

## **Dover District Council**

### **Private Sector Housing Enforcement Policy**

#### **1. Aim**

The primary enforcement role of the Private Sector Housing (PSH) service is to maintain and improve the housing conditions in Dover District (This excludes properties owned by the Council). It endeavours to achieve this through advice, information and financial assistance. Where this approach fails or is not appropriate and it is necessary to protect the health safety and welfare of persons then the service will take the appropriate enforcement action.

The aim of this policy is to:

- Set out the criteria and priorities we will use when enforcing legislation, so it is transparent and clear to the public.
- Sets out our policy in respect of charges that may be imposed for enforcement.
- Ensure our enforcement is consistent, fair, proportionate and targeted.
- Ensure it is consistent with the aims and objectives contained in the Private Sector Housing Strategy and the Empty Property Strategy.

#### **2. Scope**

This enforcement policy covers the following functional areas:

- Licensing of Houses in Multiple Occupation
- Enforcing minimum Housing standards (HHSRS) to prevent injury and ill health,
- Ensuring private rented accommodation is maintained to keep tenants safe from hazards
- The redress scheme for letting agency and management work
- Bringing empty homes back into use,
- Licensing of caravan sites and mobile homes
- Harassment and Illegal eviction of tenants

### **3. Authorisations**

In accordance with the Council's constitution, the Strategic Director for Corporate Resources, Head of Governance and Private Sector Housing Manager has a duty to appoint officers with suitable qualifications, experience and level of competency to enforce, or, to ensure that appropriate officers are trained to the required level to undertake an enforcement role.

Authority to exercise executive functions in relation to Private Sector Housing has been delegated to the Private Sector Housing Manager as detailed in the Councils Constitution. These powers have then been further delegated where considered appropriate and necessary.

### **4. General Principles**

When carrying out enforcement action it is important that the Council works within the statutory framework set out and that it follows best practice and procedure.

In particular, the Council is committed to acting in a fair and consistent manner and has adopted this enforcement policy as part of this commitment. When exercising its enforcement functions, the Council will act in such a way that is

- Transparent
- Accountable
- Proportionate
- Consistent
- Targeted only at cases where action is needed

Relevant advice/guidance and legislation underpinning this strategy includes

- Dover District Councils Overarching enforcement strategy
- DCLG document "Housing Health and safety Rating System; Enforcement Guidance".
- Regulator's Code
- Human Rights Act 1998
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000

- Data Protection Act 2018
- Freedom of Information Act 2000
- The Protection of Freedoms Act 2012
- The Housing Acts 2004 and 1985
- Local Government Miscellaneous Provisions Act 1976
- The Building Act 1984
- The Environmental Protection Act 1994
- The Caravan Site and Control of Development Act 1960
- The Caravan Sites Act 1968
- Mobile Homes Act 1983 and 2013
- Protection from Eviction Act 1977
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 became operative on 1st October 2015
- The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014
- Housing and Planning Act 2016
- The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended 2019
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
- Various Government (MHCLG) guidance for Local Housing Authorities but in particular “Civil Penalties under the Housing and Planning Act 2016” and “Rent repayment orders under the Housing and Planning Act 2016”
- Other legislation may be used occasionally.

## 5. Interventions and Enforcement

After considering all relevant information one or more of the following courses of action shall be taken: -

- a) Informal action
- b) Formal action such as:
  - Statutory notice

- Simple caution
- Prosecution
- Works in default
- Prohibition Order
- Penalty Charge Notice
- Rent Repayment Order
- Banning Order
- Register landlord on Rogue Landlord Database
- Compulsory purchase of property
- Management order

Not all these options are available in every case. This underlines the need to consider powers available under each piece of legislation individually.

In making any decision on enforcement, officers will consider the following criteria: -

- The legal duties placed on the Local Authority to take enforcement action
- The potential risk of harm
- The seriousness of any offence
- The owner/landlord's history
- Consequences of non-compliance
- The known or likely public benefit of the chosen enforcement action
- The willingness of the owner/landlord to carry out works and the confidence in them
- The likely ability of any witnesses to give evidence and their willingness to co-operate
- The Crown Prosecution Service's Code for Crown Prosecutors
- The risk of any hazard to health (see details below)
- Any relevant guidance or case law

The primary legislation used by PSH is the **Housing Act 2004** as amended by the Housing and Planning Act 2016 and is mainly used to remove hazards in a property that puts occupiers at risk of injury or ill health. This legal provision applies to all property and tenures including owner-occupiers. Hazards are subject to a statutory risk assessment that determines whether the hazards are classified as a Category 1 or 2. A category 2 hazard is less serious than a Category 1 hazard.

The Council are under a legal duty to take formal action in the case of a category 1 hazard. The Council do not have a duty to take action with category 2 hazards, but they do have the power to take action. The decision in deciding which type of notice or order to serve will depend upon several factors. These factors are contained in DCLG document “Housing Health and safety Rating System; Enforcement Guidance” and is summarised in paragraph 5.3.

. In deciding on the most appropriate action we will take the following matters into account: -

- The wishes of the occupier
- Whether there are high scoring hazards
- Where there are multiple hazards;
- Whether the occupants are in the high-risk group in relation to any hazards present
- Whether it is reasonably practicable to remedy the hazard;
- Whether the defects have a significant effect on the occupants well being
- Whether the landlord had a record of poor maintenance
- Whether the landlord is accredited with a recognised accreditation scheme
- Whether the landlord has agreed to remedy the defects
- Whether the property or person is within one of the Council priorities;
- Whether the hazard is likely to become more serious if not dealt with, for example, damp can often lead to the property fabric deteriorating.

The Council may take enforcement action for category 2 hazards and will do so where it is felt appropriate and taking the above factors into account. Generally, a Category 2 hazard scoring more than 600 points under the HHSRS statutory assessment will be considered a high scoring category 2 hazard.

## **5.1 INFORMAL ACTION**

If appropriate, the Council will try to enforce in an informal manner. This would involve the officer drawing the matter to the attention of the owner, manager or responsible person in the form of a letter, e-mail or telephone. This letter will normally list any concerns or deficiencies

found and arrange for a follow up visit to discuss the matter with the owner, manager and occupiers. If this informal approach does not result in enough progress being made, or the concerns are considered more serious or information requested is not supplied then the Council will treat the matter in a more formal way.

Informal action is appropriate where;

- The act or omission is trivial in nature and it can be simply remedied.
- Confidence in the individual/businesses management is high.
- There is good co-operation of the landlord in responding to any hazard(s)
- Any hazards pose a minimal risk to health.
- There is insufficient evidence for formal action at the time (although formal action may follow later).
- The views or circumstances of the occupiers or owners provide compelling reasons why formal action should not be taken.
- There are no concerns that the tenant may be subject to retaliatory eviction.

## 5.2 FORMAL ACTION

In some cases, the Council are under a legal duty to take formal action such as when there is a category 1 hazard under the Housing Act 2004.

Formal action will be taken when:

- The Council is legally required to take formal action,
- Informal action has not resulted in compliance or progress. See **Appendix 1** detailing the PSH service standards.
- There is a serious risk to an occupier or member of the public.
- An owner or landlord is known to have a history of non-compliance with statutory requirements.
- There is a belief that the tenant may be subject to retaliatory eviction.
- A serious offence has been committed.
- The consequences of non-compliance are significant.
- The likely ability of any witnesses to give evidence and their willingness to co-operate in the case of a prosecution.
- Where an empty property is assessed as being a case for priority action as prescribed in our Empty Homes Strategy. See **Appendix 2**.

