

Report to Cabinet

23 July 2020

By the Cabinet Member for Community & Wellbeing

DECISION REQUIRED



Not Exempt

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

Executive Summary

This report details the powers and duties introduced by The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020. These relate to the Government's response to tackling rogue landlords and improving the private rental sector.

They require Landlords to ensure that the fixed electrical installations in their properties are inspected and tested at least every 5 years by a competent electrician. The initial inspections need to be carried out before any new tenancy is granted from 1 July 2020, and by 1 April 2021 for existing tenancies.

The Regulations introduce measures that are intended to be implemented by landlords from 1 July 2020:

- Landlords are required to provide their tenants with electrical safety reports: in the case of new tenants, before they move in; to existing tenants within 28 days of receiving it; and to any prospective tenant within 28 days of their request to view the report;
- The Council has the power to demand sight of the report and the landlord must provide this within 7 days of the request. Failure to do so could result in a penalty charge;
- If the Council has reasonable grounds to believe that the landlord is in breach of the Regulations, it also has the power to serve a remedial notice on the landlord to compel them to comply with the Regulations;
- Landlords have 28 days to remedy the breach, and if the work is not carried out in time then the Council has the power to carry out the required works themselves (on providing prior written notice to the landlord) and recover their costs from the landlord;
- Landlords failing to provide tenants with an electrical safety report at the start of their tenancies will be in breach of the regulations and may face a civil penalty of up to a maximum of £30,000, with the potential for multiple penalties to be imposed for a continuing failure.

This report is to advise Cabinet of the proposed changes to Horsham DC Private Sector Housing Enforcement Policy.

Recommendations

That the Cabinet is recommended:

- i) to note and agree to the changes to Horsham DC Private Sector Housing Enforcement Policy under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020,
- ii) to add these regulations under the list of regulations enforced in this Enforcement Policy,
- iii) to add details of the penalty charges, procedures and appeals in line with other regulations to Horsham DC Private Sector Housing Enforcement Policy under the Housing and Planning Act 2016.

Reasons for Recommendations

- i) to ensure that the powers used to tackle the problem of rogue landlords are effective, appropriate and current.

Background Papers:

Wards affected: All

Contact: Marc Rankin, Head of Environmental Health and Licensing, Ext 5178

Background Information

1 Introduction and Background

- 1.1 The private rented sector is an important part of the housing market and in the Horsham District the private rented sector serves the housing needs of approximately 8% of our residents. The Council's Environmental Health and Licensing Department is responsible for ensuring good standards in this sector, protecting the health, safety and rights of tenants.
- 1.2 This report details the new regulations under the Housing and Planning Act 2016.

2 Relevant Council policy

- 2.1 The Private Sector Housing Enforcement Policy contributes towards the District Priority: Support our Communities, making a fundamental contribution to the maintenance and improvement of public health, quality of life and wellbeing.

3 Details

- 3.1 The Housing and Planning Act 2016 introduced a range of measures to crack down on rogue landlords. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 further enhance these measures:

- Landlords are required to provide their tenants with electrical safety reports: in the case of new tenants, before they move in; to existing tenants within 28 days of receiving it; and to any prospective tenant within 28 days of their request to view the report;
- The Council has the power to demand sight of the report and the landlord must provide this within 7 days of the request. Failure to do so could result in a penalty charge;
- If the Council has reasonable grounds to believe that the landlord is in breach of the Regulations, it also has the power to serve a remedial notice on the landlord to compel them to comply with the Regulations;
- Landlords have 28 days to remedy the breach, and if the work is not carried out in time then the Council has the power to carry out the required works themselves (on providing prior written notice to the landlord) and recover their costs from the landlord;
- Landlords failing to provide tenants with an electrical safety report at the start of their tenancies will be in breach of the regulations and may face a civil penalty of up to a maximum of £30,000, with the potential for multiple penalties to be imposed for a continuing failure.

