

**MEDWAY COUNCIL**

**Private Sector Housing**

**Housing Enforcement and Licensing  
Policy  
Draft Version 1  
2020**



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## Chapter 1: Introduction

**1.1** Our aim is to raise the standards in the private rented sector, as the Council understands the importance of living in good quality homes, and how poor housing can have an impact on people's health. The Council is working with owners, landlords, letting agents and tenants to achieve this. However, it is recognised that if the law is broken, then enforcement action may be necessary to protect the public and the environment.

**1.2** The enforcement policy will support the aims of the Medway Council Housing Strategy 2018-2022.<sup>1</sup>

**1.3** It is important for local authorities to have a policy to ensure consistency of approach among council officers and for members of the public to know what to expect from the service. The enforcement policy also provides clarity if the Council takes legal proceedings or if enforcement action is appealed against.

Note – In this Policy, the term “landlords” also includes “property agents”, “managing agents” and “letting agents “unless otherwise specified.

### General Principles

**1.4** We are committed to the principles of good enforcement as set out in the Legislative and Regulatory Reform Act 2006<sup>2</sup>. When exercising our regulatory activities we will do so in a way that it is transparent, accountable, consistent and proportionate and targeted only at cases in which action is needed.

- **Transparency:** We will be open in our approach, explain our decisions and publish our policies.
- **Accountability:** We will be accountable for the efficiency and effectiveness of our service and the decisions we make. We will be clear when we can help and when we cannot, in the line with the legislation available to us and where possible signpost customers to other council departments/ external agencies who may be able to assist.
- **Proportionality:** We will ensure that enforcement action is proportionate to the risk and any sanction applied is appropriate.
- **Targeting:** We will prioritise and direct our regulatory effort where it is needed
- **Fairness and Consistency:** We will treat all service users fairly and ensure that our enforcement practices are consistent. We will have regard to the national guidance, Codes of Practice and best practice to inform our decision making. We will provide details on how to appeal against decision making and be open and fair in this approach.

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<sup>1</sup> Medway Council Housing Strategy 2018-2022

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2006/51/contents>

## Regulators' Code

**1.5** The Legislative and Regulatory Reform Act 2006 requires the authority to have regard to the Regulator's Code<sup>3</sup> when developing its policies and procedures to guide our regulatory activity.

**1.6** This enforcement policy has regard to 'the Code' in that we will:

- **Support local businesses to comply and grow-** we aim to carry out our activities in a way that supports landlords and businesses to comply with their legal responsibilities whilst being able to grow their business.
- **Engage with our service users** and provide a number of mechanism to facilitate this, including the landlords' forum, landlord and tenant accreditation schemes, landlords CPD training and landlord focus groups.
- **Provide clear information** in an accessible and easily understood format, using guidance and advice to help landlords. We will explain our decisions when action is considered as necessary, an explanation of what would be required and why such works/actions are required in writing. When offering advice the Private Sector Housing team will distinguish between statutory requirements and advice or guidance, aimed at improvements above minimum standards. Advice will be confirmed in writing if requested.
- **Share Information** Often a single housing matter may overlap the enforcement responsibilities of several internal services and external agencies, such as the Kent and Fire Rescue service. Where possible we will take a comprehensive approach to enforcement by co-ordinating action between other council departments and other external agencies, ensuring the most effective action is taken and led by the most appropriate department agency, to avoid duplication and inconsistencies.
- **Risk based approach** our enforcement activities are aimed at reducing the risk of harm to individuals and the wider community. We will review our enforcement priorities and the effectiveness of our approach to ensure we are delivering an efficient and relevant services
- **Be transparent** We will provide suitable advice and guidance to those we enforce against to ensure they fully understand the enforcement process, explain what they need to do, and what they can expect to happen if they do not comply. We will distinguish between statutory requirements and advice or guidance about what is desirable, but not compulsory, to meet the legislation. We will enforce and apply penalties in a transparent manner and we will issue a press release, when we successfully prosecute a person or business and if it is within the interests of the public to do so.

## Government's Enforcement Concordat

**1.7** The Council has agreed to apply and follow the government's Enforcement Concordat<sup>4</sup>, which provides a basis for fair, practical and consistent enforcement. It is based on the principle that anyone likely to be subject to formal enforcement action

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<sup>3</sup> <https://www.gov.uk/government/publications/regulators-code>

<sup>4</sup> <https://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/files/file10150.pdf>

should receive clear explanations of what they need to do to comply and have an opportunity to resolve difficulties before formal action is taken.

### **Regulations of investigatory Powers Act 2000 (RIPA) and human rights**

**1.8** Any covert surveillance carried out by the team will have regard to the code when carrying out any surveillance on a person, to receive any personal information.

**1.9** Medway Council is a public authority for the purposes of the Human Rights Act 1998. The principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms will therefore be applied. In particular, the following are applicable:

- Article 6 - the right to a fair trial;
- Article 8 - the right to respect for private and family life, home and correspondence.

### **Equality statement**

**1.10** This policy aims to promote the Council's objectives of improving the quality of life and opportunities for everyone living, working, learning, playing and visiting Medway.

**1.11** Medway Council wants to be acknowledged as an organisation that promotes fair access and inclusion by meeting the diverse needs of local people, visitors and our workforce.

**1.12** The Council is committed to ensuring that no service user, employee, job applicant, partner, contractor, supplier or member of the public will be unlawfully discriminated, harassed or victimised on the grounds of race; ethnicity; nationality; ethnic or national origin; colour; disability; gender identity or presentation; marital or civil partnership status; maternity or pregnancy; family and caring responsibilities; sex; sexual orientation; age; HIV status; religion or belief; political beliefs; social class; trades union activity; or irrelevant spent convictions.

**1.13** This document describes a range of interventions aimed at safeguarding and improving the health, safety and wellbeing of people living in the private sector.

**1.14** You may view Medway's' Fair Access, Diversity and Inclusion Policy<sup>5</sup> on Medway Council website.

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<sup>5</sup> [https://www.medway.gov.uk/downloads/file/1206/fair\\_access\\_and\\_inclusion\\_policy\\_2012](https://www.medway.gov.uk/downloads/file/1206/fair_access_and_inclusion_policy_2012)

## Chapter 2: Housing Health Safety Rating System (HHSRS)

**2.1** The Housing Act 2004<sup>6</sup>(Part 1) introduced the Housing Health and Safety Rating System (HHSRS). The HHSRS is a method to calculate the potential risks to the health and safety of a vulnerable occupant from a range of hazards, which could arise as a result of defects or deficiencies existing within a dwelling (29 hazards identified in total). Vulnerability is defined for each of the 29 hazards. The HHSRS is a form of risk assessment, which uses the following steps to provide a means of evaluating and representing the severity of any dangers present in a dwelling:

**2.2** It is recognised that not all visits to a property will result in a full HHSRS inspection, however if during a visit a potential hazard is identified than a full HHSRS will be required. Details of how this is undertaken is contained within the relevant HHSRS operational guidance<sup>7</sup>.

**2.3** The HHSRS calculation procedure requires (for each hazard) two judgements from the officer, these are calculated on;

- the likelihood of an occurrence, which could cause harm during the 12 months following the assessment.
- the judgement on the probable severity of outcome of such an occurrence.

**2.4** Every HHSRS assessment must be made on the basis of a whole dwelling inspection. If the dwelling concerned is a flat or bedsit, the common areas leading to the unit of accommodation must also be taken into account during the risk assessment.

**2.5** The scores for each hazard present are then branded from A to J. Bands A to C (ratings of 1,000 points and over) are the most severe and are known as Category 1 hazards when considering action. Bands D to J, the less severe (ratings less than 1,000 points) are known as Category 2.

**2.6** The council has a duty to take enforcement action in response to a Category 1 hazard. Where a Category 1 hazard(s) have been identified, the council will decide which of the available enforcement options is most appropriate for each individual case.

**2.7** Under Section 7 of the Housing Act 2004, Local Authorities have a power, rather than a duty, to take enforcement action with respect to category 2 hazards.

**2.8** As with category 1 hazards, the Council has the power to require that category 2 hazards are removed or reduced to an acceptable level.

**2.9** Category 2 hazards falling within one or more of the following criteria, will be considered for formal action:

<sup>6</sup><http://www.legislation.gov.uk/ukpga/2004/34/contents>

<sup>7</sup><https://www.gov.uk/government/collections/housing-health-and-safety-rating-system-hhsrs-guidance>

- Still significant risk to health and safety of the occupant (such hazards are likely to be those rated at band D and E).
- The defects/disrepair contributing to the hazard are such that if not dealt with in a reasonable amount of time, are likely to deteriorate to an extent that the hazard rating will increase.
- The individual hazards, though of a minor nature, their cumulative effect is to render the property a serious risk to the health and/or safety of any occupier or resident to the property.

## **Authorised Officers**

**2.10** Only officers who are competent by training, qualification and /or experience will be authorised to undertake enforcement action. All Private Sector Housing staff (PSH) have received appropriate training in the assessment of hazards and the application of hazard scores using the HHSRS.

**2.11** All officers who are required to carry out inspections or visits to any premises will always carry with them a means of identification, plus a written form of authority which specifies their powers of entry.

**2.12** Due regard will be had to further guidance issued by the Secretary of State, LACORS<sup>8</sup> and case decisions from the First Tier Property Tribunal.

## **Situations where a Service may not be provided**

**2.13** Where any of the following situations arise, consideration will be given to either not provide a service or ceasing to provide a service. In all instances when a service is either not provided or ceased approval shall be sought from the Private Sector Housing Manager.

- Where the tenant(s) unreasonably refuses access to the landlord, managing agent or landlord's builder, to arrange or carry out works.
- Where the tenant(s) have, in the opinion of the Council, clearly caused the damage to the property they are complaining about, such damage does not present an imminent risk to health and safety, and there are no other items of disrepair
- Where the tenant(s) have requested a service and then failed to keep an appointment and not responded to a follow up letter or appointment card.
- Where the tenant(s) have been aggressive, threatening, verbally or physically abusive towards Officers.
- Where there is found to be no justification for the complaint, on visiting the property.
- Where the tenant unreasonably refuses to provide the Council with relevant documentation or information.

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<sup>8</sup> <https://www.rla.org.uk/docs/LACORSFSguideApril62009.PDF>

## **Informal Action and advice**

**2.14** Following the receipt of a service request or complaint about poor housing conditions or landlord, an initial risk assessment will normally be carried out. Any follow up advice or action will depend on the outcome of the initial assessment, which may not always involve a visit to the property. The council will take further action to deal with health and safety concerns or issues which cause a statutory nuisance. For less serious issues, such as delays to other repairs we will provide support to advise tenants of their rights and practical steps they may wish to follow.

**2.15** Except in emergency situations, tenants of the private rented sector should inform their landlord of the problem (preferably in writing) and allow them an opportunity to resolve it. We will normally direct tenants to contact their landlord first, but will investigate a complaint where private tenants are dissatisfied with the response or action undertaken by their landlord.

**2.16** This is because landlords can only carry out their legal obligations once they have been made aware of the problem. The law covering landlord and tenant issues requires that tenants notify their landlords of any problems with the property.

**2.17** Tenants are responsible for keeping the council informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.), which may affect the action the council is taking or considering taking.

**2.18** The Council will normally make an appointment with the occupier to gain access to investigate conditions.

**2.19** Tenants have a right to invite us into the property for the purpose of inspection or investigation without the need to inform the landlord or require their permission. In many cases the tenant does not want the landlord to be present during our visits. For these reasons we do not, as a matter of course, give prior notification to landlords when we have arranged inspections.

**2.20** In appropriate circumstances, a Notice of Entry will be served or an application made to the Magistrates' Court for a warrant to enter, e.g. if the premises is vacant or access is refused or it is reasonably anticipated will be refused.

**2.21** Council officers have powers to enter premises in order to perform the council's statutory functions. Anyone who obstructs an authorised officer from entering a premise in accordance with their powers is committing an offence.

**2.22** We may also seek a warrant where the giving of notice would be counterproductive, for example in investigations concerning overcrowding complaints

## **Informal Action**

**2.23** Informal action can include verbal advice and advisory letters, and be considered appropriate in circumstances such as:

- Where the deficiency or omission is not serious enough to warrant formal action;
- the landlords past history;
- from assurances given that it can be reasonably expected that informal action will achieve compliance;
- The consequences of non-compliance will not pose a significant risk to health and safety of the tenants or others.

Any informal letters sent to the landlord(s):

- Indicate the legislation contravened and the measures to be taken to ensure compliance with any legal requirements;
- Contain all the information necessary to undertake which work is required and why it is necessary;
- Give individuals and or managing agents the opportunity to contact the appropriate officer to discuss the matter further.

**2.24** Officers giving verbal or written advice will ensure that they clearly differentiate between those items which are legal requirements and those which are recommended as good practice.

## Chapter 3: Enforcement Options

### Formal notices and order

**3.1** The principle of the housing legislation enforced by the Private Sector Housing team (PSH) are based upon protecting the health, safety and wellbeing of the individuals and the public. A decision regarding when to serve statutory notices or order will depend on whether there is a power or duty to serve such a notice or order and will take into account the following criteria;

- informal action has failed, there is a cat 1 or cat 2 hazard,
- an owner or landlord is known to have a history of non-compliance with statutory requirements;
- Standards are generally poor with little management or awareness of their statutory requirements.
- the consequences of non-compliance could potentially have a serious effect on the health and safety of the individuals or members of the public.
- Where the breach of the legislation is so serious, deterrence and enforcement may be required to prevent future occurrence.

**3.2** Officers serving statutory notices or orders will be prepared to discuss any works specified with the appropriate parties, and may consider the availability and suitability of alternative solutions. The notice or order will explain what is wrong, what is required to put things right, timescales of when the work can be expected to be completed by, and what will happen if the notice or order is not complied with.