### **5.3 Statutory Notices under the Housing Act 2004**

Although notices are made under a variety of legislation, most notices and orders made by the Private Sector Housing team are issued under the Housing Act 2004. The main ones used under this Act are:

- Improvement Notice (sections 11 and 12)
- Prohibition Order (sections 20 and 21)
- Emergency Remedial Action (sections 40 and 41)
- Emergency Prohibition Order (sections 43)
- Hazard Awareness Notice (sections 28 and 29)
- Suspended Improvement or Prohibition notice/order

The table on the following page provides a guide to the likely action the Council will take under the Housing Act 2004. However, each case will be considered individually.

Action under other legislation may also be used. Examples of other legislation are the Building Act 1984, Environmental Protection Act 1990.

Notice type	Category 1 Hazard	Category 2 Hazard
<b>Improvement Notice</b>	Most common notice used. It's mainly used for rented accommodation but can also be used for owner-occupied properties with where there is a concern for the health of the occupants. An example would be in the case of a fire hazard in a multiple occupied property (flats).	This notice will often be used to require works to deal with both category 1 and 2 hazards. The notice may also be used where there are high scoring category 2 hazards that may affect the health of the occupants or are likely to lead to a category 1 hazard in the future if the works are not carried out.
<b>Suspended Improvement Notice</b>	This may be used occasionally. For example, where the occupier refuses to have works carried out or the work is not practical with the current occupiers.	This may be used occasionally. For example, where the occupier refuses to have works carried out.
<b>Hazard Awareness Notice</b>	Not normally used for serious hazards except where the owner occupies the property. In this situation the owner is in full control to remedy the hazard and simply notifying the owner of the hazard is believed to be the most appropriate action.	This notice is mainly used where there are recommended works to be carried out, but they are not serious enough to warrant an Improvement Notice. May also be used for a high scoring hazard if an owner occupies the property.
<b>Prohibition Order</b>	Used where improvements are not practical. Used for overcrowding; to prohibit the use of unsuitable parts of a property such as basements or rooms that have no adequate means of escape in case of fire.	This order is not normally used for Category 2 hazards.
<b>Suspended Prohibition Order</b>	A Suspended Prohibition Order may commonly be used where it's not appropriate to require the current occupier to vacate the premises immediately.	This order is not normally used for Category 2 hazards.
<b>Emergency Prohibition Order</b>	An Emergency Prohibition order will be served where there is an imminent risk to health or injury and prohibiting the use of part or all the premises is believed to be the best solution.	This order is not normally used for Category 2 hazards.
<b>Emergency Remedial Action</b>	This will only be used in exceptional cases. There must be an imminent risk to health or injury of a person. The Council can carry out works immediately and recover their costs from the owner.	This action is not normally used for Category 2 hazards.



#### 5.4 Works in default

Under certain pieces of legislation, the Council is empowered to carry out works in default and recover the costs. Works in default may be carried out where:

- A notice has not been complied with within the specified time
- There is no prospect of the person responsible carrying out the work, e.g. the person is absent or infirm
- Speedy abatement is required, e.g. where there is an imminent risk of injury or ill health
- The circumstances are such that works in default are a more appropriate or effective remedy than other action
- The problem persists after prosecution.
- Where the Council is legally required to carry out such works; such as under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

Normally a 20% charge of the cost of the works will be made on works in default to cover the Councils administration costs.

#### 5.5 Prosecution

Prosecuting someone is a serious matter and will be considered carefully on a case-by-case basis. When considering prosecution officers must follow the guidance in the [Code for Crown Prosecutors](#) . For offences under the Housing Act 2004 the decision whether to prosecute will be subject to **Appendix 5** attached – ***Determining the Penalty for Offences under the Housing Act 2004.***

Where there are offences that have been committed not covered by appendix 5, officers may consider that prosecution is an appropriate way of dealing with the matter when:

- A simple caution is not appropriate, or the person accused has refused to accept the offer of a simple caution; or
- There is a risk to public health and safety or of environmental damage as a consequence of the breach; or
- The breach was as a result of a deliberate act or following recklessness or neglect; or
- The approach of the offender warrants it, e.g. repeated breaches, persistent poor standards; or
- A legal notice or order has not been complied with or no reasonable progress made in relation to its requirements; or

- Obstruction of an officer in the course of their duty; or
- When a person continues to commit offences despite being informed by the Council of these; or
- The refusal or provision of false information.

Please note this is not an exhaustive list and each case will be considered on its individual merits.

The initial decision to prosecute will normally be taken by the Private Sector Housing Manager in consultation with the Solicitor to the Council and the Head of Regulatory Services.

## 5.6 Penalty Charges

Under some legislation, the Council can serve a Penalty Charge Notice. These include:

- **The Redress Schemes for lettings Agency work and Property management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014**
- **The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**
- **The Housing Act 2004 as amended by the Housing and Planning Act 2016**
- **The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015**
- **The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020**

As with criminal prosecutions, the council is of the opinion that an early acceptance of guilt is in the public interest. It saves public time and money.

An offender can demonstrate an early acceptance of guilt by paying the financial penalty within 28 days of the date the Final Notice was served. If cleared payment is made within this time period, the offender can benefit from a 25% reduction in the amount of financial penalty payable.

A Final Notice will set out the finalised financial penalty amount determined having regard to this policy and an amount equal to 75% of that sum, which would be accepted if received within the 28-day period.

If the council is required to defend its decision at the First-tier Tribunal, there will inevitably be additional costs in officer time and expenses. As such, no reduction is available for cases subject to an appeal to the First-tier Tribunal if the appeal is unsuccessful. If an offender makes an early payment at the reduced rate, but then decides to appeal later and the appeal is unsuccessful the council will seek the full finalised amount after the appeal proceedings are completed.

### **5.61 The Redress Schemes for lettings Agency work and Property management Work**

Under the redress scheme the penalty charge will normally be £5,000 for any contravention but on representation this charge may be reduced or in exceptional cases quashed. Some brief guidance has been provided on reasons to reduce the penalty charge which includes taking account of turnover of the business or other extenuating circumstances. This charge issued is in accordance with “Guidance on the Redress Scheme Improving Rented Sector” issued in March 2015 by DCLG.

The landlord can request the local authority to review the penalty charge. Normally any representations that are made will be considered jointly by any two of the following officers; the Private Sector Housing Manger, the Head of Regulatory Services or the Strategic Director for Corporate Resources. A final appeal can be made by the landlord to the First Tier Tribunal.

### **5.62 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

Under these regulations, a penalty charge of up to £5,000 can be made. Regulation 13 requires a local Housing Authority to prepare and publish a statement of principles which it proposes to follow in determining the amount of penalty charge. **Appendix 4** details the Councils Statement of Principles in this matter.

Where the Council undertake remedial action, the type of smoke detection fitted will if reasonable and practical will meet the standards contained in British Standard 5839- part 6:2019

### **5.63 Housing Act 2004 as amended by the Housing and Planning Act 2016**

The Housing and Planning Act 2016 introduced new powers for local authorities to tackle rogue landlords. These new powers include;

- Civil penalties of up to £30,000
- Extension of Rent Repayment Order
- Banning orders for the most prolific offenders
- A database of rogue landlords/property agents

The Council has approved a policy for determining when; to issue a penalty notice and the amount of penalty to be charged, when to apply for a Rent Repayment Order, when to put a landlord the database of rogue landlords, when to prosecute and when to apply for a banning order.