3.2 Civil Penalties

- 3.2.1 Non-compliance with Housing Act notices, regulations and licensing requirements can result in the local housing authority prosecuting the offender. Section 126 and Schedule 9 of the Housing and Planning Act 2016 allows a civil penalty to be

imposed by the local housing authority for offences under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

- 3.2.2 The amount of the penalty is to be determined by the local housing authority with a maximum amount of £30,000. The Council must have regard to Guidance given by the Secretary of State about the exercise of its functions in relation to the issuing of civil penalties and local housing authorities are expected to develop and document their own policy on determining the appropriate level of civil penalty. Horsham District Council's charging scheme is set out in Appendix A.
- 3.2.3 Income received from a civil penalty can be retained by the local housing authority provided that it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector.
- 3.2.4 A civil penalty should not be seen as a lesser option compared to prosecution and to help ensure that the civil penalty is set at the appropriate level The Statutory Guidance requires a local housing authority to have regard to the following factors when deciding the appropriate level of penalty
- Severity of the offence
 - Culpability and track record of the offender
 - The harm caused to the tenant
 - Punishment of the offender and to deter the offender from repeating the offence
 - Deter others from committing similar offences
 - Remove any financial benefit the offender may have obtained as a result of committing the offence.
 - The Landlord/Letting agents assets and income
- 3.2.5 A civil penalty is an alternative to prosecution so a local housing authority is not permitted to impose a civil penalty and prosecute for the same offence. A civil penalty requires the same burden of proof as a prosecution, the evidence must meet the criminal standard of proof ie "beyond reasonable doubt". In considering the decision to prosecute or not, the Council must also consider is there is sufficient evidence for there to be a realistic prospect of conviction were it to go to court and if the prosecution is in the public interest.
- 3.2.6 Local housing authorities are also expected to develop and document their own policy on when to prosecute and when to issue a civil penalty and decide on which option on a case by case basis. The Private Sector Housing Enforcement Policy has been updated to include these details and is attached as Appendix B.
- 3.2.7 There is a prescribed process for levying civil penalties which must be followed precisely which is laid out in the Statutory Guidance. Recipients of a civil penalty have the right to appeal to the First-tier Tribunal where the soundness of the decision to impose a civil penalty, the decision relating to the amount and any deviations from the prescribed process can be rigorously reviewed. The Tribunal has the power to confirm, vary (increase or reduce) or cancel the civil penalty that the Council has issued

4 Next Steps

- 4.1 The Cabinet are recommended to approve the changes to the Private Sector Housing Enforcement Policy as set out in Appendix B to include the requirement for the inspection of fixed electrical installations.

5 Views of the Policy Development Advisory Group and Outcome of Consultations

- 5.1 The proposed policy changes were considered by the Housing and Public Protection Policy Development and Advisory Group at its meeting on 17th July. The Group was fully supportive of the new proposals.

6 Other Courses of Action Considered but Rejected

- 6.1 The Government have made it very clear that they expect local housing authorities to use the powers provided in the Housing and Planning Act 2016 robustly as a way of clamping down on rogue landlords, therefore the option not to do so was rejected.

7 Resource Consequences

- 7.1 There are no anticipated additional resource consequences

8 Legal Consequences

- 8.1 Section 126 of the Housing and Planning Act 2016 allows civil penalties to be imposed as an alternative to prosecution for certain offences as set out in Schedule 9 of the Act. Schedule 9 in turn amends the Housing Act 2004 including providing a new Section 249A which deals with civil penalties as an alternative to prosecution.
- 8.2 The Council has a statutory duty as a Local Housing Authority to enforce relevant Housing Legislation

9 Risk Assessment

- 9.1 No risks have been identified from the recommendations contained in this report

10 Other Considerations

- 10.1 The new powers introduced by the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 are intended to provide a significant incentive to landlords to comply with their legal obligations. The adoption of the new powers should mean that landlords comply more quickly and/or proactively in order to avoid financial and other penalties, which should result in fewer private tenants being exposed to housing conditions that have an adverse health impact.

**CHARGING POLICY FOR DETERMINING THE LEVEL OF CIVIL PENALTIES IMPOSED
UNDER THE HOUSING AND PLANNING ACT 2016**

1.0 Factors taken into account when deciding the level of civil penalty

- 1.1 Local housing authorities have the power to impose a civil penalty of up to £30,000. The Government would expect the maximum amount to be reserved for the very worst offenders. 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.
- 1.2 In order to ensure that any civil penalty is set at an appropriate level the Council shall consider the following factors:
- **Severity of the offence.** The more serious the offence, the higher the penalty should be.
 - **Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
 - **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.
 - **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 demonstrates the consequences of not complying with their responsibilities.
 - **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.
 - **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 the local housing authority is proactive in levying civil penalties where the need to do so exists and that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.
 - **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

2.0 Civil Penalties Matrix

2.1 The level of any civil penalty should take into account the Council's cost of investigating, determining and applying a civil penalty as well as including a punitive charge.

