Private Sector Housing Enforcement Policy

March 2021

1. Introduction

The Private Sector Housing Team aims to protect and promote the health of the people of the District by improving the standard of private sector housing, public health, safety and the environment through the provision of advice, support and formal action where necessary.

This policy is consistent with the District Council's policy on the use of enforcement powers. This approach ensures that firm but fair enforcement action will be taken on a case-by-case basis guided by the relevant legislation.

This policy details how the District Council will use its enforcement powers relating to legislation covering housing standards and issues regarding Public Health affecting poor housing conditions only, and does not apply to mobile/park homes. This is addressed in a separate policy.

The District Council will seek to resolve problems and achieve the right outcomes at the earliest possible stage with regard to our housing and environmental duties. When appropriate, we will look to engage with other agencies, such as Kent Fire and Rescue Service (KFRS), and other sections within the District Council (such as Planning Enforcement and Building Control), in order to rectify problems in a constructive manner. At times, enforcement action may be required to resolve issues and such action will be in accordance with this enforcement policy.

The District Council's approach will be in accordance with the principles of the national Concordat on Good Enforcement as promoted by the Government and formally adopted by the District Council. The District Council will carry out its functions in an equitable, practical and consistent manner to secure a safe and healthy environment for all residents.

Policy objectives are to ensure that the conditions in the private rented sector, including Houses in Multiple-Occupation (HMOs) comply with statutory standards, making the most effective use of District Council resources and reduce the number of long-term empty dwellings.

2. Methods of enforcement

The District Council recognises that prevention is better than cure, but where necessary enforcement action will be taken. The term ‘’enforcement" has a wide meaning and applies to all dealings between the District Council and those on whom the law places a duty. The range of actions available to the authority include:

- no action
- informal action and advice
- Housing Act notices
- Local Government Act notices
- Public Health Act notices
- Building Act notices
- smoke and carbon monoxide alarms – remedial notices
- works in default
- charges for enforcement
- standards of HMOs
- management of HMOs
- licensing of HMOs

- simple caution
- prosecution
- compulsory purchase orders
- Financial penalties including penalty charge notices and civil penalties
- Community Protection Warnings and Notices

2.1 Principle of Enforcement

There are four main principles of enforcement, which will be followed by officers. These are as follows:

- Proportionality - action taken by enforcing authorities should proportionally reflect any risks and the seriousness of any breach.
- Consistency - a similar approach should be taken in similar circumstances to achieve similar results. It does not mean uniformity.
- Transparency - duty holders should be helped to understand what they have to do and what they should expect from officers. The differences between statutory requirements and advice or guidance about what is desirable should be made clear.
- Targeting - inspections or visits should be aimed primarily at activities that give rise to the most serious risks or where hazards are least well controlled. Action should be focused on those responsible for the risk and who are best placed to control it.

2.2 Enforcement Considerations

- The following must be considered by officers when deciding the most appropriate course of action to take:-
- The relevant legislation
- The Government circulars and Guidance made under Section 9 Housing Act 2004, and other relevant statutory guidance notes.
- Best practice notes (Building Research Establishment (BRE), Chartered Institute of Environmental Health (CIEH), Chartered Institute of Housing (CIH) etc.)
- All investigations into alleged breaches of legislation will follow best professional practice and the requirements of:

  - The Human Rights Act 1998
  - The Regulation of Investigatory Powers Act 2000
  - The Police and Criminal Evidence Act 1984 – Codes of Practice
  - The Criminal Procedures and Investigations Act 1996
  - The Code for Crown Prosecution
  - Enforcement Guidance issued under section 9 of the Housing Act 2004.

2.3 Enforcement Options

There are a number of stages and options in the process of enforcement to be considered, including (but not restricted to):

- Inspections
- Informal Action

- Statutory Notices and Orders (including Emergency Action)
- Default work
- Prosecution
- Issue of Civil penalty charge notice
- Compulsory Purchase/Clearance
- Simple Caution
- Rent Repayment Order
- Banning Orders.

2.3 Legislative powers

The principal piece of legislation used by the Private Sector Housing Team is the Housing Act 2004 (referred to as "the Act"). However, there are circumstances where other legislation may be more appropriate in dealing with the identified problem. Officers are expected to use professional judgement to determine the most appropriate piece of legislation to use. In some cases, it may be appropriate to use a range of enforcement tools.

2.4 Decision making

The decision to take action, whatever that action may be, will be based on the available evidence and professional judgement.

All prosecutions must be endorsed by the Private Sector Housing Team Leader. Prior to submitting a prosecution file to the Head of Housing, the case officer must first consult with the Private Sector Housing Team Leader to ensure that the prosecution is in accordance with this enforcement policy. The case officer must then consult with the appropriate officer from Legal Services to ensure that the case has been properly considered and is sound.

2.5 Formal enforcement

Enforcement action may only be initiated by officers who are authorised to do so.

The Private Sector Housing Team recognises and affirms the importance of achieving and maintaining consistency in its approach to making all decisions which concern enforcement action, including prosecution. The District Council follows the principles of the Enforcement Concordat. It will also ensure that all actions will be consistent with the Human Rights Act 1998.

The District Council will, other than in exceptional cases, always ensure that landlords, tenants and owners have the opportunity to discuss proposed action before a notice is served. Exceptional circumstances will normally only be such situations where this might cause an unacceptable delay in alleviating the hazard.

Enforcement decisions should always be consistent, balanced and fair and ensure the public is adequately protected. In coming to any decision, many criteria will be taken into account including the seriousness of the offence, the individual's history of compliance, confidence in the property management, the consequences of non-compliance, and the likely effectiveness of the various enforcement options.

Formal notices

Formal notices can be an effective way of securing the undertaking of necessary remedial works where an informal approach is unsuccessful or inappropriate. For most types of notice, the recipient has the right to appeal. A range of enforcement options are available to the District Council and how these powers are used will depend on the circumstances of each case. In making decisions the following will be taken into account:

- the nature of the hazard
- the nature and circumstances of the current occupier (age, vulnerability etc.)
- views of the occupiers
- local priorities for improving housing conditions
- availability of other forms of housing assistance
- action must be proportionate to the risk

Government has issued guidance both on the operation of the Housing, Health and Safety Rating System (HHSRS) and on the enforcement framework. The Council will at all times have regard to available Government guidance before taking enforcement decisions.

Formal enforcement – prosecution and Financial Penalties

The District Council will generally initiate prosecution or consider a Financial Penalty where:

- the person served with a notice fails to comply with the requirements of the notice; and
- there has been no appeal against the terms of the notice or any appeal made has not been upheld
- Where there has been a breach of the HMO licensing or management regulations.

In deciding whether to prosecute, the District Council will follow the general principles set out in the Code for Crown Prosecutors and will apply the evidential test and consider whether it is in the public interest to prosecute.

For Financial Penalties, please see Appendix 1 for further details.

Banning Orders and The Rogue Landlord Data Base

A Banning Order bans individuals from earning income from managing or renting a property. This can be an individual or as part of a limited company. If an individual has committed a banning order offence within the last 12 months, The District Council can make an application to the First Tier Property Tribunal for a banning order to be issued for a minimum of 12 months.

A list of banning order offences can be found under section 14 of the Housing and Planning Act 2016.

If a Landlord has been convicted of a banning order offence or has received 2 or more civil penalties in the last 12 months, that Landlord can then be added to the Rogue Landlord Data base for a minimum of 2 years.