**3.3** Where there is a change of tenant before works are completed, contact will be made with the new tenant to advise of the Council's previous involvement and the works expected to have been undertaken. However some tenants may be unwilling to cooperate e.g. not allow the Private Sector Housing team access to inspect the property, or allow contractors access. If the tenant refuses to cooperate, then depending on potential hazards identified at the property or works outstanding, the council will review its position and take the most appropriate route of obtaining access depending on the circumstances.

**3.4** Generally, only one course of enforcement action can be taken in respect of any hazard. Emergency measures are the exception e.g. emergency action followed by an Improvement Notice.

### Choice of appropriate enforcement action

**3.5** Unless there is an imminent risk to the health and safety of the occupant or visitors to the property, the council will attempt to secure the required improvements informally, and within a reasonable amount of time that will be determined by the case officer.

**3.6** Where this approach fails the council will determine which of the specific enforcement options it will use, taking into account the facts and circumstances in each individual case.

**3.7** The enforcement options available to the council are as follows:

- Improvement Notice or Suspended Improvement Notice;
- Prohibition Order or Suspended Prohibition Order;
- Hazard Awareness Notice;
- Demolition Order;
- Clearance Area;
- Interim or Final Empty Dwelling Management Order
- Emergency Remedial Action (Category 1 Hazards only);
- Emergency Prohibition Order; (Category 1 Hazards only);
- Overcrowding Notice.

Officers will use the most recent Housing Health and Safety Rating System Enforcement Guidance document<sup>9</sup>.

### **Statement of Reasons**

**3.8** The Council has a duty to provide, a statement of reasons for their decision to take a particular course of enforcement action. This statement will accompany every statutory notice or order served under Part 1 of the Act and relevant provisions of the 1985 Act. The statement of reasons will cover the following points in summarising why a particular course of statutory action has been decided upon:

- Views of the current tenant, landlord and/or managing agent.
- Estimated costs of the work required.
- Practicability
- Hazard score(s) for each relevant hazard
- Timeliness of the works in relation to the hazards identified.
- Occupancy factors and risk; effect on the current occupier(s) in relation to the most vulnerable group for each hazard.
- Anything else relevant to the decision.

**3.9** Standard of works – any works required on a notice will be reasonable in relation to the hazard i.e. works will not be specified that go considerably beyond what is required to remove the hazard(s).

### **Enforcement across different tenures**

**3.10** The Private Sector Housing team will have regard to the ownership and extent of control that an owner has over works required to the dwelling. In normal circumstances this will mean, requiring a landlord to carry out works under an appropriate course of action outlined in this policy.

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<sup>9</sup> <https://www.gov.uk/government/collections/housing-health-and-safety-rating-system-hhsrs-guidance>

## **Owner Occupier**

**3.11** Owner-occupiers will not normally be required to carry out works to their own home unless there is an imminent risk to the occupiers' health, safety or wellbeing or deficiencies at the property are adversely affecting another property, or any other person. Due to the rarity of PSH involvement and the wide range of circumstances found in owner occupied properties, each decision to intervene will be considered on a case by case basis.

## **Registered Providers (RP)**

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

## **Power of Entry**

**3.13** Section 239 of the Housing Act 2004<sup>10</sup>, provides a local housing authority with the powers of entry, where they consider that inspection of any premises is necessary, in order to carry out its functions under parts 1 to 4 of the Act. In most cases Private Sector Housing Officers will give at least 24 hours' notice before entry, However, officers may enter any premises without giving prior notice for the purpose of ascertaining whether, an offence has been committed in relation to HMO licensing, or in respect of the any of the duties imposed on managers or occupiers of HMOs by management regulations. These powers are only used where difficulty is anticipated. In most cases officers will enter premises following an invite by the occupier or tenant.

**3.14** The reasons for entry may include;

- inspections of the property to check compliance with housing legislation,
- to assist tenants in securing necessary repairs
- to advise the landlord on the standards required and enforce fire safety and management standards.

**3.15** In most cases at least 24 hours' notice will be given before entry, however officers can enter at any reasonable time without prior warning, to determine if an offence has been committed.

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<sup>10</sup> <http://www.legislation.gov.uk/ukpga/2004/34/section/239>

Example offences in relation to:

- Licensing of HMOs under Part 2 of the Act
- Licensing of Houses under Part 3 of the Act (Selective)
- The Management Regulations 2006 & 2007
- Compliance with licence conditions

### **Requesting information**

**3.16** The council has powers under section 235 of the Housing Act 2004<sup>11</sup>to request information/documentation to be produced in connection with;

- for any purpose connected with the exercise of any of the authority's functions under any of Parts 1 to 4 in relation to any premises, or
- for the purpose of investigating whether any offence has been committed under Parts 1-4 in relation to Housing Act 2004.

**3.17** Under Section 235 (1-4) of the Housing Act 2004 the council has the power to serve notice requesting documents in connection with any enforcement action. The notice served will specify what action the council will take for not complying.

**3.18** Such communication may include a Requisition for Information (section 16 notice) under the Local Government (Miscellaneous Provisions) Act 1976<sup>12</sup> as standard practice, where ownership and other personal property details have not been otherwise satisfactorily confirmed.

### **Warrants**

**3.19** The Private Sector Housing team will exercise its powers to gain entry without prior notice to investigate suspected non-compliance with housing related offences.

Reasons for the use may include;

- Where previous attempts to gain access have been denied
- reasons to believe that a refusal will be anticipated
- to determine if a property is a licensable HMO or has breached Management Regulations.
- joint working with other agencies such as Police, Immigration, Environmental Health/Enforcement, Planning Enforcement and the Kent Fire and Rescue Service.

Officers can apply to Magistrates Court for a Warrant to enter a premises.

### **Simple Cautions**

**3.20** In certain circumstances, officers may use simple caution where someone has committed a less serious offence. Simple Cautions warn people that their behaviour

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<sup>11</sup> <http://www.legislation.gov.uk/ukpga/2004/34/section/235>

<sup>12</sup> <http://www.legislation.gov.uk/ukpga/1976/57/section/16>

has been unacceptable and makes them aware of the legal consequences should they commit further offences. Simple cautions can only be issued where:

- Where sufficient evidence must be available to prove the case
- The offender must admit the offence
- There is evidence an offender is guilty
- The offender is eighteen years of age and over
- It must be in the public interest to use Simple Caution.
- The offender agrees to be given a caution- if the offender does not agree to receive a caution then they are likely to be prosecuted instead

**3.21** Simple cautions are normally not appropriate where there is a history of offending within the last 2 years or where the same type of offence has been committed before. In these circumstances prosecution is more appropriate.

**3.22** A record of the caution will be held by the Council Private Sector Housing Team and will be kept on file for two years. If the offender commits a further offence, the caution may influence the council decision whether to commence prosecution proceedings and alternative to issuing a civil penalty. If during the time the caution is in force, the offender pleads guilty to/or is found guilty of committing another offence anywhere in England and Wales, the Caution may be cited in court and this may influence the severity of the sentence that the court imposes.

### **Review cases for enforcement action**

**3.23** When considering taking formal action, a case review will be undertaken to determine whether the evidential and public interests tests are met and whether the course of action is in line with the Council's Housing Enforcement and Licensing policy.

### **Works in Default**

**3.24** Where the party subject to enforcement action knowingly fails to comply with the requirements of a statutory notice, the Council will consider further appropriate action to secure compliance. In considering what course of action is most appropriate the Council will have regard to the seriousness of the offence and any immediate risk posed to the occupiers. Works in default will be considered as a course of action where there has been a failure, or inadequate action, to comply with an improvement notice. Prosecution of the person responsible for non-compliance may also be pursued where this is believed to be in the public's interest. Account will be taken of the seriousness of the offence, any mitigating circumstances, history and the Council's corporate enforcement policy. Certain offences, such as the intentional breach of a prohibition notice or persistent negligence in management will always be prosecuted.

## Rights of Appeal

**3.25** All recipients of notices and orders made by the Council will be informed of their rights to appeal to the First Tier Tribunal<sup>13</sup> if they believe the notice or order has been served in error, or if the recipient believes the proposed course of action is unjustified.

**3.26** First-tier Tribunal (Property Chamber) Residential Property  
Havant Justice Centre, The Court House, Elmleigh Road, Havant, Hampshire  
PO9 2AL.

## Shared Enforcement

**3.27** Officers may work with other services within the authority, as well as other enforcing authorities, who have the power to take enforcement action. These authorities may include:

- Kent Fire and Rescue Service;
- Kent Police;
- UK Visas and Immigration;
- Trading Standards;
- Environmental Health/Protection
- Health and Safety Executive
- Planning Enforcement
- STG Building Control
- Medway Task Force

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

- Investigations are undertaken by the most appropriate enforcing authority;
- Enforcement action is undertaken in accordance with agreed protocols and will involve the relevant authority or service in the investigations, information gathering and sharing to ensure it is carried out effectively.

**3.29** The Housing Act 2004 and the Regulatory Reform (Fire Safety) Order 2005 places duties on both the Local Authority and the local Fire Safety Authority to enforce fire safety provisions within housing in Kent. This protocol document assists in this by providing a framework of property types and guidance on which the enforcing authority should take the lead. In cases of 'means of escape' and 'fire detection' in Houses of Multiple Occupation (HMOs), the Council will consult with the fire authority as far as practicable.

**3.30** Section 10 of the Housing Act 2004 requires the Local Housing Authority to consult with the local Fire & Rescue Service before taking enforcement action in respect of a prescribed fire hazard in a HMO or in the common parts of the building

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<sup>13</sup> <https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber>

containing flats. The form of the consultation is not prescribed. Where emergency measures are to be taken in relation to a fire hazard the Local Housing Authority must consult with the local Fire & Rescue Service before they take those measures as far as is practicable.

## Chapter 4 Power to charge for certain enforcement action

### Council charges

**4.1** The local Authority has the power under the Section 49 of the Housing Act 2004 <sup>14</sup> to make a reasonable charge as a means of covering certain expenses incurred in

- serving an Improvement Notice
- making a Prohibition Order
- Serving a Hazard Awareness Notice
- taking Emergency Remedial Action,
- making an Emergency Prohibition Order or
- making a Demolition Order.

**4.2** If emergency remedial action is taken a charge may also be made in connection with the service of any subsequent notices.

**4.3** The charges for notices will not include any costs incurred by the Council in undertaking works in default, these charges will be dealt with separately.

**4.4** This policy decision has been made to ensure that the Council recovers its costs from those landlords who are not complying with their responsibilities to maintain their properties and take up more officer time by their failure to comply.

**4.5** The Council will charge for taking enforcement action unless there are extenuating circumstances this would be determine case by case and agreed by the Private Sector Housing Manager.

**4.6** For fees and charges please refer to appendix 12

### Unpaid debts and invoices

**4.7** We will pursue all debt owed as a result of enforcement action charges, charges for carrying out works in default, and unpaid invoices or unpaid financial penalties.

### Exceptions to Policy

**4.8** Occasionally, circumstances might present themselves at a property where there is indicated a *prima facie* case for following a different course of action than as directed by this enforcement policy.

**4.9** In such cases, a report will be made in writing to the Head of Housing, for an exception to policy to be considered outlining the reasons for such special consideration. Such cases are expected to be rare and will be treated on an ad hoc basis in all the prevailing circumstances so that the most appropriate course of action

<sup>14</sup> <http://www.legislation.gov.uk/ukpga/2004/34/section/49>

can be followed, taking account of this policy and the statutory guidance relevant to enforcement.

### **Revocation and Variation of Notices**

**4.10** Under section 16 of the Housing Act 2004 the council must revoke an improvement notice if they are satisfied that the requirements of the notice have been complied with.

**4.11** The council may vary an improvement notice on a case by case basis. The decision would ultimately lie with the Private Sector Housing Manager as to whether this would be appropriate.

### **Failure to comply with Notices**

**4.12** If a notice is fully complied with, no further action will be taken, however if the Notice is not fully complied with, the council will consider the following options;

- Civil Penalty
- Prosecution
- Carrying out works in default
- Carrying out works in default and prosecution
- Consider a simple Caution if it is appropriate

**4.13** The council will take action to recover its costs in connection with works in default. The council will also take action to recover the costs incurred in carrying out works associated with Emergency Remedial Action.

## Chapter 5 Prosecution

### Code for Crown Prosecutors

**5.1** During all investigations into possible offences, the council will have regard to the latest edition of the Code for Crown Prosecutors<sup>15</sup>, issued by the director of the Public Prosecutions under section 10 of the Prosecution of Offences Act 1985.

**5.2** The Council will only initiate prosecution proceedings if the requirements of both stages of the Full Code Test ('the code') have been met. The Code has two stages:

- The evidential Stage
- The public interest stage

The Code is set out in the Code for Crown Prosecutors, which is available online at [www.cps.gov.uk](http://www.cps.gov.uk).

### Council's approach to prosecution

**5.3** Prosecution will be considered as the most appropriate course of action in the most severe cases.

**5.4** The following factors will be considered in determining whether a prosecution is the most appropriate course of action.

- The seriousness of any threat or actual harm to the safety of the occupant(s) or members of the public.
- The level of culpability of the suspect, including the level of their involvement the extent to which the offending was premeditated and or planned,
- Whether they have any previous criminal convictions and or out of court disposals and whether the offending was, or likely to be continued, repeated or escalated. Consideration will also be given as to whether the suspect is, or was at the time of the offence, suffering from any significant mental or physical ill health, as in some circumstances this may mean that it is likely that a prosecution is required. When having regard to the offender's health, the council will also consider how serious the offence was, whether it is likely to be repeated, and the need to safeguard the public or those providing care to such persons;
- The harm caused to the occupants, the greater the vulnerability of the occupants the more likely a prosecution is to be required

**5.5** Prosecutions will only be pursued if there is sufficient evidence of an offence and it is in public interest to prosecute.

