

ENFORCEMENT POLICY
PRIVATE SECTOR HOUSING ENFORCEMENT
October 2025

TABLE OF CONTENTS

1. Introduction
2. Policy Aims & Objectives
3. Enforcement Options
 - 3.1. Legislative Background
 - 3.2. Approach to Enforcement
 - 3.3. The Relationship between Enforcement and the Deregulation Act 2015
 - 3.4. Emergency Action
 - 3.5. Charging for Enforcement Action
 - 3.6. Works in Default
 - 3.7. Rent Repayment Orders
 - 3.8. Financial Penalties
 - 3.9. Management Orders
 - 3.10. Rogue Landlords
 - 3.11. Delivery in Partnership
 - 3.12. Monitoring & Review
 - 3.13. Enquiries
4. Service Delivery & Standards
 - 4.1. Service Standards
 - 4.2. Leaseholders
 - 4.3. Social Sector Properties
 - 4.4. Empty Properties
 - 4.5. Inspection of Housing Conditions
 - 4.6. Illegal and Retaliatory Evictions

Appendix C

- 4.7. Energy Efficiency
- 4.8. Electrical Safety
- 4.9. Smoke & Carbon Monoxide
- 4.10. Withdrawal of Service

5. Mandatory & Discretionary Licensing

- 5.1. Regulatory Regimes (Planning / Article 4 Directions)
- 5.2. Mandatory Licensing
- 5.3. Additional Licensing
- 5.4. Selective Licensing
- 5.5. Fit & Proper Persons test

6. Appendices

- 6.1. Appendix 1 - Statement of principles to determine the amount of a penalty charge under Part 4 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 as amended by The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022 (“the Regulations”)
- 6.2. Appendix 2 - Statement of principles to determine the amount of a penalty charge for a breach of minimum energy efficiency standards (MEES) with respect to domestic privately rented property
- 6.3. Appendix 3 - Civil Penalties under the Housing and Planning Act 2016 and The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

1. INTRODUCTION

The Regulatory Services Partnership (RSP) serving the boroughs of Merton, Wandsworth and Richmond Upon Thames provides a Regulatory Enforcement Policy that sets out the principles of good regulatory practice and the approaches that are followed by our regulatory services across these services. This document is a supplement to that policy and explains in more detail the policy with regards to private sector housing enforcement.

This policy details the way in which each Council shall regulate standards in private rented housing and tackle empty homes, providing a background to the legislation and guidance on which it is based.

This policy ensures a consistent approach and helps stakeholders including tenants, managing agents and landlords understand what to expect from the service and is consistent with the overarching enforcement policy of each Council.

We recognise the contribution that responsible entities make to the private housing sector and look to support those responsible landlords whilst simultaneously setting out within this policy how the Council seeks to promote efficient and effective approaches to regulatory inspection and enforcement without imposing unnecessary burdens on landlords and managing agents. This approach ensures a firm stance is taken against those who are not responsible and actively seeking to avoid compliance, thus endangering the health, safety and welfare of their tenants.

This policy has regard to the Regulators Code 2014, which came into statutory effect on 6 April 2014 under the Legislative and Regulatory Reform Act 2006. It provides a clear, flexible and principle-based framework for how regulators should engage with those they regulate.

2. POLICY AIMS & OBJECTIVES

The main themes of this policy are to make sure the Council takes appropriate action to achieve the following general aims:

- To ensure that private sector tenants live in homes that are free from serious hazards and risks to their health and safety.
- To ensure that all licensable privately rented properties are licensed; that all licensing conditions are met and that action is taken against those non-compliant landlords.
- To ensure that effective intervention occurs where private housing remains empty for an unreasonable amount of time, promoting the empty property grant scheme enabling properties to be brought back into use as affordable housing.
- To publicise enforcement action taken against rogue landlords, raising the profile of action taken by the Council; increasing public confidence and wider awareness within the sector.
- To provide appropriate support for compliant landlords and promote a fairer private housing sector by tackling non-compliant landlords.

3. ENFORCEMENT OPTIONS

3.1. Legislation

The Private Sector Housing service is responsible for ensuring that the Council performs their statutory functions under the following legislation, including any

Appendix C

regulations, orders or other statutory provisions made under or incorporated into the below:

- i. Local Government (Miscellaneous Provisions) Act 1976
- ii. Local Government (Miscellaneous Provisions) Act 1982
- iii. Public Health Act 1936
- iv. Public Health Act 1961
- v. Deregulation Act 2015
- vi. Prevention of Damage by Pests Act 1949
- vii. Building Act 1984
- viii. Anti-Social Behaviour, Crime and Policing Act 2014
- ix. Environmental Protection Act 1990
- x. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, as amended by The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022
- xi. Housing and Planning Act 2016
- xii. Protection From Eviction Act 1977
- xiii. The Gas Safety (Installation and Use) Regulations 1998
- xiv. Energy Act 2011
- xv. The Energy Efficiency (Private Rented Property (England & Wales) Regulations 2015
- xvi. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
- xvii. Clean Air Act 1993
- xviii. Housing Act 1985
- xix. Housing Act 2004

In addition to powers as a local housing authority there are further powers available to the Council (as the local planning authority and appropriate Trading Standards enforcement agency (regarding the regulation of letting and managing agents):

- xx. Enterprise and Regulatory Reform Act 2013

Appendix C

- xxi. Redress scheme for Letting Agency Work and Property Management Work (England) Order 2014
- xxii. Consumer Rights Act 2015
- xxiii. Town and Country Planning Act 1990 (as amended)

3.2. Approach To Enforcement

The information provided by the Regulatory Services Partnership (RSP) Enforcement Policy describes the range of enforcement action available to the services and the approach taken when deciding which course of action is the most appropriate. The information provided below is supplementary and outlines some situations where a particular course of action may be taken.

No Action

This may be appropriate in certain circumstances for example:

- Where the risk to health and safety is sufficiently low
- Where taking enforcement action would be disproportionate or inappropriate

Informal Action

In most cases officers will attempt to secure the required repairs or improvements informally and within a reasonable amount of time as set out within service standards. Informal action may take the form of letters, emails, and schedules of work. It will be made clear that formal action may follow where there is a failure to respond to informal requests to carry out works.

Formal Action

When considering formal action, the Council will, where appropriate, discuss the circumstances with those suspected of a breach, considering matters when deciding the most appropriate approach. Factors that will be taken into consideration include:

- The risk that non-compliance poses to health and safety, for example no heating in cold weather, no hot water to wash and prepare food, exposed electrical wiring, gas leak, raw sewage.

Appendix C

- The responsible person fails to carry out works informally.
- There is a history of failure to respond to formal or informal requests.
- There is a history of poor management at the property, or any other property managed by the landlord and/or managing agent.
- There is a record of criminal convictions for housing related offence(s) in the past five years or a simple caution has been issued in the last two years.
- There are aggravated circumstances, such as aggressive or violent behaviour.

There are several options available for formal action. The decision as to which is the most appropriate depends on the circumstances of each case, the relevant legislation and the risk to health and safety. The options are outlined below:

Formal Notices/Orders

Shall be made in accordance with the requirements of relevant legislation. Such notices and orders will include:

- The reason for the action being taken
- Works required.
- Timescale for completion or any works (as required)
- How representations may be made
- Relevant appeal periods
- Details of any fees/charges
- The consequence of non-compliance

Appendix C

The Council has the power to suspend Improvement Notices and Prohibition orders served under Housing Act 2004. Suspension will be considered on a case-by-case basis with reasoning providing in the notice itself.

3.3. The Relationship between Enforcement and the Deregulation Act 2015

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

What should happen:

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

When it doesn't happen this way

- Where a landlord fails to engage with the tenant(s) or fails to undertake reasonable works, then the Council will step in and take enforcement action. Where action is taken the landlord cannot issue section 21 eviction notice.

Where tenants have complied with the requirements of the Deregulation Act 2015 (the Council request they do so before making requests for service) then the Council will forego any informal action and proceed directly to formal enforcement action to prevent the possibility of a retaliatory eviction.

3.4. Emergency Action

There may be occasions when emergency enforcement action is taken without the service of legal notice. Examples include:

Appendix C

- when there is an imminent risk of serious harm to the health and safety of occupiers of residential premises or others. (s40 (Emergency Remedial Action), Housing Act 2004)
- When there is an immediate need to secure a building against unauthorised entry or to prevent it becoming a danger to public health. (s29 (Protection of buildings), The Local Government (Miscellaneous Provisions) Act 1982).

In circumstances where works would be inappropriate, disproportionate, or impossible to remedy the emergency an Emergency Prohibition Order (s43 (Emergency Prohibition Orders), Housing Act 2004) will be made, to impose prohibitions on the use of premises as specified in the order.

In all cases, where legislation permits, the Council will seek to recover the cost of the work and administration and officer costs associated with the action.

Prosecution

Prosecution will be considered in all cases of non-compliance after considering all other possible options available. Prosecutions will be carried out in conjunction with the South London Legal Partnership.

Simple Caution

The Council may use Simple Cautions where someone has committed a less serious offence. Simple Cautions warn people that their behaviour has been unacceptable and makes them aware of the legal consequences should they commit further offences.

Simple Cautions may only be issued as an alternative to prosecution where:

- There is sufficient evidence to provide a realistic prospect of a conviction if the offender were to be prosecuted.
- The offender is 18 years of age or above.
- The offender admits the offence.

- The offender agrees to accept a caution.

3.5. Charging for Enforcement Action

The Housing Act 2004 allows the Council to make a reasonable charge to recover administrative and other expenses for taking certain enforcement action.

The service will recover all costs and fees when formal action is taken when we think it is reasonable to expect the responsible person to pay these in the circumstances. Fees and charges are agreed by Full Council on an annual basis and published on the website.

3.6. Works In Default

Works in default will be considered where the Council has legally required a person to carry out works but they have failed to do so. The Council may carry out all or some of the required works. The powers are provided in the specific legislation being used.

The Council will normally seek to recover all the costs associated with undertaking works in default, including all administrative costs. The Council will also consider prosecution or the imposition of a Financial Penalty for any failure to act in addition to carrying out works in default to resolve the matter. A civil penalty is a financial penalty imposed by the Council (in its capacity as a local housing authority) on an individual or organisation as an alternative to prosecution for certain housing offences under the Housing Act 2004 (or related regulations).