2.6 Informal action

Informal action, that is either verbal advice, requests or warnings, or letters and inspection reports, can be used when:

- the breach is not of a serious nature to warrant formal action;
- past experience has shown that such action will be effective;
- there is not a significant risk to the safety or health of the occupant (or the public);
- informal action will be more effective and/or quicker than formal action;
- there is confidence in the Manager/owner.

Following an inspection, a written response may be provided, usually in the form of a letter or an email. It will include confirmation of:

- what legislation is contravened;
- what works are required and why;
- wherever possible agreed timescales;
- the nature of the enforcement action the authority may take in the future if the matter is not satisfactorily addressed.

2.7 Charges for enforcement action

The District Council reserves the right to charge and recover its costs where we have the right to do so.

Landlords have a duty of care to their tenants and should provide accommodation that is both free from significant hazards and properly maintained, thus avoiding the need for intervention from the District Council. The Housing Act 2004 enables the District Council to recover its reasonable expenses associated with serving notices and other enforcement activity. The recovery of expenses will be considered on a case-by-case basis.

2.8 Emergency action

In certain emergency situations where it is not possible to contact the relevant person and/or gain their co-operation, enforcement action will be taken that will involve carrying out work without the prior need to serve legal notice, for example:

- when there is an imminent risk of serious harm to the health or safety of occupiers or others;
- where there is an immediate need to secure a building against unauthorised entry or to prevent it becoming a danger to public health.

2.9 Simple cautions

The decision to issue a simple caution will be made by the Private Sector Housing Team Leader in consultation with the appropriate officer in Legal Services.

A simple caution is designed to provide a means of dealing with low-level, mainly first time, offending without a prosecution.

In considering whether a caution is appropriate, the District Council will consider the following questions:

- Has the offender admitted to the offence (either verbally or in writing)?
- Is the offender willing to accept the caution?
- Is there a realistic prospect of conviction if the offender were to be prosecuted?
- Is the offence one where a prosecution is required in the public interest?

2.8 Other powers – works in default

Where the requirements of a notice are not carried out, in many instances the District Council is empowered to do whatever is necessary in execution of that notice and recover the costs of doing so from the person responsible. The District Council will, if deemed necessary and appropriate, carry out works in default when:

- the person served with a notice has failed to comply with the requirements of the notice;
- there has been no appeal against the terms of the notice or any appeal made has not been upheld;

The District Council may recover the costs of the work from the person responsible as a civil debt or by placing a legal charge on the property, which is a local land charge and in which interest is payable on the amount placed on the charge.

2.9 Powers of entry

Inspection of dwellings can be undertaken by officers of the Private Sector Housing Team who are authorised under the District Council's scheme of delegation.

Authorised officers have a power of entry to properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004 provided that:

- The officer has written authority from an appropriate officer within the internal scheme of delegation stating the particular purpose for which entry is authorised
- The officer has given 24 hours' notice to the owner (if known) and the occupier (if any) of the premises they intend to enter.

No prior notice is required where entry is to ascertain whether an offence has been committed under sections 72 (offences in relation to licensing of HMOs), 95 (offences in relation to licensing of houses) or Section 234(3) (offences in relation to HMO management regulations).

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

3. Owner-occupiers

Priority will be given to addressing poor housing conditions that threaten the health, safety and wellbeing of occupiers.

Enforcement will be targeted particularly at situations where occupiers have little influence over the conditions of the accommodation they occupy. For this reason, the service of notices or enforcement action on owner/occupiers will only be used in exceptional circumstances (see informal action). Enforcement action will also be considered where the issue has an impact on Public Health, such as filthy and verminous properties.

4. What the District Council will expect of tenants

Before considering taking any action in tenanted properties, the District Council will require the tenant to have contacted their landlord regarding the issue. This applies to both private and housing association tenants. Legislation covering landlord and tenant issues requires that the tenant notify their landlord (preferably in writing) of any problems with the property. Landlords can only carry out their repairing obligations once they are made aware of any problems. Tenants are expected to allow access for improvement works to be carried out and this should be arranged in advance with the landlord. Any copies of correspondence between the tenant and the landlord should be provided to officers.

Tenants will be expected to keep officers informed of any contact they have with their landlord (or landlord's agent, builder etc.) that may have an effect on what action the District Council takes.

5. Training and qualifications of enforcement officers

No officer will carry out enforcement duties unless suitably trained and experienced and authorised by the District Council.

Prosecution will only be instigated following a review of the matter by the case officer and an appropriate officer from Legal Services, and authorisation by the Private Sector Housing Team Leader.

Training will be provided for all enforcement officers as required to meet changes in legislation and enforcement procedures.

6. How the District Council will deal with any reports of poor housing conditions

It will aim to acknowledge your report within five working days and will contact you to discuss the issue you have reported in more detail within ten working days. It will agree the appropriate course of action with you and can offer telephone advice or may wish to visit the property concerned to find out more and investigate the condition of the property. It will, wherever possible, keep you informed of the progress of the investigation, but cannot reveal any information that may be restricted under data protection. Following our investigation, the District Council will notify you in writing of the action it plans to take and the timescales involved.

7. How to report a problem:

Please contact: Private Sector Housing Team
Sevenoaks District Council
Council Offices
Argyle Road
Sevenoaks
Kent
TN13 1HG

Telephone: 01732 227155

Alternatively, you can email the Private Sector Housing Team at psh@sevenoaks.gov.uk

8. How to complain about our service

If you are dissatisfied with the service you receive then please let us know. We have a three-stage complaints process, which can be accessed via the link

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

Information in other languages

If you require this policy in an alternative format please email the private sector housing team at psh@sevenoaks.gov.uk or call us on 01732 227155.

Appendix 1 - Housing and Planning Act 2016 – Financial (Civil) Penalties

This statement sets out the principles that the District Council (the Council) will apply in exercising its powers to require a relevant landlord to pay a financial penalty.

The Housing & Planning Act 2016 introduced changes to the Housing Act 2004 to allow the Council to issue financial penalties of up to £30,000.

The District Council will be able to impose such penalties as an alternative to prosecution for the following offences under the Housing Act 2004 and Housing and Planning Act 2016:

- Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004);
- Offences in relation to licensing of HMOs (section 72 of the Housing Act 2004);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95 of the Housing Act 2004);
- Offences of contravention of an overcrowding notice (section 139 of the Housing Act 2004);
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234 of the Housing Act 2004);
- Breach of a banning order (section 21 of the Housing and Planning Act 2016);
- Failure to comply with a Remedial Notice (Part 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

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

In addition to the above offences, section 23 of the Housing and Planning Act 2016 provides that a financial penalty may be imposed in respect of a breach of a Banning Order.

Banning orders prohibit landlords and agents from letting or managing residential properties. An order can prohibit a person from:

- Renting out a residential accommodation
- Engaging in letting agency work
- Engaging in property management work.

Guidance on Banning Orders document "Banning orders for landlords and property agents can be found under the Housing and Planning Act 2016" on the government website.

Where a letting/managing agent and landlord have committed the same offence the District Council can impose a financial penalty on both of them as an alternative to prosecution. The level of the financial penalty imposed on each offender may differ, depending on the circumstances of the case. The District Council cannot prosecute as well as impose a financial penalty, but must be satisfied, to the criminal standard of proof, i.e. beyond reasonable doubt, that an offence has been committed, which could justify a prosecution, before it imposes a financial penalty.

