rent Repayment Order. Similarly, tenants (including former tenants) are also allowed to make an application for a Rent Repayment Order where landlords have been convicted of the offence or where a Rent Repayment Order has already been granted to the council on the same property.

When the council identifies a non-licensed property it will write to the landlord and inform them that the property needs to be licensed. Providing, the council receives a full licence application within seven days the council may take no enforcement action will be taken with regards to this offence but this will be assessed on a case by case basis.

7.2. Non-compliance with licence conditions

A failure to meet one or more of the licensing conditions will be individually assessed but may result in one, or a combination of 2 or more, enforcement outcomes including:

- A written warning.
- Simple caution
- Prosecution.
- The imposition of a civil penalty (where appropriate).
- The service of formal notices.
- Refusal or revocation of a licence and/or the granting of a licence for a shorter period.
- Management orders

7.3. Interim and Final Management Orders

Where a licence has not been obtained, either for an HMO or a selective licence, the Council may, at its discretion, apply to take over the management of the property for an appropriate period of time, or use a managing agent. This provision is detailed under Part 4 of the Housing Act 2004 but would only be used as a last resort and with approval by a senior manager.

7.3.1 **Interim Management Order**

An interim management order (IMO) is made for the purpose of securing any action that the Council considers necessary, to protect the health, safety and welfare of the occupants. There a specific circumstances when the Council have a statutory duty to make an IMO on a licensable property (under Part 2 or Part 3 of the Act) including:

- Where a property that should be licensed but is not so licensed, and there is no reasonable prospect of it becoming licensed in the near future;
- When a property that should be licensed but is not so licensed, there are serious health, safety or welfare concerns that cannot be dealt with adequately by using the statutory powers available under Part 1 of the Act (e.g. Improvement Notices);
- When the Council have revoked the licence from a licensable property and there will be no reasonable prospect of it becoming licensed again in the near future;
- When the Council have revoked the licence on a property and there will be (on the revocation date) serious health, safety or welfare concerns that cannot be dealt with adequate

An IMO cannot last for more than 12 months.

7.3.2 **Final Management Order (FMO)**

Final management orders (FMOs) are orders which may only be made after the making of an IMO. FMOs are similar to IMOs, but provide for a longer-term solution and can be in place for up to five years. An FMO must include a "management scheme" that sets out how the Council would manage the property while the FMO is in place. A management scheme must be in two parts, including:

- Part 1 of the scheme must contain a plan giving details of the way in which the Council proposes to manage the house.
- Part 2 must describe, in general terms, how the Council intends to address the matters which caused them to make the FMO.

Under an FMO, the Council has the power to issue assured shorthold tenancies without obtaining permission from the landlord.

An FMO cannot last for more than five years.

8. Management Regulations

The Management of Houses in Multiple Occupation (England) Regulations 2006 impose duties on the persons managing HMOs in respect of:

- Providing information to occupiers (Regulation 3)
- Taking safety measures, including fire safety measures (Regulation 4)
- Maintaining the water supply and drainage (Regulation 5)
- Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected (Regulation 6)
- Maintaining common parts (Regulation 7)
- Maintaining living accommodation (Regulation 8)
- Providing sufficient waste disposal facilities (Regulation 9)

If the person managing the HMO fails to comply with these regulations the council can either serve a civil penalty notice (see 13.4) or prosecute them (see 13.5).

9. The Smoke Alarm and Carbon Monoxide (England) Regulations 2015

The regulations impose obligations upon landlords to ensure that tenanted properties are provided with smoke alarms and carbon monoxide alarms. See Appendix II.

10. Rent repayment orders

Rent Repayment Order ("RRO") were first introduced in the Housing Act 2004 where the local housing authority or tenant could apply to the First Tier Tribunal ("FTT") for the repayment of rent during periods where the landlord was operating an unlicensed premises. Under the Housing and Planning Act 2016, the relevant offences have been widened and the award is up to 12 months' rent. Where the rent was paid from housing benefit or universal credit, the sum awarded under the RRO is returned to the Council to be used by them to further its statutory functions in relation to private housing enforcement work.

