

## Portsmouth City Council

### Private Sector Housing Enforcement Policy 2022

#### 1. Introduction

- 1.1 The Council, through its Private Sector Housing team, aims to support local landlords and agents in understanding their duties and legal obligations as part of its Private Rented Sector Strategy ([Private Rental Sector Strategy for Portsmouth 2021- 2026](#)). Where suitable, Officers will work with landlords, agents, tenants, and other stakeholders to achieve desired outcomes and promote good housing standards in Portsmouth.
- 1.2 The main objective of enforcement action is to ensure that non-compliance in the local housing market is addressed in the most effective way for the benefit of all.
- 1.3 The Council is committed to fair and effective enforcement, which protects residents and communities, and will take action against those who disregard the law and endanger the safety of others. Council Officers will consider what is proportionate based on individual circumstances.
- 1.4 The Council aims to provide information and guidance for landlords and has a dedicated Landlord and Tenant Support Officer. The Council produces regular newsletters, provides information on the Council's website, and holds workshops aimed at assisting landlords and agents.
- 1.5 This document sets out the Council's enforcement policy when dealing with non-compliance of relevant legislation related to private sector housing. Legislation will be outlined within this policy.
- 1.6 The content of the Private Sector Housing Enforcement Policy has been written having regard to;
- A. The Regulators Compliance Code - which promotes proportionate, consistent and targeted regulatory activity through transparent and effective dialogue and understanding between regulators and those who they regulate. Regulators must have regard for this code when developing policies and procedures that guide their regulatory activity. A copy of the code is available on request or may be downloaded at [www.gov.uk/government/publications/regulators-code](http://www.gov.uk/government/publications/regulators-code).
  - B. In certain situations the council may decide that a provision in the Regulators Compliance Code is either not relevant, or is outweighed by another provision. Officer will ensure that any decision to depart from the Regulators Compliance Code will be properly reasoned, based on material evidence and documented.

C. The Enforcement Concordat - The concordat is a voluntary, non-statutory code of practice which the Council is committed to. It sets out principles with regards to good enforcement practice which are:

- Standards of Service and Performance
- Openness
- Helpfulness
- Proportionality
- Consistency
- Complaints about Service

## **2. Human Rights and Equality Issues**

2.1 Investigations and any enforcement action will be conducted in a manner which does not conflict or undermine the fundamental principles of the Human Rights Act 1998.

2.2 Enforcement decisions will be fair, impartial and objective and will not be influenced by issues such as the ethnicity or national origin, gender, religious beliefs, political views or sexual orientation of the suspect, victim, witness or offender. The Council's full equalities policy is available at [www.portsmouth.gov.uk/services/council-and-democracy/policies-and-strategies/equality-law-and-its-significance-for-the-council](http://www.portsmouth.gov.uk/services/council-and-democracy/policies-and-strategies/equality-law-and-its-significance-for-the-council)

## **3. Aims of the Policy**

3.1 This enforcement policy aims to:

- demonstrate transparency of approach with respect to enforcement of private sector housing and caravan sites in Portsmouth, by setting out legal requirements, policies and principles that officers will follow when enforcing legislation;
- improve housing conditions and raise the standard of property management within the private rented sector;
- provide safer, healthier and warmer homes in the private sector to enable all people within Portsmouth to benefit from healthy housing and environments;

## **4. What is Enforcement Action?**

4.1 Enforcement in its simplest sense is the process of ensuring a law or rule is met or complied with. For the purpose of this policy, it means an action carried out by the authority using statutory powers in relation to Housing. Enforcement is not limited to formal action, such as a prosecution or service of a legal notice; it includes inspections, investigations, interventions and the provision of advice and assistance, with the aim of ensuring service users comply with regulatory requirements

## 5. Enforcement Objectives

5.1 The main objectives of this enforcement policy are to ensure that:

- privately rented accommodation, including houses in multiple occupation (HMO), and accommodation provided by registered providers of social housing, are free from actionable hazards\* that affect the health and safety of the tenant, licensee or any visitor
- private rented accommodation and tenancies are managed in accordance with relevant statutory requirements;
- privately rented accommodation meets minimum energy efficiency ratings
- all licensable properties are licensed, with licence conditions being met
- empty properties are tackled with the aim of addressing security, visual amenity and statutory nuisance issues and also returning them back into occupation
- owners or occupiers of privately owned accommodation or land do not cause statutory nuisance, or an unacceptable risk to public health and safety, or to the environment or neighbourhood
- lettings and property management businesses are registered with a government-approved redress scheme and comply with relevant legislation and codes of practice\*\*
- caravan and camp sites are managed in compliance with site licence conditions and relevant statutory requirements

\*An actionable hazard is one that has been assessed to be a Category 1 or 2 hazard using the Housing, Health and Safety Rating System (HHSRS) under the Housing Act 2004 and the Housing Health and Safety Rating System (England) Regulations 2005. The authority has a duty to act where Category 1 hazards are identified. The authority has a discretionary power in respect of Category 2 hazards and will take enforcement action in cases where there is a significant risk to the health and safety of the occupiers. More information about the HHSRS can be found on the government website [Housing health and safety rating system \(HHSRS\): guidance for landlords and property-related professionals - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/hhsrs-guidance-for-landlords-and-property-related-professionals)

\*\*Potential non-compliance will be referred by the Private Sector Housing Team to Trading Standards who regulate this.

## 6. Shared enforcement and primary authority

6.1 Officers may work with other services within the authority, such as the planning department and building control; benefits and council tax teams; Housing Needs Advice & Support; Neighbourhoods teams, as well as other enforcing authorities who have the power to take enforcement action. These authorities may include:

- Hampshire and Isle of Wight Fire and Rescue Service
- Hampshire Police
- UK Visas and Immigration
- Health and Safety Executive
- Trading Standards
- other local authorities

6.2 In circumstances where shared enforcement or joint working is required, officers will ensure that:

- investigations are undertaken by the most appropriate enforcing authority;
- enforcement action is undertaken in accordance with agreed protocols and will involve the relevant authority or service in the investigations, information gathering and sharing to ensure it is carried out effectively;
- officers will have regard to the Data Protection Act 1998 (DPA) when handling all manual and computerised personal data. Any requests for access to information to the council can be done in accordance with the Freedom of Information Act 2000 and the DPA;
- where a business has registered with a Primary Authority under the Regulatory Enforcement and Sanctions Act 2008 for legislation which this service is enforcing, the council will comply with these Primary Authority requirements.

## **7. Tenure Groups**

7.1 The private sector housing service has investigative and enforcement powers relating to all private housing regardless of tenure. However the approach may vary depending on the tenure of the household.

### **7.2 Private landlords and tenants**

7.2.1 Tenants within rented accommodation do not have the same level of control of their homes as owner occupiers. They are reliant on landlords or their agent to adequately maintain their homes in accordance with legal requirements. The council will take enforcement action where required, against landlords or agents who are putting the health and safety of their tenants at risk, or in circumstances where conditions are causing serious issues to neighbouring property.

### **7.3 Owner occupiers**

7.3.1 Owner occupiers are usually in a position to make informed decisions about maintenance or safety issues in their own homes. Formal enforcement

action against this tenure group would therefore be limited. Officers would always aim to provide owner occupiers with appropriate advice and recommendations as to how they can mitigate any hazards identified. However, in cases where there is a severe risk to the health and safety of occupiers, or where there are conditions that have the potential to cause serious issues to neighbouring property, the council may take formal action against owner occupiers.

### 7.4 Registered Social Landlords (RSLs)

7.4.1 These are usually housing associations, being a private, non-profit making organisation that provides low-cost social housing for people in need. Their performance is scrutinised by the Homes and Communities Agency and the Housing Ombudsman. RSL's have written arrangements for reporting problems and clear response times for addressing these issues, in addition to having systems for registering any complaints about service failure. The council will not normally take action against an RSL, unless the problem in question has been properly reported to the RSL, who has then failed to take the appropriate action. The council will consider enforcement action against an RSL where there are significant risks to the health and safety of tenants and/or the wider public.

### 7.5 Portsmouth City Council Housing stock

7.5.1 Council owned and managed property is run through the Councils Housing Management team. The Housing Management team has written arrangements for reporting problems, clear response times and systems for registering any complaints about service failure. Their performance is also scrutinised by the Housing Ombudsman. The Private Sector Housing team works with colleagues from the Councils Housing Management team and, at their request, can provide advice on housing standards required in their stock. Formal enforcement action cannot be taken by Portsmouth City Council against itself.

## 8. Reactive Inspections

8.1 Officers will carry out inspections following a request for service from a tenant or referral from a partner or enforcement agency concerning unsatisfactory housing or overcrowded conditions. Tenants making requests for service will be asked to confirm that they have informed their Landlord of the disrepair and they have failed to act in a reasonable timescale. Inspections will take place where initial communications between this service and the landlord, agent or owner have not successfully resolved the issues for the customer.