3.7. Rent Repayment Orders

An application for a Rent Repayment Order (RROs), may be made by a tenant or the local authority to the First Tier Tribunal (Property Chamber) in respect of the following offences committed after 6 April 2017:

Appendix C

- Failure to comply with an Improvement Notice under Section 30 of the Housing Act 2004
- Failure to comply with a Prohibition Order under Section 32 of the Housing Act 2004
- Failed to licence a property requiring a licence under the Housing Act 2004
- Breach of a banning order made under Section 21 of the Housing and Planning Act 2016
- Using violence to secure entry to a property under Section 6 of the Criminal Law Act 1977
- Illegal eviction or harassment of the occupiers of a property under Section 1 of the Protection from Eviction Act 1977.

The following is a link to the application form and guidance notes provided by HMCTS <https://www.gov.uk/government/publications/form-rro1-application-by-tenant-or-local-housing-authority-for-a-rent-repayment-order-housing-and-planning-act-2016>

The rent that can be recovered is capped at 12 months.

Rent repayment orders can be granted to either the tenant or the Council. If the tenant paid their rent, this is repaid to the tenant. If rent was paid by Housing Benefit or by the housing element of Universal Credit, the rent is repaid to the Council. If the rent was paid by a combination of these methods, the rent is repaid proportionately to reflect the contributions made by each party.

If the Council imposes a financial penalty, it must consider whether to make a rent repayment order. In most cases the Council will make an application for a rent repayment order to recover monies paid through Housing Benefit or through the

Appendix C

housing element of Universal Credit. We will also offer advice, guidance, and support to assist tenants to apply for a rent repayment order if the tenant has paid the rent themselves.

3.8. Financial Penalties

A financial penalty may be imposed by the Council, as an alternative to prosecution for certain housing offences, up to a maximum of £30,000. These offences include:

- Failure to comply with an Improvement Notice (Housing Act 2004)
- Failure to licence or other licensing offences relating to HMOs (Housing Act 2004)
- Failure to comply with an Overcrowding Notice (Housing Act 2004)
- Failure to comply with a regulation in respect of an HMO (Housing Act 2004)
- Breaching a Banning Order (Housing and Planning Act 2016)

Failure to comply with the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 as amended by the Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022, will also result in the Council carrying out the works necessary to install appropriate smoke and/or carbon monoxide detection and issuing a financial penalty of up to £5,000.

Failure to comply with the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 will result in the Council serving a Remedial Notice. Where there are urgent repairs required the Council may undertake Urgent Remedial Action. The Council may also issue a financial penalty of up to £30,000 where a landlord is in breach of any of the duties set out in these regulations.

Appendix C

Failure to pay a Financial Penalty will result in the Council pursuing recovery of debt through the County Court.

Further detail of the manner in which the Council applies Fixed Penalty Notices is detailed within appendices below.

3.9. Management Orders

The Council may determine to seek an Interim Management Order (IMO) where:

- a) there is no reasonable expectation of a licence being granted and/or
- b) where the health and safety or welfare of the occupants is at serious risk and/or
- c) breach of a banning order by landlords and agents

An IMO lasts for a maximum of 12 months and gives control of the subject property to the Council. At the end of the interim period a Final Management Order (FMO) of up to 5 years may be sought, which follows the same principles but on a longer-term basis.

The Council has plans in place to manage properties where a management order is made. These arrangements may include the use of external agencies.

3.10. Rogue Landlords

The Council participates in the Greater London Authority (GLA) Rogue Landlord and Agent Checker, which provides a two-tier database. The public tier is for access by members of the public, providing details of landlords and letting agents who have faced certain enforcement action for housing related offences such as prosecutions and fines.

The private tier provides a database accessible only to London boroughs and the London Fire Brigade (LFB), containing a greater range of enforcement actions with records viewable for a longer period than the public tier. The Council uses their private tier to assist when determining matters such as whether an individual or organisation is 'fit and proper' to hold a property licence.

Appendix C

The Council will record all relevant enforcement actions including prosecutions and financial penalties on the GLA Rogue Landlord and Agent Checker. Withdrawn or quashed financial penalty notices will not be placed on the checker.

Database of rogue landlords and property agents under the Housing & Planning Act 2016

Where a landlord receives two or more financial penalties over a 12-month period, the Council may include that person's details in the national database of rogue landlords and property agents.

The purpose of the database is to enable local housing authorities to record information about, and target enforcement action against, any landlord who has:

- received a banning order under the Housing and Planning Act 2016.
- been convicted of a Banning Order offence; or
- received two or more financial penalties over a 12-month period.

Application to have landlord and agent details entered on the database is a statutory duty where a Banning Order has been given and is at the discretion of the Council in other circumstances.

The Council will apply to have details entered on the database where there is a duty to do so and in other cases, where the law allows discretion, when it is in the public interest to do so.

3.11. Delivery In Partnership

The Council works with a wide range of partners and stakeholders including private sector agents & landlords and their representatives such as the National Residential Landlords Association, resident's groups, other Council services, other regulators such as LFEPA, Immigration Enforcement Service, HMRC and neighbouring local

Appendix C

authorities. We value the partners we work with and will engage with them in relation to enforcement activity and procedures.

3.12. Monitoring & Review

The Regulatory Services Partnership will keep its regulatory activities and interventions under review.

Changes will be introduced into this document as required, to accommodate new legislation, guidance and local needs. Where housing or other related legislation is introduced, which is enforced by the Council and permits the imposition of any monetary penalty or penalty charge, the Council will seek to fully implement any duty or power conferred upon it.

We will review this policy every three years and amend it to reflect changes in legislation, corporate policy or official guidance.

3.13. Enquiries

Enquiries about this policy can be made to:

Email: privatehousing@merton.gov.uk

Post: Regulatory Services Partnership, Private Sector Housing, Civic Centre, London Road, Morden SM4 5DX

4. SERVICE DELIVERY & STANDARDS

4.1. Service Delivery Standards

Following the receipt of a service request reporting poor housing conditions or nuisance, an initial risk assessment will be carried out to triage cases. Any follow up advice or action will depend on the outcome of the initial assessment and may not always result in a visit to the property.

Appendix C

Prior to raising a service request with the Council, tenants in the private sector will usually be expected to inform their landlord of the problem, in writing, allowing an appropriate time to respond. There are situations where this will not be expected including:

- an emergency,
- the tenant has received a notice to leave their accommodation,
- where there is a history of harassment or poor management practices,
- where the tenant is vulnerable or has vulnerable members living in with them in their household,
- where the tenant is unable to contact their landlord.

Tenants are expected to co-operate with their landlord to enable work to be carried out, which is likely to include providing access at reasonable times. Tenants are responsible for keeping the Council informed of any contact they have with their landlord, landlord representative, contractors, and builders etc. which may affect any action that the Council is taking or considering taking.

We will normally make an appointment with the occupier to gain access to investigate conditions. Tenants may invite us into the property for the purpose of inspection or investigation without the need to inform the landlord or require their permission. However, if we believe that formal action may be required, we will contact the landlord and/or agent to prior to an inspection visit.

We may serve a Notice of Entry or make an application to the Magistrates' Court for a warrant to enter. For example, if the premises is vacant or access is refused, or it is reasonably anticipated will be refused. We may also seek a warrant where the giving of notice would be counterproductive, for example in investigations concerning overcrowding, unlicensed HMOs etc.

4.2. Leaseholders

Appendix C

Leaseholders may find themselves in a situation where they are aggrieved by an action or the lack of action of a freeholder, for example the maintenance of windows or a communal heating and hot water system.

The Council has powers to intervene to require freeholders to maintain and repair common parts. However, other than in exceptional cases, the Council expects long leaseholders to invoke the terms of their lease to remedy problems of disrepair or nuisance themselves. This is because the legislation provides avenues to leaseholders to address matters.

Leaseholders may be able to get advice about repair problems from the: Leasehold Advisory Service. The Leasehold Advisory Service (lease-advice.org) is a government funded organisation specifically established to provide expert advice on freehold and leasehold matters.

Exceptions to this policy include an imminent risk to health and safety, caused by another leasehold interest or the freehold interest, for example, a water leak or dangerous or flammable exterior cladding,

4.3. Social Sector Properties

The tenants of registered social landlords have greater protection than tenants of private landlords, including procedures for repairs. These standard procedures include making a formal complaint to the registered social landlord and a right of appeal to the Housing Ombudsman Service.

Therefore, the Council will expect social tenants to exhaust the complaints process with their landlord and the Housing Ombudsman before making a service request to the Council. This enables the Council to target its limited resources to tackling private rogue landlord behaviour.

An exception to this policy is where there is an imminent and significant risk to the health and safety of a tenant or the wider public.

Appendix C

4.4. Empty Properties

We'll work with owners of empty homes to encourage and assist them to bring their empty homes back into use. This may include use of grant funding, subject to terms and conditions.

Where an empty property has a detrimental impact on the amenity of the area, we will consider enforcement action.

Enforcement action includes Compulsory Purchase Orders, Empty Dwelling Management Orders, and Enforced Sales. Enforcement action shall be considered in when; owners are not taking responsibility for their properties; owners are unwilling to engage with the Council, or negotiations have failed or where there is little prospect of a property being brought back into use by the owner voluntarily.

4.5. Inspection of Housing Conditions

The Housing Health and Safety Rating System (HHSRS) was introduced by the Housing Act 2004 and provides a calculation of the effect of 29 possible hazards on the health of occupiers of residential properties. For example, fire, damp and mould, excess cold etc. Each hazard is assessed, scored, and banded between A and J.

Bands A to C are the most severe and are known as Category 1 hazards. The Council has a legal duty to act to take enforcement action in respect of Category 1 hazards.

Bands D to J are less severe and are known as Category 2 hazards. The Council has a discretionary power to address category 2 hazards.

The Council will take enforcement action when:

- There is one or more category 1 hazards present.
- There is a category 2 hazard which is progressive and is likely to become a category 1 hazard unless preventative action is taken.

Appendix C

- There are two or more category 2 hazards which the Council considers to be sufficient evidence of neglect of the property which is a hazard to occupiers.
- there are targeted enforcement priorities,
- the Council has low confidence, that the responsible party will take appropriate action, for example, previous enforcement action, previous convictions, licence refusal etc.

4.6. Illegal & Retaliatory Evictions

Retaliatory eviction is where a tenant makes a legitimate complaint to their landlord about the condition of their property. However, in response, their landlord serves on the tenant an eviction notice rather than dealing with the repair issue.