A rent repayment order can be applied for when the landlord has committed the following offences:

- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977
- Failure to comply with an improvement notice under section 30 of the Housing Act 2004
- Failure to comply with a prohibition order under section 32 of the Housing Act 2004
- Failure to licence or be licensed in respect of an HMO
- Failure to licence or be licensed in respect of the Council's Selective Licensing Scheme
- Breach of a Banning Order made under section 21 of the Housing and Planning Act 2016 (see 11 below)

When applying for a rent repayment order the landlord does not need to have been convicted of the offence.

In deciding whether to apply for a rent repayment order for any case where an application for a rent repayment order can be made the Council will consider each case individually and will take into consideration factors including:

- the seriousness of the offence
- the culpability of the offender
- the harm, or potential harm to tenants
- the impact on the wider community

Where a landlord has been prosecuted by the Council and convicted of the offence to which the rent repayment order relates, the First-tier Tribunal must order that the maximum amount of rent is repaid (capped at a maximum of 12 months).

Where an application for a rent repayment order is made and the landlord has not been convicted of the offence for which the rent repayment order application is being made, the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence.

Where a landlord has not been convicted of the offence to which the rent repayment order application relates, the Council will consider each case individually and take the following factors into account when considering how much rent it will seek to recover:

- Punishment of the offender
- Deter the offender form repeating the offence

- Dissuade others from committing similar offences
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

It should be noted that the Council may impose a civil penalty and apply for a rent repayment order for certain offences. Both sanctions are available for the following offences under the Housing Act 2004:

- failure to comply with an improvement notice (section 30)
- offences in relation to licensing of HMO (section 72(1))
- offences in relation to licensing of houses under part 3 of the act (section 95(1))

11. Banning orders

Section 15 (1) of the Housing and Planning Act 2016 provides the power to a local authority in England to apply for a banning order against a person who has been convicted of a banning order offence.

The list of offences is detailed in Regulation 3 of the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018. A banning order under section 14 (1) of the Act will prevent a person from;

a) letting any house

b) engaging in letting agency work,

c) engaging in property management work or

d) doing two or more of these activities.

An Order is limited to England and must specify the duration of the order and it must last for at least 12 months. Under section 21 of the Housing and Planning Act 2016 the penalty for breaching a Banning Order, upon summary conviction, is either a fine, or possible imprisonment for a period not exceeding 51 weeks, or both.

In deciding whether or not to seek a banning, the council will have regard to the guidance and will consider the following factors:

- The seriousness of the offence
- Previous convictions/rogue landlord database

The council will also consider the likely effect of the banning order on the person and anyone else that may be affected by the order. These factors will include;

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

12. Other Relevant Legislative Requirements

There are a wide range of other legislative provisions available to the Council that that enable it to regulate housing standards and assist in tackling empty homes.

This includes but is not confined to:

- The Public Health Act 1936
- The Prevention of Damage by Pests Act 1949
- The Local Government Miscellaneous Provisions Act 1976 and 1982
- The Building Act 1984
- The Housing Act 1985
- The Environmental Protection Act 1990
- Town and Country Planning Act 1990
- Housing Act 2004
- Anti-Social Behaviour Crime And Policing Act 2014
- Smoke Alarm and Carbon Monoxide Regulations 2015
- The Housing and Planning Act 2016

The Council will also make use of any future legislative provisions relevant to the regulation of housing standards.

13. Enforcement options

13.1. There are a range of options available to the council for non-compliance with statutory, notices, orders and other enforcement action. The council may take one or more of the following courses of action. For the avoidance of doubt, the taking of one course of action does not prejudice the council from taking other actions.

- A written warning.
- Works in default
- Simple cautions
- Prosecution.
- The imposition of a civil penalty.
- Refusal or revocation of a licence and/or the granting of a shorter licence period
- Rent repayment orders
- Management orders
- Civil proceedings including applications for an injunction

13.2. Works in default

In situations where a landlord or owner fails to comply with a formal notice including a civil penalty notice requiring remedial works, the Council may undertake the work in default of the owner. The council will then take steps to recover any costs incurred and will also add a works in default fee to the total cost of the works.

This power may be exercised in addition to any prosecution proceedings.