2.2 The table below based on culpability and harm will be used as a starting point for determining, on a case by case basis, the level of civil penalty that should be imposed:

| | | CULPABILITY | | |
|------------------|----------|-----------------|-----------|------------|
| | | Low Culpability | Negligent | Deliberate |
| H A R M | Moderate | £2,000 | £4,000 | £6,000 |
| | Serious | £4,000 | £8,000 | £16,000 |
| | Severe | £8,000 | £16,000 | £30,000 |
| | | | | |

2.3 In determining culpability regard should be had to the following:

- **Deliberate** – An intentional breach by a landlord or property agent or a flagrant disregard for the law.
- **Negligent** – The failure of the landlord or property agent to take reasonable care to put in place proper systems for avoiding the offence.
- **Low culpability** – The offence committed has some fault on the part of the landlord or property agent but there are other circumstances which have led to the offence.

2.4 In determining harm regard should be had to the following:

- **Severe** – A severe and substantial risk, including imminent risk, to the health and safety of the occupiers and/or community, with potential life threatening results.
- **Serious** - A serious risk to the health and safety of the occupiers and/or immediate neighbours, leading to a potential serious injury or disease requiring treatment and/or hospital admission.
- **Moderate** – A moderate risk which is still significant enough to warrant medical attention.

2.5 In order to ensure that a civil penalty is set at an appropriate level, the Council will have regard to the Civil Penalty Matrix and consider each case against the factors identified in the statutory guidance and detailed in paragraph 1.2 above. Aggravating factors in a case will increase the level of penalty and, equally any mitigating factors will reduce the level of penalty.

3.0 Discounts

3.1 The Council will apply the following discounts to any imposed civil penalties in the following circumstances:

- In the event that the offender complied with the identified breach within the representation period at the 'notice of Intent' stage, the Council would normally reduce the level of any imposed civil penalty by 20%
- An early payment discount of 20% of the civil penalty will be applied should the payment be made within 14 days from the date of the 'final notice'. This discount would be in addition to any reduction applied as a result of compliance at the 'notice of intent' stage.

4.0 Procedure and Appeals

- 4.1 The procedure for imposing a civil penalty is set out at Schedule 13A of the Housing Act 2004 and summarised in the DCLG guidance. There is no scope for the Council to deviate from this procedure.
- 4.2 Before imposing a civil penalty the Council must give the person a notice of its proposal (notice of intent) to impose a civil penalty.
- 4.3 A person who is given a notice of intent may make written representations to the Council within 28 days about the proposal to impose the civil penalty. Any representations to the civil penalty charge will be considered by the Head of Environmental Health and Licensing and all representations will be considered on their own merit.
- 4.4 After the end of the period for representations, if the Council decides to impose a civil penalty, it must give the person a notice (a Final notice) imposing the penalty.
- 4.5 A person receiving a final notice of a civil penalty may appeal to the First-tier Tribunal against the decision to impose a penalty or the penalty amount. The appeal has the effect of suspending the notice and requirement to pay until determined.

5.0 Non-payment of civil penalty

- 5.1 Where a person fails to pay a civil penalty, the Council will pursue non-payment of the penalty through a Court Order process.

PRIVATE SECTOR HOUSING ENFORCEMENT POLICY

1.0 Introduction

1.1 The Private Sector Housing Service is responsible for enforcing a wide range of statutory provisions relating to housing and environmental conditions affecting health and safety.

1.2 The objectives of the service are to:

- Improve the standards of homes in the private sector
- To assess local housing conditions
- To reduce the number of properties with serious risks to health and safety
- To improve standards in private rented accommodation
- To improve the standards in HMOs (houses in multiple occupation)
- To work closely with private sector landlords towards improving conditions and the standard of management of private rented housing
- To provide an excellent service that is accessible to anyone living in the private sector who may have poor living conditions

1.3 The Private Sector Housing service works **reactively** and **proactively**.

Reactively the service will respond to:

- Private sector tenants who contact the Council with complaints about disrepair or poor conditions within their home.
- Complaints about properties that may be causing problems for neighbouring properties.
- Enquiries from owner occupiers or private tenants and landlords who would like advice about housing conditions.
- Enquiries for advice about the legal minimum housing standards, particularly HMOs (houses in multiple occupation)

Proactively the service will:

- Operate a programme of inspections of higher risk HMOs

1.4 In exercising their duties and other functions, officers will seek to do so in a firm but fair, open and consistent and helpful way. Any enforcement action will be compliant with relevant legislation and guidelines in line with the principles of good enforcement.