Parliament has put in place a method by which tenants should deal with issues of disrepair/improvements that is aimed at stopping retaliatory evictions. This is covered under the Deregulation Act 2015 and the process outlined below.

- The tenant set out the repair issues in writing to the landlord.
- The landlord has 14 days to respond to the tenant
- Agreed, reasonable works should be carried out by the landlord.

In circumstances where this does not occur.

- Where a landlord fails to respond or fails to undertake reasonable works, then the Council may step in, carry out an inspection and take enforcement action. Where action is taken the landlord cannot issue a Section 21 notice.

4.7. Energy Efficiency

Minimum energy efficiency standards (MEES) are designed to tackle the least energy efficient properties in England and Wales, those rated F or G on their Energy Performance Certificate (EPC).

Appendix C

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 ('the MEES Regulations') establish a minimum standard for all rented properties.

Landlords that fail to make improvements where required, or register a valid exemption, are committing an offence and they may face a financial penalty up to 18 months after the breach and/or publish details of the breach for at least 12 months. There is a maximum financial penalty of up to £5000 per breach per property. See appendix 2 below.

The MEES Regulations were introduced to improve the quality of private rented buildings in England and Wales and to increase the energy efficiency of the worst performing houses and buildings.

In addition, the MEES Regulations aim to improve the comfort and conditions in private rented homes, reducing fuel property.

4.8. Electrical Safety

The electrical safety standards in the Private Rented Sector (England) Regulations 2020 place duties to ensure that the electrical installation of privately rented accommodation is up to standard and adequately maintained.

The regulations require the Council to serve a Remedial Notice where a landlord breaches their duties under these Regulations. The Council may also carry out works to remedy the breaches and recover costs of doing so where the landlord fails to comply with a Remedial Notice. Where urgent works are required, the Council can undertake those works urgently and then seek recovery of costs.

The Regulations allow the Council to consider the imposition of a financial penalty of up to £30,000 for any breach of the duties laid out in the Regulations. See Appendix 3 for more information on how this is calculated.

4.9. Smoke & Carbon Monoxide

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force on 1 October 2015 and were amended by The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022, which came into force on 1 October 2022. From that date, all relevant landlords must:

Appendix C

- Ensure at least one smoke alarm is equipped on each storey of their homes where there is a room used as living accommodation. This has been a legal requirement in the private rented sector since 2015.
- Ensure a carbon monoxide alarm is equipped in any room used as living accommodation which contains a fixed combustion appliance (excluding gas cookers).
- Ensure smoke alarms and carbon monoxide alarms are repaired or replaced once informed and found that they are faulty.

The requirements are enforced by local authorities who can impose a penalty charge of up to £5,000 where a landlord fails to comply with a remedial notice. See appendix 1 for more information on how this is calculated.

4.10. Withdrawal of Service

There may be situations where the service decides to not provide or cease to provide a service. These situations may include but are not limited to where:

- The tenant(s) unreasonable refuse access to a landlord, managing agent or contractor, preventing remedial works from being carried out.
- The tenant(s) have been aggressive, abusive, threatening towards officers, either physically, verbally or in writing.
- The tenant(s) are shortly moving out of the property, by their own choice.
- The tenant(s) are clearly and deliberately causing damage to the property, that they are reporting to the Council.

Decisions to withdraw or not provide service will be reviewed by the Private Sector Housing Manager or appropriate senior manager.

5. MANDATORY & DISCRETIONARY LICENSING (Wandsworth Only)

5.1. Mandatory Licensing

It is a legislative requirement, subject to some exemptions, that all HMOs with five or more unrelated occupiers, who share facilities must be licensed. The aim of licensing is to make sure every licensable HMO is properly managed, safe for the occupants and visitors. The person having control of the property and/or the person managing the property is responsible for ensuring that the property is licensed.

It is an offence under the Housing Act 2004, not to licence a property which requires a property licence. The Council will aim to remind licence holders when renewals are due, however it is the responsibility of the licence holder to ensure that a property is relicensed.

5.2. Discretionary Licensing

Local Authorities have the discretion to bring into force licensing of residential accommodation as defined in parts 2 and 3 of the Housing Act 2004. Adopting these provisions allows local authorities to require landlords of some privately rented properties to apply for a licence.

There are two types of discretionary licence schemes:

- Additional HMO licensing may be appropriate where a large number of HMOs in an area are not being managed effectively and are causing particular issues for the people who live in these properties or residents in the area.
- Selective licensing may be appropriate where there are issues with low housing demand, anti-social behaviour, high levels of migration, poor property standards, high levels of crime or high levels of deprivation (or a combination of these) in certain areas and where some or all of the responsible persons in that area are generally failing to act to address the issues.

5.3. Fit & Proper Persons

In granting a licence the Council must be satisfied that the proposed licence holder, manager, and any person involved in the management of the property are fit and proper persons. There will be regard to relevant guidance and the legislative requirements in applying the 'fit and proper' test.

A person's "fit and proper" status may be reviewed at any time. Removal of the status may lead to a refusal and/or revocation of licence(s).

The criteria (not an exhaustive list and each case will be considered on its merits) considered when assessing an applicant's ability to be a licence holder or manager are as follows:

- Whether there is a conviction of any criminal offence including, where relevant, any spent convictions excepted under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Particular consideration will be given to offences of dishonesty, fraud, violence, harassment, drug trafficking, human trafficking, money laundering or offences of a sexual nature or of offences relating to child exploitation or abuse, whether or not these offences were in the United Kingdom, and Housing Act 2004 offences or any breaches of provisions of housing or landlord and tenant law.
- Whether there are current relevant criminal proceedings.
- Whether the responsible person has been subject to any adverse finding or any settlement in civil proceedings.
- Whether the responsible person has been responsible for acts of unlawful discrimination on the grounds of sex, colour, race, ethnic or national origin, disability, sexual orientation or religious belief in connection with carrying out business.
- Whether a spouse, business associate or controlling partner in the company, director of the company or any person with a controlling interest in the

Appendix C

company has been convicted of any criminal offence including, where relevant, any spent convictions excepted under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Particular consideration will be given to offences of dishonesty, fraud, violence, drug trafficking, human trafficking, money laundering or offences of a sexual nature or of offences relating to child exploitation or abuse, whether or not these offences were in the United Kingdom, and Housing Act 2004 offences or any breaches of provisions of housing or landlord and tenant law.

- Whether a spouse, business associate or controlling partner in the company, director of the company or any person with a controlling interest in the business is currently the subject of any criminal proceedings.
- Whether a spouse, business associate or controlling partner in the company, director of the company or any person with a controlling interest in the business has been subject to any adverse finding or any settlement in civil proceedings.
- Whether a spouse, business associate or controlling partner in the company, director of the company or any person with a controlling interest in the business has practiced unlawful discrimination on the grounds of sex, colour, race, ethnic or national origin, disability, sexual orientation or religious belief in connection with carrying out business.
- Whether a responsible person residing abroad could effectively manage the property or has in place a UK based Manager/ Licence Holder that can properly manage the property, which includes access to funds to carry out management, repairs, maintenance, and deal with emergencies, etc. and agrees to be bound by the licence conditions.
- Other convictions/enforcement action relating to:
 - Environmental Health convictions
 - Financial Penalty issued
 - Rent Repayment Order made

Appendix C

- Banning Order made
- Inclusion on the National Rogue Landlord or Property Agent Database or the Greater London Assembly Rogue Landlord or Agent Checker
- Convictions for Illegal eviction/harassment
- Environmental Health - Enforcement Action, e.g. the making of Prohibition Order, failing to comply with an Improvement Notice, etc.
- Waste Enforcement
- ASB Enforcement
- Planning Enforcement

Where there is evidence of a concern, applicants will be invited to submit an explanation of their actions. The applicant will be required to account for the failure to comply with legislation and satisfy the Council that this will not recur. The Council may also require the applicant to complete a Standard Disclosure and Barring check by the Disclosure and Barring Service and provide details of the result as part of their HMO application.

5.4. Other Regulatory Regimes (Planning Domain / Article 4 Directions)

HMO licensing and Planning are separate statutory domains and are governed by different legislation. HMO licensing principally concerns the safety and welfare of tenants. If you are going to rent your HMO to seven or more people, you will require planning permission for change of use.

Article 4 directions remove permitted development rights for smaller HMOs (six or fewer occupants). Landlords will need to contact Planning to enquire whether their property requires planning permission.

Where planning permission is required for HMO use or planning permission has been refused, it is likely that a licence will be granted (subject to usual process and

Appendix C

checks) with a reduced term, usually one year. This will provide opportunity for the licence holder to obtain suitable planning permission or resolve the breach. For example, return the property back to a single household.

6. APPENDICES

Appendix 1 – Smoke & Carbon Monoxide

Statement of principles to determine the amount of a penalty charge under Part 4 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 as amended by The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022 (“the Regulations”)

Appendix 2 – Energy Efficiency

Statement of principles to determine the amount of a penalty charge for a breach of minimum energy efficiency standards (MEES) with respect to domestic privately rented property.

Appendix 3 – Electrical Safety

Civil Penalties under the Housing and Planning Act 2016 and The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

APPENDIX 1 – Smoke & Carbon Monoxide**Statement of principles to determine the amount of a penalty charge under Part 4 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 as amended by The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022 (“the Regulations”)**

Section 13 of the Regulations requires local housing authorities to prepare and publish a statement of principles which they propose to follow in determining the amount of a penalty charge.

The Regulations introduced legal requirements on most private sector landlords to:

1. Ensure at least one smoke alarm is equipped on each storey of the premises where there is a room used as living accommodation.
2. Ensure a carbon monoxide alarm is equipped in any room used as living accommodation which contains a fixed combustion appliance (excluding gas cookers)
3. Carry out checks by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.
4. Ensure smoke alarms and carbon monoxide alarms are repaired or replaced once informed and found that they are faulty.

For the purposes of the legislation, living accommodation includes a bathroom or lavatory.

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

If the landlord then fails to take the remedial action specified in the notice within the specified timescale, the Council can require a landlord to pay a penalty charge. The power to charge a penalty arises from Regulation 8 of the Regulations. Failure to

Appendix C

comply with each remedial notice can lead to a penalty charge of up to £5,000. A penalty charge may be imposed for each breach,

The 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.