13.3. Simple cautions

The purpose of a simple caution is to deal quickly and simply with less serious offenders by diverting them away from the courts, and to reduce the chances of repeat offences. Simple cautions will be kept on file for three years. A caution will only be issued if there is sufficient evidence of guilt, the offender is over eighteen years old, the offender admits the offence, and consents to the caution. If the offender refuses to accept a simple caution, a prosecution or civil penalty notice will normally be pursued.

13.4 Civil Penalty Notices

The Council may serve notices imposing civil penalties as an alternative to prosecution, of up to a maximum of £30,000 in respect of the following offences:

- Failure to comply with an Improvement Notice
- Failure to license or other licensing offences relating to Houses in Multiple Occupation (HMOs)
- Failure to licence or other licensing offences under the Council's Selective Licensing Scheme
- Failure to comply with an Overcrowding Notice
- Failure to comply with a regulation in respect of an HMO
- Failure to comply with the Management of Houses in Multiple Occupation Regulations.
- Breaching a Banning Order

The Council will determine, on a case by case basis, whether to instigate prosecution proceedings or to serve a civil penalty in respect of any of the offences listed above.

Examples of situations in which a decision to prosecute would normally be taken include:

- For what are judged to be particularly serious offences
- Where the offender has committed similar offences in the past

In circumstances where the Council has determined that it would be appropriate to issue a civil penalty as an alternative to prosecution, the level of the penalty would be calculated having regard to the matrix set out in Appendix I – civil penalty notices.

13.5 Prosecution

The council intends to use the new Civil Penalty Notices powers for the offences detailed in 13.4 but will also consider prosecutions depending on the factors below. For other offences where Civil Penalty Notices cannot be used and the alleged offence is serious enough, prosecution may be necessary and will be assessed based on the factors set out below.

The following factors will be taken into account:

- The seriousness of the offence.
- The previous history of the party concerned.
- The willingness of the party to prevent a recurrence of the problem.

- Whether the issuing of a simple caution would be more appropriate or effective.
- Whether the offence was committed deliberately, any evidence of obstruction of the officers in their lawful duty or of the investigation.
- Financial considerations - the benefit obtained from the alleged offences(s).

13.6 Recovery of debts

Where charges for enforcement action are levied and where the legislation allows, they will be registered as a local land charge against the owner's property and may also be pursued through the courts. This means that when the property is sold the debt has to be repaid including any interest accrued on the initial charge. The Council will vigorously pursue all debts owed to it as a result of enforcement charges or charges for carrying out works in default (as well as any other charges). This includes smaller debts where the cost of recovery is greater that the debt owed.

14. Rogue Landlord Database

14.1. Ministry of Housing, Communities and Local Government Database

The Housing and Planning Act 2016 ("the Act") introduced measures to establish and operate a database of rogue landlords and property agents.

Local housing authorities in England are responsible for maintaining the content of the database. They must make an entry on the database for a person or organisation who has received a banning order.

The council may make an entry on the database in respect of a person who has:

- been convicted of a banning order offence that was committed at a time when the person was a residential landlord or property agent; and/or
- received two or more financial penalties in respect of a banning order offence within a period of 12 months committed at a time when the person was a residential landlord or a property agent.

In cases where the Council exercises its discretion to make an entry onto the database it will issue a decision notice before making an entry, specifying the period for which the entry will be maintained.

The Council will have regard to the following criteria when deciding the period to specify in a decision notice:

- Severity of offence.
- Mitigating factors.
- Culpability and serial offending
- Deter the offender from repeating the offence.

14.2. Greater London Authority Rogue Landlord Database

The GLA has launched a Rogue Landlord database that will name and shame landlord and letting agents who have been successfully prosecuted or have faced civil enforcement action for housing offences. All London Boroughs and the London Fire Brigade have signed up to the database.

The council intends to add details of all successful prosecutions and civil penalty notices to the database.

15. Background Papers

Key legislation and guidance in relating to housing enforcement and London Borough of Bexley key decision and supporting documents on Licensing Private Renting (Decision reference CAB17-17/18).