1.5 This policy deals with the practical application of enforcement procedures that will be used to achieve statutory housing and environmental standards. It sets out what owners, landlords, their agents and tenants of private sector properties can expect from officers.

1.6 Enforcement, in the context of this policy is not limited to formal enforcement action such as prosecution, but includes for example, the inspection of premises for the purpose of checking compliance with legislation and the provision of advice.

1.7 This policy seeks to support the Council's corporate aims, objectives and strategies with respect to private sector housing and has to read in conjunction with the Council's General Enforcement Policy for Environmental Health and Licensing and the Council's Private Sector Housing Renewal Policy.

2.0 Principles of Good Enforcement

2.1 The aim of the policy is to ensure that all enforcement actions comply with the following principles:

Consistency
Proportionality
Openness

2.2 **Consistency** means taking a similar approach in similar circumstances to achieve similar ends. It does not mean uniformity, as officers will take into account many factors such as the level of risk, the history of compliance and the attitude and actions of those involved.

2.3 **Proportionality** means relating enforcement action to the risks and severity of the breach of the law involved. This will ensure that the most serious risks are targeted first.

2.4 **Openness** means explaining our actions clearly in plain language and discussing compliance failures or problems with anyone experiencing difficulties. A clear distinction will be made between legal requirements (what must be done) and advice or guidance (what is desirable)

3.0 Legislation

3.1 This section lists the legislation commonly enforced by the private sector housing service and outlines the provisions. It is not an exhaustive list and is not a full statement of the law – it is simply a summary.

3.2 The Housing Act 2004 introduced the Housing Health & Safety Rating System (HHSRS), a method of assessing and categorising hazards to health. The categories are summarised below:

| HHSRS | Band | Severity | Response |
|-------------------|------|----------------------|--|
| Category 1 hazard | A | Serious hazards | The Council has a duty to take enforcement action. |
| | B | | |
| | C | | |
| Category 2 hazard | D | Less serious hazards | The Council has discretion to take action |
| | E | | |
| | F | | |
| | G | | |
| | H | | |
| | I | | |
| | J | | |

The Council has a range of enforcement options to address hazards that exist in residential premises as follows:

| Action | Category of hazard where action appropriate | |
|-----------------------------|--|-------------------|
| | Category 1 | Category 2 |
| No action | No | Yes |
| Hazard awareness notice | Yes | Yes |
| Improvement notice | Yes | Yes |
| Prohibition order | Yes | Yes |
| Emergency remedial action | Yes | No |
| Emergency prohibition order | Yes | No |
| Demolition order | Yes | No |
| Clearance area | Yes | No |

3.3 Houses in Multiple Occupation (HMOs)

In addition to the previously mentioned enforcement options the Council has further powers to ensure adequate standards in HMOs are met and maintained.

The Housing Act 2004 introduced a mandatory scheme to licence HMOs. Licensing is intended to apply only to larger high risk HMOs of 3 or more stories occupied by 5 or more people, comprising 2 or more households.

The HMO licensing regime provides procedures to assess the fitness of a person to be a licence holder, potential management arrangements of the premises and suitability of the property for the number of occupants, including the provision of relevant and adequate equipment and facilities at the property.

It is a criminal offence if a person controlling or managing a HMO does not have the required licence. Breaking any condition of a licence is also an offence.

All HMOs, regardless of whether they are licensable or not, are subject to legislation about how they are managed and must comply with the requirements of the Management of Houses in Multiple Occupation Regulations 2006.

3.4 Empty Properties

The Housing Act 2004 introduces Empty Dwelling Management Orders (EDMO) in order to unlock the potential of empty houses and to get them back into use as houses as quickly as possible. EDMOs are designed as a backup to voluntary leasing arrangements and an alternative to enforcement action under other legislation.

There are two types of order, Interim EDMO and Final EDMO. EDMOs allow the Council to secure the occupation and proper management of privately owned houses and flats that have been unoccupied for a specified period (at least six months).

3.5 Caravan Sites

The Use of land as a caravan site usually requires a caravan site licence under the Caravan Sites and Control of Development Act 1960 and the Council may impose site licence conditions. The Council has adopted conditions based on the current model standards. The Council is able to take enforcement action, by way of Compliance Notices, should a site be operating without a licence or where site licence conditions are not being met.