8.2 There will be circumstances where an inspection may be undertaken in the first instance, for example where:

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- there appears to be significant risks to the health and safety of occupiers and/or visitors
- the tenant or prospective occupier is vulnerable
- the issues are complex or involve neighbouring properties
- there is a poor history of compliance with legal requirements for housing conditions and/or management practices
- the property is empty

8.3 Where an inspection is undertaken, officers will assess compliance with all enforceable legal requirements, including a risk assessment under the Housing Health and Safety Rating System (HHSRS) and also licence conditions if applicable. This may involve referrals to other agencies or local authority service areas.

8.4 It is the council's aim to action requests for service within appropriate timescales. Requests for service can be received from:

- tenants/occupiers
- the general public
- property letting and managing agents
- referrals from other council services
- referrals from agencies

8.5 Details of the source of the service request will not be divulged when dealing with Landlords or agents.

8.6 In most circumstances this service will not be able to act on anonymous complaints, although each case will be considered separately. Where an anonymous request cannot be accepted the relevant information will be recorded in case of any future complaints.

### **9. Proactive Inspections**

9.1 Inspections will be carried out by the private sector housing service on a pro-active basis in private rented accommodation that is subject to HMO Licensing, under Part 2 of the Housing Act 2004, for assessing compliance with:

- licence conditions, or where evasion of licensing is suspected
- legislation relating to housing conditions, including for example HHSRS, drainage and refuse
- legislation relating to property management
- the councils' adopted standards

9.2 Inspections of caravan sites licensed by the council, will be undertaken in order to assess compliance with licence conditions.

9.3 The Private Sector Housing Team may also carry out proactive inspections in the following ways if information comes to light that requires proactive investigation:

9.3.1 Inspections of all homes within a small targeted geographical area (such as a specific road, block of flats, or cluster of properties) with significant problems, in which all owners will be notified in advance of the start of the initiative. Through a combination of property inspections, liaising with owner occupiers and working with partners, this proactive approach aims to improve housing and the standard of housing management. This initiative aims to bring empty homes back into use as well as making social, financial and environmental improvements to areas whilst creating stronger and more stable communities.

9.3.2 Inspections of property owned or managed by landlords or agents who have a poor history of compliance with legal requirements for housing conditions and /or management practices. This may include identifying those with a previous history of enforcement action, lack of engagement with the authority or where there is intelligence about breaches in legal requirements from partner agencies. The aim of this proactive intervention is to target resources for improvements to housing conditions and tenancy management, as well as creating more sustainable tenancies, particularly for vulnerable tenants.

9.3.3 Inspections in areas to identify licensable properties, empty homes, poor housing conditions and environmental matters that are detrimental to a neighbourhood or locality.

9.3.4 Inspections undertaken according to property type; mode of occupation; low energy efficiency rating as stated in an Energy Performance Certificate; or overcrowded conditions for example.

9.3.5 Investigations to establish whether or not a letting agent or property manager has joined one of the Government-approved Property Redress Schemes.

## **10. Delegation & Decision Making**

10.1 Officers carrying out enforcement functions have been authorised by the council in accordance with the Director of Housing, Neighbourhoods and Building services sub delegation scheme. Each officer within the private sector housing service will carry an identification card.

10.2 Decisions about the most appropriate action to be taken will be made in line with:

- this policy

- professional judgement
- legal guidelines and advice
- statutory codes of practice
- strategic priorities set by the Council and/or Central Government

10.3 A decision to instigate any type of enforcement action will be taken by the investigating officer with the agreement of a delegated manager, in accordance with the council's Scheme of Delegation.

## **11. Power of Entry**

11.1 In carrying out their duties, duly authorised Officers have a range of far reaching powers, including the right to enter any premises at any reasonable time in order to:-

- Ascertain whether or not a breach of legislation exists
- Carry out any action or works authorised in accordance with this enforcement policy

Such powers will be used when a duly Authorised officer has reason to believe that entry is required because of a potential breach of legislation or requirement of this enforcement policy. Entry to any residential property shall not, except in an emergency, or in investigating potential contraventions of Licensing, be demanded as a right unless a minimum of 24 hours' notice has been given. If entry is refused, an Officer may apply to a Justice of the Peace for a Warrant to enter the premises, if needs be, by force.

## **12. Purpose and Method of Enforcement**

12.1 The private sector housing service offers an opportunity to work informally with landlords, agents, owners and service users, by providing a range of information and guidance. In cases where there has been a complaint about a private rented property or empty home, and where it is the first contact about property standards, the service will normally notify responsible parties and/or will provide an inspection report outlining breaches in legal requirements. This approach is detailed in section 13 under "stage one" enforcement action.

12.2 The purpose of an informal approach is to enable responsible landlords, agents and owners to comply with regulatory requirements and agree to undertake the works required by the authority in a short timescale.

12.3 The underlying aim of these communications is to establish good management practices from the outset that ensure compliance with regulatory



requirements for property standards and that this approach continues through each subsequent tenancy.

12.4 All powers available to the private sector housing service will be used in order to meet the enforcement objectives set out in this policy. Enforcement action can be separated into 3 stages, as outlined in sections 13, 14 and 15 of this policy. Decisions will be made by competent and authorised officers, in accordance with guidance, as to the most appropriate course of action to be taken.

12.5 Different types of enforcement action may be undertaken in relation to any given case depending on legislation used. In some instances, multiple actions may be taken as the case progresses through the different stages of the regulatory process.

12.6 Where there is non-compliance with legal requirements, after an informal approach has been made, formal action will be taken as detailed in section 15 (Stage 2 enforcement) and section 16 (Stage 3 enforcement) below.

12.7 However, where there are serious breaches in legal requirements, the authority will take a formal approach in the first instance and will move immediately to stages two and three.

12.8 To safeguard the health and safety interests for occupiers, visitors and members of the public, formal action will also be considered in the first instance, where:

- the landlord or owner has previous history of non-compliance with legal requirements
- the landlord, agent or owner has previously been made aware of their legal responsibilities through letters and reports for other properties

11.9 In a small number of cases, there may be circumstances where a decision is made to not take formal action. These may include, for example:

- Where there are low risks to the health and safety of occupiers, visitors or members of the public
- Where there are special circumstances regarding the person against whom action would be taken
- Where legal action would be disproportionate or inappropriate, taking into account the circumstances of the case
- Where the tenant does not want action to be taken and a decision is taken that it is not appropriate to take any further action at that time, given the present circumstances.

### 13. Stage 1 – Informal Enforcement Action. Providing Assistance, Information, Education and Inspection reports

13.1 The Council will help property owners to meet their legal obligations by providing clear and concise information about what they need to do to comply with the relevant legislation. However, whilst help can be provided, property owners should always seek out and rely upon their own independent advice to ensure legal compliance.

Information and leaflets	A wide range of information and links are available on our website by searching "information for landlords".
Telephone calls, emails and letters	To advise of works or actions to be taken, following a request from a tenant or as a result of an inspection by this service. These will cover deficiencies in regulatory requirements.
Inspection report	A report showing deficiencies or areas of non-compliance with specific legislation. The report may also include recommended works of good practice.
Landlord workshops	The service hosts regular landlord workshops on a variety of subjects aimed at educating landlords of their obligations and best practice.
E-newsletters	Regular updates are provided in newsletters, which are emailed to addresses registered with our service. Subscribe for updates privaterentalupdate@portsmouthcc.gov.uk
Referrals to other services/agencies or regulators	For specialist areas within their remit.
Landlord and agent associations	Information and support can be obtained from industry-led organisations such as the NRLA, ARLA and NALS as well as local association PDPLA. Please refer to the organisation's website for details.

### 14. Stage 2 – Formal enforcement action issued by the local authority

14.1 The Council expects full compliance with the law and will not hesitate to use enforcement powers where necessary. Formal action will be taken against those who wilfully contravene the law, act irresponsibly, or do not learn from informal enforcement action.

Formal action, including the service of formal notices, will be taken in situations where:

- the council has a duty to serve a notice or take a specified action;
- statutory requirements have been breached;

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- remedial action needs to be taken quickly;
- an owner, landlord or agent has a history of non-compliance;
- a property has actionable hazards that create risks to an occupier's health and safety (or that of a visitor);
- there is a long-term empty property.

In cases where an officer decides it is more appropriate to take formal enforcement action without first giving an opportunity to resolve the issue informally, the officer will explain to the person concerned the reasons for this decision.

Where notices and orders are served, the authority will provide copies to other interested parties, such as the occupier; mortgagee; freeholder; leaseholder or agent in accordance with the specific legislative requirements. They will also provide details on how such notices can be appealed where applicable.