Determining whether to prosecute or issue a financial penalty

Where the legislation allows a financial penalty to be issued this will normally be the first choice rather than prosecution unless the landlord has breached housing legislation in the past and continues to be considered such a poor landlord that a banning order is considered necessary. In this case a prosecution will be the first choice with an aim to proceed for a banning order.

When issuing a financial penalty, the procedures set out in this appendix 7 will be followed in determining the level of the fine.

When determining whether to prosecute for an offence, officers will follow the guidance in this enforcement policy.

The District Council has the power to impose a financial penalty of up to £30,000, per offence, with a level of financial penalty imposed in each case in line with its policy. The financial penalty will be based on the seriousness of the offence and taking into account the circumstances of the case. This would include the financial circumstances of the offender.

Statutory Guidance

The Government has issued statutory guidance under Schedule 9 of the Housing & Planning Act 2016 Local Authorities must have regard to this guidance in the exercise of their functions in respect of financial penalties.

Paragraph 3.5 of the statutory guidance states that 'The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlord's previous record of offending'. The same paragraph sets out several factors that should be taken into account to ensure that the financial penalty is set at an appropriate level in each case:

1. **Severity of the offence**. The more serious the offence, the higher the penalty should be.
2. **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.
3. **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.
4. **Punishment of the offender**. A financial 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.
5. **Deter the offender from repeating the offence**. The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be

set at a high enough level such that it is likely to deter the offender from repeating the offence.

6. **Deter others from committing similar offences**. While the fact that someone has received a financial 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 financial penalty. An important part of deterrence is the realisation that (a) the local authority is proactive in levying financial penalties where the need to do so exists and (b) that the level of financial penalty will be set at a high enough level to both punish the offender and deter repeat offending.
7. **Remove any financial benefit the offender may have obtained as a result of committing the offence**. The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

Appendix 2 - Housing Act 2004 (HHSRS)

Under the Housing Act 2004, local housing authorities are able to assess housing conditions for specific hazards. It looks at the effect that deficiencies in the home can have on the health and safety of occupants and visitors by using a risk assessment approach called the HHSRS. The aim of individual risk assessment is to reduce or eliminate hazards to health and safety in domestic accommodation. Potentially there are 29 hazards and each hazard is assessed separately and rated according to how serious the likelihood of harm.

The 29 hazards:

- Damp and mould growth
- Lead
- Lighting
- Falls/baths
- Hot surfaces
- Excess cold
- Radiation
- Noise
- Falls on level
- Collision/entrapment
- Excess heat
- Un-combusted fuel gas
- Domestic hygiene
- Falling on stairs etc.
- Explosions
- Asbestos
- Volatile compounds
- Food safety
- Falling between levels
- Ergonomics
- Biocides
- Crowding and space
- Personal hygiene
- Electrical hazards
- Structural collapse
- Carbon monoxide
- Entry by intruders
- Water supply
- Fire

The assessment process is not just a question of examining defects to a property, but it comprises risk assessment, probable outcomes and the resulting effects on the occupiers' health, safety and welfare.

Two keys tests are applied:

- The likelihood of an occurrence (such as an accident or ill health) as a direct result of this deficiency in the house;
- The likely outcomes in terms of injury or ill health (physical and mental) arising from the deficiency

The final score is divided into bands ranging from A-J. Councils have a duty to take action to remedy hazards that fall in bands A-C which are termed category 1 hazards.

Category 2 hazards are also subject to enforcement powers by councils. Each case is individual and the appropriate enforcement action will be chosen which reflects the circumstances concerned.

The Act also provides a range of enforcement tools:

Improvement Notices – section 11 is used for category 1 hazards, section 12 is used for category 2 hazards. An improvement notice should be used where reasonable remedial works can be carried out to reduce the hazard sufficiently.

Prohibition Orders – section 20 for category 1 hazards and section 21 for category 2 hazards. This order may prohibit the use of part or all of premises for some or all purposes or for occupation by a particular number or description of people. An order may be appropriate where conditions present a risk by remedial action is not possible because of cost or other reason. It may also be used to limit the number of persons occupying the dwelling, or prohibit the use of the dwelling by specific groups. In an HMO it can be used to prohibit the use of specified dwelling units.

Hazard Awareness Notices – section 28 for category 1 hazards and section 29 for category 2. This is used where a hazard has been identified but it is not necessarily serious enough to take formal action. It is a way of drawing attention to the need for remedial action. This notice should not be used if the situation is considered serious enough for follow up inspections to be made. This notice is not registered as a land charge and has no appeal procedure.

Emergency Remedial Action – section 40 is only acceptable for use where there is an imminent risk of serious harm and the hazard must rate as a category 1. The authority must undertake any necessary remedial works that are required to reduce the immediate risk. A warrant to enter the premises in order to carry out the work may be granted by a Justice of the Peace where he/she is satisfied that the authority would not be granted admission by the owner.

Emergency Prohibition Order – section 43 is only acceptable for use where there is an imminent risk of serious harm, the hazard rates as a category 1 and where it is not practical to carry out the remedial works as in section 40.

Demolition Order – this can only be used in response to category 1 hazards, but not if the building is listed. It must take into account availability of accommodation for re-housing, demand for accommodation, and the possible future use for the cleared site.

Clearance Area – All residential buildings in the proposed area must have at least one category 1 hazard. It must take into account availability of accommodation for re-housing, demand for accommodation, and the possible future use for the cleared site.

Suspend Improvement Notices or Prohibition Orders – these notices may be suspended where enforcement action can safely be postponed until a specified event or time. This can be a period of time or a change in occupancy. Current occupation and wishes must be taken into account. These may also be used where there is programmed maintenance. The suspensions must be reviewed, at the very least, every 12 months. The advantage of suspending a notice is that there is a record of the LHA's involvement and the situation must then be reviewed. It is also recorded as a local land charge.

The Act requires enforcing authorities to produce a statement of reasons justifying the type of action they are taking. This must accompany all notices and orders served.

Appendix 3 – Enforcement and Penalties for The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

These Regulations impose mandatory duties on the private landlords of residential premises in respect of electrical safety standards. These regulations apply to all specified tenancies. A "specified tenancy" means a tenancy of residential premises in England Which:

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

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

- Social Housing, where the landlord is a private registered provider;
- Accommodation shared with a landlord or a landlord's family, where at least one amenity is shared (an amenity in this context means a toilet, bathroom, kitchen or living room);
- Long leases, or tenancies that grant a right of occupation for the term of seven years or more (see Paragraph 3 of Schedule 1 of the Regulations for the definition of long lease);
- Student halls of residence;
- Certain hostels and refuges, which are managed by private registered providers of social housing, or operated on a non-commercial basis and funded by central or local government or a government agency, or managed by a voluntary organisation or charity;
- Care homes as defined by section 3 of the Care Standards Act 2000;
- Hospitals and hospices; and
- Other accommodation relating to healthcare provision (relating to accommodation provided owning to a statutory duty placed on the NHS).

Generally the Regulations apply to the vast majority of residential tenancies in the private rented sector.

The Regulations are subject to a phased introduction, and apply to:

- All new specified tenancies form 1 July 2020; and
- All existing specified tenancies from 1 April 2021.

Duties of private landlords in relation to electrical installations.