3.6 Other Legislative Provisions

The Private Sector Housing Service is also responsible for enforcing the provision of other legislation including Public Health Acts 1936 and 1961, Building Act 1984, Environmental Protection Act 1990, The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 and the Letting Agents

Redress Scheme and the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

3.7 **Power to Charge for Enforcement Action**

Section 49 of the Housing Act 2004 allows the Council to make a reasonable charge as a means of recovering expenses incurred in taking enforcement action. The expenses are in connection with the inspection of the premises, subsequent consideration of any action to be taken, and the service of notices.

The Council will recover costs when formal action is taken i.e. the service of Housing Act Notices, where it is reasonable to expect the owner to pay the charges. The full cost of an officer's time including overheads and any relevant expenses will be charged. There is discretion to waive the charge when it is not reasonable to expect a person to pay the charges for enforcement.

Landlords seeking to comply with the law will not be charged for enforcement action whilst bad landlords will be charged.

Where charges for enforcement action are levied they can be registered as a local land charge against the property.

The Council will also recover costs when formal action is taken i.e. the service of Compliance Notices, under the Caravan Sites and Control of Development Act 1960, where it is reasonable to expect the owner to pay the charges. The full cost of an officer's time including overheads and any relevant expenses will be charged. There is discretion to waive the charge when it is not reasonable to expect a person to pay the charges for enforcement.

4.0 **Enforcement**

4.1 The actions available to the Private Sector Housing Service to improve the standards of private sector housing are broadly divided into two categories:

Informal action - Informal action will include verbal advice given by Officers, and advisory letters. The Private Sector Housing Services is very willing to offer help and advice and will explain the reasons for the Council's involvement and what should be done to improve the particular housing conditions. The preferred approach is to work with people to help to prevent the need for formal enforcement.

Formal action - Formal action normally involves the service of enforcement notices. Most notices served by the Private Sector Housing Service require the recipient of the notice to commence and complete specified works within specified time limits.

All notices are accompanied by notes that explain the effect of the notice and the recipient's right of appeal. Officers will always be willing to discuss the works specified in the notice and the reason for the service of the notice.

4.2 Private Sector Housing Officers are authorised to operate the service according to this policy and prepare enforcement work on behalf of the Council. Authorisation to approve enforcement action is delegated by the Council to the Head of Environmental Health and Licensing.

4.3 **Sanctions**

In all case where an offence is committed the Council has various sanctions it can impose.

4.3.1 **Penalty Charge Notices**

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

The Redress Schemes for lettings Agency work and Property management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014

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

The landlord can request the local authority to review the penalty charge. A final appeal can be made by the landlord to the First-tier Tribunal.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Under these regulations, a penalty charge of up to £5,000 can be made. Regulation 13 requires a local Housing Authority to prepare and publish a statement of principles which it proposes to follow in determining the amount of penalty charge. Appendix 1 details the Councils Statement of Principles in this matter.

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

Under these regulations a penalty charge of up to £30,000 can be made, with the potential for multiple penalties to be imposed for a continuing failure. The procedure and appeals concerned with penalty charges are laid out in Schedule 2 to these Regulations.

4.3.2 Civil Penalties

The Council may serve notices imposing Civil Penalties as an alternative to prosecution in respect of the following offences:

- Failure to comply with an Improvement Notice
- Failure to licence or other licensing offences relating to Houses in Multiple Occupation (HMOs)
- Failure to comply with an Overcrowding Notice
- Failure to comply with a regulation in respect of an HMO
- Breaching a Banning Order

The local housing authority should determine the amount of penalty which can be up to a maximum of £30,000. The table and notes in Appendix 2 sets out the charging system and the matters which are to taken into consideration when setting the level of a civil penalty.

4.3.3 Prosecution

Non-compliance with legislation and regulations enforced by the Private Sector Housing Service is generally a criminal offence. The Council is the prosecuting authority for such offences and as they are criminal in nature, proceedings are normally taken in the Magistrates Court.

4.3.4 Rent Repayment Orders

A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent. Rent repayment orders can be applied to a wide range of offences and where an offence to which a rent repayment order relates has been committed the local authority will consider applying for a rent repayment order on each case independently. The Council must consider applying for a rent repayment order where a landlord has been convicted of an offence for which a rent repayment order can applied for.

4.3.5 Works in Default

Work in default is a power given to the Council, to ensure work is carried out to a property. If the recipient of the Notice does not do the work required by the Notice, the Council may employ a contractor to enter the property and carry out the work itself. The Council will charge the appropriate person for the cost of the works together with the costs involved in arranging for the work to be done.