- Cabinet Report 10th April 2018 – Rent it Right (Licensing Private Renting). London Borough of Bexley, decision reference CAB17-17/18 key decision on Licensing Private Renting.
- Housing Act 2004.
- Housing Health and Safety Rating System – Operating Guidance. Published 27th February 2006 by Ministry of Housing, Communities and Local Government.
- Housing Health and Safety Rating System – Enforcement Guidance. Published 23rd August 2006 by Ministry of Housing, Communities and Local Government.
- Smoke Alarm and Carbon Monoxide (England) Regulations 2015.
- The Housing and Planning Act 2016.
- The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018.
- Civil penalties under the Housing and Planning Act 2016 Guidance for Local Housing Authorities. Published 6th April 2017 and updated on the 6th April 2018 by Ministry of Housing, Communities and Local Government.
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Appendix I

Civil Penalty Notices

1.1. Introduction

Under Section 126 and Schedule 9 of the Housing and Planning Act 2016, the Council through the newly created Section 249a in the Housing Act 2004 may serve notices imposing Civil Penalties(CP) as an alternative to prosecution, of up to a maximum of £30,000 in respect of the following offences:

- Failure to comply with an Improvement Notice
- Failure to license or other licensing offences relating to Houses in Multiple Occupation (HMOs)
- Failure to licence or other licensing offences under the Council's Selective Licensing Scheme
- Failure to comply with an Overcrowding Notice
- Failure to comply with a regulation in respect of an HMO

In addition, under section 23 of the Housing and Planning Act 2016 a civil penalty may be imposed in respect of a breach of a Banning Order.

The Council will determine, on a case by case basis, whether to instigate prosecution proceedings or to serve a civil penalty in respect of any of the offences listed above.

Examples of situations in which a decision to prosecute would normally be taken include:

- For what are judged to be particularly serious offences
- Where the offender has committed similar offences in the past

In circumstances where the Council has determined that it would be appropriate to issue a civil penalty as an alternative to prosecution, the level of the penalty will be calculated having regard to the matrix set out further in this appendix.

The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlord's previous record of offending. Local housing authorities should consider the following factors to help ensure that the civil penalty is set at an appropriate level:

- **Severity of the offence**.

  The more serious the offence, the higher the penalty should be.

- **Culpability and track record of the offender**.

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

- **The harm caused to the tenant**.

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

  The offence to be assessed against the degree of potential or actual harm caused, both to individual tenant and more widely, for example:

- Was more than one tenant affected?
- Was the actual or potential physical or psychological impact on victim(s) particularly serious?
- Was the actual or potential physical or psychological impact on the victim(s) long-term, life-altering or potentially fatal?
- Was the victim(s) vulnerable, as per the guidance on CPs (a family with children, a vulnerable adult, someone with language issues)?
- Was there actual or potential harm caused for the surrounding area or community?

- **Punishment of the offender**.

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

- **Deter the offender from repeating the offence**.

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

- **Deter others from committing similar offences**.

  While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that:

  (a) The local housing authority is proactive in levying civil penalties. Where the need to do so exists and (b) That the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

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

The process for determining the penalty involves consideration of three stages.

These consider the statutory guidance in that the Fixed Penalty (FP) should reflect: the severity of the offence, the culpability and track record of the offender, the harm caused to the tenant, ensure the punishment of the offender, to need to deter the offender from repeating the offence, the need to deter others from committing similar offences and any financial benefit the offender has from offending.

2. Stage One Determining the penalty band

This stage considers the landlord's culpability for the offence and the seriousness of harm risked to the tenants or visitors to the property.

A higher penalty will appropriate where the landlord has a history of failing to comply with their obligations and/or their actions were deliberate. Landlords are running a

business and are expected to be aware of their legal obligations. There are four steps to this process and each step is set out below.

2.1. Step One Culpability

Table 1 sets out the four levels of culpability that will be considered: each level has accompanying examples of the behaviours that could constitute that particular level of culpability. The behaviour of the landlord should be compared to this table to determine the appropriate level of culpability. This exercise will be repeated for each offence that is being considered as the landlord's culpability may vary between offences.

Table One

Very High	• Deliberate breach of or flagrant disregard for the law
High	• Serious and/or systemic failure by the person or organisation to comply with legal duties.
Medium	• Offender fell far short of their legal duties; for example, by: - failing to put in place measures that are recognised legal requirements or regulations; - ignoring warnings raised by the local Council, tenants or others; - failing to make appropriate changes after being made aware of risks, breaches or offences; - allowing risks, breaches or offences to continue over a long period of time. • Systems were in place to manage risk or comply with legal duties but these were not sufficiently adhered to or implemented.
Low	• Offender did not fall far short of their legal duties; for example, because: - significant efforts were made to address the risk, breaches or offences, although they were inadequate on this occasion; - they have offered a reasonable defence for why they were unaware of the risk, breach or offence. • Failings were minor and occurred as an isolated incident

The officer will consider any evidence gathered when investigating the offence and identify any aggravating or mitigating factors which may be relevant to an assessment of culpability.