- Regulation 3 of the Regulations sets out the duties imposed on private landlords.
- Unless subject to a statutory exemption, private landlords must:

- Ensure that the 'electrical safety standards' are met to the current IET Wiring Regulations during any period of occupation;
- Ensure that all electrical installations in their rented properties are inspected and tested by a qualified and competent person at intervals of not more than five years (or less if the most recent report recommends a shorter period before the next inspection);
- Obtain a report from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test;
- Supply a copy of the report to the existing tenant within 28 days of the inspection and test;
- Supply a copy of the report to any new tenant before they occupy the premises;
- Supply a copy of the report to any prospective tenant within 28 days of receiving a written request for the report;
- Supply the local housing authority with a copy of the report within seven days of receiving a written request for a copy;
- Retain a copy of the report to give to the inspector and tester who will undertake the next inspection and test;
- Where the report shows that further investigative and/or remedial work is necessary, complete the work within 28 days or any shorter period if specified in the report;
- Where further investigative and/or remedial work is necessary, supply the tenant and the local housing authority with written confirmation from a qualified and competent person that confirms the completion of the further investigative and/or remedial works within 28 days of the completion of those works;

Duty of local Housing Authority to serve Remedial Notice

Where a local housing authority has reasonable grounds to believe that a private landlord is in breach of one or more of the duties imposed by the Regulations, the authority must serve a Remedial Notice on that private landlord. A Remedial Notice will specify the remedial action necessary and require that the action be completed within 28 days (beginning with the day on which the notice is served). A private landlord may make written representations against such a notice within 21 days.

Duty of private landlords to comply with a Remedial Notice

If served with a Remedial Notice, a private landlord has a duty to take the specified remedial action if:

- No representation are made to the local housing authority; or
- The local housing authority confirms the notice after consideration of any written representations received.

If no written representations are received, the private landlord must complete the remedial action within the 28-day deadline, If written representations are made and the local housing authority subsequently confirms the notice, the remedial action must be completed within 21 days of the date the private landlord is informed that the notice has been confirmed. The cost of carrying out remedial work can be recovered from the landlord.

Appendix 4 - The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 – Statement of principles for determining financial penalties

Introduction

This statement sets out the principles that Sevenoaks District Council (the council) will apply in exercising its powers to require a relevant landlord (landlord) to pay a financial penalty.

Purpose of statement of principles

The council is required under these regulations to prepare and publish a statement of principles and it must follow this guide when deciding on the amount of a penalty charge.

The council may revise its statement of principles at any time, but where it does so, it must publish a revised statement of principles published at the time when the breach in question occurred.

The legal framework

The powers come from the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the regulations), being a Statutory Instrument (2015 No.1693) which came into force on 1 October 2015.

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;
- a carbon monoxide alarm is installed in any room of premises used as living accommodation, which contains a solid fuel burning appliance.

And, for tenancies starting from 1 October 2015:

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

Where the council has reasonable grounds to 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 then fails to take the remedial action specified in the notice within the specified timescale, the council can require a landlord to pay a penalty charge. The power to charge a penalty arises from Regulation 8 of these regulations.

A landlord will not be considered to be in breach of their duty to comply with the remedial notice, if they can demonstrate they have taken all reasonable steps, other than legal proceedings to comply. This can be done by making written representations to the

council at the address given at the bottom of this page within 28 days of when the remedial notice is served.

Sevenoaks 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.

The purpose of imposing a financial penalty

The primary purpose of the council's exercise of its regulatory powers is to protect the occupants' safety within a dwelling in the event of a fire.

The primary aims of financial penalties will be to:

- ensure landlords take proper responsibility for their properties
- eliminate any financial gain or benefit from non-compliance with the regulations
- be proportionate to the nature of the breach of the regulations and the potential harm outcomes
- aim to deter future non-compliance
- reimburse the costs incurred by the council in undertaking work in default
- lower the risk to tenant's health and safety

Criteria for the imposition of a financial penalty

A failure to comply with the requirements of a remedial notice allows the council to require payment of a penalty charge.

In considering the imposition of a penalty, the authority will look at the evidence concerning the breach of the requirement of the notice. This could be obtained from a property inspection, or from information provided by the tenant or agent that no remedial action had been undertaken.

For example, landlords can demonstrate compliance with the regulations by supplying dated photographs or alarms, together with installation records or confirmation by the tenant that a system is in proper working order.

Landlords need to take steps to demonstrate that they have met the testing at the start of the tenancy requirements. Examples of how this can be achieved are by tenants signings an inventory form and that they were tested and were in working order at the start of the tenancy. Tenancy agreements can specify the frequency that a tenant should test the alarm to ensure it is in proper working order.

In deciding whether it would be appropriate to impose a penalty, the authority will take full account of the particular facts and circumstances of the breach under consideration.

A financial penalty charge will be considered appropriate if the council is satisfied, on the balance of probabilities that the landlord who had been served with remedial notice under Regulation 5 had failed to take the remedial action specified in the notice within the time period specified.

Principles for determining the amount of a financial penalty

Any penalty charge should be set at a level which is proportionate to the risk posed by non-compliance with the requirements of the legislation and which will deter non-

compliance. It should also cover the costs incurred by the council in administering and implementing the legislation.

Fire and carbon monoxide are two of the 29 hazards prescribed by the Housing Health and Safety Rating System and often result in death and serious injury.

In the case of fire, the absence of working smoke alarms in residential premises is a significant factor in producing worse outcomes.

This is particularly so at night, as without the early warning they provide, a small fire can develop unnoticed rapidly to the stage where smoke and fumes block escape routes or render a sleeping occupant unconscious. Working smoke alarms alert occupiers to a fire at an early stage before it prevents physical escape to safety.

Carbon monoxide is a colourless, odourless and extremely toxic gas. At high concentrations it can cause unconsciousness and death. At lower concentrations it causes a range of symptoms from headaches, dizziness, weakness, nausea, confusion, and disorientation, to fatigue – all symptoms which are sometimes confused with influenza or depression. For all these reasons, carbon monoxide is often dubbed "the silent killer". Open fires and solid fuel appliances can be significant sources of carbon monoxide. Carbon monoxide alarms alert occupiers to the presence of the gas at an early stage before its effects become serious.

The provision or smoke detectors and carbon monoxide alarms does not place an excessive burden on a landlord. The cost of the alarms is low and in many cases they can be self-installed without the need for a professional contractor. The impact on occupiers, damage to property and financial costs resulting from a fire or carbon monoxide poisoning event are far and out of proportion to the cost of installing alarms.

For these reasons, an effective incentive to comply with these regulations is fully justified.

It is understood that the imposition of the maximum potential fixed penalty charge, being £5,000 under the regulations, can present an excessive financial burden but this is balanced against the risk. The low cost of compliance and the fact that all reasonable opportunity will have been given to comply prior to any penalty charge being levied. A recipient of a fixed penalty charge has a right of appeal.

For these reasons a penalty charge of £5,000 is set for non-compliance with a Remedial Notice. A reduction of 50% will apply in respect of a person/company who has not previously received a penalty charge under this legislation and payment is received within 14 days of service of the penalty charge notice. There is no reduction for early payment offered to a person/company who has previously received a penalty charge under this legislation.

The council may exercise discretion and reduce the penalty charge if there are extenuating circumstances following a request for a review made by the landlord in writing.

This discretion will not apply when:

1. The person/company served on has obstructed the authority in carrying out its duties; and/or

2. The person/company has previously received a penalty charge under this legislation

The regulations state that the period for payment of the penalty charge must not be less than 28 days.