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 to comply. Where there is evidence, including written correspondence, of repeated and consistent efforts to obtain access to the property, with access repeatedly being prevented by the occupant(s) of the property, a landlord will not be considered to be in breach of their duty to comply with the remedial notice. A landlord will be expected to have:

- Communicated the risk of harm that the lack of functioning alarms posed to all occupants in writing on multiple occasions.
- Requested access to comply with the remedial notice on a regular basis of no longer than every seven days in writing.

In considering the imposition of a penalty, the Council may look at the evidence concerning the breach of the requirement of the notice. A non-exhaustive list of methods that may be used to obtain relevant evidence includes, but is not limited to:

- Evidence obtained from a property inspection
- Evidence provided by the tenant or agent
- Evidence provided by the landlord demonstrating compliance with the Regulations by supplying dated photographs of alarms, together with installation records

Landlords need to take steps to demonstrate that they have met the testing requirements at the start of the tenancy requirements. A non-exhaustive list of methods that may be used to evidence compliance with these testing requirements includes, but is not limited to:

Appendix C

- Tenants signing an inventory form which states that they observed the alarms being tested and confirming that the alarms were in working order at the start of the tenancy

Where a landlord is in breach, the local housing authority may serve a remedial notice. Failure to comply with each remedial notice can lead to a penalty charge of up to £5,000. A separate penalty charge will be imposed for each breach

When determining the amount of the penalty charge, regard will be had to whether this there have been or are other breaches under the Regulations.

Determining the amount of the penalty charge for a first breach

The minimum amount of a penalty charge for a first breach of the Regulations will be £2500.

The starting level of a penalty charge for a first breach of the Regulations shall be £3,000. The penalty charge amount shall be varied to take account of aggravating and mitigating factors.

Aggravating factors include, but are not limited to:

- The number of alarms not working or missing (the Regulations state there should be one per storey)
- Other fire safety concerns/defects in the property which increase the risk posed to the occupants
- The length of time the offence is believed to have been on-going
- The frequency of complaints by the occupiers to the landlord about the non-working or missing alarms
- The costs of any remedial work the Council have carried out in response to the breach
- Whether the property is let as a HMO (which increases the overall risk)
- The number of occupants living in the property

Appendix C

- Presence of vulnerable occupiers such as elderly, children or disabled people
- Any history of previous enforcement or non-compliance of the landlord
- Attempts to obstruct the investigation

Mitigating factors include, but are not limited to:

- The property being small and low-risk (for example a one-bedroom ground floor flat with a large number of fire escapes including large windows)
- A single occupant living in the property
- Evidence that all required alarms were checked and in working order at the start of the tenancy
- Written evidence that some efforts to gain access and comply with the remedial notice were made and access was prevented by the occupant
- Extent of co-operation with the investigation

Determining the amount of the penalty charge for a subsequent breach

The penalty for subsequent breaches by the same landlord will be £5000.

APPENDIX 2 – Energy Efficiency**Statement of principles to determine the amount of a penalty charge for a breach of minimum energy efficiency standards (MEES) with respect to domestic privately rented property**

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (“the Regulations”) make it unlawful to rent out a domestic property if it has an EPC (Energy Performance Certificate) rating of F or G (unless a valid exemption has been registered on the PRS Exemptions register).

The Regulations make it unlawful to fail to comply with a compliance notice served by the Council.

The Regulations cover all relevant properties, even where there has been no change of tenancy.

The Regulations were introduced to improve the energy efficiency of housing in the private rented sector and to reduce greenhouse gas emissions and tackle climate change. They should help make tenants’ homes more thermally efficient.

An energy performance certificate (EPC) gives the property an energy efficiency rating – A rated properties are the most energy efficient and G rated are the least efficient. It’s valid for 10 years and must be provided by the owner of a property, when it is rented or sold.

If you are a landlord and you fail to provide an EPC at the start of a tenancy, you will be in breach of the Regulations.

An EPC contains information about the type of heating system and typical energy costs. It also gives recommendations about how the energy use could be reduced, lowering running costs. You can find the recommended energy efficiency improvements on the current EPC.

If you’re a private landlord, you must either:

- ensure your rented properties have an EPC with a minimum ‘E’ rating

Appendix C

- register a valid PRS exemption on the PRS exemptions register

Failure to do either of these is a breach of the Regulations.

The Council investigates any potential breaches of the regulations. If the Council is satisfied that you are currently or have at any time in the 18 months preceding the date of service of the penalty notice, breached the Regulations, you may be subject to a penalty notice imposing a financial penalty. The Council may also impose a publication penalty.

The “publication penalty” means publication, for a minimum period of 12 months, or such longer period as the Council may decide, on the PRS Exemptions Register of such of the following information in relation to a penalty notice as the Council decides:

- Where the landlord is not an individual, the landlord’s name
- Details of the breach of these Regulations in respect of which the penalty notice has been issued
- The address of the property in relation to which the breach has occurred, and
- The amount of any financial penalty imposed.

The Council will impose the following financial penalties:

- (a) letting a property with an F or G rating for less than 3 months: £2,000
- (b) letting a property with an F or G rating for more than 3 months: £4,000
- (c) registering false or misleading information on the PRS exemptions register:
£1,000
- (d) failing to provide information to the Council demanded by a compliance
notice: £2,000

Appendix C

The Council may not impose a financial penalty under both subsections (a) and (b) above in relation to the same breach of the Regulations. But they may impose a financial penalty under either paragraph (a) or paragraph (b), together with financial penalties under paragraphs (c) and (d), in relation to the same breach. Where penalties are imposed under more than one of these paragraphs, the total amount of the financial penalty may not be more than £5,000.

APPENDIX 3 – Civil Penalties**Civil Penalties under the 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**

In this policy, the term 'landlord' should be read as including letting agents, managing agents, licensors, property owners, directors of corporate landlords and any other person involved in the letting or management of privately rented accommodation.

In this policy, the terms 'House of Multiple Occupation' or 'HMO' are defined by the Housing Act 2004.

Under section 249A Housing Act 2004, a London borough council, in its capacity as the local housing authority, may impose a civil penalty as an alternative to prosecution in respect of the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice [section 30]
- Offences in relation to licensing of Houses in Multiple Occupation (HMOs) under Part 2 [section 72]
- Offences in relation to the Selective Licensing of 'houses' under Part 3 [section 95]
- Failure to comply with an Overcrowding Notice [section 139]
- Failure to comply with a management regulation in respect of an HMO [section 234]

Regulation 11 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 provides local authorities with the power to impose a civil penalty in respect of breaches of Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

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

The Council has the power to impose a civil penalty of up to a maximum of £30,000 for each separate offence. If multiple offenders have committed the same offence at

Appendix C

the same property, a separate civil penalty can, and usually will, be imposed on each offender. In each case, the level of civil penalty imposed on each offender will be in line with this policy.

This guidance outlines the Council's policy in setting the level of a civil penalty in each case where it has been determined to issue a civil penalty as an alternative to prosecution proceedings.

The Council considers the need for transparency and consistency in the discharge of its functions under the Housing Act 2004 to be of primary importance. The general objective of this policy is, therefore, to promote both transparency and consistency in the imposition of financial penalties under the 2004 Act so that, for example, those managing and having control of rented properties in the Council (a) know how the Council will generally penalise relevant offences and (b) are assured that, generally, like cases will be penalised similarly, and different cases penalised differently. The further objectives of using financial penalties in particular as a means of enforcing the above offences are explained below.

Statutory Guidance

The Government has issued statutory guidance under Schedule 9 of the Housing & Planning Act 2016 entitled "Civil penalties under the Housing and Planning Act 2016. Guidance for Local Housing Authorities". The Council is required to have regard to this guidance when exercising its functions in respect of civil penalties.

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

- a. **Severity of the offence.** The more serious the offence, the higher the penalty should be.
- b. **Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their

Appendix C

obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

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

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

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

f. **Deter others from committing similar offences.** While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

g. **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence,

Appendix C

i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

Each Council shall have regard to these factors and its policy aims when applying the Civil Penalties matrix below,

Other Policy Aims

The Council is mindful that despite its best efforts, many landlords may operate unlawfully for a significant period of time without detection, and only a proportion of landlords committing relevant offences will be discovered. The Council is, therefore, mindful that when deciding to impose a Civil Penalty, it should create an environment where it is clear to the offender and others that operating unlawfully as a landlord will be financially disadvantageous when compared to operating lawfully.

The Council intends to create an environment where landlords engage with the Council's requests and demands fulsomely, openly and honestly. This helps create a level playing field which supports the aims of transparency and consistency. No landlord should be able to benefit financially by withholding information it should possess and disclose to the Council. It is expected that fulsome and complete supporting evidence is provided to support any Written Representations received in response to a Notice of Intent.

Civil Penalties Matrix

In determining the level of a civil penalty, officers will have regard to the matrix set out below, which is to be read in conjunction with the associated guidance. The matrix is intended to provide indicative 'starting level' under the various offence categories, with the final level of the civil penalty adjusted in each case, taking into account aggravating and mitigating factors including, the track record and culpability of the landlord and the harm or risk of harm to the occupants.

In deciding what level of penalty to impose, officers will conduct the following four stage process. First, they will consider the seriousness of the relevant housing

Appendix C

offence to identify a starting level of the penalty. Second, an assessment of the number of rental properties controlled or owned or managed by the landlord and/or their experience in the letting/management of property will be considered, which may have the effect of increasing or decreasing the penalty. Third, aggravating and mitigating factors such as culpability, track record and harm, Fourth, if any of the Discounts, as set out below, apply, the penalty will be decreased.

Once the seriousness of the relevant housing offence has been identified, the starting level of the penalty will be identified using the table below with the headings 'Seriousness of offence' and 'Starting level [£]'. Consideration of the number and type of rental properties controlled or owned or managed may adjust the penalty.

To reflect the seriousness of the offence(s) in question, the presence of one or more mitigating factors will rarely result in the penalty being decreased by more than of £5000. In exceptional circumstances, officers may determine that the presence of one or more mitigating factors justify a decrease in the penalty more than £5000. The presence of multiple mitigating factors will not necessarily be considered as exceptional circumstances.

The Council has not provided a definitive list of mitigating factors acknowledging each case should be considered on its particular facts.

To ensure that any penalty imposed is proportionate to the offending behaviour the presence of one or more aggravating factor will rarely result in the penalty being increased by more than of £5000. In exceptional circumstances, officers may determine that the presence of one or more aggravating factors justify an increase in the penalty in excess of £5000.