The officer will then use the table to identify the band that the landlord's behaviour falls into, if there is more than one category, the officer will choose the highest. When carrying out the assessment they will consider any past enforcement action against the landlord.

2.2. Step Two: Seriousness of harm risked

The seriousness of harm is broken down into three levels. The officer will determine what harm the offence caused and this will be repeated for each offence being considered but this may vary between offences.

When using the table to determine the appropriate level, consideration should be given to the worst possible harm outcomes that could reasonably occur as a

result of the landlord committing the offence. This means that even if some harm has already come to tenants or visitors to the property, consideration should still be given to whether there was the potential for even greater harm to have occurred.

Seriousness of harm risked

Table Two

Level A	The seriousness of harm risked would meet the guidance for Class I and Class II harm outcomes in the Housing Health and Safety Rating System.
Level B	The seriousness of harm risked would meet the guidance for Class III and Class IV harm outcomes in the 'Housing Health and Safety Rating System.
Level C	All other cases not falling within Level A or Level B (e.g. where an offence occurred but the level of harm to the tenants or visitors does not meet the descriptions for Level A or Level B). i.e. non licensing of a property, failure to comply with the Management of Houses in Multiple Occupation Regulations 2006.

The Class of Harms are defined in Annex C of the Housing Health and Safety Rating System Operating Guidance

2.3. Step Three Penalty Levels

The next step is to determine the level of culpability and seriousness of harm risked using the table below, which will then determine the penalty band in step 4.

Table Three

Seriousness of Harm Risked	Culpability			
	Very high	High	Medium	Low
Level A	5	5	4	3
Level B	5	4	3	2
Level C	4	3	2	1

Step Four Penalty Bands

Table four

Penalty Level	Penalty Band
1	**£250 – £1,000**
2	**£1,000 – £2,500**
3	**£2,500 - £5,000**
4	**£5,000 - £10,000**
5	**£10,000 - £30,000**

The lower figure of the penalty band will be the starting point for the penalty. The council will then determine what the exact penalty will be by looking at the landlord's finances and their track record. The maximum the penalty will be is the highest figure of the penalty band.

3. Stage Two - Considering the landlord's income and track record

When determining a civil penalty the council is permitted to consider all of the landlords financial means.

A full financial assessment will only be carried out when the penalty falls into band 5. This assessment can consider all sources of income received by the landlord can be considered as 'relevant income' for the purpose calculating the civil penalty. Specifically, the average weekly income of landlord for the 12 months preceding the date of the offence will be used.

For penalties that fall within bands 1 to 4, the landlord's income will still be considered but the 'relevant income' will normally be limited to the income that the landlord received in relation to the property where the offence occurred.

- For property owners, this will be the weekly rental income, as declared on the tenancy agreements, for the property where offence occurred and at the time the offence occurred.
- For property agents, the relevant income will be any weekly fees they received for the management of the property, as stated on the management contract between the agent and the other parties to the contract. Where the fees include VAT or any other charges, the gross amount of the fees will be used.

NB Where the offence falls within penalty bands 1 – 4 the council reserves the right to carry out a full financial investigation where it considers it reasonable and proportionate to the circumstances.

In order to calculate the weekly figure the council will request copies of tenancy agreements and will use the figures on these. If these are not readily available then the council has existing powers to request this information.

In cases where the landlord is not forthcoming with this information or documentation, an estimate of the average weekly income will be used instead and it will be for the landlord to make representations against this estimated figure if they deem it to be too high.

Representations against estimated incomes will only be accepted where sufficient evidence of the landlord's income is provided to support these claims. Estimates of average weekly income will be calculated on a case by case basis but they will generally be based on an assessment of similar sized rental properties in the same area as the property to which the offence relates.