The sums received by the council under the penalty charge will offset any remedial works undertaken by the council and the balance may be used by the authority for any of its functions.

Procedural matters

The regulations impose a number of procedural steps which must be taken before the council can impose a requirement on a landlord to pay a penalty charge.

When the council is satisfied that the landlord has failed to comply with the requirements of the remedial notice, all penalty charge notices will be served within six weeks.

Where a review is requested within 29 days from when the penalty charge notice is served, the council will consider any representations made by the landlord. All representations are to be sent to the address at the bottom of this page. The council will notify the landlord of its decision by notice, which will be either to confirm, vary or withdraw the penalty charge notice.

A landlord who has requested a review of a penalty charge notice and has been served with a notice confirming or varying the penalty charge notice, may appeal to the First-Tier Tribunal against the council's decision. Appeals should be made within 28 days from the notice served of the council's decision on review.

If the penalty charge notice is not paid, then recovery of the penalty charge will be an order of the court and proceedings for recovery will commence after 30 days from the date when the penalty charge notice is served.

However, in cases where a landlord has requested a review of the penalty charge notice, recovery will not commence until after 29 days from the date of the notice served giving the council's decision to vary or confirm the penalty charge notice. Where landlords do make an appeal to the First-tier Tribunal, recovery will commence after 29 days from when the appeal is finally determined or withdrawn.

Remedial action taken in default of the landlord

Where a council is satisfied that a landlord has not complied with a specification described in the remedial notice in the required timescale and consent is given by the occupier, the council will arrange for remedial works to be undertaken in default of the landlord. This work in default will be undertaken within 28 days of the council being satisfied of the breach. In these circumstances, battery operated alarms will be installed as a quick and immediate response.

Smoke alarms

In order to comply with these regulations, smoke alarms will be installed at every storey of residential accommodation. This may provide only a temporary solution as the property may be high risk because of:

- its mode of occupancy, such as a house in multiple occupation or building converted into one or more flats;
- having an unsafe internal layout where fire escape routes pass through living rooms or kitchens; or
- the building is three or more storeys high

A full fire risk assessment will subsequently be undertaken, with regards to Leeds City Council Fire Safety Principles and LACORS Housing – Fire Safety Guidance. This will consider the adequacy of the type and coverage of the smoke alarm system, fire escape routes – including escape windows – and fire separation measures, such as fire doors and protected walls and ceilings.

Any further works required to address serious fire safety hazards in residential property, that are not undertaken through informal agreement, will be enforced using the Housing Act 2004, in accordance with the council's enforcement policy.

Carbon monoxide alarms

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

All communications for requests for review or representations made against the Remedial Notice (regulation five) or the Penalty Charge Notice (regulation eight) are to be in writing and sent to:

Address: Private Sector Housing Team
Sevenoaks District Council
Council Offices
Argyle Road
Sevenoaks
Kent
TN13 1HG

Telephone: 01732 227155

Alternatively, you can email the private sector housing team at psh@sevenoaks.gov.uk

Appendix 5 –HMOs

A house in multiple occupation (HMO) is a property rented out by at least 3 people who are not from 1 ‘household’ (for example a family) but share facilities like the bathroom and kitchen. It’s sometimes called a ‘house share’.

You must have a license if you’re renting out a large HMO in England or Wales. Your property is defined as a large HMO if all of the following apply:

it is rented to 5 or more people who form more than 1 household

some or all tenants share toilet, bathroom or kitchen facilities

at least 1 tenant pays rent (or their employer pays it for them)

If the HMO is occupied by less than 5 people, then it is not licensable but would still need to adhere to the management regulations.

Licensing of HMOs

Mandatory licensing

Mandatory licensing of HMOs under part 2 of the Housing Act 2004 requires the District Council to have a licensing scheme in place, seek properties that require licences and license properties that are licensable.

A mandatory licence is required for HMOs with five or more occupiers living in two or more households sharing some facilities.

A landlord's failure to license a property is an offence with the maximum fine on summary of a conviction being £20,000.

Duration of licences

Licences will normally be granted for the full five-year period but the District Council may use its discretion to determine the suitable duration less than five years, if necessary.

‘Fit and Proper Person’ policy

In granting a licence the District 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. A person's fit and proper status may be reviewed at any time if circumstances change. Removal of this status could lead to refusal and/or revocation of licence.

The proposed licence holder will need to be exempt from the following before granting a licence:

- any unspent convictions for offences involving fraud or other dishonesty, or violence or drugs or any offence listed Schedule 3 to the Sexual Offences Act 2003
- any unlawful discrimination on grounds of sex, colour, race, ethnic or national origins, or in connection with the carrying on of a business
- any contravention of any provision of the law relating to housing or of landlord and tenant law (including any civil proceedings) that results in a judgement against you

Discretionary licensing

The District Council may, at its discretion, bring into force licensing of other residential accommodation, as defined by parts 2 and 3 of the Housing Act 2004, which allows local authorities to require landlords of some privately rented properties to apply for a licence. There are two types of discretionary licensing:

- **Additional licensing** may be appropriate where a large number of HMOs in an area are not being managed effectively and causing particular problems for the people who live in these HMOs or members of the public

- **Selective licensing** may be appropriate where there is a problem with anti-social behaviour in an area or an area of low housing demand, and that some or all of the landlords in the area are failing to take action to combat the problem

Standards of HMOs

HMOs will be inspected having regard to the HHSRS and the Management Regulations.

If, after an inspection, it is found the HMO does not meet the District Council's standards or has serious hazards under the rating system, enforcement action may be taken.

Management of HMOs

The Management Regulations (**The Management of Houses in Multiple Occupation (England) Regulations 2006)** apply to HMOs in England, including non-licensable HMOs apart from those that apply to section 257 of the Housing Act 2004 (see below for separate regulations regarding these).

Non-licensable HMOs

- 257 HMOs

Under Section 257 of the Housing Act 2004, Certain converted blocks of flats are also considered to be HMOs regardless of the amount of occupants. These are Buildings or part of a building that has been converted into and consist of self-contained flats. Section 257 applies if:

a) building work undertaken in connection with the conversion did not comply with the appropriate building standards and still does not comply with them; and

b) less than two-thirds of the self-contained flats are owner-occupied.

A more comprehensive description can be found under section 257 of the Housing Act 2004

HMOs defined under 257 of the Housing Act must adhere to **The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007.**

- HMOs with less than 5 occupants do not require a licence but must adhere to **The Management of Houses in Multiple Occupation (England) Regulations 2006.**

Management Orders (Housing Act 2004)

These powers will be used as a last resort in relation to HMOs where other attempts to deal with breach of the Management Regulations have failed in the most serious cases, where there is no reasonable prospect of a licence being granted or it is necessary to protect the health, safety or welfare of occupiers, visitors or persons living in the vicinity or where serious anti-social behaviour can be evidenced and is found to be significantly affecting other occupiers, visitors or persons in the vicinity of the premises.

Appendix 6 – Enforcement and Financial Penalties for the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 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 both domestic and non-domestic privately rented property, effecting new tenancies from 1 April 2018.

The Council's enforcement objectives include:

"where required privately rented accommodation meets minimum energy efficiency ratings and that Energy Performance certificates are provided"

To meet this objective, Private Sector Housing Officers are authorised to check for different forms of non-compliance with Regulations including:

- From the 1 April 2018 whether the property is sub-standard and let in breach of Regulation 27 (which may include continuing to let the property after 1 April 2020)
- Where the landlord has registered any false or misleading information on the government's *"National PRS Exemptions Register"* or has failed to comply with a compliance notice.