Certain notices, orders and charges are required to be registered as a local land charge and whilst the matter is outstanding, these will be disclosed to any prospective purchaser making a local land search.

There are a number of different types of formal notices, licences, warnings and charges that can be issued by the authority:

Formal notice, order or licence	Served to require works or actions to be undertaken in accordance with specified legislative requirements.
Notices to recover costs and expenses incurred by the authority in taking enforcement action	Served in connection with Housing Act 2004 notices for the recovery of costs and expenses.
Power of Entry notices	Served when access is required into residential premises at a specified date and time.
Notices requiring information or documents	Served to require prescribed documents or information to be supplied.
Emergency Prohibition Order	Served under the Housing Act 2004 to immediately prohibit use of premises (or part of) where a serious health and safety issue exists.
Emergency remedial action	Served to require serious, emergency works undertaken immediately by the local authority in default. Costs incurred by the council in taking this action will be recovered.

Revocation or variation of an improvement notice, prohibition order or emergency prohibition order	Notices served to vary or revoke the terms of a previously served enforcement notice or order.
Revocation, variation or refusal to licence premises	Notices served to vary the terms or revoke a previous licence issued, or to refuse to licence a property.
Works in default	Works undertaken in default by the authority to ensure compliance with a legal requirement. Costs incurred by the council in taking this action will be recovered.
Civil penalty	A notice issued by the local authority to impose a financial penalty. It is to be paid to the authority in situations where there are breaches of legal requirements or where offences have been committed.
Simple caution	Issued by the local authority where offences have been committed.
Compulsory Purchase Order and enforced sale	An Order served by the authority for a long-term empty home where it is causing blight and statutory nuisance in an area. It is used only where there is proven demand for this house type. A sale of a property can be imposed to recover unpaid debts incurred by the authority for undertaking essential repair works in default.
Management orders and empty dwelling management orders	Orders served by the authority where no responsible person can be identified to manage a privately rented or empty home.

Further information about the types of notices and when they would typically be considered can be found in the government enforcement guidance document [Housing health and safety rating system \(HHSRS\) enforcement guidance: housing conditions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/housing-health-and-safety-rating-system-hhsrs-enforcement-guidance-housing-conditions) as well as a short updated government guidance document [Local authority enforcement powers under the Housing Act 2004 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/local-authority-enforcement-powers-under-the-housing-act-2004)

### 15. Stage 3 - Formal enforcement action progressed by courts or tribunals

15.1 Failure to comply with legal requirements, such as a formal notice may result in a stage three action. Before considering a stage three action, the investigating officer will consider the appropriate actions available for the legislation concerned.

Prosecution in criminal courts (Magistrates and Crown Court)	Legal proceedings instigated where there is a flagrant breach of law; non-compliance with a legal notice or legal requirements; a history of non-compliance and for serious offences where there is a community benefit.
Warrant to enter premises	Warrants issued by the Magistrates Court for officers to enter premises by force, if required.
Rent Repayment Order	An Order issued by the First Tier Tribunal for the repayment of rents received where there has been an offence or breach of legislative requirements.
Proceeds of Crime Actions	An Order issued by the courts for confiscation and civil recovery of proceeds from criminal acts.
Injunctions	Issued by the courts to prevent certain actions, activities or threats being carried out by a specific person.
Criminal Behaviour Orders	Issued by the courts to take specific actions in cases where harassment, alarm or distress is proved.
Civil Penalties	Issued as an alternative to prosecution where there is a flagrant breach of law; non-compliance with a legal notice or legal requirements; a history of non-compliance and for serious offences.

## 16. Prosecution

16.1 Prosecution will be considered for more serious offences with the purpose of

- Punishing serious wrong doing
- Avoiding a reoccurrence of the offence and/or
- To act as a deterrent to others

16.2 The Council will have regard to the Code for Crown Prosecutors and will only prosecute where there is sufficient admissible and reliable evidence that the offence has been committed. There should also be a realistic prospect of conviction, taking into account any applicable defences, and the Council believe that it is in the public interest to do so.

## 17. Civil Penalties

17.1 The Housing & Planning Act 2016 introduced changes to the Housing Act 2004 to allow the Council to issue civil penalties of up to £30,000. Appendix 1 to this policy sets out the decision making process regarding whether to use a civil penalty notice and at what level it should be charged.

## 18. Works in Default

18.1 Works in default may be considered as an alternative to, or in addition to a prosecution or financial penalty. The Council will carry out works in

default where it is proportionate and seek to recover full costs associated with the works, including officer time and administration costs.

18.2 Where appropriate, the costs will be placed against the property as a local land charge. The Council may seek to use its powers to enforce the sale of the property to recover costs.

18.3 Each case will be looked at individually and a decision will be made whether to undertake works in default, based on the type and extent of the issues, as well as the protection of the health, safety and welfare of any person affected.

## **19. Proceeds of Crime**

19.1 The Proceeds of Crime Act 2002 allows the courts to deprive perpetrators of criminal offences of any proceeds they have accrued as a result of criminal activity. Officers from across the council will work collaboratively to ensure the best outcome.

## **20. Costs of Enforcement**

20.1 The Council is able, in certain circumstances, to charge for enforcement action. The amount to be charged will depend on the type of action taken. When costs are charged, an invoice will be sent to the relevant party outlining the amount, what it covers, and the payment terms. The charge levied will only cover the cost of the enforcement action to the local authority. Examples include;

- Costs associated with determining whether to serve a notice
- Costs involved in identifying any action required
- Costs associated with serving a notice

20.2 The full break down of the charges applicable for each Notice or Order can be found on the councils website by searching "private sector housing enforcement charges".

## **21. Appeals**

21.1 Any person served with a notice/order has the right to appeal on grounds set out in the relevant legislation.

21.2 Full details of the appeals process will be contained in the notice/order.

21.3 The Council will rigorously defend any appeals where the notice/order has been correctly served.

## **22. Review**

10.1 This Enforcement Policy shall be reviewed periodically and amended to reflect changes in legislation, corporate policy or official guidance. Any amendment shall be in line with meeting the requirements of the legislation and the public interest.

### **23. Legislative Powers**

23.1 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 pieces of 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.

23.2 A list of legislation is attached at Appendix 3. This list is not exhaustive

23.3 A list of enforcement powers under the Housing Act 2004 at Appendix 4.

23.4 The Council has a statutory duty to act in the case of category 1 hazards and a power to act in the case of category 2 hazards.

23.5 The Council will exercise enforcement action in the following circumstances;

- Where a category 1 hazard or hazards are present in the dwelling
- Where a category 2 hazard is progressive and will likely become a category 1 hazard unless action is taken
- Where there are a number of category 2 hazards present in the dwelling likely to have a cumulative negative effect of the occupants
- Where there is a vulnerable individual or group in occupation or likely to be in occupation

Detailed information about the Housing Health & Safety Rating system, and Category 1 and Category 2 hazards can be found in the Government guidance document [Housing health and safety rating system \(HHSRS\): guidance for landlords and property-related professionals - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/housing-health-and-safety-rating-system-hhsrs-guidance-for-landlords-and-property-related-professionals)

23.6 Part 1 of The Housing Act 2004 includes the type of notice or order that can be issued, detailed in Appendix 4.

23.7 When any notice or order is served, officers will have full regard to the relevant areas within part 1, Housing Act 2004 and the appropriate schedules.

### **24. Houses in Multiple Occupation - Licensing**

24.1 Mandatory Licensing of Houses in Multiple Occupation under part 2 of the Housing Act 2004. The Council is required to have a licensing scheme in place, identify properties that require licenses, and license properties that are licensable.

24.2 From 1st October 2018 HMO licences are required for all HMOs of any storey height that are occupied by five or more persons, who form two or

more households and share facilities (such as kitchens, living rooms and bathrooms).

OR

Purpose built flats where there are up to two flats in the block and one or both of the flats are occupied by 5 or more persons in 2 or more separate households. This will apply regardless of whether the block is above or below commercial premises. This will bring certain flats above shops on high streets within mandatory licensing as well as small blocks of flats which are not connected to commercial premises.

- 24.3 A person commits an offence if they manage or are in control of an HMO which should be licensed but does not have one or if they allows the property to be occupied by more than the agreed number of households or persons authorised in the licence conditions. Prosecution can result in unlimited fines and court costs or instead of prosecuting, the council can issue penalty charges of up to £30,000.
- 24.4 Rent re-payment orders – if a person has committed the offence of operating as an HMO without having an HMO licence, the Council or the tenants can apply for a rent repayment order. The First Tier tribunal (FTT) can award the order, which requires the appropriate person to repay all rents, periodical payments and housing benefits for the period up to a licence being issued. The order would state the amount to be repaid.
- 24.5 Termination of Tenancies – Landlords will not be able to issue any section 21 notices under the Housing Act 1988 (termination of a shorthold tenancy and possession of the property), whilst a licensable HMO is unlicensed.
- 24.6 Licences will be granted for a maximum five year period. The Council may grant licences for appropriate lesser periods. Details of such policies will be detailed on the Council's Website with details of how to apply for a licence.
- 24.7 Prospective applicants for a license will be vetted to determine whether they are a 'Fit and Proper' person to hold a licence as required by section 66 of the Housing Act 2004. Where a person is found not to be a 'Fit and Proper' person to hold a licence, this information will be stored within the Council's records and shared as necessary with other Departments and Local Housing Authorities.
- 24.8 The 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, and Selective. Any introduction of such schemes will be



publicised in accordance with legislative requirements and details of such designations will be available on the Councils website.