3.1. Calculating the landlords income

3.1.1. Step 1

The penalty band from table four is used to determine how the weekly income will be calculated.

Table five

Penalty Level	Relevant weekly income
1	Gross rental income or management fees for the property where the offence occurred
2	
3	
4	
5	All income for the offender (carry out a financial assessment)

3.1.2. Step 2

Once it has bene established how the weekly income will be calculated, the next stage is to calculate the figure using the table below.

Table six

Penalty level	% of Relevant Weekly Income
1	50% of relevant weekly income
2	100% of relevant weekly income
3	150% of relevant weekly income
4	250% of relevant weekly income
5	400% of relevant weekly income

3.1.3. Step 3

A higher penalty will be appropriate where the landlord has a history of failing to comply with their obligations; as such, the track record of the landlord will be an important factor in determining the final amount of the civil penalty that is imposed.

Landlords track record	% increase
Has the landlord had any civil penalties imposed on them in the past two years or cautioned?	25%
Has the landlord breached any relevant notices, which resulted in works in default being carried out, in the last 2 years?	50%
Has the landlord been the subject of a banning order under the Housing and Planning Act 2016 in the last 2 years? Has the landlord owned or managed a property which was subject to an interim or final management order under the Housing Act 2004 in the last 2 years?	75%
Has the landlord been prosecuted for any relevant offences in the last 2 years?	100%

3.1.4. Discounts

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

- In the event that the offender complied with the identified breach [for example by making an application to licence a previously unlicensed address] within the representation period at the 'Notice of Intent' stage, the Council would reduce the level of any imposed civil penalty by 20%;
- A discount of 20% of the original calculated financial penalty should the penalty be paid in full within a specified time period [normally 28 days]. This discount would be in addition to any reduction applied as a result of compliance at the Notice of Intent stage

4. Stage Three – legal process

Notice of intent

After the financial penalty has been calculated by the officer, it will be checked by a manager prior to it being passed for processing. A checklist will be completed and kept on file

The council will then give the person a notice of its proposal ('notice of intent') to impose a financial penalty to the landlord in question. The notice must be served within six months of the last day on which the council has evidence of the offence occurring.

The notice of intent will set out:

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

The notice of intent must be given no later than 6 months after the local housing authority has sufficient evidence of the conduct to which the penalty relates or at any time when the conduct is continuing.

Representation Period

A person who is given a notice of intent may make written representations to the council about the intention to impose a financial penalty. All representations from landlords will be considered by an appropriate senior colleague.

Any representations must be made within 28 days from when the notice was given.

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

At the end of the period for representations, the council will then decide whether to impose a penalty and, if so, the amount of the penalty.

Final Notice

If the local housing authority decides to impose a financial penalty, it must give the person a notice ('final notice') requiring that the penalty is paid within 28 days.

The final notice must set out:

- The amount of the financial penalty
- The reasons for imposing the penalty
- Information about how to pay the penalty
- The period for payment of the penalty (28 days)
- Information about rights of appeal; and
- The consequences of failure to comply with the notice.

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

Withdrawing or amending notices

At any time, the Council may withdraw a notice of intent or a final notice or reduce the amount of a civil penalty. This is done by giving notice in writing to the person on whom the notice was served.

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

Appeals to the tribunal

On receipt of a final notice imposing a financial penalty a landlord can appeal to the First tier Tribunal against the decision to impose a penalty and/or the amount of the penalty. The appeal must be made within 28 days of the date the final notice was issued. The final notice is suspended until the appeal is determined or withdrawn.

Other consequences of having a Civil Penalty imposed

Where a civil penalty has been imposed on a landlord, this will form a part of the Council's consideration when reviewing licence applications for properties in which they have some involvement. This includes licences under Part 2 or Part 3 of the Housing Act 2004.

Whilst a civil penalty will not automatically preclude the Council from granting a licence where such persons are involved, the reasons for imposing the penalty and the extent of the person's involvement in the property will be considered.

Example 1 - Landlord who fails to licence a property that requires a selective licence.

Table one, assessed as being high because they ignored written warning from the council giving them 14 days to apply for a licence.

Table 2 classed as C. This gives a culpability score of 3 and a penalty level of £2,500 - £5,000.

The landlord will have a penalty level of 3 so only the income of the property will considered.