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<sup>15</sup> Code for Crown Prosecutors

## Chapter 6 Financial Penalties

### The Smoke and Carbon Monoxide Alarm (England Regulations 2015)<sup>16</sup>

**6.1** Private rented landlords are required to provide:

- At least one smoke alarm installed on every storey of their properties.
- A carbon monoxide alarm installed in any room containing a solid fuel burning appliance (e.g. coal fire, wood burning stove)
- Landlords are required to ensure that such alarms are in proper working order at the start of each new tenancy.

**6.2** The council can impose a fine up to £5000, where a landlord fails to comply with a Remedial Notice.

**6.3** As required by Regulation 13, the council has issued a 'Statement of Principle' for determining the financial penalties as prescribed under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (see appendix 1)

**6.4** Where the council undertakes remedial action the type of smoke detection fitted will, if reasonable and practical meet the ideal standard. Normally the ideal standard would meet the minimum requirements contained in British Standards 5839 Part 6:2019

### Rent Repayment Orders (RRO)

**6.5** In addition to the powers provided by the Housing Act 2004 to apply Rent Repayment Orders (RRO) <sup>17</sup>in regards to offences related to HMOs as outlined at section 73 and 74 of Housing Act 2004, the Housing and Planning Act 2016 extended the power to apply RROs in respect of the following offences committed after 6 April 2017;

- Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004)
- Failure to comply with a Prohibition order (section 32 of the Housing Act 2004)
- Breach of a Banning Order made under section 21 of the Housing and Planning Act 2016
- Using violence or harassment of the occupiers of a property (section 6 of the Criminal Law Act 1977)
- Illegal eviction or harassment of the occupiers (section 1 of the Protection from Eviction Act 1977)

**6.6** The maximum amount of rent that can be recovered is capped at 12 months.

**6.7** See appendix 4 for further details.

<sup>16</sup> <https://www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-landlords/the-smoke-and-carbon-monoxide-alarm-england-regulations-2015-qa-booklet-for-the-private-rented-sector-landlords-and-tenants>

<sup>17</sup> <https://www.gov.uk/government/publications/rent-repayment-orders-under-the-housing-and-planning-act-2016>

## Civil penalties

**6.8** Under the Housing Act 2004 and the Housing and Planning Act 2016<sup>18</sup>, the Council may impose a Civil Penalty, as an alternative to prosecution, up to a maximum of £30,000 in respect of the following offences.

- 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 a HMO (Housing Act 2004)
- Breaching a Banning order.

**6.9** A civil penalty can be issued as an alternative to prosecution for each separate breach of the Houses in Multiple Occupation Management Regulations.

Section 234(3) of the Housing Act 2004 provides that a person commits an offence if he fails to comply with Management Regulations. Hence, each failure to comply with the regulations constitutes a separate offence for which a civil penalty can be imposed.

**6.10** In setting the amount for the civil penalty the council will have regard to statutory guidance for fee setting.

**6.11** Appendix 2 of this policy details Medway's approach towards the use of civil penalties as an alternative to prosecution.

## Banning Orders

**6.12** In accordance with the Housing and Planning Act 2016, the Council may apply to the First Tier Tribunal for a Banning Order against a residential landlord or a property agent who has been convicted of a Banning order offence<sup>19</sup>

## 6.13 Banning Order offences

- Unlawful eviction and Harassment of the occupier
- Violence for Securing entry
- Failing to comply with an Improvement Notice Failure to comply with a Prohibition Notice
- Offences in relation to licensing of Houses in Multiple Occupation
- Offences in relation to licensing under Part 3 of the Act
- Contravention of an overcrowding notice
- Failure to comply with Management Regulations in respect of Houses In Multiple Occupation
- False or misleading information
- Fire Safety Offences Regulatory Reform (Fire Safety) Order 2005

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<sup>18</sup> <https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>

<sup>19</sup> <https://www.gov.uk/government/publications/banning-orders-for-landlords-and-property-agents-under-the-housing-and-planning-act-2016>

- Gas Safety Offences- duties on landlords- (Health and Safety at Work Act 1974)

**6.14** Under section 14(1) of the Housing and Planning Act 2016 a banning order will prevent you from (minimum 12 months) the following;

- Letting housing in England
- Engaging in English letting agency work;
- Engaging in English property management work; or
- Doing two or more of those things

**6.15** Please refer to appendix 5 for further details.

### **Rogue landlord database**

**6.16** The Housing and Planning Act 2016 (the Act) introduced a range of measures to help local housing authorities tackle rogue landlords and drive up standards in the Private rented sector. These measures include establishing and operating a database of rogue landlords and property agents.

**6.17** The Rogue landlord Database<sup>20</sup> records landlords/agents that have are subject to a Banning Order or have committed a Banning Order offence. Only local Authorities can make entries to the database.

**6.18** Under the Act, local authorities have a mandatory duty to make an entry on the database where a landlord or property agent has received a Banning Order. They have the discretion to make entries where a landlord or property agent have been convicted of a Banning Order offence or received two or more Civil Penalties within a 12-month period.

**6.19** Please refer to appendix 6 for further details

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<sup>20</sup> <https://www.gov.uk/government/publications/database-of-rogue-landlords-and-property-agents-under-the-housing-and-planning-act-2016>

## Chapter 7 Accommodation Inspections for UK Entry Clearance

**7.1** People immigrating to the UK from outside the EEC must provide evidence to the Immigration Authorities that the housing they propose to move in to would be free from any category 1 & 2 hazards.

**7.2** The Council can undertake an assessment under the Housing Health and Safety Rating System (HHSRS) and where appropriate, provide a report or letter to show that the accommodation:

- does not pose a significant risk to the health or safety of those who will be living there
- is in a good state of repair and will not become overcrowded with the extra people living there

**7.3** The applicant will be required to produce the following documents prior to the letter being issued:

- valid certificate issued by a Gas Safe Registered engineer within the last 12 months for all gas appliances/installations at the property (if renting the property)
- valid electrical test certificate issued within the last 5 years by a competent person showing the electrical installation as safe (if renting the property)
- Name, date of birth and passport/reference number of the person (s) seeking entry to the UK
- Name and date of birth of other occupants in the property
- a copy of the tenancy agreement (if renting the property)
- the Energy Performance Certificate for the property (if renting the property)

**7.4** Any deficiencies identified must be rectified prior to the Council issuing confirmation that the property meets all required standards.

**7.5** As this is not a statutory function, the Council will charge a fee for this service which must be paid before the inspection takes place. The fees can be found in appendix 11.

**7.6** Medway Council will not supply any letters unless an inspection has been carried out. The Immigration Authorities will not accept letters that are greater than 12 weeks old. If your letter expires, the council will need to carry out another inspection. The council reserves the right to make a charge for any amendments to the letter or for supplies of copies of the letter at a later date.

**7.7** To apply for an application form, you can apply online or print off the application. [www.medway.gov.uk/info/200153/private\\_housing/112/housing\\_inspection\\_for\\_uk\\_entry\\_clearance](http://www.medway.gov.uk/info/200153/private_housing/112/housing_inspection_for_uk_entry_clearance)

Or alternatively you can email the completed form and payment to [uk.entry@medway.gov.uk](mailto:uk.entry@medway.gov.uk) or return it by post: UK Entry Inspections, Private Sector Housing, Medway Council, Gun Wharf, Dock Road, Chatham, Kent, ME4 4TR

## Chapter 8 Housing in Multiple Occupation (HMO)

### Overview

**8.1** A HMO is a property that is occupied by at least 3 people in more than 1 household that share facilities.

**8.2** As HMOs are higher risk than single family homes, the conditions, facilities and management are regulated. Some HMOs are subject to licensing:

- Mandatory HMO Licensing
- Additional HMO Licensing (not currently applied in Medway)
- Other HMO's which do not currently require a licence are subject to the Management of Houses in Multiple Occupation (England) Regulations 2006<sup>21</sup> and The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007<sup>22</sup>.

**8.3** Schedule 14 of the Housing Act 2004<sup>23</sup> exempts certain buildings from the HMO licensing definition.

### Mandatory Licensing Houses in Multiple Occupation (HMO)

#### Overview

**8.4** The Housing Act 2004 introduced mandatory licensing system for larger types of Houses in Multiple Occupation (HMO). However, from the 1st October 2018 the scope of mandatory licensable HMOs has been extended<sup>24</sup>, and smaller HMOs have been brought within the scheme. The aim of licensing is to ensure every licensable HMO is safe for the occupants and visitors and complies with Management Regulations.

**8.5** From October 2018 new mandatory conditions<sup>25</sup> are to be included in all HMO licenses, prescribing national minimum sizes for rooms used as sleeping accommodation and requiring landlords to adhere to council refuse schemes.

**8.6** Under the new Mandatory HMO Licensing scheme all properties that meet the following criteria will require a mandatory HMO licence:

- Is occupied by five or more persons;
- Is occupied by persons living in two or more separate households; and meet -
- The standard test under section 254(2) of the Act;

<sup>21</sup>[http://www.legislation.gov.uk/ukssi/2006/372/pdfs/ukssi\\_20060372\\_en.pdf](http://www.legislation.gov.uk/ukssi/2006/372/pdfs/ukssi_20060372_en.pdf)

<sup>22</sup><http://www.legislation.gov.uk/ukssi/2007/1903/contents/made>

<sup>23</sup><http://www.legislation.gov.uk/ukpga/2004/34/schedule/14>

<sup>24</sup><http://www.legislation.gov.uk/ukssi/2018/221/contents/made>

<sup>25</sup><https://www.legislation.gov.uk/ukdsi/2018/9780111167359/contents>

- The self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or
- The converted building test under section 254(4) of the Act.

## **Validation of licences applications**

**8.7** Upon receipt, the council will make initial checks before validating an application. If the application form is incomplete or one or more supporting documents are missing, it will not be accepted.

**8.8** To be considered a valid application, the following information must be provided to the Council in an acceptable format.

- Licence application form completed in full, including all information/certificates specified, plus any further information requested by the Council
- A declaration signed by the applicant (and also the proposed licence holder where different)
- The specified fee paid in full.

## **HMO renewal licence**

**8.9** Where an HMO property already has a licence in force, and the council receive a valid application with fee, and is submitted before the licence expires, with no significant changes i.e. new Licence Holder, then a renewal application will be accepted, and a reduced fee applied.

## **Incomplete Applications**

**8.10** Where an incomplete application has been made, the council will notify the applicant and request the outstanding documents and or/ require the proper completion of the application form. Applicants who have failed to provide the full details required to make their application an effective, or complete, application will be given adequate opportunity to provide the missing information or documentation. This will be in writing, requesting the missing information or documentation. A reminder letter will allow a further period where there has been no, or an inadequate, response to the first letter, with this letter we will enclose the incomplete application form which will then be returned to the applicant.

**8.11** Continued failure to submit a complete valid application, will be regarded as a failure to apply for a HMO licence and legal proceedings may be commenced. Please refer to section 11, HMO licensing enforcement options.

**8.12** Failure to pay the licence fee in full will mean that the licence application is not considered to be an effective, or complete application.

## **Inspections**

**8.13** Private Sector Housing Officers will inspect HMOs following receipt of a valid new or renewal licence application. This process is to assess the suitability of the

HMO, for the proposed number of occupants and households, and compliance with the HMO Amenity standards and HMO regulations. The Council will seek to ensure that all properties are inspected at least once every 5 years. This is to ensure properties are free from significant hazards, have complied with any additional licence conditions and HMO Management Regulations, or to investigate complaints.

### **Fit and proper person**

**8.14** Medway Council is required to assess whether the applicant, any manager, or persons associated with them or formerly associated with them\* are 'fit and proper' people to own or manage an HMO.

A person will be considered fit and proper if Medway Council is satisfied that:

- They have no unspent convictions relating to:
- Offences involving fraud, dishonesty, violence or drugs, or sexual offences
- Unlawful discrimination on grounds of sex, race, or disability
- Housing or Landlord and Tenant law
- Breaches of planning, compulsory purchase, environmental protection or other legislation enforced by Local Authorities.
- They have not been refused an HMO licence, been convicted of breaching the conditions of a licence or have acted otherwise than in accordance with the approved code of practice under Section 197 of the Act within the last five years.
- They have not been in control of a property subject to an HMO Control Order, an Interim Management Order (IMO) or Final Management Order (FMO) or had work in default carried out by a Local Authority.
- If a person associated or formally associated with the applicant or any manager, has done any of the things stated above, the Council will only take these issues into account, if they are relevant to the applicant or manager being a 'fit and proper' person to manage the house.

### **Refund of Licence Fees**

**8.15** The licensing fees are set to recover the administrative and inspection costs. We can only offer refunds upon withdrawal of an application as below:

A full refund will be given if:

- You made an application for an exempted property by mistake
- You made an application for a property which is not licensable under Medway's HMO licensing scheme.

A refund will not be given if:

- You withdraw your application at any stage;
- We refuse your application;
- We revoke (take away) your licence;
- You are subsequently refused planning permission for your HMO;
- Your property ceases to be let as an HMO during the term of the licence.

## **Refusal to grant a licence**

**8.16** The Council may refuse to issue a licence to the applicant or proposed licence holder/ manager. An example of this can be where the applicant or manager is deemed to not be a fit and proper person. Also, a licence will be refused in circumstances where the accommodation is not capable of being operated as a licensable HMO.

## **Variation of licences**

**8.17** The Council may vary a licence, either by agreement with the licence holder or on its own decision where it is considered, that there has been a change of circumstances since the licence was granted.

**8.18** If work is undertaken to extend the property, or to increase the number of occupiers, then a variation of the licence will be required to increase the permitted numbers. The responsible person will normally be given adequate opportunity to apply for a variation to the HMO licence before an investigation is commenced.

**8.19** Failure to respond to the letters will result in a visit being made to the property, in order to verify the number of occupants, and to ensure compliance with the conditions of the licence. Continued failure to apply for a variation will result in the commencement of an investigation, which may lead to legal proceedings being pursued.