The Council may, exceptionally, increase the penalty by greater than £5000 on account of aggravating factors or, again exceptionally, decrease it by more than £5000 on account of mitigating factors. The Council will exercise its discretion to increase or decrease a penalty by more than £5000 on when exceptional circumstances arise only after consideration of Discounts as set out below.

Appendix C

Seriousness of offence	Starting level [£]
Mild	2500
Moderate	7500
Serious	12500
Very Serious	17500
Severe	22500
Very Severe	27500

Offences where a civil penalty may be levied as an alternative to prosecution and relevant considerations as to the level of that penalty

Failure to comply with an Improvement Notice - Section 30 of the Housing Act 2004

Where an improvement notice has become operative, the person on whom the notice was served commits an offence should he fails to comply with it. A person who commits such an offence is liable on summary conviction to a fine without limit.

An Improvement Notice served under Part 1 Housing Act 2004 shall specify each hazard and necessary remedial action. Category 1 hazards are the most serious hazards, posing the highest risk of harm to occupiers. The Council has a duty to take action when a dwelling is found to have one or more Category 1 hazards.

In some cases, the service of an Improvement Notice will have followed an informal stage, where the landlord had been given the opportunity to carry out improvements without the need for formal action. In such cases, an identified failure to comply with an Improvement Notice will represent a continued failure on the part of the landlord to deal appropriately with one or more significant hazards affecting the occupier[s] of the relevant dwelling.

The Council shall regard the offence of failing to comply with the requirements of an Improvement Notice as a significant issue, exposing the occupier[s] of the dwelling to one or more significant hazards.

Appendix C

The seriousness of the offence is viewed by the Council as being a Severe matter, for which financial penalty may be imposed with a starting level of £22,500.

The starting level shall be reduced to £17,500 provided the landlord does not control, own or manage more one HMO and no more than two dwellings and where there are no, relevant factors or aggravating features,.

The starting level shall be £22,500 for a landlord controlling, owning or managing a property portfolio of three, four, or five dwellings, and/or two HMOs, where there are no other relevant factors or aggravating features.

The starting level shall be £27,500 for a landlord controlling, owning, managing a property portfolio, of six or more dwellings, and/or three or more HMOs or has demonstrated experience in the letting or management of property (irrespective of the size of the portfolio), in the absence other relevant factors or aggravating factors.

Relevant factors and aggravating features specific to non-compliance with an Improvement Notice

- The nature and extent of hazards present. Multiple hazards or severe or extreme hazards considered to have a significant impact on the health or safety of the occupiers of the property or their guests.

Generic relevant factors and aggravating features

The Council shall have regard to general factors in determining the level of the civil penalty including, but not limited to:

- A previous history of non-compliance. Other examples of previous non-compliance include a previous conviction [whether or not spent], the imposition of a financial penalty, being subject to a rent repayment order, a public authority doing works in default of the landlord and breaches of regulations/obligations.

Appendix C

- A failure to cooperate with a Council investigation, including failure to answer requisitions for information made pursuant to s.16 Local Government (Miscellaneous Provisions) Act 1976 notice, s.235 Housing Act 2004 notice and the failure to provide a substantive response to a letter of alleged offence.
- Deliberate intent when committing the offence. Non-exhaustive examples of deliberate intent would include knowledge that the offence was occurring, committing the offence after relevant correspondence was sent by the Council.
- The number of residents placed at risk.
- Offending over an extended period of time that is, 6 months or longer.
- Vulnerable residents in occupation at the time of the offence. Steps taken to prevent a vulnerable resident reporting concern to the Council

Failure to License offences

The letting of properties is regulated by the Council using a number of provisions within the Housing Act 2004, including the mandatory licensing of HMOs, Additional HMO licence arrangements and selective licensing arrangements.

The penalty on conviction for an offence of failing to license a property, when required to do so, is a fine (without limit).

Failure to license a Mandatory 'HMO' – Section 72(1) of the Housing Act 2004

Under Part 2 Housing Act 2004, HMOs occupied by 5 or more persons forming 2 or more households are required to hold an HMO licence issued by the local authority. HMO licensing allow local authorities to regulate standards and conditions in high risk, multiply occupied residential premises. Through the property licence regime, local authorities ensure an HMO has sufficient kitchens, baths/showers and WCs and a limit on the number of persons permitted to occupy it and the licence holder is required to comply with a set of licence conditions. Licensing was introduced by the

Appendix C

Government in order to regulate management, conditions, standards and safety in the properties considered to represent the highest risk to tenants as regards such matters as fire safety and overcrowding

The Council shall view the offence of failing to license an HMO as a significant failing.

This seriousness of this offence is considered to be a Very Serious matter, for which a financial penalty may be imposed with a starting level of £17,500.

The starting level for the financial penalty may be reduced to £12,500 where the landlord controls, owns or manages one HMO dwelling and no more than one other dwelling (that is not an HMO), where there are no other relevant factors or aggravating features.

Under the Council's policy, the financial penalty shall be £17,500 for a landlord who controls, owns or manages, being three, four, or five dwellings, and/or two HMOs, where there are no other relevant factors or aggravating features.

Under the Council's policy, the financial penalty shall be £22,500 for a landlord who controls, owns/ or manages six or more dwellings, and/or three or more HMOs or has demonstrated experience in the letting or management of property, where there are no other relevant factors or aggravating factors.

Relevant factors and aggravating features specific to failure to licence

- The condition of the unlicensed property. The nature and extent of any significant hazards that are present would justify an increase in the level of the civil penalty. Equally, an HMO that was found to be poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded would also justify an increased civil penalty.

Appendix C

- Any demonstrated evidence that the landlord/agent was familiar with the need to obtain a property licence e.g. the fact that they were a named licence holder or manager in respect of an already licensed premises.

Generic relevant factors and aggravating features

As set out under 'Failure to comply with an Improvement Notice' above.

Failure to license a property under the Council's Additional [HMO] Licensing Scheme – Section 72(1) of the Housing Act 2004

The Council has designated the whole of the borough as an additional licensing area. Under the scheme, most HMOs occupied by three or more persons forming two or more households sharing one or more basic amenities such as a WC or kitchen, but which fall outside the scope of mandatory HMO licensing, will be required to hold an additional licence in order to be legally let.

The Council would view the offence of failing to license an HMO under its additional licensing scheme as a significant failing. The Council has introduced additional HMO licensing, amongst other reasons, in order to regulate management, conditions, standards and safety in the properties considered to represent a higher risk to tenants as regards such matters as fire safety and overcrowding compared with properties occupied by a single-family household.

This seriousness of the offence is viewed by the Council as being a Serious matter, attracting a financial penalty with a starting level of £12500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing only one HMO dwelling and no more than one other dwelling that is not an HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £12500.

Appendix C

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £17500.

Aggravating features/factors specific to failure to licence offences

- The condition of the unlicensed property. The nature and extent of any significant hazards that are present would justify an increase in the level of the civil penalty. Equally, an HMO that was found to be poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded would also justify an increased civil penalty.
- Any demonstrated evidence that the landlord/agent was familiar with the need to obtain a property licence e.g. the fact that they were a named licence holder or manager in respect of an already licensed premises.

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above

Mitigating features/factors specific to failure to licence offences

- The condition of the unlicensed property. The property being in a compliant state and of high decorative standard would justify a reduction in the level of the civil penalty.
- Any demonstrated evidence that the landlord/agent was familiar with the need to obtain a property licence e.g. the fact that they had proactively obtained the licence previously without local authority involvement and failed to renew the licence.

Generic mitigating features/factors

As set out under 'Failure to comply with an Improvement Notice' above

Failure to license a property under the Council's Selective Licensing Scheme – Section 95(1) of the Housing Act 2004

Appendix C

The Council has also exercised their powers under section 80 Housing Act 2004 and has designated part of the council as selective licensing areas. Under these designations, most privately rented homes which are occupied by a single-family household or by no more than 2 unrelated persons, are required to have a property licence to operate in the borough.

The Council would view the offence of failing to ensure that a rented home was licensed under its Selective Licensing Scheme as a significant issue, meaning that the tenants and wider community are not protected by the additional regulatory controls afforded by licensing.

This seriousness of the offence is viewed by the Council as being a Serious matter, attracting a financial penalty with a starting level of £12500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £7500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £17500.

Aggravating features/factors specific to failure to licence offences

- The condition of the unlicensed property. The nature and extent of any significant hazards that are present would justify an increase in the level of the civil penalty. Equally, a property that was found to be poorly managed and/or lacking

Appendix C

amenities/fire safety precautions and/or overcrowded would also justify an increased civil penalty.

- Any demonstrated evidence that the landlord/agent was familiar with the need to obtain a property licence e.g. the fact that they were a named licence holder or manager in respect of an already licensed premises.

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above

Mitigating features/factors specific to failure to licence offences

- The condition of the unlicensed property. The property being in a compliant state and of high decorative standard would justify a reduction in the level of the civil penalty.
- Any demonstrated evidence that the landlord/agent was familiar with the need to obtain a property licence e.g. the fact that they had proactively obtained the licence previously without local authority involvement and failed to renew the licence.

Generic mitigating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

Knowingly permitting over-occupation of a licensed HMO – Section 72(2) of the Housing Act 2004

Maximum Court fine following prosecution that can be levied for breach of section 72(2) Housing Act 2004 – Unlimited

It is an offence for a person having control of or managing a licensed HMO commits and offence if:

- They knowingly permit another person to occupy the house, and
- The other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

Appendix C

The Council would view the offence of knowingly permitting over-occupation of a licensed HMO as a Very Serious matter, attracting a financial penalty with a starting level of £17500.

Under the Council's policy the civil penalty for a landlord controlling/owning/managing one or two dwellings, including no more than one HMO, with no other relevant factors or aggravating features [see below], will reduce by £5000, attracting a civil penalty of £12500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a significant property portfolio, being three, four, or five dwellings, and/or two HMOs, with no other relevant factors or aggravating features [see below], will attract a civil penalty of £17500.

Under the Council's policy, the civil penalty for a landlord controlling/owning/managing a large property portfolio, being six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the portfolio), with no other relevant factors or aggravating factors [see below], will increase by £5000, attracting a civil penalty of £22500.

Aggravating features/factors specific to non-compliance with an Overcrowding Notice

- The level of over-occupation present – higher levels of over-occupation, and/or over-occupation in breach of amenity standards and/or minimum space standards would justify a higher civil penalty.