It should be noted that carrying out the work in default does not exclude the Council from taking other formal action. The Council is entitled to ensure that the work is carried out and to consider if it is appropriate to take further action.

4.3.6 Remedial Action

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 give the powers to take urgent remedial action where it appears that the owner of the property will not do so. The procedure to be followed is specified in regulation 10.

4.4 Shared Enforcement Responsibility

In circumstances where enforcement responsibility is shared between enforcement agencies, the Private Sector Housing Service will have regard to procedures agreed with other enforcement agencies, particularly where memoranda of understanding exists.

In some cases, enforcement powers will rest with another agency (for example the Health and Safety Executive has responsibility for enforcement of gas safety in domestic property). In these situations, the Private Sector Housing Section will act to ensure that the case is transferred to the enforcing agency promptly and in accordance with any agreed procedures.

5.0 Taking Action and Imposing Sanctions

The decision to take informal or formal action will be made by the officer in charge of the case.

5.1 When we will take Enforcement Action

Notices are served when there is no alternative and when all other reasonable attempts have been made to achieve the necessary action voluntarily.

In determining whether or not to serve a notice each case is looked at individually and the following factors are taken into account:

- Whether an informal approach such as a letter informing the landlord of the defects and asking them to confirm their intentions within a set timescale is appropriate.
- The significance of the hazards.
- The extent and location of the hazards.
- Whether the Council is under a duty or has a power to take formal action in respect of the hazards identified.
- The level of risk posed to the occupiers, including whether there is an imminent risk of serious harm
- The views and intentions of the occupiers.
- The views and intentions of the owners.
- The compliance record of the person in control of the premises.
- Whether the chosen option is practical, reasonable and proportionate in reducing the hazards to an acceptable level.
- The physical impact on adjoining buildings.
- The longer term viability of the premises.
- The impact on the local community and on the appearance of the local area.
- Whether the tenant will be protected from retaliatory eviction.

5.2 When will sanctions be imposed?

In all cases where an offence is committed, consideration will be given as to whether a sanction should be imposed and if so, which one. In some cases it may be appropriate to impose two sanctions for example, prosecution and an application for a rent repayment order.

In deciding whether to pursue sanction, the initial decision will be made by the officer in charge of the case in consultation with the Head of Environmental Health and Licensing. Having prepared the case and collected the evidence, officers will then consult the Council's Legal Section to discuss the merit of the action proposed.

5.3 **Civil Penalties or Prosecution**

Each case is unique and must be considered on its own facts. However, there are general principles that apply to the way in which Officers decide whether an action should be applied and if so which one.

There are two overarching tests used in determining whether to impose a sanction. These are the evidential test and the public interest test.

The Evidential Test - Private Sector Housing Officers must be satisfied that there is enough evidence to provide a realistic prospect of conviction. This is an objective test and means that a court is more likely than not to convict the offender of the charge alleged.

The Public Interest Test - If the evidential requirements are met, Officers must then consider whether the public interest requires a prosecution. It is not the case that Officers will prosecute simply because an offence has been committed. There should generally be a public interest in bringing such an offence to Court.

- 5.3.1 Whenever the authority believes a Housing Act 2004 offence has been committed and the evidence passes the evidential stage and the public interest stage it will then be necessary to consider on a case by case basis if instigating prosecution proceedings or imposing a civil penalty is the best approach. If the Council believes that it has a reasonable prospect of a conviction in a particular case it will always consider a civil penalty in the first instance.

Factors to consider will include:

- The seriousness of the offence, history of compliance, culpability and the harm caused.
- Whether a civil penalty is likely to be sufficient to change the behaviour of the offender.
- Whether the offender has a large portfolio of properties potentially putting many tenants at risk if they continue to operate with poor practices.
- Information from partner agencies e.g. Police and West Sussex Fire and Rescue Service.
- Is publicity likely to act as a deterrent to others, a prosecution is in the public domain whereas a civil penalty is not.
- Which option will be the best deterrent to prevent further offences,
- Whether the tenant or council is also considering applying for a Rent Repayment Order.

Examples of situations in which a decision to prosecute may be the most appropriate option include; for what are judged to be particularly serious offences and where the offender has committed similar offences in the past. However, that does not mean civil penalties should not be used where serious offences have been committed and each case will be considered on an individual basis.