**8.20** Officers may need to inspect the property prior to issuing a variation to the licence.

**8.21** The Council cannot transfer a licence to a new licence holder, the current licence holder would need to apply to revoke the current licence and the new applicant would be required to then submit a new application complete with fee.

Reasons to change your licence could be:

- change your address / name (e.g. due to marriage / divorce)
- change the name of your manager
- increase or decrease the number of occupiers

## **Revocation of a licence**

**8.22** The Council may revoke a licence either with the agreement of the licence holder or in the following circumstances:

- Where the Council considers that the licence holder or any other relevant person has committed a serious breach of a licence condition or repeated breaches of a condition, or
- Where the Council no longer considers that the licence holder is a fit and proper person to hold the licence, or

- Where the Council considers that the management of the premises is no longer being carried out by fit and proper persons;
- Where the premises has ceased to be an HMO requiring a licence, or
- Where the Council considers that, were the licence to expire at that time, it would not grant a further licence because of the structure of the premises.
- A licence will be revoked following a change in ownership; death of the licence holder or by agreement with the licence holder if the property is no longer licensable

### **Appeals of licence decisions**

**8.23** The licence applicant, anyone with an estate or interest in the property, a person managing the premises or anyone on whom the licence would place any restriction or obligation, may appeal to the First-tier Tribunal against the Council's decision to either grant or refuse to grant a licence, or in connection with decisions in relation to revocation or variation. The appeal period is set as 28 days

### **Temporary Exemption Notice**

**8.24** A Temporary Exemption Notice (TEN)<sup>26</sup> will be served where an owner of a Mandatory licensable HMO states in writing that they are taking steps to make the HMO non-licensable. The TEN exempts that property from being licensed for a period of 3 months (from the date the Notice is served). In exceptional circumstances, Medway Council may serve a second TEN that lasts a further 3 months and that takes effect when the first TEN ends. No further TENs can be served after the expiry of the second TEN.

**8.25** The Private Sector Housing team will not use these Notices routinely, and therefore, a second notice will only be used in exceptional and unforeseen circumstances agreed by the Service Manager.

**8.26** All necessary action and support will be provided to a landlord, to comply with their legal obligations to licence HMOs. However, where this is not successful the Housing Act 2004 requires Local Authorities to take specified action to deal with unlicensed HMOs.

### **Satisfactory management arrangements**

**8.27** In order to issue a licence the Council must be satisfied that the proposed management arrangements for the house are satisfactory. If we are to be satisfied, we will require the licence holder to have in place the following arrangements:

- A person to whom the tenants can report deficiencies at the HMO, including an emergency contact, and for this information to be displayed in written form in the premises.
- If the proposed licence holder is not the owner, then an appropriate lease agreement needs to be put in place

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<sup>26</sup> <http://www.legislation.gov.uk/ukpga/2004/34/notes/division/6/2/8>

- An established system for periodically inspecting the HMO to identify any repairs or maintenance.
- The ability to finance and to undertake repairs and maintenance in an appropriately timely fashion.
- Where the manager is not the owner of the property, the manager must be able to fund and implement urgent repairs in those situations where it is not possible to obtain the owner's approval without undue delay.
- A system to deal with any anti-social behaviour caused by tenants or their visitors, which causes nuisance or annoyance to people living in the vicinity.

### **Issuing a HMO licence / renewal**

**8.28** When assessing whether the council will grant a licence to an applicant for a HMO we will look at whether the following has been met.

- The house is suitable for occupation for the maximum number of occupants and households, either specified by the application or assessed by a HMO officer. To ensure there is a sufficient number of bathrooms, kitchen facilities and room sizes meet the HMO Amenity Standards.
- The proposed license holder will be subject to a fit and proper person check, to ensure they are the most appropriate person to be the licence holder
- The proposed manager is the person having control of the house or an agent or employee of that person and is subject to a fit and proper person checks, to ensure they are the appropriate person(s) to be managing the property.
- The property has the appropriate Fire Safety requirements (we will seek advice from the Kent Fire and Rescue Service KFRS)
- The proposed management arrangements for the house are satisfactory

### **Conditions of a HMO licence**

**8.29** A licence may include such conditions, as Medway Council considers appropriate for management use and occupation of the HMO.

**8.30** Certain conditions, as detailed in Schedule 4 of the Act, are mandatory and must be included in every licence granted. These mandatory conditions require the licence holder to:

- Provide copies of gas safety certificates annually.
- Keep electrical appliances and furniture in a safe condition.
- To supply on demand, with a declaration as to the safety of such appliances and furniture.
- Keep smoke alarms in proper working order.
- To supply the authority, on demand, with a declaration, as to the condition and positioning of such alarms.
- To ensure that a carbon monoxide alarm is installed in accommodation containing solid fuel burning combustion appliance.
- To keep such alarms in proper order
- To supply the authority, on demand, with a declaration, as to the condition and positioning of such alarms

- Provide tenants with a written tenancy agreement (council discretion)

**8.31** The Mandatory Conditions Regulations 2018 amend Schedule 4 of the Act, introducing the following new conditions:

- Mandatory national minimum sleeping room sizes and
- Waste disposal provision requirements

**8.32** From 1st October 2018 the new conditions will apply to HMOs which are required to be licensed under Part 2 of the 2004 Act. The condition will not apply to existing licences issued before 1 October 2018, until the current licence expires and is renewed.

- no room may be occupied as sleeping accommodation if the floor area of the room is less than 4.63m<sup>2</sup>;
- a room with a usable floor area between 4.64m<sup>2</sup> and 6.5m<sup>2</sup> may be occupied by a child under the age of ten, provided the room is let or occupied in connection with the letting or occupation of a room with a usable floor area of or in excess of 6.51m<sup>2</sup> to a parent or guardian of the child
- a room with a usable floor area between 6.51m<sup>2</sup> and 10.22m<sup>2</sup> may only be occupied as sleeping accommodation by one person;
- a room with a usable floor area of 10.22m<sup>2</sup> or more may be occupied as sleeping accommodation by two persons;

**8.33** The measurement is wall to wall floor area, where the ceiling height is greater than 1.5m. No part of a room should be included in the measurement where the ceiling height is less than 1.5m.

**8.34** If a property is found to be over-occupied when the licence application is approved, the council can allow up to 18 months for the issue to be resolved, either by evicting the occupant or carrying out internal alterations to make the room larger

**8.35** From 1 October 2018, local authorities will be required to impose a mandatory licensing condition, concerning the provision of suitable refuse storage facilities and the disposal of domestic refuse pending collection. Local authorities are aware that HMOs, occupied by separate and multiple households, generate more waste and rubbish than single family homes.

## **Discretionary Licence Conditions**

**8.36** The Council can also impose discretionary conditions that are considered to be necessary for regulating the management, use and occupation of the premises concerned, plus its' condition and contents. In particular such conditions include:

- imposing restrictions or prohibitions on the use or occupation of particular parts of the house by persons occupying it;
- requiring the licence holder to take reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house;
- requiring facilities and equipment to be made available in the house for the purpose of meeting standards prescribed under section 65;
- requiring such facilities and equipment to be kept in good repair and proper working order.

## **Duration of a HMO licence**

**8.37** The duration of a HMO licence is up to a maximum of five years.

## **Appeals**

**8.38** The licence applicant, anyone with an estate or interest in the premises, a person managing the premises or anyone on whom the licence would place any restriction or obligation, may appeal to the First-tier Tribunal against the Council's decision to either grant or refuse to grant a licence, or in connection with decisions in relation to revocation or variation. The appeal period is set as 28 days

## **Public Register/ Temporary Exemption Register**

**8.39** The Council has a duty under section 232 of the Housing Act 2004 to maintain a public register of all Houses in Multiple Occupation (HMO) licences, together with any Temporary Exemption Notices served and details of any interim or final management order that are in effect. An edited version is available on request from the council office at Gun Wharf.

## Chapter 9 HMO licensing Enforcement

### Breach of Licence Conditions

**9.1** Under section 72 (3) of the Housing Act 2004, it is an offence punishable by an unlimited fine or civil penalty if the licence holder, or a person on whom restrictions or obligations are imposed under the terms of a licence, fails, without reasonable excuse, to comply.

**9.2** Failure to comply with the licence conditions will result in a letter being sent to the Licence Holder requesting immediate compliance. Any continued failure to comply will result in legal proceedings being pursued.

**9.3** A serious breach, or repeated breaches of the licence conditions, may also be grounds to revoke the licence. Legal proceedings will be considered in all cases where a licence is revoked on these grounds.

### Failure to licence a mandatory licensable HMO

**9.4** Where it is believed that a House in Multiple Occupation meeting the mandatory licensing definition, is operating without a licence and an application has not been submitted, the Private Sector Housing Team will gather all available information and investigate.

**9.5** Where there is evidence that a licensable House in Multiple Occupation (HMO) is operating without a licence and the management and/or property conditions are poor, placing the health and safety of the occupiers at risk; the Private Sector Housing Team will give legal instruction to instigate formal proceedings for the offence, of operating a licensable HMO without a licence. Alternatively will may use a Civil Penalty Notice as an alternative to prosecution.

### Offences in relation to Licensing HMOs

**9.6** The Housing Act 2004 sets out a number of licensing related offences all of which carry an unlimited fine, including:

- Operating an unlicensed HMO or allowing an HMO to be occupied by more person than a licence allows
- Breach of licence conditions
- Supplying incorrect information in a licence application

**9.7** These offences carry a range of punitive actions which the Council may wish to pursue, including:

- Prosecution resulting in an unlimited fine on summary conviction
- Seeking Banning Orders following successful convictions
- Financial penalties of up to £30,000 for each offence

- Rent Repayment Orders to recover Housing Benefit/Universal Credit
- Assisting tenants to apply for Rent Repayment Orders
- Entering landlords and agents into the 'Rogue Landlords Database'
- Interim or Final Management Orders

### **Interim Management Order**

**9.8** Where there is no prospect of an HMO being licensed, the Act requires that Local Authorities to use their interim management powers. Medway Council must make an Interim Management Order (IMO) if it is satisfied that: -

- There is no reasonable prospect of the property being licensed in the near future; or
- The health and safety condition applies (see below).
- The health and safety condition applies when an IMO is necessary to protect the health, safety and welfare of the occupiers of the property and/or residents and/or owners of properties in the vicinity. Medway Council has the discretion (but not the duty) to treat a threat to evict the occupiers in order to avoid the licensing requirements as a threat to the welfare of the occupiers. If general action using HHSRS is needed to deal with a Category 1 hazard then the health and safety condition is not met.
- An IMO is in force for 12 months and the Council must: take immediate steps to protect health, safety and welfare (if appropriate) and; Take steps to manage the property pending the grant of a licence, the making of a Final Management Order or the ending of the IMO.
- An IMO enables Medway Council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. In extreme cases this can be extended to five years, with Medway Council also having the power to grant tenancies. Medway Council will consult with Registered Social Landlords and private companies to establish the most appropriate mechanisms for the management of such properties.
- The IMO allows Medway Council to manage the property with all rights of a landlord and to collect rent and expend it on work to the property. Any balance must be paid to the landlord. However, Medway Council cannot create any interests (e.g. grant tenancies) without the written permission of the owner. The IMO must contain the date upon which it ceases to be in force (being no more than 12 months from its creation) and there are provisions to vary, revoke and appeal against an IMO. The IMO ceases to have effect if a licence is granted within its duration.

### **Final Management Orders**

**9.9** In exceptional circumstances the Council can also apply for a Final Management Order (FMO) which can last for up to five years. Such powers will only be used in exceptional circumstances and will be agreed by the Head of Housing and Community Enforcement.

**9.10** An FMO cannot be made unless an IMO or another FMO was already in force. An FMO transfers the management of the house to the Private Sector Housing Enforcement Service for the duration of the order. In particular, the FMO allows the Council;

- Possession of the property against the immediate landlord, but subject to existing rights of occupation
- To do anything in relation to the property, which could have been done by the landlord, including repairs, collecting rents etc.
- To spend monies received through rents and other charges for carrying out its responsibility of management, including the administration of the property;
- To create new tenancies (without the consent of the landlord).

### **Management Order Management Scheme**

**9.11** The Council must adopt a management scheme for a property subject to an FMO. The scheme must set out how the Council intends to manage the house. In particular, the management scheme must include:

- The amount of rent it will seek to obtain whilst the order is in force
- Details of any works which the Council intends to undertake in relation to the property. The estimate of the costs of carrying out those works
- Provision as to the payment of any surpluses of income over expenditure to the relevant landlord, from time to time

**9.12** In general terms how the authority intends to address the matters that caused the Council to make the order. The Council must also keep full accounts of income and expenditure in respect of the house and make such accounts available to the relevant landlord.

### **HMO Declaration**

**9.13** Where it is unclear whether the households are occupying the building as their only or main residence, Medway Council can declare the building to be an HMO to remove any doubt. Medway Council must serve a Notice on the person managing or controlling the property within 7 days of deciding to make the declaration stating:

- The date of the Council's decision to serve the Notice
- The date on which the Notice will come into force (which must not be less than 28 days from the date the Notice is served.)

**9.14** The recipient's right to appeal to the Residential Property Tribunal within 28 days of the Council's decision.

**9.15** If no appeal is made within 28 days, the Notice comes into force on the day stated in the Notice and the person managing or controlling the premises will have to apply for a licence if the dwelling is of the type where one is mandatory required.

**9.16** Fire Authorities also have the powers under the Regulatory Reform (Fire Safety) Order 2005 and although this does not apply to private dwellings it can be used for common areas in HMO's, purpose-built flats and workplace accommodation. The local Authority will liaise with the Fire Authority in cases where substantial fire precaution works are required to a property.

### **Overcrowding in Non-Licensable HMOs**

**9.17** Under Chapter 3 of Part 4 of the Housing Act 2004, an Overcrowding Notice may be served on a relevant person having control of, managing, or having an estate or interest in, an HMO, to either not permit an excessive number of persons to sleep in the house, or to not admit new residents if the number of persons is already excessive. This power does not apply to HMOs which are required to be licensed under Part 2 of the Act, or to HMOs subject to an Interim or Final Management Order.

