

Private Sector Housing Enforcement Policy 2021

Preface

The London Borough of Southwark's (the Council) Regulatory Services Enforcement Policy sets out the approach to enforcement across the service. This Private Sector Housing Enforcement Policy is a supplement to that wider policy. It explains, in greater detail, the enforcement policy in relation to private sector housing (PSH) which includes owner/occupation, leaseholders, Registered Providers (for and not-for-profit Housing Associations) as well as the private rented sector (it excludes property owned and managed by the Council).

Private Sector Housing Services ensure that legally compliant housing conditions standards are maintained in privately owned residential property, this includes housing matters arising from privately owned land. In carrying out its functions, the service prioritises and targets resources to improve the private rented housing sector.

The Council regards all aspects of managing and renting residential property as a business and expects those engaged in it, e.g. as a landlord, a letting agent, managing agent, etc. to understand and be conversant with the relevant legal requirements and to take responsibility for their business undertakings.

The Council's preferred approach to private rented housing enforcement is to take formal action where hazards are identified under the Housing Act 2004 as set out in this policy. In all other matters an informal approach will be taken initially, and guidance and advice offered to help businesses achieve the standards required. However, where this approach fails, where there is a history of non-compliance, or where it is necessary to protect the health safety and welfare of people or the environment, the service will take formal enforcement action in line with statute.

The service's functions include; the licensing and proper management of houses in multiple occupation (HMOs), the licensing and proper management of privately rented homes, enforcement of the housing, health and safety rating system, overcrowding, public health matters and associated/related provisions. These service functions reflect the Council's statutory duties and are in-line with the Council's corporate objectives and associated strategies.

The service works closely with partners across London including other local authorities, other regulators, the Greater London Assembly and Registered Providers of social housing. Any protocols agreed with partners are referred to in this policy. The policy sets out the Council's transparent approach to private sector housing enforcement so that all stakeholders, including tenants and landlords, understand how we will deliver service functions and how they will be dealt with by the Council when it necessary to use statute to intervene.

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Background and context

Policy Aims

1. Ensure safer and healthier private sector housing.
2. Explain the legal responsibilities, policies, principles and priorities followed when we enforce legislation.
3. Raise the profile and demonstrate transparency of enforcement in the private housing sector and in particular the private rented housing sector.
4. Increase public confidence in the quality of local accommodation and assist a responsible private rented sector to thrive in the borough.

Enforcement Action – what is it?

5. Enforcement means an action carried out in exercise of, or against the background of, statutory enforcement powers. It includes inspections (using our powers of entry, which includes, where necessary, by warrant) and investigations where the purpose is checking compliance with the law. It also includes providing advice to help those responsible persons and businesses to comply with statute and more formal enforcement action such as service of statutory notices, the making of orders, the issue of financial penalties, works in default, enforced sale, compulsory purchase and prosecution.

Relationship with the divisional Regulatory Enforcement Policy

6. The London Borough of Southwark has a Regulatory Enforcement Policy that sets out the principles of good regulatory practice and the approaches that are followed by our regulatory services and officers across these services. This document is a supplement to that policy that explains in more detail the policy with regards to private sector housing enforcement.
7. Both consider the Council's approach to better regulation within the Government's Better Regulation agenda. They follow the principles of good regulation set out in the Legislative and Regulatory Reform Act 2006 (2006 Act) and subsequent related legislation.
8. The 2006 Act requires that regulatory services have regard to current Regulators Codes when developing policies and procedures that guide our regulatory activity. This policy has regard to the Regulators Code 2014.
9. This policy promotes efficient and effective approaches to regulatory inspection and enforcement without imposing unnecessary burdens on businesses such as landlords and letting or managing agents.
10. The policy recognises the contribution responsible businesses make to the private housing sector and seeks to take a robust approach to those that are not responsible and in particular those that actively seek to avoid compliance and put people at risk.

Relationship with the Housing Strategy to 2043

11. The long-term housing strategy for the Borough was agreed by cabinet in 2015. However, a refreshed version of this strategy was agreed at Cabinet on 8 December 2020. This updated housing strategy continues the long-term direction, but with simplified clearer commitments and updated actions.
12. The four fundamental issues are affordability; quality; security; and pride and responsibility. The four broad principles on these key values, as follows:
 - Increasing the supply of genuinely affordable high-quality homes that meet our residents' housing needs and aspirations.

- Demanding safer, higher quality, energy efficient homes.
 - Promoting tenure security and social support in housing, and improving the health, wellbeing and economic resilience of residents.
 - Empowering residents and communities to have pride and influence over their homes.
13. The principles make specific reference to demanding safer, higher quality, energy efficient homes. The enforcement practices of Private Sector Housing Services will help the Council to ensure properties in the private housing sector comply with these principles.

Enforcement Objectives

14. The Council's Private Sector Housing Enforcement Service covers all privately owned residential accommodation and land. In normal circumstances, our enforcement action will be carried out to ensure:
- a) Tenants of a private landlord or Registered Providers of social housing (RP's) live in homes free of significant hazards which affect their health and safety.
 - b) Privately rented accommodation, including houses in multiple occupation (HMOs) are managed in accordance with legal requirements.
 - c) All licensable properties are licensed, and licence conditions met.
 - d) Vulnerable occupiers, or those unable to support independent living, live in accommodation free of significant risks to their health and/or safety.
 - e) Owners or occupiers of privately-owned land or property do not cause a statutory nuisance to owners or occupiers of other land or property.
 - f) Owners or occupiers of privately-owned land or property do not present an unacceptable risk to public health, safety or the environment.
 - g) Persons are held accountable for actions which are deemed detrimental to local environmental quality or to the health, safety and welfare of residents.
 - h) The service meets its statutory duties.

Fees and Charges

15. Some legislation allows the Council to apply fees and charges in respect of the work carried out by the authority. Fees and charges are revised annually. Where fees and charges apply, they are highlighted within this policy.

Data Protection and Sharing

16. This Policy has regards to the General Data Protection Regulations and the Data Protection Act 2018.
17. The Council actively shares information between its services. The Council will share information with other organisations, partner agencies and external regulatory partners for purposes of law enforcement, to investigate matters of fraud and for the prevention or detection of crime, the capture or prosecution of offenders, and the assessment or collection of tax or duty. In doing so the sharing of data will be done in accordance with General Data Protection Regulations and the Data Protection Act 2018.
18. Where general data is shared between internal services and external agencies it is done so in line with the published corporate data privacy notice, which can be found on the Council's website. In addition, Data Sharing Agreements, which set out when, why and how we share data, have and continue to be established between relevant services where it is necessary to do so.

19. In relation to this Enforcement Policy the data that can be collected as part of the process is as follows:
- Proof of residency,
 - Addresses,
 - email addresses,
 - Social media profile (as a person or another legal entity),
 - Telephone numbers,
 - Gender,
 - Date of birth and age,
 - Health conditions/disorders/impediments/disabilities (physical and mental),
 - Nationalities,
 - Identity,
 - Details of the properties you own or renting/licensing,
 - Details of businesses you are running or associated with,
 - Details of land and buildings you own, lease or are associated with,
 - Criminal convictions,
 - Civil judgements,
 - Civil penalties issued,
 - Company names and addresses you are part of,
 - Right to manage entities you are part of,
 - Legal partnerships and their addresses you are part of,
 - Vehicle registration and registered keeper and their address,
 - Details of mortgages, charges, interests, restrictions against property in your ownership (as a person or other legally entity, solely or jointly),
 - Household information, such as ages and gender,
 - Financial information and,
 - Associations, e.g. people, financial, criminal, directorships, companies, partnerships, address history, management companies, and right to manage entities.

The Rogue Landlord and Agent Checker

20. The Council is part of the Greater London Authority's (GLA) Rogue Landlord and Agent Checker. The watch list is a two-tier database hosted by the GLA. The first tier is for general public access and gives details of landlords and letting agents with unspent criminal convictions for housing-related offences under legislation, such as (not exhaustive and subject to change):
 - Housing Act 2004
 - Housing Act 1985
 - Prevention of Damage by Pests Act 1949
 - Environmental Protection Act 1990
 - Protection from Eviction Act 1977
 - Fraud Act 2006.
21. This includes information such as landlord name, part of home address, address of property associated with the offence, value of fine and date of conviction.
22. The second tier is for London local authority staff only, to view spent and unspent convictions, cautions, and civil penalty notices (up to ten years previous). This aids Local Authorities in the determination of matters such as whether an individual or organisation is fit and proper to hold a licence.