This policy can be found at **Appendix 5; Determining the Penalty for Offences under the Housing Act 2004.**

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

These regulations have been made under the Housing Act 2004 and the Housing and Planning Act 2016. The regulations give legal responsibilities to landlords to ensure their property(s) electrical system are safe. This includes providing an electrical inspection report every 5 years. The regulations allow for a Penalty Charge (and no other form of penalty) of up to £30,000 for a breach of duties of a private landlord. The policy for determining the penalty will be the same process as **Determining the Penalty for Offences under the Housing Act 2004, found at Appendix 5.** A landlord can make written representation to the Council within 28 days, regarding a penalty charge.

#### **5.65 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015**

The regulations provide that, subject to prescribed exceptions, a landlord of a domestic private rented property must not continue to let the property after 1st April 2020, where the energy performance of the property is below the minimum level. (Currently F and G). There are legal exemptions which must be registered under The National PRS Exception Register. Where the Council is satisfied that a landlord is in breach, it may issue a penalty notice imposing a financial penalty, and a publication penalty. This policy can be found at **Appendix 6; Determining the Penalty for Offences under The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.**

### **5.7 OVERCROWDING**

Wherever possible the Council will resist taking action that would lead to homelessness but will seek to reduce overcrowding using suspended notices that relies on a voluntary reduction in the occupation of the dwelling. We will work with the Council's Homelessness team where enforcement action may lead to a family moving out of their accommodation.

In acting, we will consider:

- The impact of the overcrowding upon the health and safety of vulnerable adults and children's living conditions.
- Whether the occupants are being exploited and we will take this into account when deciding what action to take.

- The wishes of the occupier.

Where there is a serious hazard of overcrowding, a suspended prohibition notice will normally be served. This will require the occupation of the property to be reduced by the occupiers leaving the property when they choose to. The Notice will then become fully operative once the property is no longer overcrowded and it would be an offence if the property became overcrowded by new occupiers.

## **5.8 Priorities for Enforcement**

Normally the Council will not take enforcement action against owner-occupiers as statistically these homes are safer, and the owner has far greater control and power to remedy any hazards in the property. A private tenant would not have this control or power. However, where the Council knows there is a serious hazard in an owner-occupied property, we may have to take formal action in accordance with our statutory duty. In most cases this will simply be a Hazard Awareness Notice, but an Improvement or Prohibition Notice may be served if this is needed to protect existing or future occupants.

To ensure that the Council meet their policy and enforcement objectives effectively, they will from time to time need to target their enforcement activity to specific subjects. For example, this may be:

- Concentrating our action on specific roads or;
- On individuals or organisations who persistently commit offences, or their activities result in the need for us to work proactively to meet our objectives or;
- On specific types of properties for example Houses in Multiple Occupation or empty homes;
- The need to work with partners on specific enforcement activities.

## **5.9 Charging Policy for Taking Enforcement action**

The Housing Act 2004 allows Councils to charge for taking enforcement action that results in service of a notice under the Act. The Council will recover our costs when statutory action is taken including the full costs of an officer's time, overheads and any relevant expenses such as specialist reports. Current charges are attached as **Appendix 3** and these will be updated annually.

There will be discretion to waive the charge when it is not reasonable to expect a person to pay for charges for the enforcement action taken i.e. where it is very clear that the owner is not at fault or that the reason for serving the notice was outside the control of the owner.

If the notice is fully complied with within the time allocated by the Council, then the costs charged relating to officer time and administration will be waived. Any other costs such as the obtaining of specialist reports will be fully recovered by the Council. Where a charge for enforcement action is levied, it will be registered as a local land charge.

## **6. Policy Monitoring**

To ensure compliance with this policy, the enforcement activities of the Private Sector Housing Service will be monitored regularly by the Private Sector Housing Manager and are subjected to a regular audit process.

The Private Sector Housing Manager will review this policy annually.

## **7. Training and Development**

Appropriate resources will be made available for training officers to enable them to successfully carry out their duties within this policy. All officers will have recognised relevant qualifications and completed training on the Housing, Health and Safety Rating System. Ideally senior enforcement officers will be professionally qualified and undertake Continual Professional Development.

## **8. Equality impact Assessment**

This policy aims to promote the Council's objectives of improving environmental quality, promoting prosperous communities, health and well-being.

Care has been taken to ensure that application of these policies will not result in discrimination against any of the equalities groups. This document is covered by the Equalities Impact Assessment (EIA) for the overarching Corporate Enforcement Strategy.

## **9. Complaints against our Service**

If you are dissatisfied with the service, you receive please let us know. The Council are committed to providing quality services and your suggestions and criticisms about any aspect of our service will help us to improve. We will deal with all complaints in the strictest confidence. Wherever possible we will attempt to resolve your complaint informally.

Initially you should make representations through the case officer to try to resolve your concern. If you are unable to resolve this matter with the case officer, you should contact the Private Sector Housing Manager.

If you are still dissatisfied, the Council has in place a Corporate Complaints procedure.

If you are still unhappy you can discuss your complaint with your local ward Councilor, MP or can complain to the Local Government Ombudsman.

## **How to Contact us**

In the first instance please use the telephone number given on any correspondence we send and speak to the case officer dealing with the matter or contact;

Robin Kennedy, Private Sector Housing Manager,  
Dover District Council,  
White Cliffs Business Park,  
Dover CT16 3PJ  
Tel: 01304 872221 or E-mail: [robin.kennedy@dover.gov.uk](mailto:robin.kennedy@dover.gov.uk)

Our complaints officer can be contacted

Professional Standards Officer  
Dover District Council  
White Cliffs Business Park  
Dover CT16 3PJ

## Appendices

Appendix 1	Service Standards
Appendix 2	Priority system for empty homes
Appendix 3	Charging Policies
Appendix 4	Statement of Principles for penalty charge for the Smoke and Carbon Monoxide Alarm (England) Regulations 2015
Appendix 5	Determining the Penalty for Offences under the Housing Act 2004
Appendix 6	Determining the Penalty for Offences under The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.



## **Appendix 1**

### ***SERVICE STANDARDS***

#### **Response to communication**

This is to be determined by Council- wide standards.

#### **Enforcement/request for service**

1. All requests for service to be acknowledged within 7 working days by telephone or e-mail or letter where this is a last resort.
2. Where a request for service is deemed very urgent with an imminent risk to health or injury, a visit to the premises should be made within 24 hours. If upon inspection it is confirmed there are hazards giving rise to a serious imminent risk to health the landlord or owner are to be informed as soon as practical and formal action taken within 4 working days.
3. For all other requests for service, the complainant may be required to complete a questionnaire giving details of their problems and their landlord. If the questionnaire is not returned within 14 days a reminder letter will be sent. If following a further 14 days, we have still not received a reply the case will normally be closed by the Private Sector Housing Manager. Wherever possible the complainant will be telephoned before the case is cancelled.
4. If a questionnaire is not required, or has been returned, the complainant will be contacted to inspect the property within 10 working days. Alternatively, if the problem does not require a visit the Council will contact the agent or landlord within 5 working days asking them to carry out works to remedy the problem.
5. Following an inspection of the property and in all cases not mentioned in section 2 above the council will write to the complainant within 10 working days informing them of the action the council are taking in the matter. The exception to this is where no action is required, and the tenant will be given advice at the time of inspection.

6. Where an officer determines that works may be required, the council will write to the landlord and tenant within 10 working days of the inspection requesting a formal inspection<sup>1</sup> of the property with the landlord.
7. Within 10 working days of the formal inspection the landlord will be informed in writing that identifies the hazards, works required and timescales to complete them. A copy will be sent to the tenant any other interested parties.
8. Where works or action is required by the council the matter will normally be reviewed by a re-visit or in some cases by contacting the complainant within the following time periods.
  - For all properties having a category 1 hazard the reviews will take place every 6 weeks.
  - For all properties having no category 1 hazard the reviews will take place every 8 weeks.