**9.18** Contravention of an Overcrowding Notice without reasonable excuse is an offence punishable by an unlimited fine. In deciding whether or not an HMO is overcrowded, or is likely to become overcrowded, regard will be had to Medway's HMO Amenity standards.

### **Selective & Additional Licensing schemes**

**9.19** The Council currently does not have an active Selective Licensing scheme, however this will be kept under review. The aim of a Selective Licensing area or scheme is to promote good management of privately rented properties within a designated area. A licence is required for each privately rented dwelling in the designated area.

**9.20** The Council has not implemented an additional HMO licensing scheme, however, the case for additional licensing will be reviewed regularly and if the council, at some time in the future, forms the opinion that there are particular problems with other types of HMOs, we may decide to consult on a proposed additional HMO licensing scheme.

**9.21** The HMO and selective licensing regimes include arrangements for assessing the suitability of the premises, for the number of occupants including the adequacy of the amenities. They also provide for the assessment of the fitness of a person to be the licence holder and the potential management arrangements of the premises.

**9.22** It is a criminal offence if a person controlling or managing a HMO or privately renting a property in a selective licensing area, does not have the required licence. Failure to comply with any condition attached to a licence is also an offence. The Council will consider all available enforcement options in accordance with this policy when dealing with unlicensed properties and breaches of the licence conditions.

**9.23** Subject to the provisions of this policy, the Council will vigorously pursue anyone who is controlling or managing a property without a HMO licence and, where appropriate, it will impose civil penalties on them or pursue their prosecution.

## Chapter 10 Empty Properties

### Overview

**10.1** The HHSRS is still applicable to empty properties as the rating of hazards is undertaken for the most vulnerable potential occupant. However, if there is no occupier, and if there is no reasonable prospect that the property is likely to be re-occupied, action will only be taken proportionate to its vacant state e.g. structural collapse, which may be a hazard to any visitors to the property. Where a property is temporarily vacant e.g. between tenancies and it is reasonable to expect re-occupation any action commenced, including informal action will be continued until any hazards considered appropriate for formal action have been removed.

## Chapter 11 Landlord and Tenant Engagement

**11.1** The Council recognises that engaging with landlords and managing agents on an informal basis is an invaluable way of raising standards and promoting good quality private sector accommodation.

**11.2** Most landlords comply with the law, and some of those who do not can easily be persuaded with just a little help and advice. The council therefore believes in a proactive approach towards landlord engagement. Through constructive dialogue and landlord accreditation the Council can increase the number of safe and healthy homes, and businesses can prosper.

### Medway Landlords' Focus Group

**11.3** The Council formed the Medway Landlords' Focus Group over 10 years ago, the Focus Group meets quarterly and is made up of 15 landlords and managing agents, who own or manage residential properties in the Medway area.

**11.4** The primary aim of the Focus Group is to increase the level of understanding and communication between the Council and local private sector landlords and managing agents.

**11.5** The four primary objectives of the Focus Group are:

- To bring to the attention of the council matters which are of importance to local private sector landlords and managing agents;
- To be a route through which all local private sector landlords and managing agents can raise relevant issues for discussion;
- To be a consultative body for policy changes proposed by the council that could affect the private rented sector.

**11.6** Anyone interested in becoming a member of the Focus Group should visit Medway Councils' Information for private landlords' web page.

**11.7** Anyone wanting to bring a particular matter to the Focus Group's attention can do so by using this email address [landlords@medway.gov.uk](mailto:landlords@medway.gov.uk). All communications will be made available to the Focus Group.

**11.8** Wherever possible, the council will consult the Focus Group before implementing any new or substantially revised policy, which could affect landlords and managing agents who own or manage residential properties in the Medway area.

### Landlords Forum

**11.9** The Council organises a Landlords Forum, which is currently free to attend, is open to all interested landlords and managing agents. The format of the forum is flexible and is in line with any new changes to the legislation.

**11.10** At recent events, presentations have been made on subjects believed to be of most interest, The National Landlords Association, Residential Landlords Association and iHowz Landlord Association have been previous contributors. There is normally time before and after the presentations for networking, and public agency and trade stands are usually on hand to offer help and advice.

**11.11** Anyone interested in attending the forum can obtain more information by emailing [landlords@medway.gov.uk](mailto:landlords@medway.gov.uk). Places are limited, so pre-booking is recommended. Continuing Professional Development (“CPD”) certificates are available for pre-booked attendees.

### **Kent Landlord Accreditation Scheme**

**11.12** Accreditation & Training for Landlords & Agents Service (ATLAS) promotes and runs accreditation schemes across the country to recognise good practice and improve conditions in the private rented sector. The schemes provide training and on-going professional development for private landlords and letting agents.

**11.13** Medway is one of a few local authorities in Kent to offer not only accreditation courses but also further training for landlords. We have currently 404 accredited landlords, currently the most in Kent with Swale behind us with 259. Medway offers four accreditation courses in a year.

**11.14** On-going professional development courses are highly praised by the landlords as we always offer training on a current housing related issues.

**11.15** For more information about the scheme and how to join, visit Medway council, information for private landlord web page<sup>27</sup>

### **Tenant Accreditation**

**11.16** The scheme was set up by Medway Council in January 2015 and is administered by Private Sector Housing Team. The scheme particularly focuses on empowering households to sustain their accommodation, preventing homelessness and minimising the impact for both vulnerable clients and children. Tenants are required to attend the training to successfully complete the accreditation. We offer further 6 months support to tenants and landlords to ensure that tenants achieve full accreditation.

**11.17** So far 79 tenants attended the training this year, making total of 257 since 2015, and 7 tenants completed full accreditation this year.

**11.18** For more information about the scheme and how to join, visit Medway councils' advice for private tenants' web page<sup>28</sup>

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<sup>27</sup> [https://www.medway.gov.uk/info/200153/private\\_housing/96/information\\_for\\_private\\_landlords/4](https://www.medway.gov.uk/info/200153/private_housing/96/information_for_private_landlords/4)

<sup>28</sup> [https://www.medway.gov.uk/info/200153/private\\_housing/100/advice\\_for\\_private\\_tenants](https://www.medway.gov.uk/info/200153/private_housing/100/advice_for_private_tenants)

## How to report a problem to us

Write to: Private Sector Housing, Medway Council, Dock Road, Chatham, Kent. ME4 4TR

Please contact: 01634 333333

All enquires: [psh@medway.gov.uk](mailto:psh@medway.gov.uk)

## Complaints against the service

If you are dissatisfied with the service you receive please let the team know. We are committed to providing a quality service and your suggestions and criticisms about any aspect of our service may help us to improve. We will deal with all complaints in the strictest confidence, wherever possible we will attempt to resolve your complaint informally.

Initially you should make representations through the case officer to try and resolve your concerns. If you are unable to resolve this matter with the case officer, you should contact the Private Sector Housing Manager.

If you are still dissatisfied, the council has in place a corporate complaints procedure.

You can make a complaint by using one of the following methods:

- Complete our online complaint form<sup>29</sup>
- Phone 01634 333333
- Write to us: Customer Relations, Medway Council, Gun Wharf, Dock Road, Chatham, Kent, ME4 4TR

If you are still unhappy you can complain to the local government Ombudsman.

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<sup>29</sup> [www.medway.gov.uk/info/200138/your\\_council/470/complaints\\_compliments\\_or\\_comments/5](http://www.medway.gov.uk/info/200138/your_council/470/complaints_compliments_or_comments/5)

## **Appendix 1: The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

### **Introduction**

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

### **Purpose of statement of principles**

**1.2** The council is required under Regulations 13 to prepare and publish a statement of principles and it must follow this guide when deciding on the amount of a penalty charge.

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

### **The legal framework**

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

**1.5** The regulations place a duty on landlords, which include freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-liscence. The regulations exclude registered providers of social housing.

**1.6** The duty requires that landlords ensure that:

- a smoke alarm is installed on each storey of premises where there is living accommodation
- a carbon monoxide alarm is installed in any room of premises used as living accommodation, which contains a solid fuel burning appliance

And, for tenancies starting from 1 October 2015:

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

**1.7** Where the council has reasonable grounds to believe that a landlord is in breach of one or more of the above duties, the council must serve a remedial notice on the landlord. The remedial notice is a notice served under Regulation 5 of these regulations, this will list the remedial works required to be taken by the landlord.

**1.8** 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 civil penalty charge. The power to charge a penalty arises from Regulation 8 of these regulations.

**1.9** 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. This can be done by making written representations to the council at the address given at the bottom of this document within 28 days of when the remedial notice is served.

**1.10** Medway Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in the remedial notice within the required timescale.

### **The purpose of imposing a financial penalty**

**1.11** The purpose of the council's exercise of its regulatory powers is to protect the interest of the public.

The aims of financial penalties will be to:

- ensure landlords take proper responsibility for their properties
- eliminate any financial gain or benefit from non-compliance with the regulations
- be proportionate to the nature of the breach of the regulations and the potential harm outcomes
- Change the behavior of the landlord and aim to deter future non-compliance
- reimburse the costs incurred by the council in undertaking work in default
- lower the risk to tenant's health and safety
- penalise the landlord for not installing alarms after being required to do so under the notice.

### **Criteria for the imposition of a financial penalty**

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

**1.13** In considering the imposition of a penalty, the authority will look at the evidence concerning the breach of the requirement of the notice. This will be obtained from a property inspection.

**1.14** Landlords can demonstrate compliance with the regulations by supplying dated photographs of alarms, together with installation records or confirmation by the tenant that a system is in proper working order,

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

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

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

### **Level of Penalty Charge**

**1.18** The Regulations state the amount of the penalty charge must not exceed £5000.

**1.19** The Penalty Charge shall be set at £1,000 for the first offence, reduced to £750 if paid within a 14 day period. It will cover the cost of all works in default, officer time, recovery costs, legal costs, an administration fee and a fine.

**1.20** Should the landlord not comply with future Remedial Notices then the fine shall be set accordingly:

Second offence	£2,000
Third offence	£3,000
Fourth offence	£4,000
Fifth or More offence	£5,000

**1.21** No discount will be given for prompt payment after the first occasion.

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

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

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

**1.25** This discretion will not apply when:

- The person/company served on has obstructed the authority in carrying out its duties; and/or
- The person/company has previously received a penalty charge under this legislation

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

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

### **Appeals in relation to a penalty charge notice**

**1.28** The landlord can request in writing, in a period that must not be less than 28 days beginning with the day on which the penalty notice was served, that the local housing authority review the penalty charge notice. The local housing authority must consider any representation and decide whether to confirm, vary or withdraw the penalty charge notice. A landlord who is served with a notice confirming or varying a penalty charge notice may appeal to the First-tier Tribunal against the local housing authority's decision.

## **Appendix 2 Medway Council Financial Penalty Policy under the Housing and Planning Act 2016**

### **Introduction**

**2.1** Medway Council's policy is based on the work undertaken by Thanet Council on the use of Civil Penalties. The policy developed by Thanet has been tested and meets the requirements of DCLG Guidance.

**2.2** As such Medway Council acknowledges the work of Thanet Council and expresses its thanks to that Authority for the advice offered to Medway when adopting the policy and the use of the civil penalty calculation tools.

**2.3** This document stands alongside the Medway Council –Housing Enforcement and Licensing Policy, as published by Medway Council and is an appendix to that policy, which will be kept under review as the law in this area develops.

### **Financial penalties as an alternative to prosecution**

#### **Relevant housing offences**

**2.4** Section 126 and Schedule 9 of the Housing and Planning Act 2016 ("the 2016 Act") amended the Housing Act 2004 ("the 2004 Act") to allow financial penalties to be imposed by local housing authorities as an alternative to prosecution for certain housing offences.

**2.5** Under section 249A of the 2004 Act, a local housing authority may now impose a financial penalty on a person if satisfied, beyond reasonable doubt that the person's conduct amounts to a "relevant housing offence".

**2.6** The relevant housing offences are offences under the 2004 Act, namely:

- Failing to comply with an Improvement Notice (section 30);
- Failing to licence a house in multiple occupation ("HMO") under Part 2 (section 72(1));
- Knowingly permitting the over-occupation of an HMO licensed under Part 2 (section 72(2));
- Failing to comply with the condition of an HMO licence issued under Part 2 (section (72(3));
- Failing to licence a house subject to selective licensing under Part 3 (section 95(1));
- Failing to comply with the condition of a selective licence issued under Part 3 (section (95(2));
- Failing to comply with an overcrowding notice in respect of a non- licensable HMO (section 139(7)); and
- Failing to comply with HMO management regulations (section 234(3)).

**2.7** A person who commits any of the above-mentioned offences without reasonable excuse is liable on summary conviction to a fine of any amount in the Magistrates' Court. A financial penalty imposed by a local housing authority as an alternative must not exceed £30,000.

### **Breaches of banning orders**

**2.8** The 2016 Act also introduced banning orders under Chapter 2 of Part 2. A local housing authority may apply to a First-tier Tribunal for a banning order against a person who has been convicted of a "banning order offence". A banning order offence is an offence set out in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 (SI 2018/216). A range of offences under 14 Acts of Parliament are listed, including those listed above as relevant housing offences.

**2.9** A banning order made by a First-tier Tribunal may prohibit a person from engaging in one or more of the following activities:

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

**2.10** A person who breaches a banning order commits an offence under section 21(1) of the 2016 Act and is liable on summary conviction to imprisonment, or to a fine, or to both. However, a local housing authority may instead impose a financial penalty under section 23 of the 2016 Act of an amount not exceeding £30,000.

### **Prosecution or financial penalty**

**2.11** A local housing authority cannot both prosecute and impose a financial penalty in respect of the same offence. It must decide which course of action is most appropriate.