24.9 HMOs will be inspected having regard to the Housing Health and Safety Rating System and the Management Regulations, and the Council Private Sector Housing Space and Amenities Standards (this can be found on the Councils website by searching "HMO standards"). If after an inspection it is found the HMO does not meet the Council's standards or has serious hazards under the rating system, enforcement action will be considered.

24.10 The Management Regulations apply to Houses in Multiple Occupation (HMOs) in England, but do not apply to converted blocks of flats to which section 257 of the Act applies. These are buildings that have been converted into and consist of self-contained flats where the building work undertaken in connection with the conversion did not comply with the appropriate building standards and still does not comply with them, and less than two thirds of the self-contained flats are owner occupied.

24.11 A Public Register of

- Licensed HMO's,
- Dwellings with interim/final/empty dwelling management orders,
- HMO's with Temporary Exemption Notices,

will be available upon request for public inspection at the Civic Offices, Guildhall Square, Portsmouth, in line with the requirements of the legislation and guidance. A copy of the register can be provided by the Council, subject to a reasonable fee to cover administration costs as per section 232 of the Housing Act 2004.

24.12 The Council will consider suspending, revoking or refusing to renew a licence, or to grant a new licence, where licensing conditions are not being met and there are clear failings by the landlord in relation to Part 2 of the Housing Act 2004. The general principles of this policy will also apply to any action taken under this part.

24.13 Management Orders under the Housing Act 2004 will be used as a last resort where other attempts have failed, 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. It will also be considered where anti-social behaviour is affecting other occupiers, visitors or persons in the vicinity of the premises.

## **25. Caravan Sites**

23.1 Caravan and camping sites provide accommodation both for residential, holiday and touring purposes. It is a requirement that all sites are registered with the council and that owners apply for a caravan site licence.

23.2 Licences are issued with conditions attached in accordance with their planning permissions and Model Caravan Standards.

23.3 The requirement to apply for a caravan site licence refers to all sites, including park home sites. However, it does not apply to council managed gypsy and traveller sites, nor to unauthorised sites without the appropriate planning permissions as these cases would require investigation from other enforcement bodies.

23.4 Caravan sites will be inspected on a cyclical basis or as a result of a complaint made to the service. This is to ensure that there is compliance with conditions listed on the site licence and also, where appropriate, with other legislative requirements.

23.5 Where there is non-compliance with licence conditions or legal requirements, these deficiencies will be notified to the licence holder, owner or manager. Formal action will be taken where there is insufficient progress, limited co-operation or, in the first instance, where serious issues are identified.

23.6 The council has the power to charge annual fees for residential caravan sites and mobile home parks under the Mobiles Homes Act 2013. All charges, where applicable, are set out in the Portsmouth City Council Fee Structure.

## **26. Empty Properties**

26.1 This council will encourage owners of private sector empty homes to bring their properties back into occupation through letters, advice and referral to assistance schemes such as the Councils Rent it Right service, to assist in bringing the property back into use.

26.2 Where informal action is not successful, the service will consider using a range of enforcement measures shown in Stages 2 and 3 of the Enforcement Action which can include:

- the service of a statutory notice
- arranging for works to be carried out in default of the owner
- serving Empty Dwelling Management Orders (Part 4 of the Housing Act 2004)
- enforced sale (Law of Property Act 1925)
- compulsory Purchase Order action (Part 2 of the Housing Act 1985)

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

24.1. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (ESSPRS) came into force on 1 June 2020. The regulations are designed to ensure electrical safety within the private rented sector in England by requiring landlords to have the fixed electrical installation within rented properties inspected at least every five years.

24.2. The Council must serve a remedial notice on the landlord within 21 days of deciding that it has reasonable grounds that a landlord has breached one or more of their duties under:

13.2.1 Regulation 3(1)(a) – electrical safety standards have not been met during the period of a tenancy, or

13.2.2 Regulation 3(1)(b) – that the electrical installation has not been inspected at regular intervals (5 years or shorter as required), or

13.2.3 Regulation 3(1)(c) – that the first inspection was carried out before the tenancy began (for new tenancies) or by 1st April 2021 (for existing tenancies), or

13.2.4 Regulation 3(4) – that remedial or investigative work was required to the electrical system and that this was not undertaken within 28 days (or a shorter period where required), or

13.2.5 Regulation 3(6) – that remedial or investigative work was required to the electrical system as a result of 3(6) (above) and that this was not undertaken within 28 days (or a shorter period where required) of the further investigations; and the most recent inspection report does not indicate that urgent remedial action is required

13.3 The Council may impose a financial penalty where it is satisfied, beyond reasonable doubt, that a landlord has breached their duty under these regulations.

## **28. Smoke and Carbon Monoxide Regulations 2015**

28.1 Smoke and Carbon Monoxide Alarm Regulations 2015 The Council has a duty to serve a remedial notice (within 21 days of having reasonable grounds to believe that a breach of the landlord's duty has occurred) on a private landlord if there is no smoke alarm fitted on each storey of the premises on which there is a room used wholly or partly as living accommodation.

28.2 The Council has a duty to serve a remedial notice (within 21 days of having reasonable grounds to believe that a breach of the landlord's duty has occurred) on a private landlord if there is not a carbon monoxide alarm fitted in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance. The notice will require the landlord to take action within 28 days.

28.3 There is a penalty charge of up to £5,000 for not having a smoke alarm on every level of a premises used as a private rented dwelling and for not having a Carbon monoxide alarm fitted in rented dwellings where there are solid fuel appliances. The council has published a statement of principles regarding its fine structure. See Appendix 2 for more details.

### **29. Banning Orders**

29.1 The Housing and Planning Act 2016 introduced (from 6 April 2018) a new power for local housing authorities to apply to the First-tier Tribunal for an order that bans a rogue landlord or agent from letting housing in England. The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017 set down the offences that can lead to an application for a banning order to be made. Once granted, a banning order remains in place for at least 12 months.

29.2 Once a banning order is in place, the Council can take over the management of the property or properties of the landlord or agent receiving the order.

29.3 The Council will pursue a banning order for serious offences. Where the Council decides to pursue a banning order, it will consider the scope for working together with other local housing authorities. For example, through using the Rogue Landlord Database, the Council will be able to establish whether a landlord has committed offences in other local authority areas.

29.3.1 When considering a banning order the Council will take into account:

- The seriousness of the offence
- Previous convictions/Rogue Landlord Database
- Harm caused to a tenant
- Punishment of the offender
- Detering the offender from repeating the offence
- Deter others from committing similar offences

### **30. Rogue Landlord Database**

30.1 The council can enter details of landlords considered to be “rogue” onto the government database. It is available to all Local Authorities to enable them to share information about criminal landlords who operate in multiple areas.

### **31. Other Statutory Provisions**

15.1 There are a number of other statutes which give powers to Local Housing Authorities for a range of different issues. These will be used where appropriate.

### **32. Compliments and complaints policy**

26.1 The council recognises the need to provide an excellent public service which is responsive to the views of both residents and businesses. We are therefore

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committed to continually improve the Private Sector Housing Service in Portsmouth and want customers and service users to provide feedback, which may be used to improve our services further.

26.2 As required by the Regulators' Code, the council has a compliments and complaints procedure which allows all service users to give a compliment, give feedback or make a formal complaint. This can be accessed through our website by searching "complaint" or by telephoning the complaints line on 023 9283 4702.

26.3 Through the compliments and complaints procedure, it is the aim that complaints are resolved speedily, effectively and fairly. The tone of our contact is open, responsive and avoids unnecessary formality. Our written correspondence uses plain English and where appropriate, will be backed up with action to resolve such complaints.

26.4 If a complainant is not satisfied at the end of the complaints process, the matter can be raised with the relevant ombudsman service.