5.4 **Work in Default**

When determining if work in default is appropriate, officers will consider the following, this is not an exhaustive list and other factors may be taken into account:

- The reason for non-compliance to the original Notice,
- The effects of not carrying out the work on the health and safety of the occupant of the property concerned,
- The reason for the work not being carried out in the first place.

6.0 **Service Complaints**

- 6.1 If you feel the Council has not acted in accordance with this policy please contact:

The Head of Environmental Health and Licensing
Horsham District Council
Parkside
Horsham
West Sussex RH12 1RL
E-mail: publichealth.licensing.gov.uk
Telephone: 01403 215405

If you are dissatisfied with the response you can pursue your complaint through the internal complaints procedure

7.0 Policy Review

- 7.1 The policy will be reviewed regularly by the Head of Environmental Health and Licensing to ensure it continues to meet the principles of good enforcement.

Statement of principles for determining the amount of a penalty charge for breaches of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

INTRODUCTION

1. Regulation 13 of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 ('the Regulations') requires local housing authorities such as Horsham District Council ('the Council') to prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge.
2. This statement of principles sets out the principles that the Council will apply in exercising its powers to require a relevant landlord ('landlord') to pay a financial penalty for a failure to comply with requirement of a remedial notice ('the Notice') served under Regulation 5 of the Regulations.

FINANCIAL PENALTY CHARGES

3. In accordance to Regulation 8, where the Council is satisfied that on the balance of probabilities that the landlord on whom it has served a remedial notice ('the Notice') under Regulation 5 has failed to take the remedial action specified in the Notice within the period specified, the Council may require the landlord to pay a penalty charge of such amount as the authority has determined.
4. In deciding whether it would be appropriate to impose a penalty charge, the Council will take full account of the particular facts and circumstances of the breach under consideration, such as evidence of the breach of the requirement of the Notice.
5. Before imposing a requirement on a landlord to pay a penalty charge, the Council must, within a period of six weeks from the point at which it is satisfied that the landlord has failed to comply with the requirements of the Notice, serve a penalty charge notice in accordance with Regulation 9 setting-out:
 - the reasons for imposing the penalty charge;
 - the premises to which the penalty charge relates;
 - the number and type of prescribed alarms (if any) which an authorised person has installed at the premises;
 - the amount of the penalty charge;
 - that the person responsible for the breach is required, within a period specified in the notice –
 - to pay the penalty charge, or
 - to give written notice to the local housing authority that the offender wishes the authority to review the penalty charge notice;

- how payment of the penalty charge must be made;
 - the person to whom, and the address (including if appropriate any email address) at which, a notice requesting a review may be sent and to which any representations relating to the review may be addressed; and
 - any other information as required by the regulations that have been breached.
6. Under Regulation 8(2) the amount of the penalty charge must not exceed £5,000.
7. For a first offence, the Council will impose a penalty charge of £2,500 and an early payment (within 14 days of the penalty charge notice with the day on which the penalty charge notice is served) will be reduced by 50% making £1,250 payable.
8. For subsequent offences the penalty will be £5,000 to deter continued non-compliance and an early payment will attract a discount of 50% making £2,500 payable

REVIEW OF PENALTY CHARGE NOTICE

9. Should the Council receive a request from the landlord for the review of a penalty charge within 28 days (beginning with the day on which the penalty charge notice is served), a review shall be undertaken by the Head of Environmental Health and Licensing and the Head of Legal and Democratic Services. They will review the penalty charge and take into account all representations made. All representations will be considered on their own merits; in particular, the following may be considered relevant in deciding any reduction in the charge made:
- Internal failed preventative measures – in cases of national agents / landlords / businesses where due to internal processes failing local office has breached regulations.
 - Good attitude and cooperation with the Council – in cases where the landlord has cooperated fully with the Council in investigating the breach of the regulations.
 - Immediate and voluntary remediation – when the offence was brought to the attention of the landlord they immediately rectified any breach of the regulations.
 - No previous history of non-compliance with other housing legislation – if this is a first breach of any housing related legislation.
 - Any relevant personal circumstances.
 - Undue financial hardship – if the fine would cause the offender undue financial hardship such that it might not be able to continue to operate.
10. In conducting the review, the Council will consider any representations made by the landlord, and serve notice of its decision whether it confirms, varies or withdraws the penalty charge notice issued to the landlord.
11. The notice of the review decision will also state the landlord's right of appeal

APPEALS

12. A landlord who, having requested a review of a penalty charge notice is served with a notice confirming or varying the penalty charge may appeal to the First-tier Tribunal against the Council's decision.
13. When any review determines a final amount of penalty and this is not paid the Council will pursue non-payment of the penalty charge on the order of a court, as if payable under a court order.