Where no adequate progress has been made, the owner shall receive written confirmation of the results within 10 days of the review. The tenant will be informed either in writing or verbally.

9. If there appears to be no satisfactory progress, then legal action will be taken. This will usually be by the service of a statutory notice, but this will depend upon all legal formalities such as ownership of the property being satisfied. The time scale allowed before progress is deemed unsatisfactory cannot be prescriptive, but the following guidelines should be followed.
  - In the case of properties having category 1 hazards a formal notice would normally be served within 10 weeks of the formal inspection. In the case of properties having high scoring category 2 hazards, a formal notice would normally be served within 20 weeks of the formal inspection.
  - Where there is a concern that the tenant may be subjected to retaliatory eviction, the service of an Improvement Notice will be served as soon as possible.
10. Where a formal notice has been served, reviews will take place within 5 working days of any start date and completion date contained in the notice. The results of any review will normally be informed to the landlord in writing within 5 working days.
11. Where the notice has not been complied without reasonable excuse, then a penalty will be considered in accordance with appendix 5. If action is deemed to be necessary, this would normally be instigated within 6 weeks of the contravention. Any such action is subject to legal considerations, being proportional and in the public interest so timescales cannot be prescriptive.

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<sup>1</sup> This formal inspection is required by the Housing Act 2004.

## Appendix 2

### ***Empty Homes Priority System for Action***

A priority list of known empty residential properties will be calculated, that reflects the length of time the property has been empty and the impact the property is having on the local environment & community.

The Council will tackle vacant residential property in priority order. The properties with the highest score will be dealt with first.

Vacant properties will be surveyed regularly to enable their points to be adjusted to take into account changes in circumstances.

Properties subject to new complaints will be surveyed within 14 working days. The points will be calculated in accordance with the table below to establish their priority. The points are accumulative. For example, a property empty for eight years will be awarded 30 points for being empty for that length of time.

<b><u>Property Description</u></b>	<b><u>Points</u></b>
Vacant for over 2 Years.	15
Vacant for over 5 Years. An additional	15
Vacant for over 10 Years. An additional	15
Vacant for over 15 Years. An additional	15
Causing serious damage to adjoining property	15
Falling into serious disrepair	15
Property in a high-profile area. (Regeneration areas, town centres, major roads and conservation areas)	10
Becoming an eyesore to the area	10
Attracting rubbish & fly tipping	10
Receiving complaints regarding the property	10
Attracting vandalism and anti-social behaviour	10
No real attempt to sell or re-let after 2 years	5
No sign of refurbishment after 2 years	5

**Low Scoring Properties – up to 40 pts**

This score could reflect an empty property that the owner is in the process of renovation, alterations or sale. Or there is a probate or other legal issues. These properties are not causing a nuisance and are secure and in a good state of repair. Properties that fall into this category will only require minimal monitoring to ensure they do not deteriorate or remain empty long term.

**Medium Scoring Properties – 41 to 65 pts**

This score reflects empty properties that are falling in to a state of neglect. Attempts to sell or re-let the property have been unsuccessful or not pursued. The owner has not maintained the appearance of the property. They are now beginning to become an eyesore, cause a nuisance, attracting rubbish, or anti-social behaviour and action is needed to prevent them from falling into serious disrepair. The Empty Property Officer, who will attempt to negotiate with the owner to try and prevent further deterioration in their condition and bring them back into use and occupation, will closely monitor these properties. Planning and Public Protection enforcement powers will also be used at this stage, if necessary.

**High Scoring Properties – over 65 pts**

These properties will normally have been empty for many years, are causing a nuisance to the local community and are eyesores and probably in a prominent position. They are at risk of attracting vandalism, arson, fly tipping and are in a state of disrepair and/or derelict.

**Priority and Urgent Properties.**

These will be properties that in urgent need of attention by the Council. These will be properties that are, insecure, unsafe and dangerous and will be secured and made safe as soon as possible. Once secure the property will be rescored and dealt with in priority order.

### Appendix 3

#### **Charges for Notices and HMO licensing**

Under section 49 of the Housing Act 2004 charges can be made for work undertaken in respect of the Housing Act 2004 for the service of statutory notices and the licensing of Houses in Multiple Occupation. These charges can include the costs for officer time; specialist reports such as electrical or structural reports and legal costs.

The Council will only seek to recover costs that have been reasonably incurred in administering the service and cannot be used to make profit or used as a penalty. Where owners act responsibly and co-operate then charges may be reduced to reflect this. Charges may also be reduced or waived in exceptional circumstances, but this is at the discretion of the Private Sector Housing Manager. Any request must be put in writing.

#### **Charges for service of Statutory Notices under the Housing Act 2004**

*These charges are for 2020/21 and are subject to annual increases*

Notice Type	Officer time costs*	Specialist reports costs	Possible Reduction
Hazard Awareness	No cost	Charge made for all costs	None
Improvement, Prohibition,	£420 charge for simple notice; £550 for standard notice; £670 for more complicated notice	Charge made for all costs and there is no reduction.	The charge is cancelled if the notice complied with within timescales contained in the Notice
Suspended Notices	Same charges apply as for Improvement and Prohibition Notices above. Plus annual charge of £50 for annual review.	Charge made for all costs and there is no reduction,	The charge is waived if works completed within 12 months of notice.
Emergency Remedial Action	£680 charge	Charge made for all costs	None
Demolition order	£680	Charge made for all costs	None

\* A simple notice would typically be a notice on a one bed flat or a single hazard; a standard notice would typically be a two or three bed house or a number of hazards; a complicated notice would typically be a House in Multiple Occupation, a property with more than three bedrooms or a property with more than six hazards.

### Charges for Licensing of Houses in Multiple Occupation under the Housing Act 2004

These charges are for 2020/21 and are subject to annual increases

<b>License Type</b>	<b>Current Fee</b>
Initial application fee to licence an HMO.	£750 for up to 8 habitable rooms plus £50 for each habitable room above 8
Fee for Licence renewal	£540 for up to 8 habitable rooms plus £32 for each habitable room above 8

## **Appendix 4**

### **STATEMENT OF PRINCIPLES FOR DETERMINING THE AMOUNT OF CIVIL PENALTY CHARGES UNDER REGULATION 13 OF THE SMOKE AND CARBON MONOXIDE ALARM (ENGLAND) REGULATIONS 2015**

#### **1. Introduction**

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force on 1 October 2015. The regulations require private sector landlords from that date to have a working smoke alarm installed on every storey of their rented properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire, wood burning stove). After that, the landlord must make sure the alarms are in working order at the start of each new tenancy.

#### **2. Purpose of Statement of Principle**

Under these regulations, Dover District Council (DDC) as an enforcing authority may impose a civil penalty of up to £5,000 on landlords who do not comply with a remedial notice that has been served on them regarding meeting the requirements of the legislation.

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

The civil penalty scheme is designed to encourage a landlord to comply with their duties under the legislation and to reimburse the Council in arranging remedial action in default of the landlord. The civil penalties we impose are intended to be proportionate to the level of non-compliant behaviour, the potential harm outcome, to consider any mitigating circumstances and are therefore calculated on a sliding scale.

### **3. Overview of the civil penalty process**

The Regulations place a duty on landlords, which include freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence. The Regulations exclude registered providers of social housing.

The duty requires that landlords ensure that:

- a smoke alarm is installed on each storey of premises where there is living accommodation. (You should refer to BS 5839:part 6 for guidance).
- 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) is/are in proper working order on the day the tenancy starts.