Sevenoaks District Council intend to identify landlords that are not meeting the minimum requirements and determine if it is then appropriate to make financial penalty and whether or not that penalty is published.

In addition, we will advise landlords what actions is necessary for them to take in

Government Guidance

The Department of 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.

Purpose

In accordance with Regulation 33 and 34 Local Authorities are responsible for enforcing the minimum level of energy provisions within their area. The purpose of this policy is to describe how Sevenoaks District Council officers will enforce the regulations.

Scope

1. In the first instance The Council will informally advise Landlords who rent

properties with and EPC of F or G that they do not meet the minimum energy efficiency standard. The Council will offer advice how the standards can be met and request Landlords to register an exemption if appropriate.

Landlords will be given an appropriate time to make the necessary changes but will be warned that if they continue to be in breach after the time given, an investigation will follow and formal enforcement action will be considered.

The Council may in circumstances where a landlord has a history of not complying with housing related regulatory requirements, decide to take formal action without giving an informal opportunity for the landlord to comply.

2. 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. Sevenoaks District Council will serve Compliance Notices where the additional information is required. The Council will consider serving Penalty Notices where a landlord fails to comply with the Compliance Notice.
3. 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 and publication penalty.
4. If offences under these regulations are committed the Council will, where appropriate, serve a Penalty Notice. This Policy provide guidance for officers on how to determine the appropriate penalty.
5. 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. Sevenoaks District Council will place the information on the register at the appropriate time, for a minimum of 12 months.
6. The Landlord has the right to ask 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.

Guidance for determine the level of a financial penalty

The Maximum level of penalty varies on the type of breach under the Regulations.

Financial Penalties *(Regulation 40)*

Where the Local Authority decides to impose a financial penalty, they have the discretion to decide on the amount of the penalty, up to maximum limits set by the Regulations. The maximum penalties are as follows:

(a) Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty;
(b) Where the landlord has registered false or misleading information on the PRS Exemptions Register, the Local Authority may impose a financial penalty of up to £1,000 and may impose the publication penalty;
(c) Where the landlord has registered false or misleading information on the PRS

Exemptions Register, the Local Authority may impose a financial penalty of up to £1,000 and may impose the publication penalty;

(d) Where the landlord has failed to comply with comply with compliance notice, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.

Matrix guide to determine appropriate penalty

	Low Culpability	High Culpability
Low Harm	25%	50%
High Harm	50%	100%

Note: % = Proportion of Maximum Penalty.

Factors affecting culpability

High - Landlord has a previous history of non-compliance with housing related regulatory requirements and/or Landlord has failed to comply with requests to comply with these regulations. Knowingly or recklessly incorrect information

Low - First offence under these regulations, no previous history of non-compliance of with Housing related regulatory requirements. Complex issues partially out of control of the landlord have led to non-compliance.

Factors affecting harm

High – Very low EPC score. Vulnerable tenants occupying property for an extended period of time since non-compliance.

Low – No vulnerable tenants, Higher EPC score close to minimum accepted EPC rating.

Appendix 7 - Deciding on an appropriate level of financial penalty

STEP 1 – Determining the offence category

The Council will determine the offence category using only the culpability and harm factors in the tables below. The severity of the offence base on the culpability levels below would be determined in conjunction with the statutory guidance.

Culpability

Very high

- Where the offender intentionally breached, or flagrantly disregarded, the law; or
- Who has a high public profile and knew their actions were unlawful.

High

- Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken.

Medium

- Offence committed through act or omission, which a person exercising reasonable care would not commit.

Low

Offence committed with little fault, for example, because:

- significant efforts were made to address the risk although they were inadequate on this occasion;
- there was no warning/circumstance indicating a risk;
- failings were minor and occurred as an isolated incident.

Track record

The second step in determining the amount of financial penalty relates to the offender's track record. A historically non-compliant landlord or agent should be subject to a more significant penalty on the basis that they have yet to change their behaviour. A penalty amount adjustment relating to the offender's track record is therefore appropriate. This should help deter repeat offending.

The District Council will review all relevant records to identify any previous evidence of legislative failings. However, only evidence relating to the five years immediately prior to the offence date will be taken into account. The evidence reviewed will include:

- Any previous convictions for housing related offences;
- Whether previously subject to a financial penalty for a housing related contravention;

- Whether previously subject to, or associated with, statutory enforcement action (e.g. Improvement Notice, Emergency Prohibition Order, etc.); and
- The number of genuine housing condition complaints received in respect of properties associated with the offender.

Following the review, the offender's track record will be classed as one of the following categories:

- Significant;
- Some;
- None or negligible.

Significant

Where there is evidence of multiple enforcement interventions by the District Council's Private Sector Housing Team, together with evidence of non-compliance, the significant category will be used. In most cases, this category will also be used for any offender who has been successfully prosecuted for a housing offence or been subject to a housing related-financial penalty.

Some

This category will be used where the offender is associated with more evidence than would normally be expected of a good landlord or agent having regard to the size and nature of their portfolio. There is likely to be evidence of statutory enforcement action.

None or negligible

This category will be used if, following a review of the District Council's records, there is no relevant evidence associated with the offender. Any unsubstantiated housing condition complaints will be disregarded. The District Council may also exercise its discretion to disregard any evidence where the issues were minor in nature and there was no reluctance on the part of the landlord or agent to resolve the issues within reasonable timescales.

The descriptor 'Negligible' has been included to allow for a fair and reasonable review of evidence in respect of landlords and agents with larger portfolios. Therefore, if the evidence is negligible having regard to the size of the portfolio in the Sevenoaks District, this category will be used.

Property portfolio size

The third step in determining the amount of financial penalty requires the District Council to allocate a portfolio size. There are four size categories which relate to the number of units of accommodation the offender has ownership of, responsibility for, or association with. The size categories, are:

- One unit of accommodation;
- Two to four units of accommodation;
- Five to 19 units of accommodation;
- 20 or more units of accommodation.

Risk of harm

The fourth step in determining the amount of financial penalty concerns the risk of harm associated with the offence. The nature of the exposure to a harmful occurrence is an important factor when considering the severity of an offence.

The District Council will make an assessment of the risk of harm by having regard to the seriousness of the harm risked as well as the likelihood of that harm occurring. The offence will be placed into one of the following four categories:

- Level 1
- Level 2
- Level 3
- Level 4.

To assist in determining the level of risk, potential harm outcomes are classified as serious, severe or extreme and the likelihood classified as low, medium or high.

Level 1

This category will be used when the risk of harm does not fall within the Level 2, Level 3 or Level 4 categories.

Any offence associated with the operation of an unlicensed premises under the HMO and selective licensing regimes will usually fall into this category if there is no particular risk of harm associated with the condition or management of the property concerned.

Level 2

The use of this category may infer that the offence was associated with an extreme harm outcome, but the likelihood of a harmful event occurring was low. This category may be used when the risk of harm related to a severe harm outcome and the likelihood of a harmful event occurring was medium. This category may also be used when the risk of harm related to a serious harm outcome and the likelihood of a harmful event occurring was high.

Level 3

The use of this category may infer that the offence was associated with an extreme harm outcome and the likelihood of a harmful event occurring was medium. This category may also be used when the risk of harm related to a severe harm outcome and the likelihood of a harmful event occurring was high.