The database of rogue landlords and property agents under the Housing and Planning Act 2016

23. The national database is intended to provide Councils with the ability to track rogue landlords and property agents. Where a Banning Order is issued against a rogue landlord or property agent against the Council must place the information on the database. The Council has a power to enter details onto the database of other specified prosecutable offences and where it issues two or more civil penalties against the same person in a twelve-month period.
24. Before making an entry on the database, the Council must issue a notice informing the person before making an entry on the database. The Notice sets out what the entry will be and the time period the entry will remain on the database. The recipient may appeal the Notice to the First Tier Tribunal.
25. The Council will have regard to the legislation and guidance in making the decision to make an entry on the database.

Public Registers

26. The Council is under a duty to maintain certain public registers under the Housing Act 2004, which covers:
 - a) Property licences for any scheme in force
 - b) Temporary Exemptions from licensing
 - c) Management Orders in place
27. The Council will maintain the registers in line with the Housing Act 2004 and subordinate regulations issued as well as any guidance. These will be made available to the public on request and are available online.
28. The information the Council places on the register is set out by statute. This includes the licence holders name and address. Where a licence holder wishes to use a business or correspondence address rather

than their home address, this will be considered at the point of application. The address for the licence holder cannot be the address of the licensed property, unless that is also the licence holder's main or only residence.

Primary Authority

29. In October 2013, Primary Authority requirements under the Regulatory Enforcement and Sanctions Act 2008 (enforced by the Local Regulation Department of the Office for Product Safety and Standards) were extended to cover the Housing, Health and Safety Rating System (HHSRS), under the Housing Act 2004.
30. The Council welcomes applications from businesses to form a Primary Authority Agreement, e.g. letting agents, landlords, RPs. This can apply where either a business has housing across two or more Local Authority areas or where an organisation, such as a trade body wishes to offer a consistent approach to compliance for its members.
31. The Council will have regard to formally recognised Primary Authority Agreement's in its enforcement approach. The Local Regulation Department publish a list of primary authorities and the businesses they support.

Providing Assistance and Information

32. We offer a wide variety of assistance and information, some of which might be charged for, such as help with completing a licence application. We will provide clear, accessible advice and guidance and provide contact details where further information is required. Information is provided in a range of formats, hard copies, and electronically. Information can be provided in languages other than English, upon request, or where a need to do so is identified. Key information can be found on our website.

Targeting Enforcement Action

33. From time to time we will target our enforcement activity to ensure we meet our objectives effectively and efficiently. Our targeted action is agreed in line with the Council's constitution and delegations.
34. Some examples of ways in which activity may be targeted is set out below (not an exhaustive list):

Property Type or Occupation

- a) Unlicensed properties.
- b) Poorly managed privately rented properties.
- c) Private rented property subject to incidences of anti-social behaviour.
- d) Properties where tenants receive Local Housing Allowance/Housing Benefit/Universal Credit. These tenants are more vulnerable to lower standards of accommodation and can consequently face greater risks to their health safety and welfare.
- e) Properties poorly or illegally built or converted that may not comply with planning or building regulation requirements.
- f) Household types such as shared accommodation.
- g) Properties with a low energy efficiency rating on their Energy Performance Certificate (EPC).
- h) Construction type – where there is a known issue associated with methods of construction for example external cladding systems, precast reinforced concrete, etc.
- i) Where a style of renting or rental model causes risk to health, safety or welfare, e.g. rent to rent models, where a short-term tenant sub-lets a property creating an unregulated HMO.

Areas

- a) Where there are identified issues in a specific locality. This can be determined, for example, street by street, Local Super Output Area, town centre or ward basis, etc.
- b) Where an area of the Council has been identified as potentially having adverse health or socioeconomic indicators.
- c) To provide a co-ordinated approach alongside other Council initiatives.

Where a landlord, agent, organisation or individual:

- a) Fails to manage privately rented accommodation in accordance with legal requirements.
- b) Fails to comply with informal or formal requests to meet minimum legal requirements of relevant legislation or commits offences.
- c) Fails to submit a valid licence application or meets licensing standards and requirements.
- d) Places tenants in overcrowded accommodation.
- e) Their activities result in the need for us to work proactively to meet our enforcement objectives.

Other

- a) To support the Council's published corporate strategies and policies such as the joint strategic needs assessment or homelessness strategy.

Licensing of Private Rented Sector Properties

Mandatory HMO Licensing

35. On the 1 October 2018 the Government changed the definition of the type of HMO that must be licensed regardless of where you are in the country (mandatory licensing). The definition is as follows:
36. HMOs occupied by 5 or more people in 2 or more households, where householders lack or share basic amenities, which is:
 - A building
 - A converted flat
 - Purpose built flats (with up to 2 flats in the block, and any of which are occupied as an HMO)
37. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 brought these changes into force.

Discretionary Licensing

38. Local Authorities have the discretion to bring into force licensing of residential accommodation as defined in parts 2 and 3 of the Housing Act 2004. Adopting these provisions allows local authorities to require landlords of some privately rented properties to apply for a licence.
39. There are two types of discretionary licence schemes:
 - Additional HMO licensing may be appropriate where a large number of HMOs in an area are not being managed effectively and are causing particular issues for the people who live in these properties or residents in the area.

- Selective licensing may be appropriate where there are issues with low housing demand, anti-social behaviour, high levels of migration, poor property standards, high levels of crime or high levels of deprivation (or a combination of these) in certain areas and where some or all of the responsible persons in that area are generally failing to act to address the issues.
40. The Council operated Additional HMO Licensing and Selective Licensing Schemes up to the 31 December 2020.
 41. The Council is currently determining whether to introduce new schemes to replace the additional and selective licensing schemes in all or parts of the Borough. Any decision to introduce schemes will be based on sound and robust evidence to support the decisions. The Council is committed to ensuring all legislative requirements, such as a public consultation, submission and approval by the Secretary of State (where needed) are met in full before introducing any schemes.

Tacit Consent

42. Tacit consent applies to both HMO and selective licensing. This means that, if the Council goes over its self-imposed time limit for processing licensing applications (it is possible to extend this time limit once in exceptional circumstances), the applicant can operate the licensable property as though licensed unconditionally.
43. If the Council has not decided an application for a property licence (HMO or Selective) in 52 weeks from receipt of a full and complete application (application and accompanying required documentation) and initial payment, the property will be able to be operated as though the Council has granted the licence unconditionally. In exceptional circumstances the Council may extend this period once. The applicant will be notified of the reason and time period of the extension if an extension is granted by the Head of Regulatory Services. In any circumstance an extension cannot be longer than 12-weeks from the expiry of the initial 52-week period.

Operating an Unlicensed Property

44. The Council employs resources to find unlicensed properties and where identified may apply an enhanced application fee to cover the additional costs incurred in having to find the unlicensed property.
45. If a landlord cooperates with the Council an informal approach will be adopted so long as a valid application with the appropriate fee is subsequently made within a reasonable time scale. The time scale may vary depending on circumstance but will be not be less than 10 working days. Consideration will be given to any representations regarding exceptional circumstances that may have resulted in the application not having been made. In other circumstances, the Council will investigate and if appropriate consider taking formal action, such as prosecution, applying for a Rent Repayment Order, issuing a Civil Penalty, etc.
46. The Council may provide tenants with information and advice on how and when they can claim back the rent they paid whilst the property was unlicensed through the application of a Rent Repayment Order.
47. Tenants of an unlicensed property cannot be issued with a Section 21 Housing Act 1988 eviction notice whilst the property remains unlicensed.

Licence Fees

48. The Council applies fees for licensing of private rented property. Fees cover the administration and enforcement of the schemes and are subject to an annual review as a minimum.
49. Discounts may apply in certain circumstances. Please check the current fee structure to see what discounts are available.

Other Charges

50. The Council currently offers chargeable services for:
- Assistance with licence applications
 - Providing a paper application
51. Services and charges can be withdrawn (temporarily or permanently) or other chargeable services introduced. Please check the fees and charges structure for current information.