VALIDITY OF THIS POLICY

14. The Council may revise its statement of principles and, where it does so, it must publish the revised statement.

**CHARGING POLICY FOR DETERMINING THE LEVEL OF CIVIL PENALTIES IMPOSED
UNDER THE HOUSING AND PLANNING ACT 2016**

1.0 Factors taken into account when deciding the level of civil penalty

1.1 Local housing authorities have the power to impose a civil penalty of up to £30,000. The Government would expect the maximum amount to be reserved for the very worst offenders. 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.

1.2 In order to ensure that any civil penalty is set at an appropriate level the Council shall consider the following factors:

- **Severity of the offence.** The more serious the offence, the higher the penalty should be.
- **Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
- **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.
- **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 demonstrates the consequences of not complying with their responsibilities.
- **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.
- **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 the local housing authority is proactive in levying civil penalties where the need to do so exists and that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.
- **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

2.0 Civil Penalties Matrix

- 2.1 The level of any civil penalty should take into account the Council's cost of investigating, determining and applying a civil penalty as well as including a punitive charge.
- 2.2 The table below based on culpability and harm will be used as a starting point for determining, on a case by case basis, the level of civil penalty that should be imposed:

CULPABILITY

| | Low Culpability | Negligent | Deliberate | |
|---|-----------------|-----------|------------|---------|
| H | Moderate | £2,000 | £4,000 | £6,000 |
| A | Serious | £4,000 | £8,000 | £16,000 |
| R | Severe | £8,000 | £16,000 | £30,000 |
| M | | | | |

- 2.3 In determining culpability regard should be had to the following:
- **Deliberate** – An intentional breach by a landlord or property agent or a flagrant disregard for the law.
 - **Negligent**– The failure of the landlord or property agent to take reasonable care to put in place proper systems for avoiding the offence.
 - **Low culpability** – The offence committed has some fault on the part of the landlord or property agent but there are other circumstances which have led to the offence.
- 2.4 In determining harm regard should be had to the following:
- **Severe** – A severe and substantial risk, including imminent risk, to the health and safety of the occupiers and/or community, with potential life threatening results.
 - **Serious** - A serious risk to the health and safety of the occupiers and/or immediate neighbours, leading to a potential serious injury or disease requiring treatment and/or hospital admission.
 - **Moderate** – A moderate risk which is still significant enough to warrant medical attention.
- 2.5 In order to ensure that a civil penalty is set at an appropriate level, the Council will have regard to the Civil Penalty Matrix and consider each case against the factors identified in the statutory guidance and detailed in paragraph 1.2 above. Aggravating factors in a case will increase the level of penalty and, equally any mitigating factors will reduce the level of penalty.

3.0 Discounts

- 3.1 The Council will apply the following discounts to any imposed civil penalties in the following circumstances:
- In the event that the offender complied with the identified breach within the representation period at the 'notice of intent ' stage, the Council would normally reduce the level of any imposed civil penalty by 20%
 - An early payment discount of 20% of the civil penalty will be applied should the payment be made within 14 days from the date of the 'final notice'. This discount would be in addition to any reduction applied as a result of compliance at the 'notice of intent' stage.

4.0 Procedure and Appeals

- 4.1 The procedure for imposing a civil penalty is set out at Schedule 13A of the Housing Act 2004 and summarised in the DCLG guidance. There is no scope for the Council to deviate from this procedure.
- 4.2 Before imposing a civil penalty the Council must give the person a notice of its proposal (notice of intent) to impose a civil penalty.
- 4.3 A person who is given a notice of intent may make written representations to the Council within 28 days about the proposal to impose the civil penalty. Any representations to the civil penalty charge will be considered by the Head of Environmental Health and Licensing and all representations will be considered on their own merit.
- 4.4 After the end of the period for representations, if the Council decides to impose a civil penalty, it must give the person a notice (a final notice) imposing that penalty.
- 4.5 A person receiving a final notice of a civil penalty may appeal to the First-tier Tribunal against the decision to impose a penalty or the penalty amount. The appeal has the effect of suspending the notice and requirement to pay until determined.

5.0 Non-payment of civil penalty

- 5.1 Where a person fails to pay a civil penalty, the Council will pursue non-payment of the penalty through a Court Order process.