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

Failure to Comply with an Overcrowding Notice – Section 139 of the Housing Act 2004

Section 139 Housing Act 2004 empowers the Council to serve an Overcrowding Notice in respect of an HMO that is not required to be licensed under Part 2 Housing Act 2004. The notice shall specify, on a room-by-room basis, the maximum number

Appendix C

of persons permitted to occupy each room as sleeping accommodation and may identify room is not considered suitable for that purpose and which may not be so used.

The Council shall regard the offence of failing to comply with the requirements of an Overcrowding Notice as a significant matter, exposing the tenants of an HMO to unacceptably cramped living conditions.

The seriousness of the offence is considered to be Very Serious, for which the Council it may impose a financial penalty with a starting level of £17,500.

Under the Council's policy, the starting level for the financial penalty shall be £12,500 for a landlord who controls, owns or manages one or two dwellings, including no more than one HMO, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level for the financial penalty will be £17,500 for a landlord who controls, owns or /manages three, four, or five dwellings, and/or two HMOs, where there no other relevant factors or aggravating features.

Under the Council's policy, the starting level for the financial penalty shall be £22,500 for a landlord who controls, owns or manages six or more dwellings, and/or three or more HMOs or has demonstrated experience in the letting/management of property, where there are no other relevant factors or aggravating factors.

Relevant factors and aggravating features/ specific to non-compliance with an Overcrowding Notice

- The level of overcrowding present – breaches that relate to over-occupation of multiple rooms or extreme over-occupation of an individual room.

Generic relevant factors and aggravating features

As set out under 'Failure to comply with an Improvement Notice' above.

Failure to Comply with a Banning Order – Section 21 of the Housing and

Appendix C

Planning Act 2016

A person who breaches a banning order commits an offence. A person guilty of such an offence is liable on summary conviction to term of imprisonment for a period not exceeding 51 weeks.

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

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

Banning Orders are reserved for serious housing-related offences. Where the Council is satisfied of the breach of a Banning Order the most appropriate sanction shall be a prosecution. When determined appropriate a civil penalty may be imposed for which the financial penalty shall be £30,000 (which is intended to reflect the severity of the offence).

Failure to Comply with The Management of Houses in Multiple Occupation (England) Regulations 2006 and The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007

–These regulations are made pursuant to s234, Housing Act 2004 and impose duties on persons managing HMOs. A person commits an offence if he fails to comply with a duty for which the penalty on conviction is a fine (unlimited).

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

- Providing information to occupiers [Regulation 3]
- Taking safety measures, including fire safety measures [Regulation 4]
- Maintaining the water supply and drainage [Regulation 5]
- Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected [Regulation 6]
- Maintaining common parts [Regulation 7]

Appendix C

- Maintaining living accommodation [Regulation 8]
- Providing sufficient waste disposal facilities [Regulation 9]

The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 impose duties on the persons managing HMOs as defined by Section 257 Housing Act 2004 in respect of:

- Providing information to occupiers [regulation 4]
- Taking safety measures, including fire safety measures [regulation 5]
- Maintaining the water supply and drainage [regulation 6]
- Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected [regulation 7]
- Maintaining common parts [regulation 8]
- Maintaining living accommodation [regulation 9]
- Providing sufficient waste disposal facilities [regulation 10]

It is important that the manager of an HMO complies with all regulations, but the Council recognises that a failure to comply with certain regulations is likely to have a much bigger impact on the safety and comfort of residents than others.

Manager failure to comply with the duty to provide information to occupier.

A manager who fails to comply with the duty to provide information to an occupier shall be regarded as a Mild matter, for which the Council may impose a financial penalty, with a starting level of £2,500.

Under the Council's policy, the starting level for the financial penalty shall be £2,000 for a landlord who controls, owns or /manages one HMO dwelling and no more than one other dwelling (that is not an HMO) where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level for the financial penalty shall be £2,500 for a landlord who controls, owns or manages three, four, or five dwellings, and/or two HMOs, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level for the financial penalty shall be £4,500

Appendix C

for a landlord who controls, owns or manages six or more dwellings, and/or three or more HMOs or has demonstrated experience in the letting or management of property, where there are no other relevant factors or aggravating factors.

Relevant factors and aggravating features specific to breaches of Management Regulations

- The number, nature and extent of the management regulation breach(es) and the extent of the deficiencies of compliance with the regulations

Generic relevant factors and aggravating features

As set out under 'Failure to comply with an Improvement Notice' above.

Duty of manager to take safety measures

A manager's failure to comply with the duty to take safety measures shall be regarded as a Very Serious matter, for which a financial penalty may be imposed with a starting level of £17,500.

Under the Council's policy, the starting level of the financial penalty shall be £12,500 for a landlord who controls, owns or manages only one HMO dwelling and no more than one other dwelling that is not an HMO, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £17,500 for a landlord who controls, owns or manages being three, four, or five dwellings, and/or two HMOs, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £22,500 for a landlord who controls, owns or manages six or more dwellings, and/or three or more HMOs or has demonstrated experience in the letting or management of property (irrespective of the size of the property portfolio), where there are no other relevant factors or aggravating factors,

Relevant factors and aggravating features specific to breaches of Management Regulations

Appendix C

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above.

Generic relevant factors and aggravating features

As set out under 'Failure to comply with an Improvement Notice' above.

Duty of manager to maintain water supply and drainage.

A manager's failure to comply with the duty to maintain the water supply and drainage shall be regarded as a Serious matter for which a financial penalty may be imposed. The starting level of the financial penalty shall be £12,500.

Under the Council's policy, the starting level of the financial penalty to be imposed on a landlord shall be £5,000 where the landlord controls, owns or manages only one HMO dwelling and no more than one other dwelling that is not an HMO, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £12,500 for a landlord who controls/owns or manages three, four, or five dwellings, and/or two HMOs, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £17,500 for a landlord controls, owns or manages six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the property portfolio), where there are no other relevant factors or aggravating.

Relevant factors and aggravating features specific to breaches of Management Regulations

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above.

Generic relevant factors and aggravating features

As set out under 'Failure to comply with an Improvement Notice' above.

Appendix C

Duty of manager to supply and maintain gas and electricity

A manager's failure to comply with the duty in relation to the supply of gas and electricity shall be regarded as a Serious matter for which a financial penalty may be imposed. The starting level of the financial penalty shall be £12,500.

Under the Council's policy, the starting level of the financial penalty shall be £7,500 for a landlord who controls, owns or manages only one HMO dwelling and no more than one other dwelling that is not an HMO, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £12,500 for a landlord who controls, owns or manages three, four, or five dwellings, and/or two HMOs, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £17,500 for a landlord who controls, owns or manages six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the property portfolio), where there are no other relevant factors or aggravating factors.

Relevant factors and aggravating features specific to breaches of Management Regulations

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above.

Generic relevant factors and aggravating features

As set out under 'Failure to comply with an Improvement Notice' above.

Duty of manager to maintain common parts, fixtures, fittings and appliances

A manager's failure to comply with the duty to maintain the common parts, fixtures, fittings and appliances shall be regarded as a Moderate matter, for which a financial penalty may be imposed. The starting level of the financial penalty shall £7,500.

Appendix C

Under the Council's policy, the starting level of the financial penalty is £2,500 for a landlord who controls, owns or manages only one HMO dwelling and no more than one other dwelling that is not an HMO, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £7,500 for a landlord who controls, owns or manages three, four, or five dwellings, and/or two HMOs, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £12,500 for a landlord who controls, owns or manages six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the property portfolio), where there no other relevant factors or aggravating factors.

Relevant factors and aggravating features specific to breaches of Management Regulations

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above.

Generic relevant factors and aggravating features

As set out under 'Failure to comply with an Improvement Notice' above.

Duty of manager to maintain living accommodation

A manager's failure to comply with the duty to maintain the living accommodation shall be regarded as a Moderate matter for which a financial penalty may be imposed. The starting level of the financial penalty shall be £7,500.

Under the Council's policy, the starting level of the financial penalty shall be £2,500 for a landlord who controls, owns or manages only one HMO dwelling and no more

Appendix C

than one other dwelling that is not an HMO, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £7,500 for a landlord who controls, owns or manages being three, four, or five dwellings, and/or two HMOs, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £12,500 for a landlord who controls, owns or manages six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting or management of property (irrespective of the size of the property portfolio), where there are no other relevant factors or aggravating factors.

Relevant factors and aggravating features specific to breaches of Management Regulations

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above.

Generic relevant factors and aggravating features

As set out under 'Failure to comply with an Improvement Notice' above.

Duty to provide waste disposal facilities

A manager's failure to comply with the duty provide waste disposal facilities shall be regarded as a Moderate matter for which a financial penalty may be imposed. The starting level of the financial penalty shall be £7,500.

Under the Council's policy, the starting level of the financial penalty shall be £2,500 for a landlord who controls, owns or manages only one HMO dwelling and no more than one other dwelling that is not an HMO, where there are no other relevant factors or aggravating features [.

Appendix C

Under the Council's policy, the starting level of the financial penalty shall be £7,500 for a landlord who controls, owns or manages three, four, or five dwellings, and/or two HMOs, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £12,500 for a landlord who controls, owns or manages six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the property portfolio), where there are no other relevant factors or aggravating factors.

Relevant factors and aggravating features specific to breaches of Management Regulations

As set out under 'Failure to comply with the duty of manager to provide information to occupier' above.

Generic relevant factors aggravating features.

As set out under 'Failure to comply with an Improvement Notice' above

Breach of licence conditions – Section 72(3) Housing Act 2004

A licence holder commits an offence if they fail to comply with any condition imposed by the licence issued pursuant to Part 2 of the Housing Act 2004. Similarly, a person (other than a licence holder) who has consented to the imposition of restrictions or obligations, commits an offence for the failure to abide by them. The penalty on summary conviction for such offences is a fine (unlimited) HMO licences may include such conditions on the licence holder as the Council consider appropriate for regulating the management, use and occupation of the house concerned, and its condition and contents.

It is important that the manager of a licensed property complies with all imposed conditions, but the Council recognises that a failure to comply with certain licence conditions may have a greater impact on the safety and comfort of residents than others.