Licence Renewal

52. To assist existing licence holders, the Council will send a reminder to the licence holder approximately 3 months before the expiry of the licence. The Council is not obliged to do this and its failure to do so does not provide the licence holder with an excuse to not make a valid re-application. Failure to renew a licence within 1 month of the licence expiring will forfeit the right to relicence at the renewal fee rate. Each case will be considered on its merits and subsequent licence applications will be charged at either the new licence or unlicensed fee rate. In addition, formal action will be considered, which may include, prosecution, applying for a Rent Repayment Order or issuing a Civil Penalty.
53. The Council may provide tenants with information and advice on how and when they can claim back the rent they paid whilst the property was unlicensed through the application of a Rent Repayment Order.
54. Tenants of an unlicensed property cannot be issued with a Section 21 Housing Act 1988 eviction notice whilst the property remains unlicensed.

Transfer of unexpired licences from the existing schemes

55. Where licences are granted under existing discretionary licensing schemes, they will either cease to be valid when that scheme ends or where they have not expired will be valid under any subsequent scheme introduced for the remainder of their licence period.
56. This is to prevent essential council resources being taken up with re-licensing properties that have already been licensed, inspected and brought up to standard within a 5-year period under the existing schemes.

Duration of Licenses

57. Licenses will normally be granted for the full five-year period (where it is a mandatory licence). The length of the licence may be shorter where any of the following apply:
- a. History of the applicant or the property. For example (not exhaustive):
 - i. Repeated and sustained complaints from tenants and/or neighbours, where the licence holder could have acted but hasn't. This could relate to management, ASB, noise, etc.
 - ii. Repeated need for enforcement action to rectify issues.
 - iii. A failure to deal with inadequate waste arrangements, following intervention.
 - iv. History of tenant harassment and alleged attempts at illegal eviction.
 - b. Significant issues arising from the inspection (if any), For example:
 - i. Management issues that significantly impact the health and/or safety of the tenants.

- ii. Category 1 hazards (other than fire) that require the instigation of the enforcement process.
- c. Major works required. For example (not exhaustive):
- i. Missing a high graded AFD system.
 - ii. A complete lack of compartmentalisation to the common parts, i.e. fire doors, walls, ceilings, cupboards, etc.
 - iii. The need to add or relocate bathrooms, WCs, kitchens, etc.
 - iv. A full re-wire.
 - v. Complete window replacement.
 - vi. The installation of a whole house heating system.
 - vii. Extensive damp proofing.
- d. Planning permission needed for HMO use or planning permission refused and the applicant needs to regularise the use of the property, i.e. bring it back into single household use.
- e. Mortgage company refusing to finance the rental use or querying existing mortgage conditions.
- f. The Council are the freeholder and are refusing to give permission for HMO use, to enable the applicant to regularise the use of the property, i.e. bring it back into single household use.
- g. To remove any advantage gained over those licence holders who applied at the appropriate time.
- h. Where a scheme is time limited by law.
58. Following the expiry of a licence a new application and fee will be required.

Fit and Proper Person Policy

59. In granting a licence the Council must be satisfied that the proposed licence holder, manager and any person involved in the management of the property are fit and proper persons. We will have regard to relevant guidance and the legislative requirements in applying the 'fit and proper' test.
60. A person's 'fit and proper' status may be reviewed at any time. Removal of the status may lead to a refusal and/or revocation of licence(s).
61. The criteria (not an exhaustive list and each case will be considered on its merits) considered when assessing a persons or an organisations ability to be a licence holder or manager are as follows:
- a. Whether there is a conviction of any criminal offence including, where relevant, any spent convictions excepted under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Particular consideration will be given to offences of dishonesty, fraud, violence, harassment, drug trafficking, human trafficking, money laundering or offences of a sexual nature or of offences relating to child exploitation or abuse, whether or not these offences were in the United Kingdom, and Housing Act 2004 offences or any breaches of provisions of housing or landlord and tenant law.
 - b. Whether there are current relevant criminal proceedings.
 - c. Whether the party has been subject to any adverse finding or any settlement in civil proceedings.

- d. Whether the party has practiced unlawful discrimination on the grounds of sex, colour, race, ethnic or national origin, disability, sexual orientation or religious belief in connection with carrying out their business.
- e. Whether a spouse, business associate or controlling partner in the business, director of the company or any person with a controlling interest in the business has been convicted of any criminal offence including, where relevant, any spent convictions excepted under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Particular consideration will be given to offences of dishonesty, fraud, violence, drug trafficking, human trafficking, money laundering or offences of a sexual nature or of offences relating to child exploitation or abuse, whether or not these offences were in the United Kingdom, and Housing Act 2004 offences or any breaches of provisions of housing or landlord and tenant law.
- f. Whether a spouse, business associate or controlling partner in the business, director of the company or any person with a controlling interest in the business is currently the subject of any criminal proceedings.
- g. Whether a spouse, business associate or controlling partner in the business, director of the company or any person with a controlling interest in the business has been subject to any adverse finding or any settlement in civil proceedings.
- h. Whether a spouse, business associate or controlling partner in the business, director of the company or any person with a controlling interest in the business has practiced unlawful discrimination on the grounds of sex, colour, race, ethnic or national origin, disability, sexual orientation or religious belief in connection with carrying out business.
- i. Owns or has previously owned a property that has been the subject of an:
 - interim or final management order whilst in their ownership, or a special
 - Interim management order under the Housing Act 2004.
- j. Is subject to a banning order under Section 16 of the Housing and Planning Act 2016.
- k. Owns or has previously owned a property for which the council has taken action as described in Section 5(2) of the Housing Act 2004, which includes the service of an Improvement Notice, Prohibition Order, Emergency Prohibition Order, Hazard Awareness Notice, Demolition Order or Emergency Remedial Action.
- l. Other convictions/enforcement action relating to:
 - Environmental Health convictions
 - Financial Penalty issued
 - Rent Repayment Order made
 - Banning Order made
 - Inclusion on the National Rogue Landlord and Property Agent Database or the Greater London Assembly Rogue Landlord or Agent Checker
 - Convictions for Illegal eviction/harassment
 - Environmental Health - Enforcement Action, e.g. the making of Prohibition Order, failing to comply with an Improvement Notice, etc.
 - Waste Enforcement

- ASB Enforcement
 - Planning Enforcement
- m. Whether a person residing abroad can effectively manage the property or has in place a UK based Manager/Licence Holder that can properly manage the property, which includes access to funds to carry out management, repairs, maintenance and deal with emergencies, etc. and agrees to be bound by the licence conditions.
 - n. Whether a person is in prison for a term of more than 2 months.
 - o. Type of property being licensed.
 - p. Size of the property being licensed.
 - q. The level of risk to health and/or safety associated with the property.
62. Appropriate investigations will be undertaken to establish the fit and proper status of an individual or the directors of a company or the partners of a partnership.
 63. Each application will have to be considered individually by the local authority and the declaration of an unspent conviction would not necessarily mean that the applicant was not a fit and proper person

Licence Conditions

64. All licences will carry conditions. Some conditions are set out in statute and must be included in a licence and the Housing Act 2004 allows the Council to also impose discretionary conditions against a licence. The conditions imposed (other than the mandatory conditions) can be omitted or amended depending on the circumstances and where necessary specific conditions added to a licence relating directly to the property in question. Conditions used by the Council are published here.
65. Where a discretionary scheme has been introduced for specific issues, e.g. a prevalence of ASB incidences associated with the PRS then that scheme will have licence conditions that specifically meet the needs of that scheme.
66. Changes to these conditions are subject to the approval of the Head of Regulatory Services (or their nominee).
67. All conditions are subject to consultation and where necessary appeal to the First Tier Tribunal as part of the licensing process.
68. Breaching any licence condition is an offence, which carries an unlimited fine or the imposition of a Civil Penalty of up to £30,000 for each breach. In most cases the Council will inform the licence holder and manager of the breaches of the conditions informally giving a reasonable time to remedy the defects (usually 10 working days). If the informal process fails, then the Council will consider formal action.

HMO Standards

69. The Housing Act 2004 allows the Council to adopt standards for HMOs. These cover issues such as types and numbers of amenities (such as bathrooms and kitchens) different types of HMO should have, they cover minimum room sizes for different types of room use, etc.
70. These apply to all HMOs and the Council expects operators of HMOs to adhere to these. Where an HMO is licensed the licence will set out the levels of occupancy the HMO and its rooms can accommodate and where necessary require works to bring the HMO to a level required by the adopted standards.
71. HMO Standards adopted by the Council are published here. Changes to these standards are subject to the approval of Head of Regulatory Services (or their nominee).