### **Burden of proof**

**2.12** The same criminal standard of proof is required for a financial penalty as for a prosecution. Before taking formal action, a local housing authority must therefore be satisfied that if the case were to be prosecuted in the Magistrates' Court, there would be a realistic prospect of conviction.

**2.13** In determining whether there is sufficient evidence to secure a conviction, the council will have regard to the Medway Council –Housing Enforcement and licensing Policy and the Crown Prosecution Service Code for Crown Prosecutors, published by the Director of Public Prosecutions. The finding that there is a realistic prospect of conviction is based on an objective assessment of the evidence, including whether the evidence is admissible, reliable and credible and the impact of an available defence

## Statutory guidance

**2.14** In exercising their functions in respect of financial penalties, local housing authorities must have regard to any statutory guidance issued under section 23(10) and Schedules 1 and 9 of the 2016 Act. The Ministry of Housing, Communities & Local Government issued such statutory guidance in April 2018, namely: *Civil penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities*.

**2.15** The guidance requires local housing authorities to develop and document a policy which sets out:

- When it should prosecute and when it should impose a financial penalty; and
- The level of financial penalty it should impose in each case.

**2.16** The guidance states that local housing authorities should consider the following factors to help ensure that any financial penalty is set at an appropriate level:

- Severity of the offence; the more serious the offence, the higher the penalty should be;
- Culpability and track record of the offender;
- The harm caused to the tenant (actual and potential);
- Punishment of the offender (the penalty should be proportionate to the offence and have a real economic impact);
- 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.

**2.17** This policy sets out how Medway Council (“the council”) will impose financial penalties in accordance with relevant legislation and statutory guidance.

## Commencement

**2.18** This policy takes effect from 01 April 2020 and applies to all relevant offences (“relevant housing offences” and breaches of banning orders) committed on or after this date.

## When a financial penalty is to be imposed

### Crackdown on rogue landlords

**2.19** The Government announced the introduction of financial penalties for relevant housing offences with a press release entitled: “*Tougher measures to target rogue landlords - New rules will help crackdown on rogue landlords that flout the rules and improve safety and affordability for renters.*” The Government is obviously keen to see more enforcement action taken against the small minority of rogue landlords who neglect their responsibilities.

**2.20** Significantly, these new powers allow local housing authorities to retain the income received from financial penalties to fund private sector housing enforcement activities. This is clearly intended to help local housing authorities take more enforcement action.

**2.21** The council will use the new powers robustly whenever it is appropriate to do so.

### **Determining an appropriate sanction**

**2.22** Each offence will be assessed on a case-by-case basis. However, the starting position is that the council will seek to impose a financial penalty for a relevant offence, unless there are circumstances relating to the offence that advocate pursuing a criminal prosecution instead.

**2.23** The council may choose to prosecute for a relevant offence if it is of a particularly serious nature. The imposition of a financial penalty in accordance with the policy set out below may not constitute a sanction of sufficient severity in relation to some offences, as the policy has prescribed ranges and is further restricted by the statutory maximum of £30,000. If the council is of the opinion that an offence is of such serious nature that it warrants a more significant financial sanction than that which could be imposed by this policy, it will normally seek to prosecute the offender(s).

**2.24** The breach of a banning order under the 2016 Act is a serious offence, and the council will give careful consideration to the option of prosecution in such cases, as the courts have the power to impose a prison sentence as a punishment.

**2.25** Prosecution may also be an appropriate course of action when an offender has committed the same offence on more than one occasion in the past. Preventing reoffending is an important consideration and a successful prosecution resulting in a criminal record might be a more significant deterrent in some circumstances.

**2.26** Wider public awareness may also be a key consideration. Prosecutions are held in the public domain and can be publicised by the council and local media. Such publicity in respect of an offender may be in the public interest in certain circumstances. Naming and shaming also helps to deter others from committing similar offences. If an offender is subject to a financial penalty, their personal information will not be available in the public domain.

**2.27** There may be other situations in which prosecution may be the most appropriate sanction. Accordingly, the council will carefully review the merits of prosecution for every offence before making a final decision as to an appropriate sanction

## Determining the starting point for a financial penalty

### Severity of the offence

**2.28** A financial penalty may be of any amount up to the statutory maximum of £30,000. However, local housing authorities are expected to reserve the higher amounts for the worst offenders and take a logical and proportionate approach to setting the level of financial penalties more generally. The overarching principle is that the more serious the offence, the higher the penalty should be. The penalty for each offence must therefore be determined on a case-by-case basis.

**2.29** Having due regard to the statutory guidance published by Government, the council has developed the Table of Financial Penalties set out below. The table specifies a range of starting points from £1,000 to £30,000. The starting point is determined by the severity of the offence, which is based on an assessment of the following factors:

- Culpability
- Track record;
- Portfolio size;
- Risk of harm.

**2.30** The following paragraphs set out how each determinant is assessed.

### Culpability

**2.31** Culpability is a key factor in determining the severity of an offence. Therefore, the level of any penalty will initially be set by calculating the culpability category, which then determines the culpability premium. There are four culpability categories, namely:

- Very High;
- High;
- Medium;
- Low.

#### Very High

**2.32** This category applies to offences where the offender has deliberately breached or flagrantly disregarded the law. This category is subject to a 100% culpability premium.

#### High

**2.33** This category applies to offences where the offender had foresight of a potential offence, but through wilful blindness, decided not to take appropriate and/or timely action. This category is subject to an 80% culpability premium.

## **Medium**

**2.34** This category applies to offences committed through an act or omission that person exercising reasonable care would not commit. Any person or other legal entity operating as a landlord or agent in the private rented sector is running a business and is expected to be aware of their legal obligations. This category is subject to a 60% culpability premium.

## **Low**

**2.35** This category applies to offences where there was fault on the part of the offender, but significant efforts had been made to secure compliance with the law, but those efforts were not sufficient. This category may also apply to situations where there was no warning of a potential offence. This category is subject to a 40% culpability premium.

## **Track record**

**2.36** The council would expect a good landlord or agent to have very little contact with the council's Private Sector Housing Team, other than for advice or for licensing obligations. They would be expected to maintain their properties in a good and safe condition and keep up-to-date and comply with all relevant legal requirements. Unfortunately, there are landlords and agents who are regularly subject to enforcement action owing to their failure to maintain their properties in an acceptable condition.

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

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

- Any previous convictions for housing related offences;
- Whether previously subject to a financial penalty for a housing related contravention;
- Whether previously subject to, or associated with, statutory enforcement action (e.g. Improvement Notice, Emergency Prohibition Order, etc.); and
- The number of genuine housing condition complaints received in respect of properties associated with the offender.

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

- Significant
- Some;
- None or negligible.

## **Significant**

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

## **Some**

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

## **None or negligible**

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

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

## **Portfolio size**

**2.44** The size of an offender's portfolio will be taken into account when determining the amount of financial penalty. While all landlords and agents are expected to be aware of their legal obligations, the larger the business is, the more proficient and professional the landlord or agent should be. Furthermore, offenders with a larger portfolio will have more assets and a higher rental income and as such the penalty should have regard to their ability to pay.

**2.45** Taking into account the size of the offender's portfolio helps ensure that the penalty is set at a high enough level to have a real economic impact, such that it serves as an appropriate punishment as well as a deterrent.

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

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

**2.47** A unit of accommodation is a single dwelling house, a flat (whether self-contained or not) or a room or bedsit within a house in multiple occupation (“HMO”).

**2.48** The common parts of a building containing one or more flats will also be counted as one unit of accommodation for the purposes of determining the portfolio size, if the landlord or agent concerned is only responsible for the common parts and not for any flats within the building. If the landlord or agent concerned is responsible for one or more flats within the building, the common parts will be disregarded.

**2.49** Some offenders own properties directly; some are directors of companies which own property. It is also not uncommon for an offender to be strongly associated with the management of a rented property, but actual ownership, for whatever reason, is in the name of a husband, wife or partner. All units of accommodation that are clearly associated with the offender will be taken into account when determining the portfolio size.

**2.50** The council will determine which category to place the offender in using the information it already holds and any information it can reasonably obtain in making the assessment.

**2.51** If the council cannot ascertain any information as to whether the offender has any other properties, an assumption will be made, with the default position being two to four units of accommodation. However, if an agent is the offender, it will be assumed that they are responsible for 20 or more units of accommodation.

### Risk of harm

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

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

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

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

### Level 1

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

**2.56** Any offence associated with the operation of an unlicensed premises under

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

### **Level 2**

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

### **Level 3**

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

### **Level 4**

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

### **Table of Financial Penalties**

**2.60** Having made the four-step assessment described above, the council will determine the starting point for the financial penalty using the Table of Financial Penalties set out on the next page.

## Table of Financial Penalties

Culpability	Track Record	Portfolio Size	Risk of Harm			
			Level 1	Level 2	Level 3	Level 4
Very High (100% Premium)	Significant	1	£7,500	£10,000	£12,500	£20,000
		2 to 4	£10,000	£12,500	£15,000	£22,500
		5 to 19	£15,000	£17,500	£20,000	£27,500
		20 +	£17,500	£20,000	£22,500	£30,000
	Some	1	£5,000	£7,500	£10,000	£17,500
		2 to 4	£7,500	£10,000	£12,500	£20,000
		5 to 19	£12,500	£15,000	£17,500	£25,000
		20 +	£15,000	£17,500	£20,000	£27,500
	None or negligible	1	£2,500	£5,000	£7,500	£15,000
		2 to 4	£5,000	£7,500	£10,000	£17,500
		5 to 19	£10,000	£12,500	£15,000	£22,500
		20 +	£12,500	£15,000	£17,500	£25,000
High (80% Premium)	Significant	1	£6,000	£8,000	£10,000	£16,000
		2 to 4	£8,000	£10,000	£12,000	£18,000
		5 to 19	£12,000	£14,000	£16,000	£22,000
		20 +	£14,000	£16,000	£18,000	£24,000
	Some	1	£4,000	£6,000	£8,000	£14,000
		2 to 4	£6,000	£8,000	£10,000	£16,000
		5 to 19	£10,000	£12,000	£14,000	£20,000
		20 +	£12,000	£14,000	£16,000	£22,000
	None or negligible	1	£2,000	£4,000	£6,000	£12,000
		2 to 4	£4,000	£6,000	£8,000	£14,000
		5 to 19	£8,000	£10,000	£12,000	£18,000
		20 +	£10,000	£12,000	£14,000	£20,000
Medium (60% Premium)	Significant	1	£4,500	£6,000	£7,500	£12,000
		2 to 4	£6,000	£7,500	£9,000	£13,500
		5 to 19	£9,000	£10,500	£12,000	£16,500
		20 +	£10,500	£12,000	£13,500	£18,000
	Some	1	£3,000	£4,500	£6,000	£10,500
		2 to 4	£4,500	£6,000	£7,500	£12,000
		5 to 19	£7,500	£9,000	£10,500	£15,000
		20 +	£9,000	£10,500	£12,000	£16,500
	None or negligible	1	£1,500	£3,000	£4,500	£9,000
		2 to 4	£3,000	£4,500	£6,000	£10,500
		5 to 19	£6,000	£7,500	£9,000	£13,500
		20 +	£7,500	£9,000	£10,500	£15,000
Low (40% Premium)	Significant	1	£3,000	£4,000	£5,000	£8,000
		2 to 4	£4,000	£5,000	£6,000	£9,000
		5 to 19	£6,000	£7,000	£8,000	£11,000
		20 +	£7,000	£8,000	£9,000	£12,000
	Some	1	£2,000	£3,000	£4,000	£7,000
		2 to 4	£3,000	£4,000	£5,000	£8,000
		5 to 19	£5,000	£6,000	£7,000	£10,000
		20 +	£6,000	£7,000	£8,000	£11,000
	None or negligible	1	£1,000	£2,000	£3,000	£6,000
		2 to 4	£2,000	£3,000	£4,000	£7,000
		5 to 19	£4,000	£5,000	£6,000	£9,000
		20 +	£5,000	£6,000	£7,000	£10,000

## Determining whether adjustment of the financial penalty is appropriate

### Review

**2.61** The level of financial penalty should, in a fair and proportionate way, meet the objectives of punishment, deterrence and the removal of gain. As such, the council will, once the starting point has been determined, review the proposed financial penalty and consider whether there are any other mitigating or aggravating factors that should be taken into account when setting the amount of financial penalty. If there are none, no adjustment will be made to the starting point identified by the Table of Financial Penalties.

**2.62** Some examples of mitigating and aggravating factors are given below. However, the list is not exhaustive, and the council may take into account any factor deemed to be relevant.

### Hardship (Landlord)

**2.63** If at this stage of the process, the council is aware of the offender's personal situation and financial position, and is of the view that there are exceptional circumstances, it may be appropriate to reduce the amount of financial penalty.

### Hardship (Tenant)

**2.64** If, owing to the imposition of a financial penalty on a landlord, the tenant will through no fault of their own - experience hardship, the council may consider reducing the amount of financial penalty, but only in exceptional circumstances.

### Previous offences

**2.65** While the Table of Financial Penalties takes into account the offender's track record, there may be circumstances in which the nature of previous offences require a more robust approach to punishment.

**2.66** For example, if a historically non-compliant landlord persists in operating unlicensed premises, the starting point may not be sufficiently high enough in certain circumstances. Such circumstances could include when there are no significant hazards associated with the unlicensed premises. If a *Significant* track record category is already in use for a certain offender, repeated offences where the *Culpability* is very high would be restricted owing to the *Risk of Harm* categorisation. However, the repeated offences would be demonstrating a complete disregard for the law. Therefore, for any repeated offence so restricted, the council may consider increasing the amount of financial penalty.

### Scale of exposure

**2.67** The greater number of people exposed to the risk of harm, the more significant the offence.

**2.68** The greater number of people exposed to the risk of harm, the more significant the offence. While the Table of Financial Penalties takes into account the risk of harm, it does not take into account the number of persons exposed to that harm. Accordingly, if the number of persons exposed is higher than average, the council may consider increasing the amount of financial penalty.