## Appendix 1

### Financial Penalties

#### **Housing Act 2004 (as amended by the Housing and Planning Act 2016) and the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020**

##### Part 1

##### 1.0 Introduction

- 1.1 The Housing Act 2004 was amended by the Housing and Planning Act 2016 to allow local authorities to impose a financial penalty as an alternative to prosecution of housing offences. These are known as Civil Penalty Notices (CPNs). On 1 June 2020, the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force and CPNs were extended to include breaches under these regulations.
- 1.2 The value of the civil penalties, set by the Council and based on national guidance and legislation and a risk based process, can range from £25 to £30,000, per offence, dependent upon the nature of the offence and the resulting harm and culpability.
- 1.3 Importantly, once an individual is subject to a civil penalty fine for Housing Act offences, the Council must consider a Rent Repayment Order (RRO) to recover monies paid through Housing Benefit or through the housing element of Universal Credit.
- 1.4 The purpose of this Policy is to set out the framework within which decisions will normally be made to issuing civil penalties in relevant cases. This policy may be departed from where the circumstances so justify. Each case will be dealt with on its own merits, having regard to its particular circumstances.  
  
This policy is designed to ensure transparency, consistency and fairness in how and when CPNs are imposed.
- 1.5 The list of offences under the Housing Act 2004 that that can currently be dealt with by way of a financial penalty are as follows:
  - Failure to comply with
    - improvement notice (Section 30)
    - with overcrowding notice, (Section 139(7))
  - Licensing of HMOs under Housing Act 2004 Part 2 (Section 72)
  - Licensing of houses under Housing Act 2004 Part 3 (Section 95)
  - Management regulations in respect of HMOs (Section 234)
- 1.6 If new legislation is introduced that permits the use of CPNs this Policy will be used (in consultation with the relevant Portfolio Holder).

## **2.0 Determining the appropriate course of action**

2.1 Offences under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 are only eligible for financial penalty fines and not prosecutions.

2.2 For eligible offences, when the Council is satisfied that a relevant offence has been committed and that it is in the public interest to proceed formally it must decide whether to prosecute or issue a civil penalty. This will be determined on a case-by-case basis but whilst not an exhaustive list, the following factors are some of the issues that will be considered in determining if a civil penalty or prosecution should be applied to an individual offence:

- The severity of the offence and the resulting potential harm
- The offending history of the alleged offender
- If the offence was committed by mistake or with knowledge
- The health and capacity of the alleged offender
- The public interest in taking the alleged offender into court where the offence will be publicised and the individual held to account in public.
- The likely impact of Court action versus a civil penalty, in deterring further offending.

2.3 The following are situations where a prosecution may be appropriate;

- The offence was serious, for example breach of a Prohibition Order or where there was imminent risk of serious injury or loss of life;
- The offender has been prosecuted for similar Housing Act offences

2.4 The following factors, whilst not exhaustive, are situations where the issuing of a civil penalty may be appropriate;

- No history of previous non-compliance with relevant legislation
- No previous convictions of relevant offences
- The offence was committed as a result of a genuine mistake or misunderstanding. This must be balanced against the seriousness of the offence.
- Prosecution is likely to have a serious adverse effect upon the offender's physical or mental wellbeing, but this must be balanced against the seriousness of the offence.

## **3.0 Civil Penalties**

3.1 The law currently allows a maximum financial penalty of £30,000 to be imposed per offence under the Housing and Planning Act 2016. The Government recommends that, to ensure that the civil penalty is set at an appropriate level, the local housing authority produce its own Policy to ensure fair and transparent application of penalties.

- 3.2 In determining whether to impose a financial penalty the Council will have regard to any relevant local enforcement policy and the Code for Crown Prosecutors. Due regard will also be given to any potential defences which will be considered by way of the representation received following the service of the 'Notice of Intent' to serve a CPN.
- 3.3 In certain circumstances, it may be appropriate to undertake an interview under caution in accordance with the Police and Criminal Evidence Act 1984 (PACE) to explore the defences but this will be entirely a decision for the Council. In total, we consider the procedure for issuing these penalties to be robust enough by way of providing fairness for the respondent.
- 3.4 In particular the factors set out in 3.6 of the Government Guidance on Civil penalties under the Housing and Planning Act 2016 have been incorporated into the charging table adjustments set out in Part 2 of this Appendix.
- 3.5 In determining the amount of penalty the Council will use the Financial Penalty Matrix (contained in Part 2 of this Appendix) which takes into account relevant matters including, but not limited to:
- The penalty should act as a deterrent to repeating the offence ,and to others from committing similar offences;
  - The penalty should remove any financial benefit obtained as a result of the commission of the offence;
  - The severity and seriousness of the offence;
  - The culpability and past history of the offender;
  - The harm, or potential harm, caused to the tenant and the impact on the wider community;
- 3.6 In determining the financial value of an imposed penalty, this Council shall have regard to the charging table and guidance notes in Part 2 of this Appendix.

#### **4.0 Process for imposing penalty charges**

- 4.1 Where it has been determined that a financial penalty may be appropriate to impose as an alternative to prosecution, the Council will follow the following process.
- 4.2 A "**Notice of Intent**" shall be served on the person suspected of committing the offence. The Notice shall specify:
- a. The amount of any proposed financial penalty
  - b. The reasons for proposing the financial penalty
  - c. Information about the right to make representation to the Council.
- 4.3 The person to whom the notice relates will be given 28 days to make **written representation** to the Council about the proposal to impose on them, a financial penalty. The representation may be via any legible written format, but to aid respondents, a template form will be included with the Notice of Intent.



- 4.4 Following the 28 day period the Council will decide:
- a. Whether to impose a financial penalty on the person, and
  - b. The final value of any such penalty imposed.
- 4.5 If the Council decides to impose a financial penalty, a **final notice** shall be issued imposing that penalty. The final notice will specify:
- a. the amount of the financial penalty,
  - b. the reasons for imposing the penalty,
  - c. information about how to pay the penalty,
  - d. the period for payment of the penalty,
  - e. information about rights of **appeal** to the first tier tribunal
  - f. the consequences of failure to comply with the notice.

#### 5.0 **Consequences of non-compliance and miscellaneous provisions**

- 5.1 If, after any appeal has been finally determined or withdrawn, a person receiving a financial penalty does not pay all or part of the penalty charge, the Council will recover the penalty by order from a County Court. Where appropriate, the Council will also seek to recover the costs incurred in taking this action from the person to which the financial penalty relates.
- 5.2 Financial Penalties are an alternative to criminal proceedings and as such if a penalty is imposed, no criminal proceedings can be initiated for the same offence.
- 5.3 The Council may, at any time:
- A. withdraw a notice of intent or final notice
  - B. reduce the amount specified in a notice of intent or final notice

Where the Council decides to take either of these actions, it will write to the person to whom the notice was given.

- 5.4 Where a person has received two financial penalties under the Housing legislation in any 12 months period, irrespective of the locality to which the offences were committed, the Council will consider making an entry on the national database of rogue landlords and property agents. When considering making an entry, the Council will have regard to any guidance issued by the Secretary of State. The Government is consulting on making changes to this and any such changes will be applied as adopted under this policy.

## **Appendix 1 Part 2**

### **Charging Table for determining value of Financial Penalties imposed under:**

- a) Housing Act 2004 (as amended by the Housing and Planning Act 2016)
- b) The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 and the

**NOTES: The following notes relate specifically to the tables of charges and would be applied as appropriate depending on the offence.**

#### **Note 1 – Offences that may be dealt with by way of imposing a financial penalty**

The starting point for a financial penalty is based on the type of offence, number of previous convictions or imposition of a financial penalty for the same type or similar offence in the previous four years.

After the starting point has been determined for the relevant offences, relevant premiums are added to the starting amount to determine the full financial penalty to be imposed. More than one premium can be added, where relevant.

No single financial penalty may be over £30,000. Where the addition of all relevant premiums would put the penalty above the maximum, it shall be capped at £30,000

#### **Note 2 - 2nd subsequent offence by same person/company**

The Council will take into account any such convictions or financial penalties secured irrespective of the legislation and the locality (including outside of Portsmouth) to which the offence relates.

#### **Note 3 - Housing portfolio of 10 or more units of accommodation**

The premium is applied where the perpetrator has control or manages 10 or more units of accommodation.

For the purposes of this premium, the definition of a person having control and person managing are as defined by Housing Act 2004 Section 263.

#### **Note 4 - Multiple Category 1 or high Category 2 Hazards**

This premium will apply where the failure to comply with the Improvement Notice relates to three or more Category 1 or high scoring Category 2 hazards (under the Housing Health and Safety Rating System) associated with different building deficiencies. For the avoidance of doubt this means that where two hazards are present but relate to the same property defect, they are counted as one hazard for purposes of this calculation.

For the purpose of this premium, a high scoring Category 2 hazard is defined as one scored following the Housing Health and Safety Rating System as “D” or “E”.

#### **Note 5 - Vulnerable occupant and/or significant harm has occurred as result of housing conditions**

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This premium will be applied once if either the property is occupied by a vulnerable person or if significant harm has occurred as a result of the housing conditions.