Variations and Revocations of a Licence

Variations

72. This is where a current licence is varied to effect a change to the licence, for instance, changing the number of people that an HMO is licensed to accommodate. There are three types of variation:

- I. Minor Variations - The legislation allows the Council to put aside the formal route for dealing with variations if the variation required is deemed immaterial. Examples of minor variations are:
 - Change of address for the licence holder, manager or other party.
 - Correcting a minor mistake in the licence, e.g. the spelling of a name, mislabelling, etc.
 - Change of title, e.g. from Miss to Mrs.
 - Change of maiden name to a married name.

The list is not exhaustive and other matters might fit the criteria.

- II. Variations Agreed with the Licence Holder - The legislation allows the Council to put aside the formal route for dealing with variations if the variation is agreed between the licence holder and the Council and the Council deem that the variation does not need to be consulted on. Examples of variations that fall within this category are:

- Changing the Manager (only where the new Manager passes the fit and proper person assessment).
- Adding facilities, e.g. a laundry room/area (that doesn't affect the number of households and persons).
- Adding additional bathrooms or kitchens or facilities in existing bathrooms (that doesn't affect the number of households and persons).
- Increased fire precautions, e.g. a sprinkler system, increased detection coverage, etc.

The list is not exhaustive and other matters might fit the criteria.

- III. Formal Variations – This is where the variation is consulted upon and formal notices, subject to appeal are served. Examples of variations that fall within this category are:

- Changing the Manager.
- Adding facilities, e.g. a laundry (that affects the number of households and persons).
- Adding additional bathrooms or kitchens or facilities in existing bathrooms and kitchens (that affects the number of households and persons).
- Changing room sizes.
- Changing the number of households or persons.
- Accommodating children.
- Adding an extension/conversion that affects current occupants and/or affects the number of households and persons.

- HMO use for a specific demographic that may as a result require amended conditions, e.g. a wet hostel.
- A change in HMO type, e.g. from a shared to a room let.
- A change in the type of applicable 257 licence, e.g. via the selling of a flat.

The list is not exhaustive and other matters might fit the criteria.

73. A licence is not transferable. Therefore, any change in the actual licence holder has to be dealt with by way of a new application from the new proposed licence holder.

Revocations

74. This is where a licence exists and a revocation is requested/considered necessary. There are three types of revocation:

- a. Revocations agreed with the Licence Holder - The legislation allows the Council to put aside the formal route for dealing with revocations if the revocation is agreed between the licence holder and the Council and the Council deem that the revocation does not need to be consulted on.

The only time a revocation by agreement can be made is where there are no other interested parties that might be affected or need to know about a revocation, i.e. only the licence holder is affected.

- b. Banning Order - Where a banning order relates to a licensed property then the Council is under a duty to revoke the licence if either of the two criteria applies:

- The local housing authority must revoke a licence if a banning order is made against the licence holder.
- The local housing authority must revoke a licence if a banning order is made against a person who owns an estate or interest in the house or part of it and is a lessor or licensor of the house or part.
- The banning order does not have to be instigated by the Council but can come about from any Borough's area.

- c. Formal Revocations – This is where the revocation is consulted upon and formal notices, subject to appeal are served. A licence can be revoked, if any of the following apply:

- Where the Council considers that the licence holder or any other person has committed a serious breach of a condition of the licence or repeated breaches of such a condition.
- Where the Council no longer considers that the licence holder is a fit and proper person to be the licence holder.
- Where the Council no longer consider that the management of the house is being carried on by persons who are in each case fit and proper persons to be involved in its management.
- Where the property to which the licence relates ceases to be licensable.
- Where the authority considers at any time that, were the licence to expire at that time, they would, for a particular reason relating to the structure of the property, refuse to grant a new licence to the licence holder on similar terms in respect of it.

- That the property is not reasonably suitable for the number of households or persons specified in the licence as the maximum number authorised to occupy the house.

75. The death of a licence holder doesn't require the licence to be revoked. Instead the following applies:
- If the holder of the licence dies while the licence is in force, the licence ceases to be in force on date of their death.
 - However, during the period of 3 months beginning with the date of the licence holder's death, the house is to be treated for the purposes as if on the date of death a temporary exemption notice had been served in respect of the house.
 - If, at any time during the initial 3 month exemption period, the representatives (evidence of their authority to be given) of the deceased licence holder request it the initial 3 months can be extended by a further 3 months by way of issuing a temporary exemption notice.

Management Regulations

76. HMO Management Regulations place requirements on landlords and managers of HMOs to maintain, communicate and manage the HMOs they run. The Regulations also place requirements on occupiers of HMOs to not obstruct or interfere with the management and maintenance of the HMO. There are two sets of Regulations; The Management of Houses in Multiple Occupation (England) Regulations 2006 and the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007. Both sets cover the same requirements but relate to different types of HMOs, the former traditional room rent or shared HMOs (as defined under section 254 of the Housing Act 2004) and the latter covering HMOs that are either older or poorly converted blocks of flats where a third or more of the flats are rented out (as defined under section 257 of the Housing Act 2004). The Regulations cover:
- a) Duty of manager to provide information to occupier.
 - b) Duty of manager to take safety measures.
 - c) Duty of manager to maintain water supply and drainage.
 - d) Duty of manager to supply and maintain gas and electricity.
 - e) Duty of manager to maintain common parts, fixtures, fittings and appliances.
 - f) Duty of manager to maintain living accommodation.
 - g) Duty to provide waste disposal facilities.
 - h) Duties of occupiers of HMOs.
77. Breaching any of the Regulations is an offence, which carries an unlimited fine or the imposition of a Civil Penalty of up to £30,000 for each breach. In most cases the Council will inform the landlord and/or manager of the breaches of the regulations informally giving a reasonable time to remedy the defects (usually 10 working days). If the informal process fails, then the Council will consider formal action.

Management Orders

78. These powers are contained in the Housing Act 2004 and may be used as a last resort where
- a) All other attempts have failed,
 - b) There is no reasonable expectation of a licence being granted or

- c) It is necessary to protect the health safety or welfare of occupiers, visitors or persons living in the area or,
 - d) Anti-social behaviour is affecting other occupiers, visitors or persons living in the area.
79. The Council has plans in place to manage properties where a management order is made. These arrangements can include external agencies.

Overcrowding

80. The service will investigate requests for service received about overcrowded living conditions howsoever received and take the appropriate action, which will also account for the impact on neighbours. The service will liaise with the Council's Housing Services where our actions are likely to lead to occupants moving out of their accommodation. The service may advise persons living in overcrowded conditions that their health/safety is at risk and not require them to move out if they do not wish to do so. The Council may require a responsible person to reduce or limit the numbers of tenants when re-letting the property under a new tenancy after an existing tenancy comes to a natural conclusion. Each case will be judged on its own merits.

Anti-Social Behaviour

81. Where complaints of anti-social behaviour are more appropriately dealt with by other services, such as the Noise and Nuisance team, Antisocial Behaviour Unit, the Environmental Protection Team, these complaints will be referred to them. When making such a referral the service requester will be informed of the team dealing with the matter and provided with the appropriate team contact details.
82. Where we have legal powers to deal with anti-social behaviour, we will initially liaise with relevant organisations such as academic institutions, landlords and their associates in addition to the above teams to seek an informal resolution. Where this approach fails to resolve the matter, formal action against the responsible person will be considered, where possible.
83. Conditions attached to property licences may also deal directly with the Council's expectations of how licence holders and managers will deal with incidents of anti-social behaviour. This is dependent on the licensing scheme a property falls under.

Public Health

84. The Council will investigate cases relating to the protection of public health, which include:
- a) Private drainage and sewerage issues, e.g. blocked and broken sewers.
 - b) Nuisance issues between properties, e.g. damp ingress from a neighbouring property.
 - c) Pest and pest harbourage problems, e.g. infestations and accumulations that may attract pests.
 - d) Filthy and or/verminous premises, e.g. a home that has build-up of items that may represent a risk to health.
 - e) Securing premises to protect public health.
85. A variety of legislation is employed to investigate and remedy these issues, which can include the service of Notice and carrying out works in default. Where there is a blatant disregard for public health, criminal proceedings may be instigated against the perpetrators.

Housing, Health and Safety Rating Scheme (HHSRS)

86. HHSRS is a risk-based assessment for defining the risk to health safety of occupants and visitors from 29 defined hazards, e.g. excess cold, damp and mould, falls, etc. in residential property. The hazard is assessed, scored and banded between A to J.