**2.69** A risk of harm associated with a typical family unit would not usually necessitate an increase. However, if the risk of harm was in an HMO or the common parts of a building occupied by numerous persons, an increase in the amount of financial penalty may be appropriate.

### **Actual harm**

**2.70** If actual harm has occurred, the council may consider increasing the amount of financial penalty. If the harm outcome is of a serious nature, it is likely the council will seek to review the financial penalty upwards.

### **Adjustment range**

**2.71** The adjustment range will be limited to an amount equal to 50% of the starting point. The maximum 50% variance may be above or below the initial starting point. For example, if the starting point is £9,000, the maximum 50% variance is £4,500. As such, the financial penalty could be reduced to an amount not lower than £4,500 or increased to an amount not greater than £13,500.

**2.72** The council will not, under any circumstances, vary the financial penalty by more than 50%, and is restricted by the statutory maximum of £30,000.

### **Decision making**

**2.73** If the council decides to vary the proposed financial penalty away from the starting point identified in the Table of Financial Penalties, it will make a record of its decision and notify the offender of the reasons for that decision.

**2.74** To ensure fairness and transparency, the decision to vary a financial penalty will be subject to review by a senior manager of the council. In the first instance, the variation will be proposed by the Private Sector Housing Manager. The proposal will be reviewed by the Head of Strategic Housing, or an officer of similar or higher seniority, and a final decision made by that senior manager. From time to time, the job titles of officers are altered by the council and any reference to the Private Sector Housing Manager or the Head of Strategic Housing may be deemed to include a reference to any future equivalent post.

## **Right to make representations**

### **Notice of Intent**

**2.75** Before imposing a financial penalty, the council must first give the offender notice of its intention to impose such a penalty. This type of notice is known as a “Notice of Intent”.

**2.76** The Notice of Intent must be served within six months of the offence date. However, if the offence is ongoing, the Notice of Intent may be served at any time while the conduct is continuing. If the conduct stops, the Notice of Intent must be served within six months of the date the conduct ceased.

**2.77** For example, if a person fails to licence an HMO subject to mandatory licensing without reasonable excuse, the council may at any time while the HMO remains unlicensed, serve a Notice of Intent. If such a person makes a valid licence application, the council will still have the option to serve a Notice of Intent, but if it chooses to do so, it must serve the Notice of Intent within six months of the date the valid licence application was made.

**2.78** The Notice of Intent must set out:

- The amount of the proposed financial penalty;
- The reasons for proposing to impose the financial penalty, and
- Information about the right to make representations.

### **Written representations**

**2.79** Any person served with a Notice of Intent may make written representations to the council about the proposal to impose a financial penalty. Any representations must be made within 28 days of the date the Notice of Intent was served.

**2.80** Written representations may be made in respect of any matter.

### **Financial position**

**2.81** The offender may wish to submit information as to their financial position. If the council was aware of the financial position of the offender before serving the Notice of Intent, the council may have already made adjustments to the proposed financial penalty. However, this may not be the case and offenders are advised to use the 28-day period for submitting written representations to make the council aware of their financial situation, particularly if they would have difficulties in paying the proposed financial penalty.

### **False or misleading information**

**2.82** It is important to note that any person who supplies information to the council that is false or misleading, whether knowingly or recklessly, in connection with any proposed financial penalty, commits an offence and is liable on summary conviction in the Magistrates' Court to an unlimited fine.

## **Review of representations**

**2.83** The council will carefully review any written representations received during the 28-day period before taking any further action. There is no statutory timeframe for the review process, but the council will seek to make a decision as to its proposed course of action as soon as possible.

The council will take one of the following courses of action:

- Withdraw the proposal to impose a financial penalty;
- Impose a financial penalty of an amount lower than that proposed in the Notice of Intent;
- Impose the financial penalty proposed in the Notice of Intent;
- Propose to impose a financial penalty of an amount higher than that specified in the Notice of Intent.

**2.84** If the council decides to withdraw the proposal to impose a financial penalty, it will confirm its decision in writing. If the council decides to impose a financial penalty of a lower or equal amount to that proposed in the Notice of Intent, it will serve a Final Notice.

**2.85** If the offender has provided written representations that increase the severity of the offence committed, the council may seek to impose a higher financial penalty. If the council decides to take that course of action, it will withdraw the original Notice of Intent and serve a revised Notice of Intent proposing an increased financial penalty. The offender would then receive an additional 28 days in which to make further written representations.

## **Reduction of financial penalty**

**2.86** A reduction in the amount of financial penalty to be imposed may arise from the council altering the starting point on the Table of Financial Penalties.

**2.87** Whether the council decides to alter the starting point or not following any written representations, the council will not reduce the financial penalty by more than 50% of the finalised starting point.

**2.88** If the council decides not to alter the starting point after its review of any written representations received, and it has already used its discretion to make the maximum 50% reduction from that starting point prior to serving the Notice of Intent, no further reduction will be made.

## **Decision making**

**2.89** To ensure fairness and transparency, every decision to impose a financial penalty will be subject to review by a senior manager of the council. In the first instance, the imposition of a financial penalty will be proposed by the Private Sector Housing Manager, who will provide an assessment of any written representations received. The proposal will be reviewed by the Head of Strategic Housing, or an officer of similar or higher seniority, and a final decision made by that senior manager. From time to time, the job titles of officers are altered by the council and any reference to the Private Sector Housing Manager or the Head

of Strategic Housing may be deemed to include a reference to any future equivalent post.

## **Final Notice and right of appeal**

### **Contents of Final Notice**

**2.90** If the council decides to impose a financial penalty following its review of any written representations received, it will serve a “Final Notice” on the offender.

**2.91** The Final Notice will set out:

- The amount of the financial penalty;
- The reasons for imposing the penalty;
- Information about how to pay the penalty;
- The period for payment of the penalty;
- Information about rights of appeal; and
- The consequences of failure to comply with the notice.

**2.92** The period in which a financial penalty must be paid has been determined by statute. All financial penalties must be paid within 28 days of the date the Final Notice was served.

### **Appeals**

**2.93** A person on whom a Final Notice has been served may appeal to the First-tier Tribunal against:

- The decision to impose the financial penalty; or
- The amount of the financial penalty.

**2.94** Appeals should be made within 28 days of the date the Final Notice was served.

**2.95** Once an appeal has been lodged, the Final Notice is suspended until the appeal has been finally determined or withdrawn.

**2.96** The First-tier Tribunal have the power to confirm, vary (reduce or increase), or cancel the Final Notice. If the First-tier Tribunal decides to increase the financial penalty, it may only do so up to the statutory maximum of £30,000.

**2.97** As of 2018, the address and contact details of the First-tier Tribunal (Southern Region) were:

**2.98** First-Tier Tribunal- (Property Chamber) Residential  
Property Havant Justice Centre , the Court House, Elmleigh  
Road, Havant, Hampshire PO9 2AL

Email: [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) | Tel: 01243 779 394 |  
Fax: 0870 7395 900

## Reduction for early acceptance of guilt

### Public interest

**2.99** As with criminal prosecutions, the council is of the opinion that an early acceptance of guilt is in the public interest. It saves public time and money.

### Demonstrating early acceptance of guilt

**2.100** An offender can demonstrate an early acceptance of guilt by paying the financial penalty within 21 days of the date the Final Notice was served. If cleared payment is made within this time period, the offender can benefit from a 25% reduction in the amount of financial penalty payable.

**2.101** A Final Notice will set out the finalised financial penalty amount determined having regard to this policy and an amount equal to 75% of that sum, which would be accepted if received within the 21-day period.

**2.102** If the council is required to defend its decision at the First-tier Tribunal, there will inevitably be additional costs in officer time and expenses. As such, no reduction is available for cases subject to an appeal to the First-tier Tribunal. If an offender makes an early payment at the reduced rate, but then decides to appeal at a later date, the council will seek the full finalised amount during the appeal proceedings.

### Unpaid financial penalties

#### County Court

**2.103** The council will take robust action to recover any financial penalty (or part thereof) not paid within 28 days of the date the Final Notice was served.

**2.104** An application for an order of the County Court will be made in respect of all unpaid financial penalties. A certificate signed by the Chief Finance Officer of the council stating that the financial penalty (or part thereof) has not been paid will be accepted by the court as conclusive evidence of that fact, in accordance with Paragraph 11 of Schedule 13A to the 2004 Act (relevant housing offences) and Paragraph 11 of Schedule 1 to the 2016 Act (breaches of banning orders).

**2.105** In taking court action, the council would seek to recover interest and any court expenses incurred, in addition to claiming the full amount of unpaid financial penalty.

#### Enforcement

**2.106** If an offender does not comply with an order of the court, the council will make an application to enforce the judgement. The type of enforcement action pursued would depend on the circumstances of the case and the amount owed. The most likely types of enforcement action are shown below.

## Court bailiffs

**2.107** A court bailiff will ask for payment. If the debt is not paid, the bailiff will visit the offender's home or business address to establish whether anything can be seized and sold to pay the outstanding debt.

## Charging order - Order of sale

**2.108** The council can apply to place a charging order on any property owned by the offender. If a debt remains outstanding after a charging order has been registered, the council can make an application for an order of sale. The property would then be subject to an enforced sale and the proceeds used to settle the debt owed to the council.

## Attachment to earnings order

**2.109** If the offender is in paid employment, the council can apply to the court for an attachment to earnings order. Such an order would require the offender's employer to make salary deductions. Amounts would be deducted regularly at the direction of the court until the debt owed to the council has been fully discharged.

## Multiple offences

### General principle

**2.110** When considering imposing more than one financial penalty on an offender as a consequence of that offender committing more than one offence, the council will carefully consider whether the cumulative financial penalty would be just and proportionate in the circumstances having regard to the offending behaviour as a whole.

**2.111** Taking into account the principle of totality ensures that the cumulative effect of any sanctions imposed by the council does not constitute an unjust and disproportionate punishment.

### Determining a just and proportionate punishment

**2.112** The council will initially determine the amount of financial penalty that should be imposed in respect of each offence having regard to this policy. The council will then add up the financial penalties and make an assessment as to whether the cumulative total is just and proportionate.

**2.113** If the council considers the cumulative total to be just and proportionate, it will normally impose a financial penalty for each offence.

**2.114** However, if the council considers the cumulative total to be unjust and disproportionate, it will take one or both of the following actions to ensure that the cumulative total is reduced to an amount that does constitute a just and proportionate punishment.

### **Reduction of financial penalty**

**2.115** The council may use its discretion to reduce the amount of a financial penalty at the review and adjustment stage, irrespective of whether or not there are other mitigating or aggravating factors. Any reduction would be similarly limited to an amount equal to 50% of the starting point identified in the Table of Financial Penalties. The additional reduction may be applied to one or more of the offences under consideration.

### **Decision not to impose a financial penalty**

**2.116** The council may use its discretion to not impose a financial penalty in respect of every offence under consideration. If the council decides to take this course of action, the offence or offences disregarded will usually be of a lower severity.

### **Rent Repayment Orders**

**2.117** In consideration of totality, the council will also take into account any proposal to pursue a Rent Repayment Order in respect of the same behaviour.

## Appendix 3 Rent Repayment Orders

### Purpose

**3.1** Rent Repayment Orders (RROs) can be used as a means to require a landlord to repay a specified amount of rent.

### Legislation

**3.2** Housing and Planning Act 2016 Part 2, Chapter 4.

### Background

**3.3** The Housing Act 2004 introduced RROs to require a landlord to repay the rent that had been paid, in respect of a property that should have been licensed, but where he had failed to seek such a licence (and had therefore avoided the requirements to ensure that the property was well managed and of a good standard that would have formed part of the licence process). RROs have now been extended through the Housing and Planning Act 2016 to cover a wider range of offences;

### 3.4 The Housing Act 2004

- S.30 - Failure to comply with an Improvement Notice
- S.32 - Failure to comply with a Prohibition Order
- S.72 - Control or management of an unlicensed HMO
- S.95 - Control or management of an unlicensed house in a Selective Licensing designated area

### Principles of Rent Repayment Orders

**3.5** RRO's requiring repayment of rent to either the tenant or the Council, can be granted via application to the First-tier Tribunal. If the tenant paid their rent themselves, then the rent must be repaid to the tenant. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the Council. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent basis.

**3.6** A landlord does not have to have been found guilty of an offence through the courts for a RRO to be considered and made. A RRO can also be made against a landlord who has received a Financial Penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty. The maximum amount of rent that can be recovered is capped at 12 months.

**3.7** The Council must consider a rent repayment order after a person is the subject of a successful Financial Penalty and in most cases the Council will subsequently make

an application for a RRO to recover monies paid through Housing Benefit or through the housing element of Universal Credit.

**3.8** The Council may offer advice, guidance and support to assist tenants to apply for a RRO if the tenant has paid the rent themselves.

**3.9** The Council may apply for a RRO at the same time as a tenant if part of the rent paid during the specified period within an application was paid from either housing benefit/universal credit. The tribunal will calculate in applications where universal credit has been paid how much rent will be apportioned to the Council and the tenant.

**3.10** For those applications where a landlord has not been convicted at court, a criminal standard of proof is required. This means that the First-tier Tribunal must be satisfied beyond reasonable doubt that the landlord has committed the offence, or the landlord has been convicted in the courts of the offence for which the RRO application is being made.

**3.11** The Council will have regard to the Crown Prosecution Service Code for Crown Prosecutors for this purpose.

**3.12** If the Council becomes aware that a person has been convicted through the courts of one of the above offences listed above in relation to housing in its area, the Council must also consider applying for a rent repayment order.

### **Deciding whether to apply for a rent repayment order and for how much**

**3.13** The Council has a duty to consider applying for a RRO when one of the prescribed housing offences has been committed, these are detailed above. Applications for RRO under these powers will only be considered in relation to an offence which was committed on or after 6th April 2017. In deciding to make an application for a RRO, the Council will have regard to current guidance given by the Secretary of State.