The use of this category will usually infer that the offence was associated with an extreme harm outcome and the likelihood of a harmful event occurring was high.

Level 4

The use of this category will usually infer that the offence was associated with an extreme harm outcome and the likelihood of a harmful event occurring was high.

Tables of Financial Penalties

Having made the four-step assessment, the District Council will determine the starting point for the financial penalty using the Tables of Financial Penalties.

Culpability Very High (Premium 100%)

Track record	Portfolio size	Risk of harm level 1	Risk of harm level 2	Risk of harm level 3	Risk of harm level 4
Significant	1	£7,500	£10,000	£12,500	£20,000
Significant	2 to 4	£10,000	£12,500	£15,000	£22,500
Significant	5 to 19	£15,000	£17,500	£20,000	£27,500
Significant	20+	£17,500	£20,000	£22,500	£30,000
Some	1	£5,000	£7,500	£10,000	£17,500
Some	2 to 4	£7,500	£10,000	£12,500	£20,000
Some	5 to 19	£12,500	£15,000	£17,500	£25,000
Some	20+	£15,000	£17,500	£20,000	£27,500
None or negligible	1	£2,500	£5,000	£7,500	£15,000
None or negligible	2 to 4	£5,000	£7,500	£10,000	£17,500
None or negligible	5 to 19	£10,000	£12,500	£15,000	£22,500
None or negligible	20+	£12,500	£15,000	£17,500	£25,000

Culpability High (Premium 80%)

Track record	Portfolio size	Risk of harm level 1	Risk of harm level 2	Risk of harm level 3	Risk of harm level 4
Significant	1	£6,000	£8,000	£10,000	£16,000
Significant	2 to 4	£8,000	£10,000	£12,000	£18,000
Significant	5 to 19	£12,000	£14,000	£16,000	£22,000
Significant	20+	£14,000	£16,000	£18,000	£24,000
Some	1	£4,000	£6,000	£8,000	£14,000
Some	2 to 4	£6,000	£8,000	£10,000	£16,000
Some	5 to 19	£10,000	£12,000	£14,000	£20,000
Some	20+	£12,000	£14,000	£16,000	£22,000
None or negligible	1	£2,000	£4,000	£6,000	£12,000
None or negligible	2 to 4	£4,000	£6,000	£8,000	£14,000
None or negligible	5 to 19	£8,000	£10,000	£12,000	£18,000
None or negligible	20+	£10,000	£12,000	£14,000	£20,000

Culpability Medium (Premium 60%)

Track record	Portfolio size	Risk of harm level 1	Risk of harm level 2	Risk of harm level 3	Risk of harm level 4
Significant	1	£4,500	£6,000	£7,500	£12,000
Significant	2 to 4	£6,000	£7,500	£9,000	£13,500
Significant	5 to 19	£9,000	£10,500	£12,000	£16,500
Significant	20+	£10,500	£12,000	£13,500	£18,000
Some	1	£3,000	£4,500	£6,000	£10,500
Some	2 to 4	£4,500	£6,000	£7,500	£12,000
Some	5 to 19	£7,500	£9,000	£10,500	£15,000
Some	20+	£9,000	£10,500	£12,000	£16,500
None or negligible	1	£1,500	£3,000	£4,500	£9,000
None or negligible	2 to 4	£3,000	£4,500	£6,000	£10,500
None or negligible	5 to 19	£6,000	£7,500	£9,000	£13,500
None or negligible	20+	£7,500	£9,000	£10,500	£15,000

Culpability Low (Premium 40%)

Track record	Portfolio size	Risk of harm level 1	Risk of harm level 2	Risk of harm level 3	Risk of harm level 4
Significant	1	£3,000	£4,000	£5,000	£8,000
Significant	2 to 4	£4,000	£5,000	£6,000	£9,000
Significant	5 to 19	£6,000	£7,000	£8,000	£11,000
Significant	20+	£7,000	£8,000	£9,000	£12,000
Some	1	£2,000	£3,000	£4,000	£7,000
Some	2 to 4	£3,000	£4,000	£5,000	£8,000
Some	5 to 19	£5,000	£6,000	£7,000	£10,000
Some	20+	£6,000	£7,000	£8,000	£11,000
None or negligible	1	£1,000	£2,000	£3,000	£6,000
None or negligible	2 to 4	£2,000	£3,000	£4,000	£7,000
None or negligible	5 to 19	£4,000	£5,000	£6,000	£9,000
None or negligible	20+	£5,000	£6,000	£7,000	£10,000

Factors, which the Council will consider in reducing the penalty

The Council will consider any factors, which indicate a reduction in the penalty and in so doing will have regard to the following factors relating to the wider impacts of the financial penalty on innocent third parties; such as (but not limited to):

- impact of the financial penalty on offender's ability to comply with the law or make restitution to victims;
- impact of the financial penalty on employment of staff, service users, customers and local economy.

Reduction for early admission of guilt

The Council will take into account a potential reduction in penalty for an admission of guilt.

The following factors will be considered in setting the level of reduction. When deciding on any reduction in a financial penalty, consideration will be given to:

- The stage in the investigation or thereafter when the offender admitted guilt
- The circumstances in which they admitted guilt
- The degree of co-operation with the investigation

The maximum level of reduction in a penalty for an admission of guilt will be one-third. In some circumstances, there will be a reduced or no level of discount. For example where the evidence of the offence is overwhelming or there is a pattern of criminal behaviour.

Any reduction should not result in a penalty, which is less than the amount of gain from the commission of the offence itself.

Obtaining financial information

The statutory guidance advises that local authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty.

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

Penalties for Failure to Comply with a Banning Order

The court can impose an unlimited maximum fine for failure to comply with a Banning Order. In addition, the court can also impose a prison sentence.

The Housing and Planning Act 2016 includes provisions and processes for a person to be banned from being involved, for a specified period, in one or more of the following activities:

- Letting housing
- Engaging in letting agency work
- Engaging in property management work

Banning Orders are reserved for what are recognised as being the most serious housing related offences. If the Council was satisfied that a breach of a Banning Order had occurred, the Council would normally start prosecution proceedings. In the event that the Council believed that a civil penalty would be appropriate for a breach of a Banning Order, the council would normally impose a penalty up to a maximum amount of £30,000 to reflect the severity of the offence.

Procedures

Financial Penalty Process and Right for Person to make Representations

Before imposing a financial penalty on a person the Council will, within 6 months of the date of the offence, give the person notice of its proposal to do so (a "notice of intent"); setting out the Council's reasons for doing so and the level of fine. A person in receipt of the notice of intent can make written representations to the following within 28 days:

Address: Private Sector Housing Team
Sevenoaks District Council
Council Offices
Argyle Road
Sevenoaks
Kent
TN13 1HG

Alternatively, you can email the private sector housing team at psh@sevenoaks.gov.uk

Subsequently the Council will decide whether to issue a financial penalty and the amount. Before doing so the Council will issue a final notice requiring that the penalty be paid.

The final notice will set out:

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

The officer determining the level of the financial penalty will record his/her decision, giving reasons for the amount of the penalty.

The landlord has the right to make representations against the decision and the Council will consider any representation. The Council will provide a response within 21 days, with a decision notice stating whether the penalty will be withdrawn, varied or upheld.

A person who receives a final notice may appeal to the First-tier Tribunal against:

- the decision to impose a penalty; or
- the amount of the penalty.

If a person appeals, the final notice is suspended until the appeal is determined or withdrawn.