For purposes of this premium a vulnerable person is defined as someone who forms part of a vulnerable group under Housing Health and Safety Rating System relating to hazards present in the property or an occupant or group of occupants considered by the Council to be at particular risk of harm that the perpetrator ought to have had regard.

For purposes of this premium, significant harm is defined as physical or mental illness or injury that corresponds to one of the four classes of harm under the Housing Health and Safety Rating System Operating Guidance. At the time of publication of this Policy, this document can be found at [www.gov.uk](http://www.gov.uk) and a summary table is below.

<b>Hazard</b>	<b>Vulnerable age group (age of occupant)</b>
Damp and mould growth	14 and under
Excess Cold	65 or over
Excess Heat	65 or over
Carbon Monoxide	65 or over
Lead	under 3 years
Personal Hygiene, Sanitation and Drainage	under 5 years
Falls associated with baths etc.	60 or over
Falling on level surfaces etc.	60 or over
Falling on stairs etc.	60 or over
Falling between levels	under 5 years
Electrical hazards	under 5 years
Fire	60 or over
Flames, hot surfaces etc.	under 5 years
Collision and entrapment	under 5 years
Collision and entrapment - low headroom	16 or over
Position and operability of amenities etc.	60 or over

**Note 6 - Perpetrator demonstrates Income to be less than £450/week**

This premium (acts as a reduction) will be applied after all other relevant premiums have been included and if applicable will reduce the overall financial penalty by up to 50%.

To be applicable, the person served by the Notice of Intent must provide sufficient documented evidence of their income to the Council. Where the property is managed by a company then they will need to provide evidence relating to the company income. The responsibility to do this rests with the person served with the notice.

The figure of £450 per week is to be calculated after omission of income tax and national insurance.

The Council reserves the right to request further information to support any financial claim by the person served with the Notice, and where this is incomplete or not sufficiently evidenced may determine that the premium / reduction in financial penalty should not be applied. This decision rests with the Council.

**Note 7 - Previous history of non-compliance with these provisions**

This premium is applied where there has been a conviction or imposition of a financial penalty for the same type of offence in the previous four (4) years. The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

**Note 8 – Acts or omissions demonstrating high culpability**

This premium will be applied where, the person to which the financial penalty applies, acted in the opinion of the Council in a reckless or deliberate manner in not complying with the statutory notice or previous relevant formal advice. This premium may also be added where the Council considers that the person / company has also sought to mislead the Council in the exercise of its statutory duties.

**Tables of Civil Penalty Notice – Financial Level of Notices to be applied**

<b>A. Failure to comply with an Improvement Notice - Housing Act 2004 (Section 30)</b>		
1st offence	<i>(note 1)</i>	£5,000
2nd subsequent offence by same person/company	<i>(note 2)</i>	£15,000
Subsequent offences by same person/company	<i>(note 7)</i>	£25,000
<b>Premiums</b>		
<b>The following additional charges will be added to the charges above. All relevant charges will be applied i.e. more than one premium can be applied if relevant.</b>		
Acts or omissions demonstrating high culpability	<i>(note 8)</i>	+£2,500
Housing portfolio of 10 or more units of accommodation	<i>(note 3)</i>	+£2,500
Multiple Category 1 or high Category 2 Hazards	<i>(note 4)</i>	+£2,500
Vulnerable occupant and/or significant harm occurred as result of housing conditions	<i>(note 5)</i>	+£2,500
Perpetrator demonstrates to the satisfaction of the Council that their income is less than £450 per week	<i>(note 6)</i>	-50% of overall charge

<b>B. Offences in relation to licensing of Houses in Multiple Occupation (HMOs) under Part 2 of the Housing Act 2004 (Section 72)</b>		
<b>Failure to obtain Property Licence (section 72(1))</b>	<i>(note 1)</i>	£10,000
2nd subsequent offence by same person/company and any subsequent offences	<i>(note 2)</i>	£30,000
<b>Premiums</b> <b>The following additional charges will be added to the charges above. All relevant charges will be applied i.e. more than one premium can be applied if relevant.</b>		
Acts or omissions demonstrating high culpability	<i>(note 8)</i>	+£2,500
Housing portfolio of 10 or more units of accommodation	<i>(note 3)</i>	+£2,500
Vulnerable occupant and/or significant harm occurred as result of housing conditions	<i>(note 5)</i>	+£2,500
Perpetrator demonstrates to the satisfaction of the Council that their income is less than £450 per week	<i>(note 6)</i>	-50% of overall charge

<b>C. Breach of Licence conditions under Part 2 and 3 of the Housing Act 2004 (Section 72(2) and (3))</b>		£5,000 per licence breach
<b>Premiums</b> <b>The following additional charges will be added to the charges above. All relevant charges will be applied.</b>		
Acts or omissions demonstrating high culpability	<i>(note 8)</i>	+£2,500
Vulnerable occupant and/or significant harm occurred as result of housing conditions	<i>(note 5)</i>	+£2,500
Perpetrator demonstrates to the satisfaction of the Council that their income is less than £450 per week	<i>(note 6)</i>	-50% of overall charge

<b>D. Offences in relation to licensing of HMOs under Part 3 of the Housing Act 2004 (Section 95)</b>		
<b>Failure to Licence (section 95(1))</b>	<i>(note 1)</i>	£10,000
2nd subsequent offence by same person/company	<i>(note 2)</i>	£30,000
<b>Premiums</b> <b>The following additional charges will be added to the charges above. All relevant charges will be applied.</b>		
Acts or omissions demonstrating high culpability	<i>(note 8)</i>	+£2,500
Housing portfolio of 10 or more units of accommodation	<i>(note 3)</i>	+£2,500
Vulnerable occupant and/or significant harm occurred as result of housing conditions	<i>(note 5)</i>	+£2,500
Perpetrator demonstrates Income to be less than £450 per week	<i>(note 6)</i>	-50%
<b>Breach of Licence conditions (Section 95(2)) -</b>		£5,000 Per licence breach
Acts or omissions demonstrating high culpability	<i>(note 8)</i>	+£2,500
Vulnerable occupant and/or significant harm occurred as result of housing conditions	<i>(note 5)</i>	+£2,500

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Perpetrator demonstrates to the satisfaction of the Council that their income is less than £450 per week <i>(note 6)</i>	-50% of overall charge
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<b>E. Offences of contravention of an overcrowding notice Housing Act 2004 (section 139)</b>		
1st relevant offence <i>(note 1)</i>		£5,000
2nd subsequent offence by same person/company <i>(note 2)</i>		£15,000
Subsequent offences by same person/company <i>(note 7)</i>		£30,000
<b>Premiums (use all that apply)</b>		
Acts or omissions demonstrating high culpability <i>(note 8)</i>		£2,500
Vulnerable occupant and/or significant harm occurred as result of overcrowding <i>(note 3)</i>		£2,500
Perpetrator demonstrates to the satisfaction of the Council that their income is less than £450 per week <i>(note 6)</i>		-50% of overall charge

<b>F. Offences of failure to comply with management regulations in respect of Houses in Multiple Occupation (HMOs) under the Housing Act 2004 (Section 234)</b>		
1 <sup>st</sup> relevant offences <i>(note 1)</i>		£1,000 per offence
Second subsequent offences by same person/company for the same offence		£3,000 per offence
All subsequent offences by same person/company for the same offence		£5,000 per offence
<b>Premiums (use all that apply)</b>		
Acts or omissions demonstrating high culpability <i>(note 8)</i>		+£2,500
Housing portfolio of 10 or more units of accommodation <i>(note 3)</i>		+£2,500
Vulnerable occupant and/or significant harm occurred as result of housing conditions <i>(note 5)</i>		+£2,500
Perpetrator demonstrates to the satisfaction of the Council that their income is less than £450 per week <i>(note 6)</i>		-50% of overall charge

<b>G. Offences of breaches under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.</b>			
	<b>Relevant Offences</b>	<b>Relevant Regulation</b>	<b>Fine Amount</b>
	<b>Note that the maximum fine per breach is £30,000</b>		
1	Failure to obtain a report from the person conducting an inspection and test, which gives the results of the inspection and test and the date of the next inspection and test;	(3)(a)	£5,000
2	Failure to supply a copy of that report to each existing tenant of the residential premises within 28 days of the inspection and test;	(3)(b)	£3,000
3	Failure to supply a copy of that report to the local housing authority within 7 days of receiving a request in writing for it from that authority;	(3)(c)	£2,500