The landlord receives £1,000 a month in rent, so the weekly figure is calculated to be £230. The additional amount to pay is calculated to be £345 (150% of weekly relevant income) and when added to the original in table £2,500 this gives a figure of £4,345.

NB No multiplier applied

Example 2 – Landlord fails to comply with a section 11 improvement notice

Table one, assessed as being medium because they ignored the initial informal letter from the council.

Table 2 classed as A. This gives a culpability score of 4 and a penalty level of £5,000 - £10,000

The landlord will have a penalty level of 4 so only the income of the property will considered.

The landlord receives £1,000 a month in rent so the weekly figure is calculated to be £230.

The additional amount to pay is calculated to be £575 (250% of weekly relevant income) and when added to the original in table £5,000 this gives a figure of £5,575.

NB No multiplier applied

Appendix II

Carbon Monoxide and Smoke Alarm Regulations

Statement of principles

1. Introduction

The Smoke and Carbon Monoxide (England) Regulations 2015 came into force on the 1st October 2015. The Government passed the Regulations as a way of tackling the increased risk of fire deaths and carbon monoxide poisoning in the private rented sector. The Council is required under the Regulations to prepare and publish a Statement of Principles which it must follow when determining the amount of a penalty charge.

It is understood that the imposition of the maximum penalty charge, being £5,000 under the Regulations, can present an excessive financial burden however this is balanced against the risk and the fact that reasonable opportunity will have been given to the Landlord to comply prior to any penalty charge being levied. Additionally such alarms are readily available for purchase and are inexpensive, and Fire Authorities continually run schemes that provide such detectors for free, which includes the current scheme. As such, it is not considered that a failure to comply cannot be based on financial or legal burden.

Government figures suggest that a person is 4 times more likely to die from a fire in a property which does not have a smoke detector in place. Additionally, the successful implementation of these regulations is estimated, in terms of smoke detectors, to prevent 231 deaths and 5,860 injuries over a 10 year period, at a benefit to the economy of £606.7 million. In terms of Carbon Monoxide it is estimated that this could result in 6-9 fewer fatalities and 306-460 fewer injuries, at a saving of £16.8 million.

The Council may revise its statement of principles at any time, but where it does so, it must publish the revised statement. The current statement of principles which is in force at the time of the commission of the offence is to be used when deciding on the amount for the penalty charge.

2. Landlord duties

The Regulations require that landlords for all let properties (some exemptions exist) ensure that:

- a smoke alarm is installed on each storey of premises where there is living accommodation
- a carbon monoxide alarm is installed in any room of premises used as living accommodation, which contained a solid fuel burning appliance.

AND for tenancies starting from 1 October 2015

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

Properties subject to Part 2 or Part 3 licensing are exempt from the 2015 Regulations although compliance is achieved through an additional clause being added to the property licensing conditions.

3. Exemptions from the requirements

3.1. Social Housing

Registered providers of social housing are excluded from the requirements

3.2. Houses in multiple occupation (HMOs)

Licensed HMOs are exempt from the regulations; however, these regulations will apply to unlicensed HMOs. This is because the regulations also amend the HMO licensing requirements in the Housing Act 2004, imposing similar requirements through the HMO licensing scheme.

Part 6 will amend the conditions in Schedule 4 to the Housing Act 2004 which must be included in a licence granted or renewed on or after 1 October 2015. The amendments will mean landlords of licensed HMOs will have to ensure at least one smoke alarm is installed on every storey of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance. A landlord of a licensed HMO will be required to keep the alarms in proper working order.

3.3. Live-in landlords

An agreement under which the occupier shares accommodation with the landlord or landlord's family is excluded.

3.4. Long leases

Leases which grant a right of occupation for 7 years or more without a break clause for either party are excluded. This type of arrangement is closer to one of home ownership than the traditional landlord / tenant relationship.

3.5. Student halls of residence

Student halls of residence are excluded from the requirements

3.6. Hostels and refuges

Hostels and refuges are excluded from the requirements

4. Enforcement Process

4.1. Remedial notice

Where the Council believes that a landlord is in breach of one or more of the duties listed in section 2, the Council must serve a Remedial Notice (RN) on the landlord under Regulation 5. This will list the remedial works required to be taken by the Landlord.