Where the Council believe that a landlord is in breach of one or more of the above duties, the Council must serve a remedial notice on the landlord. The remedial notice is a notice served under Regulation 5 of these Regulations.

If the landlord fails to take the remedial action specified in the notice within specified timescale, the Council can require a landlord to pay a penalty charge.

A landlord will not be in breach of their duty to comply with the remedial notice, if they can demonstrate they have taken all reasonable steps to comply. This can be done by making written representations to the Council at the address given at the bottom of this document within 28 days of when the remedial notice is served.

Dover District Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in the remedial notice within the required timescale.



**Summary illustration of each stage of the civil penalty process**

<b>Issue a remedial notice</b>	<b>If DDC has reasonable grounds to believe there is a breach of the requirements of regulation 4, it must serve a remedial notice on the landlord.</b>
<b>Breach</b>	<b>Failure to comply with remedial notice</b>
<b>Decision</b>	<b>Decision is made on liability for civil penalty</b>
<b>Payment</b>	<b>Payment of penalty or request for review</b>
<b>Review</b>	<b>Penalty notice is confirmed, varied or withdrawn. Review decision notice issued together with appeal information.</b>
<b>Payment</b>	<b>Payment of penalty or appeal to tribunal.</b>
<b>Appeal</b>	<b>Appeal to First Tier Tribunal, penalty notice may be quashed, confirmed or varied.</b>
<b>Enforcement</b>	<b>Enforcement action can be taken if no payment is made on time.</b>

**Each stage is explained in further detail below.**

**Breach**

The landlord has 28 days to comply with the remedial notice. The civil penalty process starts when DDC is satisfied, on the balance of probabilities that a landlord on whom it has served a remedial notice has failed to comply with the terms of that notice (regulation 6(1)).

**Decision**

A decision with respect to determining the liability and calculating the penalty amount will be based on the following Consideration Framework.

**Table 1: Consideration Framework**

<b>Stage 1: Determining the level of breach</b>		
<b>Breach</b>	Is there a history of non-compliance within the last 5 years?	<b>Yes:</b> Apply the Level 2 Civil Penalty Calculator <b>No:</b> Apply the Level 1 Civil Penalty Calculator

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<b>Stage 2: Determining the penalty amount</b>	
<b>Aggravating Factors</b>	
<b>Aggravating factor 1</b>	Seriousness of offence.  Does the premises have any working alarms, the length of time the property has lacked working detectors, has the tenant asked the landlord for working detectors, has the landlord refused to co-operate.
<b>Aggravating factor 2</b>	Is the property overcrowded, is it occupied by vulnerable persons, are there other fire hazards such as poor escape, height of premises above ground level or poor electrics?
<b>Aggravating factor 3</b>	Did Dover District Council have to carry out works in default?

**Stage 3:** We need to determine the penalty amount. This is done using the Civil Penalty Calculator at Table 2. This calculator sets out a sliding scale of penalty amounts for each incidence of non-compliance.

The actual penalty amount will depend on the landlord’s history of compliance and the seriousness of the offence. It will also look at any aggravating factors that should justify a higher penalty. For example, if aggravating factors 1 and 2 apply the penalty charge will be increased by £500. If only aggravating factor 1 applies, then the penalty charge will be increased by £250.

**Table 2: Civil Penalty Calculator**

The Civil Penalty Calculator comprises two levels:

- The **Level 1** table should be used where there is no history of non-compliance during the last five years. The starting point for the calculation of the civil penalty is £2,000 before any additions are applied.

- The **Level 2** table should be used where you have been found to a history of non-compliance within the previous five years. The starting point for the calculation of the civil penalty is £4,000 before any additions are applied.

Where a civil penalty notice has been cancelled following a review or appeal and has not been replaced by a warning notice, it shall not be considered when calculating any subsequent penalty.

<b>Level 1: First breach</b>		
<b>Starting penalty amount £2000</b>		
<b>Aggravating factor 1:</b>	<b>Aggravating factor 2:</b>	<b>Aggravating factor 3:</b>
Penalty increased by £250	Penalty increased by £250	Penalty increased by £500

<b>Level 2: Second or subsequent breach</b>		
<b>Starting penalty amount £4000</b>		
<b>Aggravating factor 1:</b>	<b>Aggravating factor 2:</b>	<b>Aggravating factor 3:</b>
Penalty increased by £250	Penalty increased by £250	Penalty increased by £500

## **Payment**

Penalty charges are to be paid in full within the period specified in the penalty charge notice (this will be not less than 28 days) unless within that specified period the landlord has given written notice to DDC that the penalty charge notice be reviewed.

DDC may reduce the specified charge under an early payment option which reduces the amount of your civil penalty by 25% if we receive payment in full within 28 days of the civil penalty notice being served. The reduced penalty amount and the final date by which you must pay it will be clearly shown on your civil penalty notice.

If you lodge an objection to your penalty before the deadline specified in your civil penalty notice, you will continue to be eligible for the early payment option. If you are still required to pay a penalty following the review of your notice, you will be given a fresh notice which specifies a new date by which you may pay your penalty at the lower amount.

## **Review**

On proper notice having been given, DDC will consider any representations made by the landlord, decide whether to confirm, vary or withdraw the penalty charge notice and serve notice of its decision to the landlord. Any mitigation factors will be considered, and the penalty charge notice may be reduced. The review will be carried out by the Private Sector Housing manager acting in consultation with the Head of Regulatory Services.

## **Appeal**

DDC will be bound by the outcome of the Tribunal decision.

## **Enforcement**

If you do not pay your penalty in full, or a review or lodge an appeal, by the specified due dates, we will commence enforcement action against you. This includes action in the civil court to recover the unpaid penalty. This action may have an adverse impact on your ability to obtain future credit and act in the capacity of a company director.

#### **4. Multiple properties**

A landlord within the DDC area with more than one property found to be in non-compliance with the requirements of the legislation within the previous five years, will be subject to a penalty calculation using Level 2 of the Civil Penalty Calculator if the non-compliance is encountered at other of those properties, and the non-compliance can be attributed to a general failure of the landlord's overall approach to the legislation.

#### **5. Information regarding this statement**

DDC has prepared and published this statement in accordance with its duties under regulation 13 of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015. This statement may be revised, and where this happens any revised statement will also be published. When determining the amount of a penalty charge, DDC will have regard to the statement of principles which was most recently prepared and published at the time when the breach in question occurred.

#### **6. References in this statement**

'Days' means calendar days, i.e. including Saturdays, Sundays and bank holidays.

'Breach' or 'breaches' mean that the local authority is satisfied, on the balance of probabilities, that a landlord has breached the duty to comply (regulation 6) with a remedial notice served in respect to regulation 4 (within the relevant period of 28 days) and the local authority has arranged for remedial action to be taken. This is to ensure that tenants are protected by working alarms and may involve installing a required alarm, repairing an installed alarm or checking an installed alarm is in proper working order.

'A civil penalty notice' means a notice given under regulation 8 (3) of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 that requires a landlord to pay a penalty of a specified amount

## **Appendix 5**

### **Housing Act 2004 as amended by the Housing and Planning Act 2016**

#### **Determining the Penalty for Offences under the Housing Act 2004**

**(Including: The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020)**

#### **Introduction**

#### **Financial Penalty (FP)**

The new powers to issue a Financial Penalty came into force on April 6, 2017 under Chapter 4 and schedule 9 of the Housing and Planning Act 2016 (“2016 Act”). Section 249A of the Housing Act 2004 (“2004 Act”) allows the Local Housing Authority (LHA) to issue a FP limiting the maximum penalty at £30,000. A FP can be issued to a landlord (includes other responsible persons) who commits one of the following Housing Act 2004 (“2004 Act”) offences.