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4	Failure to retain a copy of that report until the next inspection and test is due and supply a copy to the person carrying out the next inspection and test;	(3)(d)	£1,000
5	Failure to supply a copy of the most recent report to— i) any new tenant of the specified tenancy to which the report relates before that tenant occupies those premises; and ii) any prospective tenant within 28 days of receiving a request in writing for it from that prospective tenant.	(3)(e)	£3,000
6	Failure to ensure that further investigative or remedial work is carried out by a qualified person within— (a) 28 days; or (b) the period specified in the report if less than 28 days	(4)	£2,500
7	Failure to obtain written confirmation from a qualified person that the required further investigative or remedial work has been carried out and that— (i) the electrical safety standards are met; or (ii) further investigative or remedial work is required;	(5)(a)	£2,500
8	Failure to supply written confirmation, together with a copy of the report under sub-paragraph (3)(a) which required the further investigative or remedial work to each existing tenant of the residential premises within 28 days of completion of the further investigative or remedial work; and	(5)(b)	£1,000
9	Failure to supply that written confirmation, together with a copy of the report under sub-paragraph (3)(a) which required the further investigative or remedial work to the local housing authority within 28 days of completion of the further investigative or remedial work.	(5)(c)	£1,000
10	Failure to follow due process in respect of that further investigative or remedial work. Where further investigative work is carried out in accordance with paragraph (4) and the outcome of that further investigative work is that further investigative or remedial work is required, the private landlord must repeat the steps in paragraphs (4), (5a), (5b) and (5)(c).	(6)	£1,000
<b>Premiums for offences under G</b>			
<b>The following additional charges will be added to the charges above. All relevant charges will be applied i.e. more than one premium can be applied if relevant.</b>			
Acts or omissions demonstrating high culpability <i>(note 8)</i>		+£2,500	
Housing portfolio of 10 or more units of accommodation <i>(note 3)</i>		+£2,500	
Vulnerable occupant and/or significant harm occurred as result of housing conditions <i>(note 5)</i>		+£2,500	
Perpetrator demonstrates to the satisfaction of the Council that their income is less than £450 per week <i>(note 6)</i>		-50% of overall charge	

### Section A

**Mitigating factors that may be considered by the council and may reduce the level of a final penalty notice.**

The council in considering written representation against Civil Penalty Notices will consider the information provided, if any, by the landlord (including from their agent). Where the council is satisfied that this provides mitigation in line with one or more of the following, the council may reduce the fine levied by a rate as stated by this policy.

The decision to apply a 'Mitigating reduction' in Final Penalty Notice fine rests with the council. The council's decision will be based on the landlord's written statement and any accompanying documents provided by them. It is their duty to provide their full evidence in support of their representation and not for the council to seek it out on their behalf.

**1. Steps already taken to mitigate the offence(s) (up to 25% reduction in fine)**

This will include but not be limited to:

- Submission of valid HMO licence application including making the relevant fee. Where an incomplete and or invalid or partial application is made this will not be considered sufficient to provide mitigation (25% reduction in fine).
- Completion of all (not part only) remedial works that were required under the Improvement or Remedial Notice:
  - Outside the Improvement or Remedial Notice specified period but within the Notice of Intent Period (15% reduction in fine). This is only applicable where all the specified improvement works have been completed to the satisfaction of the council including providing certificates where relevant. The onus is on the landlord to enable the inspection of completed works within the relevant Intention Notice period of 28 days.
  - Outside the Improvement or Remedial Notice specified period and outside the Notice of Intent Period (10% reduction in fine) but before the Final Notice is issued. This is only applicable where all the specified improvement works have been completed to the satisfaction of the council and relevant certificates provided. The onus is on the landlord to enable inspection of completed works within relevant times.

**2. Full written acceptance of guilt for the offence(s) (10% reduction in fine)**

This is only applicable where landlord accepts guilt (in writing) for all offences that have been listed within the Notice of Intention by writing to the council as part of their representation.

**3. Written evidence from the landlord showing that the breach of the statutory requirements was by virtue of an omission and or an extenuating circumstance (up to 10% reduction in fine)**

An example would be where the council has advised a landlord of their duty to apply for an HMO licence and the landlord has been unable to apply within a reasonable time period due to them having a serious and documented medical condition (evidenced by a medical practitioner).



4. Any further factor that the council considers to be sufficiently mitigating nature that is not covered above or within the culpability and harm factors. (10% reduction in fine)

### Other situations

The council is aware that in some situations the landlord and their contractors may not be able to undertake the necessary repairs within the specified period of the Improvement or Remedial Notice as a result of a circumstance beyond their normal control. This may for example, be due to the tenant not giving access to them or their contractors to provide estimates for or to undertake the specified works. The council will only accept this as a mitigation where the landlord has given the tenant the required 24 hours' notice of their intention in writing but the tenant has failed to give them access. In most instances, one unsuccessful attempt will not be considered as mitigation. In these and other circumstances, the landlord must provide the council with sufficient evidence for consideration. The council in these cases may choose to:

- Extend the time for the landlord to secure compliance or
- Either not issue or suspend the issue of a Final Notice (therefore levy no fine at the time) or
- If the council is not satisfied with the evidence, they will ordinarily continue to issue the Final notice.

It is the landlord's responsibility to provide evidence of why they have been unable to undertake the works. Statement(s) to this effect must be signed by the respondent and or their contractor. Respondents may wish to submit copies of letters / emails sent by them to their tenant seeking appropriate access to undertake the works and any responses from their tenant to the same.

## Section B

### Minimum fine

The decision to manage private rented properties (which is ultimately a business decision) is a choice and landlords who are unable to do this appropriately themselves are able to appoint suitably qualified and registered agents to manage their properties on their behalf.

Civil penalties are issued where the council considers that an offence has occurred. A guiding principle in the level of fine that is used by the council is that,

*The civil penalty will be **fair and proportionate** but in all circumstances will **act as a deterrent and remove any gain** as a result of the offence(s).*

For this reason the council has set minimum fine levels as listed in **Table 1** below:

<b>Table 1: Minimum Fines</b> for first offences after considering mitigating factor(s)	<b>Minimum Rate</b>
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Failure to comply with an Improvement Notice - Housing Act 2004 (Section 30). Normal penalty £5,000	£2,500
Offences in relation to licensing of Houses in Multiple Occupation (HMOs) under Part 2 of the Housing Act 2004 (Section 72) Failure to obtain Property Licence (section 72(1)) Normal penalty £10,000	£5,000
Breach of Licence conditions under Part 2 and 3 of the Housing Act 2004 (Section 72(2) and (3)) Normal penalty £5,000	£2,500
Offences in relation to licensing of HMOs under Part 2 and Part 3 of the Housing Act 2004 (Section 95)	
Failure to Licence (section 95(1)) Normal penalty £10,000	£5,000
Breach of Licence conditions (Section 95(2)) Normal penalty £5,000	£2,500
Offences of contravention of an overcrowding notice Housing Act 2004 (section 139) Normal penalty £5,000	£2,500
Offences for failure to comply with management regulations in respect of Houses in Multiple Occupation (HMOs) under the Housing Act 2004 (Section 234) Normal penalty £1,000 per offence	£500 per offence
Offences of breaches under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020	£1,000

Whilst mitigating factors may be considered and agreed by the council (see section A) these will not in any situation (individually or combined) reduce a civil penalty fine below the minimum fine level shown in Table 1 above.

### Section C

#### Early Settlement of Final Penalty Notice Fine / Invoice

The council offers a 25% discount for prompt payment of fines / invoices relating to Housing legislation and Electrical Safety Regulations.

Final penalty notices are accompanied by invoices from the Council. If a person served with a final penalty fine makes a payment to the council as follows, the remaining 'balance' of fine will be 'written off' i.e. not sought. All conditions must be complied with:

- The payment must be made electronically (BACs only) within 30 days of the fine and invoice being issued;
- The payment must be to a total of 75% (rounded to the nearest whole pound) of the fine / invoice.

### Section D

#### Calculation of total reduction in fine due to mitigation and early payment

The council will add all relevant mitigation discounts together and then deduct the resultant percentage from the original fine level.

As an example,

The council advises a landlord that a fine of £10,000 is proposed under a Notice of Intent for a landlord who fails to licence a licensable HMO where no premiums are applicable.

The landlord makes written representation as follows:

- A)** Mitigation of action – submits a valid HMO application with relevant fee within the representation period of 28 days of service of the Notice of Intent.
- B)** Makes a written statement that they admit their guilt and the offence of not previously securing a HMO licence

The council duly considers the above and applies mitigation reductions as follows:

For A) 25% and B) 10% the council applies this in total as a 35% reduction in the final civil penalty notice. The final civil penalty notice is issued at £6,500 rather than the original £10,000. As this is above the minimum fine level (Table 1) it is considered appropriate.

The landlord makes payment in line with the council's early payment reduction initiative (i.e. electronically within 30 days of the notice) and therefore makes a payment of £4,875 (i.e. 75% of the £6,500). Therefore by making a prompt payment, they have reduced their fine below the normal minimum fine level for this type of offence.