Appendix C

Failure to comply with licence conditions relating to:

- ***Signage or the provision of information for tenants***
- ***Provision of written terms of occupancy for tenants***
- ***Procedures regarding complaints***
- ***Procedures regarding vetting of incoming tenants***
- ***Compliance with deposit protection legislation***
- ***The recording and provision of information regarding rent payments***
- ***Procedures relating to rent collection***
- ***The provision of information regarding occupancy of the property***
- ***The provision of information regarding change of managers or licence holder details***
- ***The provision of information related to changes in the property***
- ***Requirements relating to the sale of the property***
- ***Attending training courses***
- ***Requirements to hold insurance***
- ***The provision of insurance documentation***

The of failure to comply with licence conditions relating to those matters listed above shall be regarded as a Mild matter, for which a financial penalty may be imposed with a starting level of £2,500.

Under the Council's policy the starting level of the financial penalty shall be £2,000 for a landlord who controls, owns or manages one or two dwellings, including no more than one HMO, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £2,500 for a landlord who controls, owns or manages being three, four, or five dwellings, and/or two HMOs, where there are no other relevant factors or aggravating features.

Appendix C

Under the Council's policy, the starting level of the financial penalty shall be £4,500 for a landlord who controls, owns or manages six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting or management of property (irrespective of the size of the property portfolio), where there are no other relevant factors or aggravating factors.

Relevant factors and aggravating features specific to breaches of Licence Conditions

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach

Generic relevant factors and aggravating features

As set out under 'Failure to comply with an Improvement Notice' above.

Failure to comply with licence conditions relating to:

- ***Procedures and actions regarding Inspections***
- ***Procedures regarding Repair issues***
- ***Maintenance and use of common parts (including gardens, outbuildings and property exterior) and living areas***
- ***Safeguarding occupiers and minimising disruption during works***
- ***Providing information regarding alterations and construction works,***
- ***Procedures regarding emergency issues***
- ***Waste and waste receptacles, pests, minor repairs, alterations or decoration.***
- ***Giving written notice prior to entry***
- ***Allowing access for inspections***
- ***Minimising risk of water contamination***
- ***The compliance of furnishings or furniture with fire safety regulations***

The failure to comply with licence conditions described above shall be regarded as a Moderate matter for which financial penalty may be imposed. The starting level of the financial penalty shall be £7,500.

Appendix C

Under the Council's policy, the starting level of the financial penalty shall be £2,500 for a landlord who controls, owns or manages one or two dwellings, including no more than one HMO, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £7,500 for a landlord who controls, owns or /manages three, four, or five dwellings, and/or two HMOs, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £12,500 for a landlord who controls, owns or manages six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting or management of property (irrespective of the size of the property portfolio), where there are no other relevant factors or aggravating factors.

Relevant factors and aggravating features/ relating to Licence Condition breach offences.

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach

Generic relevant factors and aggravating features

As set out under 'Failure to comply with an Improvement Notice' above.

Failure to comply with licence conditions relating to:

- ***The provision of documentation regarding energy performance certificates, fire detection and prevention, emergency lighting, carbon monoxide detection, fire risk assessments, gas installations, electric installations and appliances***
- ***Notification of legal proceedings, contraventions and other relevant information that may affect a fit and proper person status.***
- ***Procedures and actions regarding ASB.***

Appendix C

The failure to comply with the licence conditions described above shall be regarded as a Serious matter, for which a financial penalty may be imposed. The starting level of the financial penalty shall be £12,500.

Under the Council's policy, the starting level of the financial penalty shall be £7,500 for a landlord who controls, owns or /manages one or two dwellings, including no more than one HMO, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £12,500 for a landlord who controls, owns or manages three, four, or five dwellings, and/or two HMOs, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £17,500 for a landlord who controls, owns or manages six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting or management of property (irrespective of the size of the property portfolio), where there are no other relevant factors or aggravating.

Relevant factors and aggravating features specific to breaches of Licence Conditions

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach

Generic aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

Failure to comply with licence conditions relating to:

- ***Minimum floor areas***
- ***Occupancy rates***
- ***Occupancy of rooms that are not to be used as sleeping accommodation.***

Appendix C

- ***Limits on number of households allowed to occupy the property or part of the property.***

The failure to comply with licence conditions described above shall be regarded as a Very Serious matter for which a financial penalty may be imposed with a starting level of £17,500.

Under the Council's policy the starting level of the financial penalty shall be £12,500 for a landlord who controls, /owns or manages one or two dwellings, including no more than one HMO, where there are no other relevant factors or aggravating features.

Under the Council's policy, the financial penalty shall be £17,500 for a landlord who controls, owns or manages three, four, or five dwellings, and/or two HMOs, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £22,500 for a landlord who controls, owns or manages six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting or management of property (irrespective of the size of the property portfolio), where there are no other relevant factors or aggravating factors.

Relevant factors and aggravating features specific to breaches of Licence Conditions

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach

Generic relevant factors and aggravating features/factors

As set out under 'Failure to comply with an Improvement Notice' above.

Failure to comply with licence conditions relating to:

Appendix C

- ***The condition or existence of smoke alarms, carbon monoxide alarms, emergency lighting, gas installations, electric installations and appliances, fire detection or other fire safety features or requirements***
- ***The prevention including provision of safe means of escape.***

The failure to comply with licence conditions described above as a Severe matter for a which a financial penalty may be imposed with a starting level of £22,500.

Under the Council's policy, the starting level of the financial penalty shall be £17,500 for a landlord who controls, owns or manages one or two dwellings, including no more than one HMO, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £22,500 for a landlord who controls, owns or manages three, four, or five dwellings, and/or two HMOs, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £27,500 for a landlord who controls, owns or manages six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting or management of property (irrespective of the size of the property portfolio), where there are no other relevant factors or aggravating factors.

Relevant factors and aggravating features specific to breaches of Licence Conditions

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach

Relevant factors and Generic aggravating features

As set out under 'Failure to comply with an Improvement Notice' above.

Selective Licensing of residential accommodation pursuant to Part 3, Housing Act 2004

A licence holder person commits an offence if they fail to comply with any condition imposed by licence issued pursuant to Part 3 of the Housing Act 2004. Similarly, a person (other than the licence holder) who has consented to the imposition of restrictions or obligations, commits an offence for the failure to abide by them. The penalty on summary conviction for such offences is a fine (unlimited).

Licences may impose such conditions on the licence holder as the Council consider appropriate for regulating the management, use and occupation of the property concerned, and its condition and contents

The failure to comply with certain licence conditions is likely to have a greater impact on the safety and comfort of occupiers than others.

Failure to comply with licence conditions relating to:

- ***Signage or the provision of information for tenants***
- ***Provision of written terms of occupancy for tenants***
- ***Procedures regarding complaints***
- ***Procedures regarding vetting of incoming tenants***
- ***Compliance with deposit protection legislation***
- ***The recording and provision of information regarding rent payments***
- ***Procedures relating to rent collection***
- ***The provision of information regarding occupancy of the property***
- ***The provision of information regarding change of managers or licence holder details***
- ***The provision of information relating to changes in the property***
- ***Requirements relating to the sale of the property***
- ***Attending training courses***
- ***Requirements to hold insurance***
- ***The provision of insurance documentation***

Appendix C

The Council shall regard the failure to comply with licence conditions listed above as a Mild matter, for which a financial penalty may be imposed with a starting level of £2,500.

Under the Council's policy, the starting level of the financial penalty shall be £2,000 for a landlord who controls, owns or manages one or two dwellings, including no more than one HMO, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £2,500 for a landlord who controls, /owns or manages three, four, or five dwellings, and/or two HMOs, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £4,500 for a landlord who controls, owns or manages six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting/management of property (irrespective of the size of the property portfolio), where there are no other relevant factors or aggravating factors.

Relevant factors and aggravating features specific to breaches of Licence Conditions

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach

Generic relevant factors and aggravating features

As set out under 'Failure to comply with an Improvement Notice' above.

Failure to comply with licence conditions relating to:

- ***Procedures and actions regarding Inspections***
- ***Procedures regarding Repair issues***

Appendix C

- ***Maintenance and use of common parts (including gardens, outbuildings and property exterior) and living areas***
- ***Safeguarding occupiers and minimising disruption during works***
- ***Providing information regarding alterations and construction works,***
- ***Procedures regarding emergency issues***
- ***Waste and waste receptacles, pests, minor repairs, alterations or decoration.***
- ***Giving written notice prior to entry***
- ***Allowing access for inspections***
- ***Minimising risk of water contamination***

The failure to comply with licence conditions listed above shall be regarded as a Moderate matter, for which a financial penalty may be imposed with a starting level of £7,500.

Under the Council's policy, the starting level of the financial penalty shall be £2,500 for a landlord who controls, owns or manages one or two dwellings, including no more than one HMO, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £7,500 for a landlord who controls, owns or /manages three, four, or five dwellings, and/or two HMOs, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £12,500 for a landlord who controls, owns or manages six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting or management of property (irrespective of the size of the property portfolio), where there are no other relevant factors or aggravating factors.

Relevant factors and aggravating features specific to breaches of Licence Conditions

Appendix C

- The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach

Generic relevant factors and aggravating features

As set out under 'Failure to comply with an Improvement Notice' above.

Failure to comply with licence conditions relating to:

- ***The provision of documentation regarding energy performance certificates, fire detection and prevention, emergency lighting, carbon monoxide detection, fire risk assessments, gas installations, electric installations and appliances***
- ***Notification of legal proceedings, contraventions and other relevant information that may affect a fit and proper person status***
- ***Procedures and actions regarding ASB***
- ***Minimum floor areas***
- ***Occupancy rates***
- ***Occupancy of rooms that are not to be used as sleeping accommodation***
- ***Limits on number of households allowed to occupy the property or part of the property***

The failure to comply with licence conditions relating to those matters listed above shall be regarded as a Serious matter, for which a financial penalty may be imposed with a starting level of £12,500.

Under the Council's policy, the starting level of the financial penalty shall be £7,500 for a landlord who controls, owns or manages one or two dwellings, including no more than one HMO, where there are no other relevant factors or aggravating features.

Appendix C

Under the Council's policy, the starting level of the financial penalty shall be £12,500 for a landlord who controls, /owns or /manages three, four, or five dwellings, and/or two HMOs, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £17,500 for a landlord who controls, owns or manages six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting or management of property (irrespective of the size of the property portfolio), where there are no other relevant factors or aggravating factors [.