- Section 30 – not comply with an improvement notice
- Section 72 (1) – not licence a house in multiple occupation
- Section 72 (2) – licensed HMO that is overcrowded
- Section 72 (3) – not comply with HMO licence conditions
- Section 95 (1) – not licence a private rented property (non-mandatory HMO)
- Section 95 (2) – not comply with a private rented property licence condition.
- Section 139 – overcrowding notice for HMO

- Section 234 – non-compliance a HMO Management Regulation

These powers were amended by the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (ESSPRS) which provided penalty charges of up to £30,000 in respect of electrical safety in rented accommodation and some minor amendments Management regulations and HMO licencing.

Penalties for a breach under the ESSPRS will be calculated using the same methodology as use for other Housing Act 2004 offences.

### **Rent Repayment Orders (RRO)**

Rent Repayment Orders can be applied for by an LHA or tenant under sections 73 and 96 of the 2004 Act. Part 2, Chapter 4 of the 2016 Act widened the option to make an application to the First Tier Tribunal (FTT) for an RRO. An application for a RRO can be made, within 12 month period, by a LHA or tenant against a landlord who commits one of the following Housing Act 2004 (“2004 Act”) offences (whether or not convicted)

- Offence of failing to license an HMO under section 72 (1) of the 2004 Act;
- Offence of failing to license a licensable house under section 95(1), Part 3 of the 2004 Act.
- Failure to comply with an Improvement Notice under section 30\*,
- Failure to comply with a Prohibition Order under section 32(1),
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977

A tenant can only make an application where the LHA had either secured a conviction *or* following a successful RRO award.

### **Financial Penalties as an alternative to taking a prosecution.**

The Government introduced the FP as part of its campaign to clamp down heavily on criminal landlords. Ministers have made it very clear that they expected this power to be used robustly and they are not a lighter option to a prosecution. LHA have been given the authority to both determine whether to prosecute and the level of FP to impose; at up to £30,000. The level of penalty in the Magistrates Court is now unlimited



for all offences where a FP could also be issued. All monies collected following the issue of a FP can be retained by the LHA to further its statutory functions in relation to private housing enforcement work.

The 2016 Act has also introduced the “Landlord Banning Order” (LBO) for the most serious and prolific offenders and the “Rogue Landlord Database” (RLD) of rogue landlords and property agents convicted of certain offences. Whilst a landlord issued with a FP can be placed on the RLD (\* requiring two FP within a 12 month period) a FP will not be a “Banning Order Offence” and so the issuing of a FP will preclude a LHA from seeking to apply to a FTT for a LBO.

The legislation does not permit LHA to issue both a FP and prosecute for the same offence. If a person has been convicted or is currently being prosecuted, the LHA cannot also impose a FP in respect of the same offence. Similarly, if a FP has been imposed, a person cannot then be prosecuted of an offence for the same conduct.

The Statutory Guidance says that a prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. The first of five stages of ‘Setting the Penalty’ offers a means of Banding the Offence based on the seriousness of the offence, culpability of the landlord and impact on tenant and community. The five stages allow a wide consideration of the appropriateness of the penalty chosen including the means, and the table below acts as a guide. As part of reviewing whether to prosecute the LHA should consider the scope for working together with other LHA where a landlord has committed breaches in more than one local authority area.

The decision whether to prosecute will be considered for each offence, but the Council will regard prosecution as the preferred option for the higher banded offences and offences that the LHA determine fall at the threshold where it is proportionate to look to seek further redress, ultimately through the RLD and BO procedures. This approach will meet the Government’s aim of clamping down heavily on a criminal landlord or letting agents.

**Banding the Offence to Determining the Action (using scoring matrix)**

Band 1				Band 2				Band 3				Band 4			
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Caution															
Financial Penalty – Rent Repayment Order optional															
				Financial Penalty and Rent Repayment Order Register on Rogue Landlord Database (2 FP within 12M period)											
								Prosecution and Rent Repayment Order Banning Order Offence – register on Database							
										Consider -application to Ban Landlord					

### **Setting the Financial Penalty (FP) for a Landlord.**

A Local Authority must determine the level of FP that can be awarded against a landlord. Dover District Council has agreed this five-stage process to provide a framework to assist with “*determining the level of fine*” which will ensure consistency, transparency and a fair assessment for all parties.

The process has considered the following documents;

1. The statutory guidance issued by the Secretary of State under Schedule 9 of the Housing & Planning Act 2016.;
  - Section 41 (4) of the 2016 Act relating to making applications for Rent Repayment Orders.
  - Article 12 of the new schedule 13A in the 2004 Act.
2. The Code for Crown Prosecutors which gives guidance to prosecutors on the general principles to be applied when making decisions about prosecutions.
3. Non statutory guidance issued by the Ministry of Housing, Communities and Local Government
4. Dover Districts Council Enforcement Policy (incorporating the Private Sector Housing Enforcement Policy)

### **Principles in the Statutory Guidance for Financial Penalties.**

This explains that the FP should; reflect the severity of the offence, the culpability and track record of the offender, the harm caused to the tenant, the punishment of the offender, to deter the offender from repeating the offence, to deter others from committing similar offences and to remove any financial benefit the offender has from offending.

### The five Stages in 'Determining the Level of Financial Penalty'.

**Stage 1:** Banding the offence. The initial FP band is decided following the assessment of two factors;

- Culpability of the landlord; and
- The level of harm that the offence has had.

The scores are multiplied to give a penalty score which sits in one of four penalty bands;

**Stage 2:** Amending the penalty band based on aggravating factors.

**Stage 3:** Amending the penalty band based on mitigating factors.

**Stage 4:** A Penalty Review. To review the penalty to ensure it is proportionate and reflects the landlord's ability to pay.

**Stage 5:** Totality Principle. A consideration of whether the enforcement action is against one or multiple offences, whether recent related offences have been committed and ensuring the total penalties are just and proportionate to the offending behaviour

#### Stage1: Banding the level of Offence, (there are two factors to assess)

Banding the Offence	
<b>Factor 1.</b> <b>Culpability of Landlord (seriousness of offence and culpability)</b>	<b>Assessment:</b> The landlord is to be assessed against four levels (low, moderate, high or significant) of culpability:

<p>To consider as part of assessment</p> <ul style="list-style-type: none"> <li>a. Is the landlord experienced or has a number of properties within their portfolio?</li> <li>b. what length of time did the offence continue for or repeat over?</li> <li>c. to what extent was the offence premeditated or planned,</li> <li>d. whether the landlord knew, or ought to have known, that they were not complying with the law,</li> <li>e. the steps taken to ensure compliance.</li> <li>f. whether the landlord has previous relevant unspent housing offence related convictions (source National Landlord database),</li> <li>g. the likelihood of the offence being continued, repeated or escalated.</li> <li>h. the responsibilities the landlord had with ensuring compliance in comparison with other parties</li> </ul>	<p><b>Significant</b> - Where the offender deliberately or intentionally breached, or flagrantly disregarded, the law.</p> <hr/> <p><b>High</b> – Landlord had actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken.</p> <hr/> <p><b>Moderate</b> - Offence committed through act or omission which a landlord exercising reasonable care would not commit</p> <hr/> <p><b>Low</b> - Offence committed with little fault, for example, because:</p> <ul style="list-style-type: none"> <li>a. Significant efforts were made to address the risk although they were inadequate on this occasion</li> <li>b. There was no warning/circumstance indicating a risk</li> <li>c. Failings were minor and occurred as an isolated incident</li> </ul>
<p><b>Factor 2</b></p> <p><b>Level of Harm (for tenant, community)</b></p>	<p><b>Assessment:</b></p> <p>The landlord is to be assessed against four levels (low, moderate, high or significant) of harm or consequence:</p>