Category 1 hazards

87. These are hazards that have been scored as representing a serious risk to health and/or safety. The Council has a legal duty to act to deal with category 1 hazards (band A-C). It is committed to doing so; taking appropriate action in accordance with this policy, the Regulatory Services Enforcement Policy and the Council's adopted Enforcement Policy (2007).

Category 2 hazards

88. The Council has a discretionary power to address category 2 hazards (band D-J). These are hazards that represent a significant risk health and/or safety.
89. Officers will exercise their professional judgement when proposing enforcement action against category 2 hazards. Officers will have regard to national guidance and the following locally authorised guidelines:
- If the category 2 hazard is rated at band E or above (considering the national average for the type and age of the property).
 - Where there are category 1 hazard(s) also present.
 - Where the category 2 hazard is progressive and will likely become a category 1 hazard unless preventive action is taken.
 - Where there are targeted enforcement priorities, e.g. defined action areas or as part of a project to address specific issues.
 - Where there are two or more category 2 hazards, which when considered together, amount to neglect of the property or disregard for tenant's health, safety or welfare.
 - Where there is a track record or history of the responsible party disregarding previous enforcement advice or action, there are previous convictions for relevant offences, or a relevant licence has been refused. The Council has low confidence, based on evidence, that the responsible party will take the appropriate action without enforcement action being taken.

Enforcement Action

General Information

90. All officers will be fully trained, competent and authorised by the Council. An authorised officer will carry an identity card and, where appropriate, a warrant card. The identity card shows a photograph of the officer and their job title. The warrant card shows the officers name, job title and lists the legislation under which the officer is empowered, which includes powers of entry.
91. We will use all available powers to meet the enforcement objectives within this policy. These powers include powers of entry, production of documents, requirement to produce information about a person's identity and interest in property/land and the power to require certificates regarding gas or electrical safety. We will have regard to any relevant government guidance when carrying out our enforcement activity.
92. We will have regard to other legal requirements that might apply to our actions for example the Human Rights Act 1998, Data Protection legislation, Regulation of Investigative Powers Act 2000, Criminal

Procedure and Investigations Act 1996 and codes of practice made under the Police and Criminal Evidence Act 1984, etc.

Tenants of Not-for-Profit Social Landlords (Registered Providers)

93. The Council recognise that social tenants of not-for-profit Registered Providers (RPs) have in place greater protections than tenants of private landlords. Registered Providers are regulated by the Regulator of Social Housing. RPs will have in place complaints processes a social tenant can follow where they believe the conditions of their homes are unsatisfactory. Where a social tenant doesn't believe their RP has responded correctly or reasonably to their complaint of disrepair, they have further recourse to the Housing Ombudsman, who provide a dispute resolution service.
94. Therefore, the Council will expect social tenants to have exhausted the complaints process with their RP and then the Housing Ombudsman before the Council will consider requests for service (in relation to sub-standard conditions of their homes) from social tenants. This allows the Council to target its limited resources in tackling private rogue landlord behaviour.
95. Exceptions to this policy:
 - Where the issue presented by the social tenant presents an imminent risk to health and safety of the tenant or members of the public.
 - Other unforeseen circumstances shall be considered on their own merits by the Head of Regulatory Services.

Leaseholder and Freeholder Disputes

96. This section relates matters where a building compromises a freehold interest (an owner of the shell of the building) as well as one or more leasehold interests (a limited time owner of self-contained element of that building, e.g. a flat, commercial unit, storage unit, etc.). A leaseholder term is usually 21 years or more.
97. Leaseholders may find themselves in a situation where they are aggrieved by an action or the lack of action of a freeholder, for example the maintenance of a communal system like a central heating system.
98. The Council has powers to intervene to require freeholders to maintain and repair common parts. However, there is an expectation of leaseholders to first exhaust the civil processes available to them before approaching the Council for assistance. This is because the law recognises this relationship and provides avenues to leaseholders to address matters. Government advice is accessible here - Leasehold property - GOV.UK (www.gov.uk)
99. In the first instance the Council encourages leaseholders to obtain advice from the Leasehold Advisory Service (LEASE) - Home - The Leasehold Advisory Service (lease-advice.org) which is a government funded organisation specifically established to provide expert advice on freehold and leasehold matters.
100. The First-Tier Tribunal (Property Chamber - Residential Property) deals with leasehold/freehold disputes on the following matters:
 - Service or administration charges
 - The cost of building insurance
 - Appointment of a manager
 - Right to Manage
 - Breach of a lease

- Varying a lease
 - Recognising a tenants' association
 - Buying the freehold
 - Extending the lease
101. Particular attention is drawn to the leaseholder ability to establish a Right To Manage Company where they believe that the freeholder is not satisfactorily managing the freehold interest - Leasehold property: Right to Manage and management disputes - GOV.UK (www.gov.uk)
102. Once these avenues have been exhausted without resolution will be the Council is able to step in and assist. This is however limited to the Council assisting with the maintenance and/or repair of housing standards in the common areas under the control of freeholder.
103. Exceptions to this policy:
- Where the issue presented by the leaseholder presents an imminent risk to health and safety of the tenant or members of the public.
 - Where the issue presented by the leaseholder relates to a defect to their flat caused by another leasehold interest or the freehold interest, e.g. a water leak.
 - Where the issue relates to potentially dangerous exterior cladding impacting the fire safety on residential blocks of flats. Where this is the case the Council will risk assess the block in question and will target its limited resources on the highest risk blocks first.
 - Other unforeseen circumstances shall be considered on their own merits by the Head of Regulatory Services.

Charging for Enforcement Action

104. The Housing Act 2004 allows the Council to make a reasonable charge to recover administrative and other expenses for taking certain enforcement action. Other legislation also allows us to recover costs covering officers' time and expenses accrued when determining works necessary in the case of works in default.
105. The service will recover all costs and fees when formal action is taken when we think it is reasonable to expect the responsible person to pay these in the circumstances. Fees and charges are agreed by Full Council on an annual basis and published on the website here. Please refer to these for the latest charges.

Types of Enforcement

106. The information in the Regulatory Services Enforcement Policy and the Council's adopted Enforcement Policy (2007) describes the range of enforcement action available to the service and the approach we take to deciding which of those is the most appropriate. The information below is provided to supplement these policies and describe some situations where particular action might be taken.

No Action

107. In certain circumstances, it might be appropriate that no action is taken. For example:
- a) When the health and safety risk is sufficiently low enough.
 - b) Where there are extenuating circumstances regarding the person against whom action would be taken.

- c) Taking formal action would be disproportionate or inappropriate in the circumstances of the case.
108. The Council may make recommendations which are above the legal minimum requirements, advise if there are other avenues open to persons to resolve issues themselves, or refer to another appropriate regulator or advice service.

Informal Action

109. In most cases officers will seek resolution of issues through initially working on an informal basis with those involved. Informal action can take the form of verbal requests, letters or emails or schedules of work. It will be made clear that formal action could follow where there is a failure to respond to informal requests to carry out works to meet legal requirements. When formal action is taken in the first instance, without preceding informal action, they will inform the owner, landlord, agent or other appropriate person of this decision and their reasons for doing so.

The Relationship between Enforcement and the Deregulation Act 2015

110. Responsible landlords would not use section 21 eviction (known as 'no fault evictions') proceedings to evict tenant(s) because the tenants have reported disrepair. Where this does happen, it is known as a retaliatory eviction. The government has put in place a method by which tenants should deal with issues of disrepair/improvements that is aimed at stopping retaliatory evictions. This is covered under the Deregulation Act 2015. The process is simplified below.

What should happen?

- The tenant(s) set out the issues in writing
- The landlord has 14 days in which to respond to the tenant(s)
- Agreed, reasonable, works carried out by the landlord

When it doesn't happen this way

- Where a landlord fails to engage with the tenant(s) or fails to undertake reasonable works, then the Council will step in and take enforcement action. Where action is taken the landlord cannot issue Section 21 eviction notice.
111. Where tenants have complied with the requirements of the Deregulation Act 2015 (the Council request they do so before making requests for service) then the Council will forego any informal action and proceed directly to formal enforcement action to prevent the possibility of a retaliatory eviction.

Formal Action

112. Where the circumstances of the case justify it, officers are expected to take a formal approach. Formal action will also be taken where compliance with a statutory requirement has not been achieved by informal action.
113. Circumstances where it is appropriate to take formal action include the following (this is not an exhaustive list and each case is considered on its own merits):
- a) There is an actionable risk to health and safety such as:
- No heating in cold weather.
 - No hot water to wash and prepare food safely.
 - Exposed electrical wiring which people are likely to encounter.
 - Gas leak or risk of fire.