## Appendix 2

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

#### **Statement of principles for determining financial penalties**

##### **Introduction**

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

##### **Purpose of the 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.

When deciding on the amount for the penalty charge, the Council will have regard to the 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 contained a solid fuel burning appliance. AND for tenancies starting from 1 October 2015
- that checks are made by the landlord, or someone acting on his behalf, that the alarm (s) is/are in proper working order on the day the tenancy starts.

Where the Council 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 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 document within 28 days of when the remedial notice is served.

Portsmouth City 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 of 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 signing 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 and sometimes with depression. For all these reasons Carbon Monoxide is often dubbed “the silent killer”. Open fires and solid fuel appliances can be a significant source 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 of 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 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 the carrying out of 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 6 weeks.

A penalty charge notice will state:

- The reasons for imposing the penalty charge
- The premises to which the penalty charge relates
- The number and type of prescribed alarms (if any) which an authorised person has installed at the premises
- The amount of the penalty charge
- That the landlord is required, within a period specified in the notice:
  - To pay the penalty charge, or
  - To give written notice to the local housing authority requesting a review the penalty charge notice
- How payment of the penalty charge must be made
- Contact details of the person to whom the request for a review and representations should be sent, (including any email address).

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 document. 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 by 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 the 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 a living rooms or kitchens, or
- is 3 or more storeys high.

A full fire risk assessment will subsequently be undertaken, with regards to Portsmouth City Council Fire Safety Protocol 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.



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All communications for requests for review or representations made against the Remedial Notice (regulation 5) or the Penalty Charge Notice (regulation 8) are to be in writing, the details of who and where to send this will be detailed on the notice.

Appendix 3

**Typical legislation used by this enforcement policy:**

Housing Act 2004

Under the Housing Act 2004 Part 1, 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 Housing Health and Safety Rating System (HHSRS). There are a range of enforcement powers under the Housing Act 2004 which the Council will consider in its decision making process when Hazards are identified. See Appendix 4.

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 the payment of the bill.

Local Government (Miscellaneous Provisions) Act 1976

This act 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 to 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 7 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.

### 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.

### 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 pipes, 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.

### Smoke and Carbon Monoxide Alarm Regulations 2015

The Council has a duty to serve a remedial notice (within 21 days of having reasonable grounds to believe that a breach of the landlord's duty has occurred) on a private landlord if there is no smoke alarm fitted on each storey of the premises on which there is a room used wholly or partly as living accommodation. The Council has a duty to serve a remedial notice (within 21 days of having reasonable grounds to believe that a breach of the landlord's duty has occurred) on a private landlord if there is not a carbon monoxide alarm fitted in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance. The notice will require the landlord to take action within 28 days.

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

From 1 July 2020, all new private tenancies in England will need to ensure that electrical installations are inspected and tested by a qualified person before the tenancy begins. The landlord will then need to ensure that the installation is inspected and tested at least every five years – and more often if the most recent safety report requires it.

For existing tenancies, an electrical safety test will need to be carried out by 1 April 2021, with regular tests following this as outlined above.

**Other legislation:**

- Anti-social Behaviour, Crime and Policing Act 2014
- Caravan Sites Act 1968
- Caravan Sites and Control of Development Act 1960
- Deregulation Act 2015
- Energy Act 2013
- Enterprise and Regulatory Reform Act 2013
- Highways Act 1980
- Home Energy Conservation Act 1995
- Housing Act 1985, 1996 and 2004
- Housing and Planning Act 2016
- Housing Grants, Construction and Regeneration Act 1996
- Local Government and Housing Act 1989
- Local Government Act 2003
- Mobile Homes Act 2013
- Noise Act 1996
- Prevention of Damages by Pest Act 1949
- Protection from Eviction Act 1977
- Public Health Acts 1936
- Regulatory Reform (Housing Assistance) Order 2002
- Sustainable Energy Act 2003
- Town and Country Planning Act 1990

Including Regulations and Orders made under the Act.

## Appendix 4

### **The Housing Health and Safety Rating System (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 Housing Health and Safety Rating System (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**

The following provides a brief summary of each of the 29 hazards:

#### **1. Damp and Mould Growth**

Health threat from dust mites and mould caused by dampness and/or high humidity. Includes threats to mental health from living with damp and condensation.

#### **2. Excess Cold**

Health threat from low indoor temperatures from lack of central heating or affordable heating, poor insulation, disrepair of heating system or building components etc.

#### **3. Excess Heat**

Health threat from high indoor temperatures caused by lack of ventilation, excess heating or heat gain in summer from poor insulation, large expanses of glass etc.

#### **4. Asbestos (and manufactured mineral fibres)**

Health threat caused by exposure to asbestos fibres and manufactured mineral fibres (MMF) e.g. from insulation of pipework, lofts and cavity walls. Inhalation of fibres.

#### **5. Biocides**

Health threat from chemicals used to treat timber, insect infestation and mould growth in dwellings. Health effects may vary.

#### **6. Carbon Monoxide (CO) and fuel combustion products**

Health threat from excess levels of CO, nitrogen dioxide (e.g. from gas cookers), sulphur dioxide (e.g. from coal fires) and smoke in the dwelling.

#### **7. Lead**

Health threats from high levels of lead e.g. in old paintwork and old lead plumbing.

### **8. Radiation**

Health threats from radon gas building up in sub-floor space from radiation emitting rock as part of normal ground conditions.

### **9. Uncombusted Fuel Gas**

Health threat from escaping gas within a dwelling causing potential explosions/fire.

### **10. Volatile Organic Compounds (VOCs)**

Health threats from organic chemicals such as formaldehyde found in a wide variety of materials in the home.

### **11. Crowding and Space**

Psychological as well as infectious disease health threats from overcrowding due to lack of living space including sleeping, cooking, washing etc.

### **12. Entry by Intruders**

Psychological and actual health threat from intruders or fear of intruders due to poor security against unauthorised entry e.g. inadequate/broken door and window locks, fences.

### **13. Lighting**

Lack of natural and/or artificial light or poorly positioned lights. Includes psychological effect from lack of a view. Assessment is of whole dwelling.

### **14. Noise**

External noise from railways, airports, factories or roads, internally from adjacent dwellings lacking sound insulation (between flats), internal noise from plumbing, for example.

### **15. Domestic Hygiene Pests and Refuse**

Due to poor design and construction, damaged surfaces, access and harbourage for pests.

**16. Food Safety**

Inadequate facilities for storage, preparation and cooking of food.

**17. Personal hygiene, sanitation and drainage.**

Infectious disease and effects on mental health associated with poor personal hygiene due to inadequate washing and clothes washing facilities, sanitation and drainage.

**18. Water Supply**

Disease, poisoning and parasitic infections due to poor quality or contaminated domestic water supply.

**19. Falls associated with Baths**

Slipping getting in or out of bath or showers resulting in injury, fractures , cuts etc.

**20. Falling on Level Surfaces**

Falling on floors, yards, paths, trip steps less than 300mm resulting in injury, fractures, cuts etc.

**21. Falling on Stairs etc.**

Falls associated with internal or external stairs, steps over 300 mm and ramps resulting in injury.

**22. Falling Between Levels**

Where difference in level is over 300 mm - includes injuries arising from falls from balconies, landings, windows, accessible roofs, basement wells, retaining walls etc.

**23. Electrical Hazards**

Shocks and burns from electrocution due to defective wiring, plugs etc. Includes lightning strikes.

**24. Fire**

Potential fatality from burns and smoke inhalation caused by uncontrolled (accidental) fires frequently associated with cooking appliances, chip pans, defective heating/electrical appliances, dangerous wiring etc.

### **25. Flames and Hot Surfaces**

Burns caused by contact with hot flames/surfaces or controlled fires or liquids (e.g. when cooking or from heaters) or scalds from hot liquids and vapours.

### **26. Collisions, Cuts and Strains**

Physical injury from a) trapping body parts in architectural features, doors or windows; or b) collisions with architectural glazing, windows, doors, low headroom, ceilings and walls.

### **27. Explosions**

Injury and the threat of injury from explosions from mains or stored gas.

### **28. Position and Operability of Amenities**

Strains and injuries from awkward positioning of windows, amenities such as sinks and wash hand basins, kitchen cupboards, switches etc.

### **29. Structural Collapse and Falling Elements**

Injury arising from falling slates, bricks, ceiling plaster or windows etc. and collapse from structural failure of roofs, walls or floors, guard rails etc.

## **The Assessment Process**

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 key 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 which fall into bands A – C. These 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 but 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 – this 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 – this 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

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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.

Further information about the types of notices and when they would typically be considered can be found in the government enforcement guidance document [Housing health and safety rating system \(HHSRS\) enforcement guidance: housing conditions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/housing-health-and-safety-rating-system-hhsrs-enforcement-guidance-housing-conditions) as well as a short updated government guidance document [Local authority enforcement powers under the Housing Act 2004 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/local-authority-enforcement-powers-under-the-housing-act-2004)