The landlord has 28 days beginning with the day on which the remedial notice is served to comply with the notice.

4.2. Penalty charge notice and remedial action

If the Landlord fails to take remedial action, within the specified timescale, a penalty charge notice ("PCN") may be issued. The penalty charge ("PC") may not exceed £5,000.00. The Regulations require the Council to carry out the works in default and can then reclaim all reasonable costs incurred by the builder and themselves in organising the works.

Where the Local Housing Authority is satisfied, on the balance of probabilities (civil standard of proof), that a landlord has not complied with a remedial notice a Penalty Charge Notice ("PCN") can be served. The option of taking a criminal prosecution in a Magistrates Court is not available. Regulation 12 (6) states that the sums received by the local authority can be used for any of its functions.

In light of the above, it is proposed that the penalty charge level set comprises two specific elements with the Regulations setting the maximum at £5,000:

- a punitive (or fine) element for failure to comply with the absolute requirement to comply with a remedial notice, and

- a “reasonable cost element” relating to costs incurred by the Council in its duties as LHA in complying with its duties to undertake the remedial works in default of the landlord.

	Level of PCN	(and) Costs	Reduction for early payment
First offence	£500	Reasonable Costs	-£150
Second offence	£2,500	Reasonable Costs	None
Third and subsequent offences	£4,500	Reasonable Costs	None

The Council has discretion to offer an early payment reduction. An early payment must be made by the landlord within 14 days. We propose that the Council will offer, in the PCN, an early payment reduction to the landlord where it is the landlord’s first offence. A landlord is only entitled to the offer of one early payment reduction regardless of number of rented properties.

Reasonable costs.

The Council is able to recover its costs in complying with the remedial notice. The reasonable costs incurred by the Council could include time spent with; investigating, surveying, contacting relevant parties, administration and any remedial works (labour and materials) arranged and carried out by the Council’s contractors.

The level of reasonable costs in completing the works in default is unlikely to exceed £500 in any case. With access, the installation of a smoke or carbon monoxide alarm is not time consuming and each item is in the region of £30. The current approved method for recovering works in default costs is 30% of the builders net cost. This Statement of Principles allows the option of charging the current officer hourly rate to ensure the Council recovers monies that reflect the reasonable costs employed in meeting its duties.

4.3. Review

If a landlord does not agree with a penalty charge notice, they can request to the relevant for it to be reviewed. This request must be made in writing and within the time period specified in the penalty charge notice. The council will consider any representations made by the landlord, and decide whether to confirm, vary or withdraw the notice. The council will consider the following when making its decision:

1. Whether the facts of the matter supported the service of the PCN
2. Whether the decision was correct having regard to the relevant laws.
3. The amount of the PC was reasonable having regard to any mitigating, aggravating or other circumstances submitted with the request for review.
4. Whether the early payment reduction has already been offered.
5. That there must be a significant factor to make an adjustment.

The council will serve a notice of its decision on the landlord.

4.4. Appeals

If the council decides to confirm or vary a penalty charge notice, the landlord can appeal to First-tier Tribunal. Appeals should be made within 28 days from the date of the decision notice served by the Council.

If an appeal is lodged, the penalty cannot be enforced until the appeal is disposed of.

4.5. Recovery of penalty charges

If the PCN is not paid, then recovery of the PC will be pursued as laid out in the Regulations. Where landlords do make an appeal to the First-tier Tribunal, recovery will commence after the appeal period has elapsed or from when the appeal is finally determined or withdrawn.

5. Remedial works to comply with regulations

5.1. Smoke alarms

To comply with these Regulations the type of smoke alarm deemed acceptable is either a mains powered alarm or one operated with a sealed battery with a 10 year life with one fitted on each floor.

It is important to remind landlords that a full fire risk assessment should be undertaken to ensure that this level of detection meets the risk within the premises. The Council can assess risk using the Housing Act 2004 and this may require additional detection. Such circumstances include mode of occupation, nature of tenants, property layout or height of building. Freeholders may also be required to risk assess the common ways under the Regulatory Reform (Fire Safety) Order 2005.

5.2. Carbon Monoxide alarms

In order to comply with these Regulations, a carbon monoxide alarm will be installed in every room containing a solid fuel combusting appliance.