- Raw sewage surcharging into a neighbour's property.
- b) A responsible person fails to carry out works requested informally.
- c) There is a history of failure to meet requests to carry out legally required works.
- d) There is a history of a failure to manage a property to meet legal requirements.
- e) There is a record of criminal convictions for housing related offence(s) in the last five years or a simple caution has been issued in the last two years.
- f) It is necessary to safeguard and protect health and safety in the future.
114. There are several options for formal action. The decision as to which is the most appropriate depends on the circumstances of each case, the relevant legislation and the risk to health and safety. The options are as set out below:
115. Service of formal notices or orders
116. These are served/made in accordance with the requirements of the relevant legislation. The associated paperwork will set out:
- Reason this action is being taken,
 - Timescale for completion of any works (where required),
 - Works that are required,
 - Representations that may be made,
 - Relevant appeal periods,
 - Details of any charges, and
 - Consequences of non-compliance.
117. The Council has the power to suspend Improvement Notices and Prohibition Orders under part 1 of the Housing Act 2004. Suspension would be considered on a case-by-case basis and where the circumstances of the current occupiers were such that other options were not practical.

Emergency action

118. In some emergency situations enforcement action will be taken that will involve carrying out work without the prior need to serve legal notice. Examples are:
- Where there is an imminent risk of serious harm to the health or safety of occupiers or others (Emergency Remedial Action under the Housing Act 2004).
 - Where there is an immediate need to secure a building against unauthorised entry or to prevent it becoming a danger to public health (subject to the provisions of the local Government (Miscellaneous Provisions) Act 1982).
119. In circumstances where works would be inappropriate, disproportionate or impossible to remedy the emergency situation an Emergency Prohibition Order (Housing Act 2004) will be made, which will prohibit or restrict part or all the property from use or certain uses by any of a defined category of person, e.g. a child, etc.
120. In all cases, where the legislation allows the Council will seek to recover the cost of the work and the administration and officer costs associated with the action.

Prosecution

121. Where the Council recommends a case for legal proceedings (prosecution), it will be considered in accordance with the Regulatory Services Enforcement Policy and the Council's adopted Enforcement Policy (2007). The Head of Regulatory Services considers whether a case has been investigated sufficiently to ensure it meets evidential and public interest tests set out in the Code for Crown Prosecutors and whether any statutory defences are available to the person(s) under investigation. Cases are referred to the Council's legal services for legal court proceedings to start. Each case will also be considered for investigation and action under the Proceeds of Crime Act 2002.
122. Verdicts and sentences are given in open court and are a matter of public record. The Council will publicise sentences following prosecution on a case-by-case basis and in line with the Ministry of Justice's guidance. The guidance has a presumption in favour of publicising outcomes of criminal cases and basic personal information about convicted offenders to reassure the public, increase trust and confidence or improve the effectiveness in the justice system and discourage offending or re-offending.

Cautions

Simple Caution

The service may offer a Simple Caution as an alternative to prosecution where someone has:

- Admitted to an offence,
 - Where it is their first offence, and
 - They have as far as practicable assisted officers in remedying the situation that led to the offence.
123. Relevant examples include applying for a licence as soon as the person is made aware one is required, or quickly complying with the requirements of an expired legal notice.

Conditional Caution

124. Conditional Cautions are another alternative to prosecution and may be offered for some less serious offences where there is sufficient evidence to justify prosecution and the person admits the offence, agrees to accept a conditional caution voluntarily, including the conditions attached to it.
125. If the conditions are complied with or completed within the timescales determined, the case is finalised and there is no prosecution. If, however, the conditions are not complied with, a prosecution may follow.
126. Conditional cautions shall be issued in accordance with Ministry of Justice guidelines.
127. Cautions are issued by the Head of Regulatory Services for private housing matters as an alternative to prosecution.

Work in default

128. This is where the Council has legally required a person to do works but they have failed to do so. The Council can carry out all or some of the required works. The powers are provided for in the specific legislation being used in the case.
129. In most cases a responsible person will be given notice of the intention to carry out works in their default. Once works have started it is an offence for that person to obstruct officers or their appointed contractors. The complete cost of the works and all administrative and other costs will be recovered in accordance with the relevant statutory provisions. The Council will also consider prosecution or the imposition of a Civil Penalty for any failure to act in addition to carrying out works in default to resolve the matter.

Rent Repayment Orders

130. The Housing and Planning Act 2016 revised the powers available for applying for a Rent Repayment Order (RRO). An RRO requires a landlord to repay a specified amount of rent (up to 12 months) in certain circumstances.
131. The Council can make an application to the First Tier Tribunal (FTT) for an RRO to recover benefit payments related to housing, where the landlord has:
- Failed to comply with an Improvement Notice under the Housing Act 2004.
 - Failed to licence a property requiring a licence under the Housing Act 2004.
 - Failed to comply with a Prohibition Order under the Housing Act 2004.
 - Breached a Banning Order under the Housing and Planning Act 2016.
 - Used violence to secure entry to premises under the Criminal Law Act 1977.
 - Illegally evicted or harassed occupiers under the Protection of Eviction Act 1977.
132. The Council will consider making an application for an RRO when making investigations into the above offences. An application to the FTT for an RRO can be made if a conviction has been secured or a Civil Penalty issued or where there is no prior conviction.
133. Where there is a prior conviction or a Civil Penalty has been issued (where there is no prospect of appeal), the full amount of rent (up to a maximum of 12 months) will be applied for and FTT is compelled by law to make an Order for that amount (as long as it has been correctly calculated).
134. Where a conviction hasn't been secured the FTT will determine whether the Council has met the criminal standard in relation to the relevant offence. The Council will have regard to the statutory guidance and consider the following before deciding to make an application:
- Punishment of the offender – the Council will consider if making an application for an RRO will have a real economic impact on the offender. Where this is unlikely, i.e. where the amount of rent paid over the preceding 12 months is minimal and doesn't reflect the severity of the offence, the Council will consider prosecution or the issue of a Civil Penalty (where it can do so) as well as applying for an RRO.
 - Deter the offender from repeating the offence and dissuade others from committing similar offences – The Council will consider whether the impact from making an application for an RRO in any case will be of such a financial impact and whether the wide publication of a successful application for an RRO will be of such an impact as to dissuade and deter the offender and others from repeating the behaviour or, in the case of others, committing similar offences. Where this is unlikely the Council will consider prosecution or the issue of a Civil Penalty (where it can do so) as well as applying for an RRO.
 - Remove any financial benefit the offender may have gained as a result of committing the offence – The Council will only consider making an application for an RRO where the impact of such an order will reflect the benefit the landlord has gained from not complying with the responsibilities, e.g. where the landlord has not carried out necessary works to improve the standards in their property and the effect of recovering up to 12 months' rent will sufficiently reflect the costs of those works. Where it is unlikely that the amount recoverable is sufficient to mitigate the benefit, the Council will consider prosecution or the issue of a Civil Penalty (where it can do so) as well as applying for an RRO.
135. Before making an application, the Council will serve on the relevant person a Notice of its intentions to make an application, which will state the reasons for doing so. This will cover the above issues (where a conviction hasn't already been secured), the amount being sought and invite the relevant person to

make representations within the statutory time limit. The Council will consider any representations before making an application to the FTT.

136. A tenant of a property, where a relevant offence has been committed by their landlord, can also make an application to the FTT for an RRO. The Council will inform tenants of this right and will assist tenants in making their applications.
137. Failure to pay the amount required by an RRO will result in the Council pursuing recovery of the debt through the County Court.

Civil and Financial Penalties

138. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, the Housing Act 2004 (as amended by the Housing and Planning Act 2016) and the Housing and Planning Act 2016 enables enforcement by the imposition of a Civil/Financial Penalty.
139. Failure to comply with the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 will result in the Council carrying out the works necessary to install appropriate smoke and/or carbon monoxide detection and issuing a Civil Penalty of up to £5,000.
140. Failure to comply with the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 will result in the Council serving a Remedial Notice. Where there are urgent repairs required the Council may undertake Urgent Remedial Action. The Council may also issue a financial penalty of up to £30,000 where a landlord is in breach of the any of the duties set out in these regulations.
141. The Council may impose a Civil Penalty, 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 (Housing Act 2004).