Relevant factors and aggravating features specific to breaches of Licence Conditions

The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach

Generic relevant factors and aggravating features

As set out under 'Failure to comply with an Improvement Notice' above.

Failure to comply with licence conditions relating to:

- ***The condition or existence of smoke alarms, carbon monoxide alarms, emergency lighting, gas installations, electric installations and appliances, fire detection or other fire safety features or requirements***
- ***The prevention including provision of safe means of escape.***

The failure to comply with licence conditions relating to matters set out above shall be regarded as a Very Serious matter, for which a financial penalty may be imposed with a starting level of £17,500.

Under the Council's policy, the starting level of the financial penalty shall be £12,500 for a landlord who controls, /owns or manages one or two dwellings, including no more than one HMO, where there are no other relevant factors or aggravating features.

Appendix C

Under the Council's policy, the starting level of the financial penalty shall be £17,500 for a landlord who controls, owns or /manages three, four, or five dwellings, and/or two HMOs, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £22,500 for a landlord who controls, /owns or /manages six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting or management of property (irrespective of the size of the property portfolio), where there are no other relevant factors or aggravating factors.

Relevant factors and aggravating features specific to breaches of Licence Conditions

The number and/or nature and/or extent of the licence condition regulation breach(es) and/or the deficiencies within each licence condition breach

Generic relevant factors and aggravating features

As set out under 'Failure to comply with an Improvement Notice' above.

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

These Regulations require landlords to have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at an interval of at least every 5 years. Landlords have to provide a copy of the electrical safety report to their tenants, and to their local authority if requested.

Duties imposed on private landlords by the Regulations are set out in regulation 3, reproduced below:

3. Duties of private landlords in relation to electrical installations

- (1) A private landlord who grants or intends to grant a specified tenancy must—

Appendix C

- (a) ensure that the electrical safety standards are met during any period when the residential premises are occupied under a specified tenancy.
 - (b) ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified person; and
 - (c) ensure the first inspection and testing is carried out—
 - (i) before the tenancy commences in relation to a new specified tenancy; or
 - (ii) by 1st April 2021 in relation to an existing specified tenancy.
- (2) For the purposes of sub-paragraph (1)(b) "at regular intervals" means—
 - (a) at intervals of no more than 5 years; or
 - (b) where the most recent report under sub-paragraph (3)(a) requires such inspection and testing to be at intervals of less than 5 years, at the intervals specified in that report.
- (3) Following the inspection and testing required under sub-paragraphs (1)(b) and (c) a private landlord must—
 - (a) obtain a report from the person conducting that inspection and test, which gives the results of the inspection and test and the date of the next inspection and test.
 - (b) supply a copy of that report to each existing tenant of the residential premises within 28 days of the inspection and test.
 - (c) 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.
 - (d) 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; and
 - (e) 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.

Appendix C

- (4) Where a report under sub-paragraph (3)(a) indicates that a private landlord is or is potentially in breach of the duty under sub-paragraph (1)(a) and the report requires the private landlord to undertake further investigative or remedial work, the private landlord must 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, starting with the date of the inspection and testing.
- (5) Where paragraph (4) applies, a private landlord must—
 - (a) obtain written confirmation from a qualified person that the 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.
 - (b) 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 each existing tenant of the residential premises within 28 days of completion of the further investigative or remedial work; and
 - (c) 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.
- (6) 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) and (5) in respect of that further investigative or remedial work.

Appendix C

- (7) For the purposes of sub-paragraph (3)(e)(ii) a person is a prospective tenant in relation to residential premises if that person—
- (a) requests any information about the premises from the prospective landlord for the purpose of deciding whether to rent those premises.
 - (b) makes a request to view the premises for the purpose of deciding whether to rent those premises; or
 - (c) makes an offer, whether oral or written, to rent those premises.

A private landlord must comply with all the requirements of Regulation 3, however, the Council recognises some failures shall have a greater impact on the safety and comfort of residents than others.

Failure to comply with Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, sub-paragraphs (3)(b), 3(d) and 3(e)

The failure to comply with sub-paragraph (3)(b), 3(d) or 3(e) shall be regarded as a Mild matter, for which a financial penalty may be imposed with a starting level of £2,500.

Under the Council's policy, the starting level of the financial penalty shall be £500 for a landlord who controls, owns or manages one or two dwellings, including no more than one HMO, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £2,500 for a landlord who controls, owns or manages three, four, or five dwellings, and/or two HMOs, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £4,500 for a landlord who controls, owns or manages six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting or management of property (irrespective of the size of the property portfolio), where there are no other relevant factors or aggravating factors.

Appendix C

Relevant factors and Aggravating features specific to Electrical Safety Regulations breaches of duty

- The number and/or nature and/or extent of the Electrical Safety Regulation breach(es) within each sub-regulation
- Using an unqualified person lacking appropriate certification to carry out inspection, testing, investigative or remedial work.

Generic relevant factors and aggravating features

As set out under 'Failure to comply with an Improvement Notice' above.

Failure to comply with Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, sub-paragraphs (1)(a), (1)(b), (1)(c), (3)(a), (3)(c), (5)(b) and (5)(c)

The failure to comply with sub-paragraphs (1)(a), (1)(b), (1)(c), (3)(a), (3)(c), (5)(b) or (5)(c) of Regulation 3 shall be regarded as a Serious matter, for which a financial penalty may be imposed with a starting level of £12,500.

Under the Council's policy, the starting level of the financial penalty shall be £7,500 for a landlord who controls, owns or manages one or two dwellings, including no more than one HMO, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be 12,500 for a landlord who controls owns or manages three, four, or five dwellings, and/or two HMOs, where there are no other relevant factors or aggravating features.

Under the Council's policy, the starting level of the financial penalty shall be £17,500 for a landlord who controls, owns or manages six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting or management of

Appendix C

property (irrespective of the size of the property portfolio), where there are no other relevant factors or aggravating factors.

Relevant factors and aggravating features specific to Electrical Safety Regulations breaches of duty

- The number and/or nature and/or extent of the Electrical Safety Regulation breach(es) within each sub-paragraph
- Using an unqualified person lacking appropriate certification to carry out inspection, testing, investigative or remedial work.

Generic relevant factors and aggravating features

As set out under 'Failure to comply with an Improvement Notice' above.

Failure to comply with Regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 sub-paragraphs (4), (5)(a) and (6)

The failure to comply with sub-paragraphs (4), (5)(a) or (6) of Regulation 3 shall be regarded as a Very Serious matter, for which a financial penalty may be imposed with a starting level of £17,500.

Under the Council's policy, the starting level of the financial penalty for a landlord who controls, owns or manages one or two dwellings, including no more than one HMO, shall be £12,500 where there are no other relevant factors or aggravating.

Under the Council's policy, the starting level of the financial penalty shall be £17,500 for a landlord who controls, owns or /manages three, four, or five dwellings, and/or two HMOs, where there are no other relevant factors or aggravating features.

Under the Council's policy, the financial penalty shall be £22,500 for a landlord who controls, owns or manages six or more dwellings, and/or three or more HMOs and/or has demonstrated experience in the letting or management of property (irrespective

Appendix C

of the size of the property portfolio), where there are no other relevant factors or aggravating factors.

Relevant factors and aggravating features/ specific to Electrical Safety Regulations breaches of duty

- The number and/or nature and/or extent of the Electrical Safety Regulation breach(es) within each sub-regulation
- Using an unqualified person lacking appropriate certification to carry out inspection, testing, investigative or remedial work.

Generic relevant factors and aggravating features

As set out under 'Failure to comply with an Improvement Notice' above.

Financial penalties for breach of duties under regulation 3 and the right to make representations

Where the Council is satisfied, beyond reasonable doubt, that a private landlord has breached a duty under regulation 3, the Council may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach.

The financial penalty may be of such amount as the Council determine but may not exceed £30,000.

Before imposing a financial penalty on a private landlord for breach of a duty under regulation 3, the Council shall serve a notice of its intention to do (a "notice of intent").

The notice of intent shall set out:

- a) The amount of the proposed financial penalty
- b) The reasons for proposing to impose the penalty; and
- c) Information about the right to make written representations about the proposal within the period of 29 days after service of the notice of intent.

Appendix C

The recipient of a notice of intent who accepts responsibility for a breach of duty but disagrees with the proposed penalty should provide written reasons why, the Council should depart from its Civil Penalties Matrix and this guidance.,

Where two or more persons are served with a Notice of Intent for the same matter, each person is required to pay the financial penalty in full. Each person is required to make written representations on their own behalf if they wish for their views to be considered. In the absence of an exculpatory explanation, only in exceptional circumstances will a financial penalty be withdrawn.

After the end of the period for the receipt of written representations the Council shall:

- (a) decide whether to impose a financial penalty on the person, and
- (b) if it decides to do so, decide the amount of the penalty

In determining whether to impose a financial penalty, and the level of any penalty, the Council shall consider any written representations received in the appropriate time period and will have regard to the 'totality principle'.

Action taken to remedy the breaches during the period for making representations shall be treated as a mitigating factor but may not be sufficient to reduce the financial penalty to be imposed.

If the Council decides to impose a financial penalty on the private landlord, it will serve a notice (a 'final notice') imposing that penalty.

The Final Notice shall set out:

- 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, and
- f) the consequences of failure to comply with the notice

Appendix C

Appeals

A private landlord on whom a final notice is served may appeal to the First-tier Tribunal against—

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

Such an appeal must be brought within 28 days of service of the final notice.

The final notice is suspended until the appeal is finally determined or withdrawn.

An appeal shall be

- (a) is to be a re-hearing of the Council's decision; and
- (b) may be determined having regard to matters of which the Council was unaware when it made that decision.

On an appeal the First-tier Tribunal may confirm, quash or vary the final notice.

The final notice may not be varied so as to make it impose a financial penalty of more than £30,000.

Discounted payments in relation all forms of Financial Penalties

The financial penalty imposed in a final notice shall be reduced by 15% if such payment is received by the Council within 28 days.

Illustrative example

A landlord manages an HMO which is required to be licenced under Part 2, Housing Act 2004 but is not. The landlord operates two HMO properties and there are no other relevant factors or aggravating features. The offence is regarded as a Very Serious matter and the Council serves on the landlord a notice of intent proposing a financial penalty of £17,500.

The landlord makes written representations following which, the Council serves a final notice imposing a financial penalty of £16,000. The landlord pays the financial penalty within the discount period – being £13,600 (the sum of £16,000 reduced by 15%)