<p>To consider as part of assessment</p> <ul style="list-style-type: none"> <li>a. Circumstances or vulnerabilities or actual discrimination against the tenant or tenants. (age, illness, language, ability to communicate, young children, disabilities or in relation to any protected characteristic (Equalities Act 2010)</li> <li>b. Tenant’s views about the impact that the offence has had on them.</li> <li>c. The extent to which other people in the community have been affected, for example, because of anti-social behaviour, excessive noise and damage to adjoining properties.</li> <li>d. was more than one other household affected,</li> <li>e. The level of actual or potential physiological or physical impact on tenant(s) and third parties?</li> <li>f. What regulation, legislation, statutory guidance or industry practice governed the circumstances of the offence?</li> <li>g. has the level of trust been breached and have landlord actions impacted on sector?</li> </ul>	<p><b>Significant.</b></p> <ul style="list-style-type: none"> <li>▪ Serious adverse effect(s) on individual(s) and/or having a widespread impact</li> <li>▪ Significant risk of an adverse effect on individual(s) – including where persons are vulnerable</li> <li>▪ Significant disregard of Regulator or legitimate industry role with significant deceit</li> </ul>
	<p><b>High</b></p> <ul style="list-style-type: none"> <li>▪ Adverse effect on individual(s) (not amounting to significant)</li> <li>▪ High risk of an adverse effect on individual(s) or high risk of serious adverse effect, some vulnerabilities.</li> <li>▪ Regulator and/or legitimate industry substantially undermined by offender’s activities</li> <li>▪ Consumer/tenant misled</li> </ul>
	<p><b>Moderate</b></p> <p>Moderate risk of an adverse effect on individual(s) (not amounting to low risk)</p> <ul style="list-style-type: none"> <li>▪ Public misled but little or no risk of actual adverse effect on individual(s)</li> </ul>
	<p><b>Low</b></p> <ul style="list-style-type: none"> <li>▪ Low risk of an adverse effect on individual(s)</li> <li>▪ Public misled but little or no risk of actual adverse effect on individual(s)</li> </ul>

**Scoring Matrix to Determine the Level of Fine.**

Scoring Matrix for Financial Penalty					
FACTORS					
Level of Culpability (seriousness of offence)	Significant	4	8	12	16
	High	3	6	9	12
	Moderate	2	4	6	8
	Low	1	2	3	4
Level of Harm		Low	Moderate	High	Significant

**Financial Penalty Banding and Penalty Scores**

Penalty Band	Band 1				Band 2				Band 3				Band 4			
Penalty Score	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Financial Penalty	£250	£500	£750	£1000	£2000	£4000	£6000	£8000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000

## **Stage 2: Amending the penalty band based on aggravating factors.**

Objective: to consider aggravating factors of the offence that may influence the FP. A significant aggravating factor may allow the FP to be increased by a FP point.

### Example aggravating factors:

- Previous convictions, having regard to;
  - a) The nature of the offence to which the conviction relates and its relevance to the current offence; and
  - b) The time that has elapsed since the conviction (is conviction spent)?
    - Motivated by financial gain, profited from activities.
    - Deliberate planned concealment of activity resulting in offence and obstructive nature of landlord towards investigation
    - Established evidence of longer-term impact on the (wider) community as a consequence of activities.
    - Role within the private rented sector and familiarity with responsibilities and current level of responsibility with managing and letting private rented properties.
    - Refusal to accept offer of, or respond to LHA advice regarding responsibilities, warnings of breach or learned experience from past action or involvement of LHA or other Regulatory Body.
    - Any further factor that can be deemed of sufficiently aggravating nature that is not covered above or within the culpability and harm banding factors.

## **Stage 3: Amending the penalty band based on mitigating factors**

Objective: to consider any mitigating factors and whether they are relevant to the offence. A significant mitigating factor may allow the FP to be decreased by a FP point.



Example mitigating factors:

- No evidence of previous convictions or no relevant/recent convictions
- Voluntarily steps taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of maintaining property and compliance with legislation, statutory standards and industry standards
- Self-reporting, co-operation and acceptance of responsibility
- Mental disorder or learning disability, where linked to the commission of the offence
- Serious medical conditions requiring urgent, intensive or long-term treatment where linked to the commission of the offence.
- Age and/or lack of maturity where it affects the responsibility of the offender
- Any further factor that can be deemed of sufficiently mitigating nature that is not covered above or within the culpability and harm banding factors.

**Stage 4: A review of the financial penalty to ensure that the case can be made and that the chosen approach is proportionate:**

**Step 1:** to check that the provisional assessment of the proposed FP meets the aims of the Crown Prosecutions sentencing code:

- Punishment of offender
- Reduction of/stopping crime
- Deterrent offender or for other potential offenders
- Reform of offender
- Protection of public
- Reparation by offender to victim(s)
- Reparation by offender to community
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

**Step 2:** to check that the proposed FP is proportionate and will have an appropriate impact.

Local authorities should use their existing powers to, as far as possible, assess a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty by making an adjustment to the financial penalty band. The general presumption should be that a FP should not be revised downwards simply because an offender has (or claims to have) a low income. Similarly, if a landlord with a large portfolio was assessed to warrant a low FP, the FP might require adjustment to have sufficient impact, and to conform to sentencing principles.

Part 6 of Schedule 16 of the Crime and Courts Act 2013 permits the value of any assets owned by the landlords, e.g. rental property portfolio, to be considered when making an assessment and setting the level of penalty. The FP is meant to have an economic impact on the landlord, removing reward for criminal activities and acting as a deterrent to bad practice.

In setting a financial penalty, the LHA may conclude that the offender is able to pay any financial penalty imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the LHA such data relevant to his financial position as will enable it to assess what he can reasonably afford to pay. Where the LHA is not satisfied that it has been given sufficient reliable information, the LHA will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case which may include the inference that the offender can pay any financial penalty.

Process: The offender will be asked to submit relevant information as part of the process and the request for financial information will be incorporated into the notes on the "notice of intended action", the first step with issuing a FP notice.

### **Stage Five: Totality principle**

Objective: Where the offender is being considered to be issued with more than one financial penalty, the LHA should consider the Sentencing Council guidance "Offences Taken into Consideration and Totality - Definitive Guideline". Where separate financial penalties are imposed the LHA must be careful to ensure that there is no double-counting. Section 249A of the 2004 Act (amended) states that 'only one financial penalty under this section may be imposed on a person in respect of the same conduct'. The 2016 Act does permit the LHA to issue a FP and also apply for a RRO. Where the FP is issued the FTT must award the maximum RRO.

"The total financial penalty is inevitably cumulative". The LHA 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 LHA. The LHA 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 LHA should consider how to reach just and proportionate financial penalties. There are a number of ways in which this can be achieved.

Examples:

- where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind (management offences or breach of conditions), especially when committed against the same person, it will often be appropriate to impose for the most serious offence a financial penalty which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;
- Where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate financial penalty for each of the offences. The LHA should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the LHA should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.
- Where an LHA has determined that it will apply for a RRO within the 12 month deadline the FP should be reviewed to ensure the total penalty is proportionate as guided by Stage 4. The FP may be adjusted accordingly knowing that, *if successful*, the RRO award will be the maximum.