Note. Where a Civil Penalty has been issued and the recipient of the Improvement Notice continues to not comply, the Notice will be revoked, and a further Improvement Notice served.

- Failure to licence or other licensing offences relating to HMOs (Housing Act 2004), which applies to both mandatory and additional HMO Licensing Schemes.
 - Failure to comply with an Overcrowding Notice (Housing Act 2004).
 - Failure to comply with a regulation in respect of an HMO (Housing Act 2004).
 - Breaching a Banning Order (Housing and Planning Act 2016).
142. Failure to pay a Civil Penalty will result in the Council pursuing recovery of the debt through the County Court.
 143. Appendix one sets the Councils statement of principles for the issuing of civil penalties.

Protocols

144. The following protocols have been developed to help clarify how the service will work with other partners, organisations or services in relation to private housing. These may be added to or amended over time.
145. The Fire Safety enforcement protocol with London Fire and Emergency Planning Authority (LFEPA) sets out how both the Council and LFEPA will take enforcement action in relation to fire safety in properties where there is an overlap between each organisation's duties and powers.

Partners

146. The Council works with a wide range of partners and stakeholders including private sector landlords and their representatives such as the National Residential Landlords Association, resident's groups, other Council services, other regulators such as LFEPA, Immigration Enforcement Service, HMRC and neighbouring local authorities. We value the partners we work with and will engage with them in relation to enforcement activity and procedures.

Appeals and Complaints Procedure

147. The Regulatory Enforcement Policy, the Southwark Council's overarching Enforcement Policy (2007), this policy and the guidance referred to, are relevant documents we will consider when reviewing complaints in relation to our enforcement activity. There will also be further guidance that will be considered in relation to any service complaint that is not specifically mentioned here.

148. We will inform all persons who are the subject of formal enforcement action of their right of appeal. This right will vary depending on the legislation used.

149. Where a person is aggrieved by the imposition of enforcement action by the Council, then the Council expects that person to utilise the legislative provisions set out for appealing that imposition rather than the Council's complaints procedure, which if used, may result in the person denying themselves their ability to appeal as most appeal provisions impose a statutory time limit.

150. The Council's complaints procedure is available for complaints relating to the application of this policy or against the conduct of officers or the service.

Enquiries

Enquiries about this policy can be made to:

Email: resi@southwark.gov.uk

Telephone: 0207 525 4090

Post: Southwark Council, Regulatory Services, Private Sector Housing Enforcement, PO BOX 70063,
London SE15 9EG

Glossary

Registered Providers – A term used to describe an organisation registered with the Regulator of Social Housing that provides social housing.

Housing Ombudsman – an organisation set up under law to provide a resolution service over disputes between social tenants and their RP.

Landlord - is anyone who rents out a property they own under a lease or a licence that is shorter than seven years.

Letting agent – is a person/organisation who engages in letting agency work (whether or not that person engages in other work). Includes work in seeking to find another person to whom to let housing, or a person seeking to find housing to rent and the management of that property.

Housing, health and safety rating system (HHSRS) - a risk-based assessment for defining the risk to health safety of occupants and visitors from 29 defined hazards, e.g. excess cold, damp and mould, falls, etc. in residential property. The hazard is assessed, scored and banded between A to J.

Local Housing Allowance (LHA) this is the means tested benefit specifically relating to housing and replaced 'housing benefit' within the PRS.

Anti-Social Behaviour (ASB) - for discretionary licensing schemes affecting housing, this is conduct on the part of people living in, or visiting, residential premises a) which causes nuisance or annoyance to other people living in, or visiting, or otherwise engaged in lawful activities near the property, or b) which involves or is likely to involve the use of such premises for illegal purposes.

Fit and Proper Test - a legislatively defined test (section 66 of the Housing Act 2004 - <http://www.legislation.gov.uk/ukpga/2004/34/section/66>) test of a license's holder and any nominated manager's professional standards of conduct. Note. The Housing and Planning Act 2016 is due to amend these provisions, introducing further criteria and the Government are currently consulting on whether to make it a requirement on anyone proposing to hold a licence or be nominated as a manager to submit a criminal record check as part of the licence application process.

Shared house - a house rented by a group of unrelated people, typically students or young professionals, who live in it under one tenancy agreement and share its facilities but have their own bedrooms. Usually, if one of them leaves the remainder find someone to take his or her place.

Warrant – an authorisation given by a Justice of Peace to allow authorised officers to enter a property (by force if necessary) for defined purposes.

Enforced sale – a power that allows the Council to recover debts registered against the title of a property by forcing its sale.

Compulsory purchase – a power that allows the Council to purchase a property/land without the consent of the owner. There are various legislative powers that allow compulsory purchase in given circumstances.

Rent to Rent - a term used to describe a situation where a landlord lets to a tenant and the head tenant then sub-lets to their own tenants, often creating an HMO. The head tenant may or may not reside in the property and the landlord may or may not be aware of the sub-letting.

Injunctions - a judicial order restraining a person from beginning or continuing an action threatening or invading the legal right of another or compelling a person to carry out a certain act, e.g. to make restitution to an injured party.

Appendix 1 - Statement of Principles for the Issuing of Civil and Financial Penalties

Purpose

1. This statement sets out the principles that the Council will apply when considering the imposition of civil penalties under the following statutes:
 - I. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015.
 - II. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
 - III. The Housing Act 2004 (as amended by the Housing and Planning Act 2016).
 - IV. The Housing and Planning Act 2016.
2. The Government has issued statutory and non-statutory guidance, which the Council will consider when deciding whether to issue civil/financial penalties.

Overarching Principles for Issuing a Civil/Financial Penalty

3. These principles are:
 - I. To lower or remove the risk to tenant's/occupant's health and safety.
 - II. To remove financial gain or benefit from non-compliance.
 - III. To protect the interests of the public.
 - IV. To penalise the perpetrator for the offence(s).
 - V. To change the behaviour of the perpetrator and to prevent future non-compliance.
 - VI. To dissuade others from offending.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

4. This policy and appended statement of principles complies with regulation 13 of these Regulations.
5. The regulations make it a requirement to have smoke alarms in all private rented accommodation and carbon monoxide alarms where solid fuel combustion appliances exist. Landlords are required to ensure that all smoke and carbon monoxide alarms are in working order at the start of a tenancy.
6. For those premises that require a property licence the regulations amend statute to now make it a mandatory condition attached to a licence.
7. Note. The Council expect, as a minimum, either a mains powered smoke alarm or one operated with a sealed battery with a minimum 10-year life fitted on each floor to comply with the regulations. However, a landlord must consider the type and nature of the property being let and it may be necessary that a higher level of fire protection is required to satisfactorily protect the safety of the occupants. This is particularly relevant to HMOs, where a landlord is required to carry out a fire risk assessment. The licensing of HMOs will also require a higher level of protection and management. The Council recommends that landlord document and evidence their compliance with these regulations, e.g. dated and signed photographs/videos, a statement of testing signed by the tenant and landlord, etc.
8. Government figures submitted as part of the evidence supporting the introduction of the regulations state that a person is four times more likely to die from a fire in a property which does not have a smoke detector in place. The installation of smoke detectors and carbon monoxide alarms does not place an

excessive burden on a Landlord and the cost of doing so in any given property is unlikely to exceed £500 and, in many cases, far less for single household occupancy dwellings. However, the impact on safety for occupants is significant, especially those that are vulnerable, those that have a relevant disability, e.g. mobility, visual, etc. or those with families.

9. Before issuing a penalty, the Council must serve a remedial notice. Only if the landlord fails to comply with the notice, i.e. by installing the relevant detection within the prescribed time limit of 28 days, will the Council take measures to install the detection and then issue a penalty charge.
10. The maximum penalty that can be issued under these regulations is £5,000. Although this can represent an excessive financial burden on the landlord, this is entirely balanced by the risk to the occupants for not having the appropriate detection. This combined with the fact the landlord will have the opportunity to remedy the situation prior to the imposition of the penalty.
11. A Penalty Charge comprises two elements:
 - I. A punitive (or fine) element for failure to comply with the remedial notice, and
 - II. A “reasonable cost element” relating to costs incurred by the Council to undertake the remedial works in default of the landlord. This would include the cost of the works as well as the administration and officer costs.