Appendix 8 - Other legislation

Local Government (Miscellaneous Provisions) Act 1976

This act enables the council to re-connect or prevent the disconnection of gas, electricity or water supply in tenanted properties. These powers will be used in exceptional circumstances when all other negotiation has failed. These powers will only be used where the tenant is not responsible for payment of the bill.

This act also enables the council to obtain information about the interest in land. The notice is used to determine who owns, manages and occupies a dwelling. The information must be provided within 14 days of service of the document. Failure to provide the information may result in the council bringing a prosecution. On summary conviction the Magistrates Court can fine the relevant person.

Local Government (Miscellaneous Provisions) Act 1982

This act enables the council to board up unsecure empty properties. The council will attempt to contact the owner to carry out the work. If the property remains unsecure the council may serve a notice giving the owner 48 hours to make the property secure. If the property remains unsecure after this the council may carry out the work and re-charge its costs. A local authority need not give any such notice if it is necessary to undertake works immediately or owner/occupier cannot be reasonably traced.

Public Health Act 1961

This act enables the council to require owners/occupiers to unblock or repair toilets. If negotiation fails the council may serve a notice requiring the toilet to be unblocked within seven days. After which the council may carry out the work and re-charge its costs.

If the toilet requires repair the council may serve a notice requiring the toilet to be repaired within 14 days. After which the council may carry out the work and re-charge its costs.

Public Health Act 1936

Sevenoaks District Council has a statutory duty under the provisions of the Public Health Act 1936 to investigate complaints about premises that are in such a filthy and/or verminous condition or are prejudicial to health. This would not include premises which are merely unsightly, untidy or in a bad state of repair.

Environmental Protection Act 1990

This act enables the council to deal with premises that are deemed to be a nuisance/prejudicial to health. Prejudicial to health is defined as injurious or likely to cause injury to health.

Prevention of Pest Act 1949

The Act aims to protect the community, from the potential health and safety and hygiene hazards caused by various pests, including rats, mice, birds and all types of insects etc. There are two parts to this Act, Part One covers Rats and Mice, Part Two covers Infestation of Food.

Under the Act, any person authorised by a local authority, may inspect a premises or site at any reasonable time for infestation. Any person causing an obstruction whilst the premises is under inspection will be subjected to a fine.

Building Act 1984

Section 59 of the Building Act 1984 allows by notice the council to require owners to provide new, repair, or upgrade existing: drains, guttering, cesspools, sewers, drains, soil pips and rainwater pipes, etc.

The council must give the owner of the property reasonable time to carry out the work. If the owner fails to carry out the work the council may carry out the work itself and prosecute.

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

In addition to the powers to tackle 'rogue' agents under the Housing and Planning Act 2016 there are additional powers for local authorities to regulate letting agents, currently enforced by the PSH Team. Letting agents are required to:

- join a redress scheme;
- transparently publish their fee tariffs;
- declare whether they are a member of a client money protection scheme.

Where an agent fails to join one of the approved redress schemes, we approach the agent, explain the regulation and the penalties involved if they do not comply. The agent will then have 7 days to join a redress scheme.

If the agent is not willing to comply or if they still have not registered within 7 days, we will issue a letter of intent stating that if the agent does not register with a redress scheme, will may impose a fine.

If, after 28 days, the agent is not a member of an approved redress scheme, we may impose a financial penalty of up to £5,000.

If the council has decided to issue a fixed penalty, we then issue a final notice The final notice must give the agent at least 28 days to make the payment.

Appendix 9 – Operational Guidance during a Pandemic such as COVID 19

During a pandemic outbreak such as COVID-19 the Private Sector Housing Team are still required to continue to keep the condition of their housing stock under review, their duty to take appropriate action where 'category 1' hazards are identified (most serious hazards/imminent risk to life) remains the same. Local Authorities have a responsibility to prevent potential and imminent risk to the health, safety, and wellbeing of any occupying tenant.

Effective enforcement of standards in rented properties relies on Private sector housing officers visiting rented properties. All officers carrying out inspections and surveys will operate in accordance with the latest Government document guidance for professionals working safely in people's homes.

Local authorities have powers of entry which they can use to gain access to properties and carry out inspections. Current guidance advice indicates that local authorities should resume routine inspections, in line with their own priorities and enforcement policies and to effectively enforce standards in rented properties. However, Local authorities should be mindful that people may still want to exercise caution. In cases where local restrictions are in place, any relevant local advice should also be followed.

During a Pandemic such as COVID-19, Private Sector Housing will continue to ensure that their enforcement policies are updated to reflect the changing situation. We are committed to ensuring our health and safety policies are up to date and cover all officers carrying out inspections and visits during this period.

A decision to inspect a rented property should be made on the basis of risk and in line with a local authority's resource capacity and enforcement policies. Local authorities should have regard to the fact that some people may still wish to exercise caution. An inspection might be made because:

- There is a duty to inspect because, for example, there is an imminent risk to a tenant's health due to a serious hazard or a breach of Regulations in relation to HMOS/HMO Licensing.
- A serious hazard was previously identified and may still exist.
- The local authority has been made aware that a tenant is vulnerable and it is not clear if they are aware of the presence of hazardous conditions or a vulnerable person has requested a DFG.
- This list is not exhaustive and should not be treated as conclusive.

However, it might not be possible to inspect a property due to tenants self-isolating or refusing to allow access. Officers should address this possibility and consider what a reasonable response would be. For example, in properties where tenants are self-isolating:

- A decision may be made to temporarily de-prioritize lower-risk hazards.
- An assessment could be made through photographs, video or live broadcasting by the tenant.

- In cases of very serious risk, when entering a tenant's home to conduct an inspection, you should ensure strict separation is maintained and that the appropriate personal protective equipment (PPE) is used. Government guidance and the local authority's own health and safety policy should also be followed. Officers should consider whether the risks associated with not rectifying the hazard are higher than the risk of the Pandemic e.g. COVID-19 transmission.
- In cases of extremely hazardous conditions, alternative accommodation might be considered as an alternative to emergency remedial action.

The suggestions above are not exhaustive and all decisions should be made on the merits of the individual case and an assessment of risk. Officers should have regard to the fact that tenants may still wish to exercise caution.

During this unprecedented time Private Sector Housing should only take enforcement action that they determine is necessary in accordance with their own priorities and enforcement policies. They should update and adapt their enforcement policies as required to meet the changing circumstances caused by any Pandemic e.g. COVID-19 and latest government advice regarding the outbreak, and ensure a pragmatic, appropriate and risk-based action is taken.

For example:

- Low risk, routine enforcement action may be temporarily postponed until restrictions are further eased.
- Legal notices served under the Housing Act 2004 may, if the notice provides for this, be suspended for a period due to difficulties in completing the works.
- Non urgent work in default may be deferred.
- Other forms of enforcement action may be considered for the most serious hazards, e.g. a Prohibition Order covering part of a property may be used instead of Emergency Remedial Action.

The above list is intended only as an example and all decisions should be made on the merits of the individual case and based on an assessment of risk and the latest government advice around the outbreak.

It is important that Private Sector Housing continue to work closely with landlords and tenants to ensure standards in rented properties are maintained, using communications and marketing to emphasize the importance of keeping properties free from hazardous conditions and also to reassure landlords that a pragmatic, risk- based and common-sense approach will be used when enforcement decisions are taken. Government has produced separate guidance for tenants and landlords.