### **Reduction in Penalty Charge for Early Repayment**

As with criminal prosecutions, the council is of the opinion that an early acceptance of guilt is in the public interest. It saves public time and money.

An offender can demonstrate an early acceptance of guilt by paying the financial penalty within 28 days of the date the Final Notice was served. If cleared payment is made within this time period, the offender can benefit from a 25% reduction in the amount of financial penalty payable.

A Final Notice will set out the finalised financial penalty amount determined having regard to this policy and an amount equal to 75% of that sum, which would be accepted if received within the 28-day period.

If the council is required to defend its decision at the First-tier Tribunal, there will inevitably be additional costs in officer time and expenses. As such, no reduction is available for cases subject to an appeal to the First-tier Tribunal if the appeal is unsuccessful. If

an offender makes an early payment at the reduced rate, but then decides to appeal later and the appeal is unsuccessful the council will seek the full finalised amount after the appeal proceedings are completed.

### **Setting the Rent Repayment Order (RRO) for a Landlord.**

A tenant or an LHA may individually apply to a FTT for a RRO award in respect of their rent payments within 12 months of an offence. Under section 73 (7)(iii) and section 96 (7)(iii) of the 2004 Act and section 42 (2)(b) of the 2016 Act; the LHA is required to stipulate, in the notice of intended proceedings, how much the order for repayment of rent is. The level of rent relates to a defined period of 12 months in the period leading up to the offence or during the 12-month period whilst the offence was being committed. The local investigation will determine the levels of rent paid. An LHA has no control over the level of rent a tenant may apply for.

The Government have advised that the RRO should ensure it addresses the following factors; punishment of the offender, the recipient of any recovered rent, deter the offender from repeating the offence, deter others from committing similar offences and remove any financial benefit the offender may have obtained as a result of committing the offence. LHA must have regard to the statutory guidance issued under section 41(4) of the 2016 Act when exercising their functions in respect of RRO.

Where a conviction has been achieved the LHA will apply to the FTT for the maximum rent repayment, within a 12 month period. Section 46 of the 2016 Act states this is the level that must be awarded to either a tenant (except for section 72(1) or 95(1) offences) or a LHA where the landlord has been convicted or a FP issued in relation to that offence. In these cases there is no discretion within “Determining the Penalty”.

If there is no conviction or a FP is not issued then the Council will apply to the FTT for the maximum rent repayment when a RRO is applied for. If a FP is to be issued, the penalty point/ banding first determined will be reviewed under Stage 5 to ensure that the Totality Principle is met. This aims to ensure that the total penalties are just and proportionate to the offending behaviour.

The legislation places the ultimate decision for determining the financial award under a Rent Repayment Order with the FTT in line with section 74 and 97 of the 2004 Act and sections 44 and 45 of the 2016 Act. The FTT must take into account; the conduct of the landlord, the financial circumstances of the landlord, and whether the landlord has at any time been convicted of an offence to which this Chapter (Part 2 Chapter 4 of the 2016 Act) applies. It is felt that not making the application for the maximum award would undermine the discretion of the FTT.

## **Appeals**

A person issued with a FP has a right of appeal to the First Tier Tribunal (Para 10 of Schedule 13A of the 2016 Act)

A person placed on the DRL has a right of appeal to the First Tier Tribunal (Section 32 of the 2016 Act).

A person aggrieved by the decision of the FTT in relation to the making of a rent repayment order may appeal under the provisions of Part 2 Chapter 5 of the 2016 Act.

## **NOTE**

### **Financial Penalty Process and Right for Person to make Representations.**

Before imposing a financial penalty on a person under section 249A of the 2004 Act the LHA must, within 6 months of the date of the offence, give the person notice of the authority's proposal to do so (a "notice of intent"); incorporating why and the level of fine. A person in receipt of the notice of intent can make written representations within 28 days. Subsequently the LHA must decide whether to issue a financial penalty and the amount and to do so must issue a final notice.

Similarly, section 42 of the 2016 Act requires that the LHA must first serve a notice of intended proceedings on the landlord. He can then make written representations within 28 days of the date of service to the LHA about the proposed RRO

The landlord has the right to make representations and any representation must be duly considered. The LHA will provide a response within 21 days (no statutory time period) with a decision notice stating whether the penalty will be withdrawn, varied or upheld.

**All communications** for representations made against the intended FP or RRO are to be written and sent to:

**Private Sector Housing Manager**

**Dover District Council, White Cliffs Business Park**

**Dover, CT16 3PJ**

Telephone: 01304 872397

email to: [privatesectorhousing@dover.gov.uk](mailto:privatesectorhousing@dover.gov.uk)

## Appendix 6

### **Determining the Penalty for Offences under The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015. (amended 2019\*)**

#### **Introduction**

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended) (the Regulations) are designed to tackle the least energy-efficient properties in England and Wales – those rated F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum standard for privately rented property.

The Department for Business Energy and Industrial Strategy have produced guidance published in 2017 and updated in June 2018; *Guidance for landlords and Local Authorities on the minimum level of energy efficiency required to let domestic property under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015*. The council have had regard to this guidance in formulating this policy.

#### **Purpose of this policy**

In accordance with Regulation 34 Local Authorities are responsible for enforcing the minimum level of energy provisions within their area. In the first instance the council will notify Landlords who rent properties with an EPC of F or G that they do not meet the minimum energy efficiency standard. The Council will offer advice on how the standards can be met and request Landlords to register an exemption if appropriate. Unless the landlord has reasonable excuse for not complying with these regulations, the council will normally take formal action without giving an informal opportunity for the landlord to comply where a contravention exists.

*\*The Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2019*

The Council has discretion to serve Compliance Notices to request information from the landlord that will help them to decide whether there has been a breach. The council will serve Compliance Notices where the additional information is required. The Council will serve a Penalty Notices where a landlord fails to comply with the Compliance Notice.

The Council will check the National PRS Exemptions Register and if it believes a landlord has registered false or misleading information it will consider serving a financial penalty.

If offences under these regulations are committed the Council will normally serve a Penalty Notice. This policy is a framework for officers to follow in how to determine the appropriate penalty.

Under regulation 39 the Local Authority may publish some details of the landlord’s breach on a publicly accessible part of the PRS Exemptions Register. The council will place the information on the register at the appropriate time, for a minimum of 12 months.

The Landlord has the right to ask for a Penalty Notice to be reviewed under Regulation 42. Any request for review must be submitted to the Council within one calendar month of the Penalty Notice being served. Requests for review after the prescribed time will be considered at the Council’s discretion

**Penalties for non-compliance with the Minimum Energy Efficiency Regulations**

<b>Breaching the ban on letting a property with an EPC Rating of F or G for less than 3 months (statutory maximum £2000)</b>	
First offence - £1000 (or £750 if paid within 28 days)	All other offences - £2000 (or £1500 if paid within 21 days)

<b>Breaching the ban on letting a property with an EPC Rating of F or G for more than three months (Statutory maximum: £4,000)</b>	
First offence: £2,000 (or £1,500 if paid within 28 days)	All other offences: £4,000 (or £3,000 if paid within 21 days)



<b>Registering false or misleading information on the PRS Exemptions Register (Statutory maximum: £1,000)</b>	
First offence: £500 (or £375 if paid within 28 days)	All other offences: £1,000 (or £750 if paid within 21 days)

<b>Failing to provide information to the council demanded by a Compliance Notice (statutory maximum £2,000)</b>	
First offence: £1,000 (or £750 if paid within 28 days)	All other offences: £2,000 (or £1,500 if paid within 21 days)