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

12. The regulations put in place a number of duties. However, fundamentally the regulations are in place to ensure that the electrical installation of privately rented accommodation is up to standard and maintained. A landlord must have the electrical installation tested and a report issued and where necessary carry out any works required to bring the installation up to standard. There are also duties relating to providing copies of the installation report to relevant persons, such as existing and prospective tenants.
13. Under the Regulations the Council must serve a Remedial Notice where a landlord breaches their duties under these Regulations. The Council can also carry out works to remedy the breaches and recover the costs of doing so where the landlord fails to comply with a Remedial Notice. Where there are urgent works required to make the electrical installation safe the Council can undertake those works urgently and then seek recovery of the costs.
14. The Regulations allow the Council to consider the imposition of a financial penalty of up to £30,000 for any breach of the duties laid out in the Regulations.
15. In determining the amount of penalty the Council shall apply the criteria it uses for determining the level of penalty for civil penalties issued under the Housing Act 2004 and the Housing and Planning Act 2016, as laid out in section 5 of this Appendix, which includes discounts that would be applied.

Civil Penalties under the Housing Act 2004 and the Housing and Planning Act 2016

16. The Council may impose a Civil Penalty, 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 (Housing Act 2004).
Where there is a successful prosecution the courts can impose an unlimited fine.
 - Failure to licence or other licensing offences relating to HMOs (Housing Act 2004), which applies to both mandatory and additional HMO Licensing Schemes.
Where there is a successful prosecution the courts can impose an unlimited fine.
 - Failure to comply with an Overcrowding Notice (Housing Act 2004).

Where there is a successful prosecution the courts can impose an unlimited fine.

- Failure to comply with a regulation in respect of an HMO (Housing Act 2004).

Where there is a successful prosecution the courts can impose an unlimited fine.

- Breaching a Banning Order (Housing and Planning Act 2016).

Where there is a successful prosecution the courts can impose an unlimited fine and up to 51 days imprisonment.

17. In setting the amount of the Civil Penalty the Council will have regard to statutory guidance.
18. The level of penalty levied will reflect the severity of the offence and the offenders previous record of offending. The factors that guidance requires the Council to consider are:
 - a) Severity of the offence - The more serious the offence, the higher the penalty should be.
 - b) Culpability and track record of the offender - A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
 - c) The harm caused to the tenant - This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a Civil Penalty.
 - d) Punishment of the offender - A Civil Penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.
 - e) Deter the offender from repeating the offence - The goal is to prevent any further offending and help ensure that the landlord fully complies with all their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
 - f) Deter others from committing similar offences - While the fact that someone has received a Civil Penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a Civil Penalty. An important part of deterrence is the realisation that (a) the local 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.
 - g) Remove any financial benefit the offender may have obtained because of committing the offence - The guiding principle here should be to ensure that the offender does not benefit because of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.
19. Any decision to prosecute will be taken in accordance with the Regulatory Services Enforcement Policy and the Council's adopted Enforcement Policy (2007), the Regulators Compliance Code and the Code for Crown Prosecutors. Where an offence is particularly serious or where the offender has committed similar offences in the past it may be more appropriate to prosecute.
20. 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 below.
21. Prosecutions and civil penalties can be imposed on landlords, or letting agents, or both.

Civil Penalty Calculation Matrix

22. Each offence receives its own civil penalty calculated on the matrixes below.

23. Penalties relating to housing conditions, management, licence conditions

24. A score for each of the five areas below is chosen depending on the seriousness of each area and reasons for each score must be accompanied by a full justification and production of relevant evidence.

| Factors | Low Seriousness | Medium Seriousness | High Seriousness |
|---------------------------------------|--|---|---|
| 1. Severity of offence | Score 5 Low level offence e.g. broken glazing (cat 2) | Score 15 Medium level offence e.g. defective boiler, no hot water (cat 1) | Score 25 Serious offence e.g. multiple management issues, inadequate/defective fire detection (imminent risk) |
| 2. Deterrence & prevention | Score 5 High confidence a fine will deter repeat offending | Score 15 Medium confidence a fine will deter repeat offending | Score 25 Low confidence a fine will deter repeat offending |
| 3. Harm to tenants | Score 5 Low level harm | Score 15 Moderate level harm | Score 25 High level harm |
| 4. Size of business | Score 5 1 property | Score 15 2-5 properties | Score 25 6+ properties |
| 5. History of offending | Score -5 First time offence | Score 5 Second time offence (previous FPN) | Score 10 Conviction in the Magistrates' Court (within previous 2 years) |

Scores are added for each factor from the matrix above and the total score is then found on the chart below. The corresponding penalty on the chart below is the level of penalty to be incurred.

Penalties relating to failure to apply for a licence are calculated separately on the matrix below

| Score | Penalty to be incurred | Score | Penalty to be incurred |
|--------------|-------------------------------|----------------|-------------------------------|
| 15-20 | £250 | 66-70 | £14000 |
| 21-25 | £500 | 71-75 | £16000 |
| 26-30 | £750 | 76-80 | £18000 |
| 31-35 | £1000 | 81-85 | £20000 |
| 36-40 | £2000 | 86-90 | £22000 |
| 41-45 | £4000 | 91-95 | £24000 |
| 46-50 | £6000 | 96-100 | £26000 |
| 51-55 | £8000 | 101-105 | £28000 |
| 56-60 | £10000 | 105-110 | £30000 |
| 61-65 | £12000 | | |

| Type of licensing scheme that applies | Penalty to be incurred |
|--|-------------------------------|
| Mandatory 5+ tenants | £15000 |
| Additional 4 or fewer tenants | £10000 |
| Selective single family | £5000 |

Process for imposing a civil penalty and the right to make representations

25. Before imposing a financial penalty on a person or company, the Council will give the person or company notice of the authority's proposal to do so by service of a 'Notice of intent'.
26. A person or company who is given a notice of intent may make written representations to the Council about the proposal to impose a financial penalty. Any representations must be made within a 28-day period starting the day after the date on which the Notice of intent was given.
27. Representations should be addressed to the Private Sector Housing Enforcement Unit Manager either by email to resi@southwark.gov.uk or by post to Southwark Council, Regulatory Services, Private Sector Housing Enforcement, PO BOX 70063, London SE15 9EG
28. Representations will be reviewed by a panel consisting of the following council officers; a lawyer from the Litigation Division, a team leader and one senior manager from within the Environment and Leisure Department. The senior manager will also act as chair of the panel. The final decision of the panel will be sent, in writing, to the person(s) making the representation in the same manner as the representation was received (i.e. by email or post).
29. In the event of two or more persons receiving separate 'Notices of Intent' for the same matter, it should be noted that acceptance/payment of a civil penalty by one person will not negate the Council's intention to impose a civil penalty on the second or further persons. Each person served with the Notice of Intent is considered individually liable to pay the civil penalty notified to them. It is therefore important that any recipient of a Notice of Intent takes the opportunity to make representations should they consider for any reason a civil penalty should not be individually imposed upon them.
30. After the end of the period for representations the Council will:
 - a) Decide whether to impose a financial penalty on the person, and
 - b) If it decides to impose a financial penalty, decide the amount of the penalty
31. In the event that the Council has given Notice of Intent to impose a financial penalty to two or more persons for the same offence, the Council's decision as regards the imposition of any final penalty will be based upon the circumstances of each individual case and upon any received representations. In this regard, the payment or intended payment of a penalty by one recipient will not, in itself, be reason for the Council to determine that it should not impose a penalty on a second or further person.
32. If the Council decides to impose a financial penalty on the person or company, it will give the person or company a final notice imposing that penalty.
 - a) The final notice will set out:
 - b) The amount of the financial penalty,
 - c) The reasons for imposing the penalty,
 - d) Information about how to pay the penalty,
 - e) The period for payment of the penalty,
 - f) Information about rights of appeal, and
 - g) The consequences of failure to comply with the notice

Right of Appeal

33. Following service of a final notice, a landlord may appeal to the First-tier Tribunal. Appeals should be made within 28 days from the date the response to the representation is served. Where a landlord

appeals to the First-tier Tribunal, the operation of the penalty charge notice is suspended until the appeal is finally determined or withdrawn.

Reduction in Penalty

34. If the offender complies with the identified offence within the representation period following service of the 'Notice of Intent' (28 days), the Council will consider a reduction of 20% of the intended civil penalty, to be applied in the 'Final Notice'.
35. If the offender pays the penalty, following the 'Final Notice' a discount of 20% will be applied.
36. Both discounts above can be applied where appropriate.

Recovery

37. Where the Civil Penalty is not paid the Council will seek to recover the amount (and any legal costs for doing so) through the County Court.