**3.14** The Council can impose a Financial Penalty and apply for a RRO for certain offences:

- Failure to comply with an Improvement Notice (section 30)
- Offences in relation to the licensing of House in multiple Occupation (s72(1))
- Offences in relation to the licensing of houses under Part 3 of The Housing Act 2004 (section 95(1)).

### **Deciding how much rent to recover**

**3.15** Where a landlord has been convicted of the offence to which the RRO relates – the First-tier Tribunal must order the maximum amount of rent is repaid (max 12 months).

**3.16** Where a landlord has not been convicted of the offence to which the RRO relates, the following factors will be taken into consideration when deciding how much rent the Council should seek to recover:

- a) Punishment of the offender

**3.17** The government wish for RRO's to have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. Factors that Council will consider are;

- the conduct of the landlord and tenant
- the financial circumstances of the landlord
- if the landlord has been convicted of similar offences

- b) Deter the offender from repeating the offence

**3.18** The level of the penalty should be set at a high enough level such that it is likely to deter the offender from repeating the offence.

- c) Dissuade others from committing similar offences

**3.19** The imposition of a RRO is in the public domain. The robust and proportionate use of RRO's is likely to help ensure others comply with their responsibilities.

- d) Remove any financial benefit the offender may have obtained as a result of committing the offence

**3.20** An important element of an RRO is that a landlord is forced to pay rent and thereby loses much, if not all, of the benefit that accrued to them by not complying with their responsibilities.

### **Notice of Intended Proceedings**

**3.21** Prior to making an application to the First-tier Tribunal, the Council must issue a Notice of Intended Proceedings to the landlord. The notice may not be given after the end period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

**3.22** The notice of intended proceedings must:

- Inform the landlord that the Council is proposing to apply for a RRO and explain why.
- State the amount that the Council seeks to recover
- Invite the landlord to make representations within a specified period of no less than 28 days from the date the notice was issued

## **Consideration of Representations Received**

**3.23** The Council will consider any representations made during the notice period before deciding to apply for a RRO.

## **Rent Repayment Order Application**

**3.24** The Council can make an application if:

- The offence relates to housing in their areas
- They have given the landlord a notice of intended proceedings.

**3.25** The Council will wait until the notice period has ended before applying for a RRO. The application will include;

- A copy of the Notice of Intended Proceedings
- A copy of the Certificate of Conviction if there has been a conviction
- A copy of the Financial Penalty – Final Notice if one has been served.
- A statement from an Officer detailing whether a Financial Penalty-Final Notice was paid and any appeal outcome
- If there has been no prosecution or Financial Penalty, evidence to satisfy the Tribunal beyond reasonable doubt that the landlord has committed the offence.

## **Making of a Rent Repayment Order**

**3.26** The tribunal may make a RRO if satisfied beyond reasonable doubt that a landlord has committed a relevant offence (whether the landlord has been convicted).

## **Costs**

**3.27** The Rent Repayment Orders (Supplementary Provisions (England) Regulations 2007 provide that a LHA may apply an amount recovered under a RRO for the purposes of the reimbursement of the Council's administrative and legal costs and expenses.

## **Amount of order when satisfied that an offence has been committed**

**3.28** If the offence related to violence for securing entry/eviction/harassment, universal credit (or housing benefit) will be repaid for the period of 12 months ending with the date of the offence.

## **Amount of order following conviction**

**3.29** When there has been a conviction or a Financial Penalty (Financial Penalty Final Notice has been served in respect of the offence and; there is no prospect of

appeal or any appeal has been determined or withdrawn) the Tribunal must award the maximum payable amount with no discretion.

**3.30** For other related offences payment will be made for a period, not exceeding 12 months, during which the landlord was committing the offence.

**3.31** If the Council decide not to comply with the request the decision notice must include the reasons for the decision and a summary of the persons rights of appeal.

### **Appeals against a decision not to comply with a request**

**3.32** Appeal by a person given a notice confirming that the Council has decided not to comply with the request can be made to the First-tier Tribunal within 21 days beginning on the day on which the notice was given. On appeal the Tribunal may order the Council to remove the entry or reduce the period for which the entry is maintained.

### **Rent Repayment Order Recovery**

**3.33** The amount payable to the Council under a RRO is recoverable as a debt.

**3.34** An amount payable to the Council under a RRO does not when recovered, constitute an amount of universal credit recovered by the Council.

**3.35** The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017 outline the provisions about how the Council will deal with amounts recovered.

**3.36** The Council can apply any amount recovered under a RRO in line with the above to meet the costs and expenses (whether administrative or legal) incurred in or associated with carrying out any of its enforcement functions in relation to the private rented sector. Any amounts recovered which is not applied for that purpose must be paid into the consolidated fund.

**3.37** If the final amount due remains unpaid, the Council can apply for an order for payment by the County Court. The Council should present a certificate signed by the Authority's Chief Finance Officer which states that the amount due has not been received by a specified date. It will not be necessary at this stage to submit to the Court further supporting evidence, the certificate will be treated by the Court of conclusive evidence of that fact.

**3.38** Any amount payable to the Council will be registered against the property as a legal charge until it has been paid.

### **Appeals**

**3.39** A person aggrieved by the decision to award a RRO by the First-tier tribunal may appeal to the Upper Tribunal.

## Appendix 4 Banning Order

### Purpose

**4.1** Banning Orders (BOs) can be used in relation to landlords and property managers who have been convicted of a “banning order offence”.

### Legislation

**4.2** Housing and Planning Act 2016, Part 2, Chapter 2

### Background

**4.3** A BO is an order by the First-tier Tribunal, following an application from the Council that bans a landlord or property agent (letting agents and property managers as defined in Chapter 6 Part 2 of the Housing and Planning Act 2016) from;

- Letting housing in England
- Engaging in English letting agency work
- Engaging in English property management work, or
- Doing two or more of those things

**4.4** The Housing and Planning Act 2016 enables the Council to apply to for a BO following conviction of an individual or a company for a “banning order offence”, as defined by Regulation (see paragraph 4.11 below).

**4.5** To make use of BO powers the Council is required to have in place its own policy on when to pursue a BO and to decide which option it wishes to pursue on a case-by-case basis in line with that policy.

**4.6** This policy takes account of the non-statutory guidance issued by the Government which makes clear that BOs are aimed at rogue landlords who flout their legal obligations and rent out accommodation which is substandard, and which also confirms the Government’s expectation that BOs will be used for the most serious offenders.

**4.7** Whilst there is no statutory maximum period for a BO, it must be for a minimum of 12 months for relevant offences committed on or after 6th April 2018. A BO can be made against a person if that person was a residential landlord or property agent at the time the offence was committed. The First-tier Tribunal will set the banning period but the Council is required to recommend a period as part of an application.

**4.8** The breach of a BO is a criminal offence.

**4.9** The power to apply for BOs in appropriate cases is one of a number of enforcement tools available to the Council which include prosecution, carrying out

works in default, applying for Rent Repayment Orders and the imposition of Financial Penalties.

### **Banning Order Offences**

**4.10** BO offences are listed in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 and are divided into;

- Relevant housing offences (but not when the person has received an absolute/conditional discharge for that offence)
- Immigration Offences
- Serious Criminal Offences (when sentencing has occurred in the Crown Court).

**4.11** In respect of the relevant offences that fall within the legislation below; BOs can only be sought if the offence is linked to the tenant or other occupier, or the property owned or rented out by the landlord;

- The Fraud Act 2006
- The Criminal Justice Act 2003
- The Misuse of Drugs Act 1971
- The Proceeds of Crime Act 2002
- The Protection from Harassment Act 1997
- The Anti-Social Behaviour, Crime and Policing Act 2014
- The Criminal Damage Act 1971
- The Theft Act 1968

### **Banning Order Applications**

**4.12** The Council will have regard to current guidance issued by the Secretary of State in considering an application for a BO.

**4.13** The Notice of Intent must set out;

- That the Council is proposing to apply for a BO
- The reasons for the application
- The length of each proposed ban
- Notice recipients right to make representations

### **Procedure**

#### **Determining the appropriate sanction**

**4.14** The Council will consider the following factors when deciding whether to apply for a BO and when recommending the length of any BO;

- a) The seriousness of the offence

**4.15** All BO offences are serious. When considering whether to apply for a banning order the Council will consider the sentence imposed by the Court in respect of the

BO offence itself. The more severe the sentence imposed by the Court, the more appropriate it will be for a BO to be made. For example, did the offender receive a maximum or minimum sentence or did the offender receive an absolute or conditional discharge? Such evidence will later be considered by the First-tier Tribunal when determining whether to make, and the appropriate length of a BO.

b) Previous convictions/rogue landlord database

**4.16** The council will check the rogue landlord database in order to establish whether a landlord has committed other BO offences or has received any financial penalties in relation to BO offences. A longer ban may 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.

**4.17** The Council will also consider the likely effect of the BO on the person and anyone else that may be affected by the order and will take into account the following:

c) The harm caused to the tenant

**4.18** This is a very important factor when determining whether to apply for a BO. The greater the harm or the potential for harm (this may be as perceived by the tenant), the longer the ban should be. BO offences include a wide range of offences, some of which are more directly related to the health and safety of tenants, and could therefore be considered more harmful than other offences (such as fraud)

### Punishment of the offender

**4.19** A BO is a severe sanction. The length of the ban should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending. It is, therefore, important that it is set at a high enough level to remove the worst offenders from the sector. It should ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

d) Deterring the offender from repeating the offence

**4.20** The goal is to prevent any further offending. The length of the ban should prevent the most serious offenders from operating in the sector again or, in certain circumstances; help ensure that the landlord fully complies with all of their legal responsibilities in future. The length of ban should therefore be set at a long enough period such that it is likely to deter the offender from repeating the offence

e) Deterring others from committing similar offences

**4.21** An important part of deterrence is the realisation that (a) the Council is proactive in applying for BOs where the need to do so exists and (b) that the length of a BO will be set at a high enough level to both punish the offender and deter repeat offending.

**4.22** Spent convictions as defined under the provisions of the Rehabilitation of Offenders Act 1974 will not be taken into account when determining whether to apply for and/or make a BO.

**4.23** Having had regard to this policy, a decision to commence the banning order procedure in any case will be confirmed by the Council's Head of Housing for the service area delivering private sector housing enforcement and regulation. The Executive Director will also be responsible for considering any representations made by a landlord served with a notice of intention and for the decision to make an application for a BO, including the recommended duration of the ban.

**4.24** Subject to consideration of relevant guidance issued by the Ministry of Justice and consultation with its legal advisors, the Council will consider publishing details of any successful BO including the names of individual landlords. The Council will also consider making information on a BO available on request by a tenant.

**4.25** A BO can apply to a body corporate, and both a body corporate and an officer of a body corporate.

### **Notice of Intention**

**4.26** Prior to applying for a BO, the Council must issue the landlord/manger with a notice of its intention to do so. The Notice of Intent must be served within 6 months of the landlord being convicted of the offence.

**4.27** The Notice of Intent must set out;

- That the Council is proposing to apply for a BO
- The reasons for the application
- The length of each proposed ban
- Notice recipients right to make representations

### **Appeals**

**4.28** A person receiving the notice of intent can make written representations within 28 days to the Council from the date the notice was issued. The Council will consider any representations received during the 28-day period and then decide whether to pursue a BO.

**4.29** A landlord may also appeal to the Upper Tribunal against a decision of the First-tier Tribunal to make a BO. An appeal cannot be made unless permission is granted by either the First-tier Tribunal or the Upper Tribunal.

**4.30** A person against whom a BO is made may apply to the FtT for an order revoking or varying the BO.

## **Request for Information**

**4.31** The Council may require a landlord to provide information under Section 19 of the Act to enable them to decide whether to apply for a BO. This could include requiring the landlord to provide information on all the properties that the landlord owns.

**4.32** It is an offence for a landlord not to comply with this request, unless they can provide a reasonable excuse. It is also an offence for a landlord to provide false and misleading information. The Council will consider exercising its powers in relation to Section 19 if a landlord or agent/manager fails to provide information or the information provided is found to be false or misleading.

## **Role of the First-tier tribunal (FtT)**

**4.33** The FtT has the power to make a BO against a landlord or property agent who has been convicted of a BO offence and who was a residential landlord at the time the offence was committed. They will do so on an application by the Council for the area in which the offence occurred.

**4.34** The FtT determines the length of the BO following a recommendation from the Council in its application as to the length of ban they are seeking. The minimum duration of a ban is 12 months.

## **Factors the FtT will consider when deciding whether to make a banning order**

- The seriousness of the offence of which the person has been committed
- Any previous convictions that a person has for a BO offence
- Whether the person is or has at any time been included in the rogue landlord's database; and
- The likely effect of a BO on the person and anyone else that may be affected by the order.

**4.35** The FtT can also revoke or vary a BO upon application from the person against whom the BO has been made. Examples of variations include adding new exemptions to a ban, varying the banned activities listed on the order, varying the length of the ban and varying existing exceptions to a ban. The Council cannot vary or revoke a BO.

## **Enforcement and Impact**

**4.36** A landlord subject to a BO is prevented from:

- Letting housing in England
- Engaging in English letting agency work
- Engaging in English property management work, or
- Doing two or more of those things

**4.37** A landlord subject to a BO is also unable to hold a licence for a House in Multiple Occupation (HMO) and their property may also be subject to a management order.

### **Consequences of Banning Orders**

**4.38** A person who breaches a banning order commits an offence.

**4.39** The council can consider two options on the identification of a breach:

- Prosecution (liable on conviction to imprisonment for a period not exceeding 51 weeks or to a fine or both)
- Financial Penalty

**4.40** When a person is convicted of breaching a BO and the breach continues after conviction, the person commits a further offence and is liable on further conviction to a fine not exceeding 1/10 of level 2 on the standard scale or part of a day on which the breach continues.

**4.41** If the Council chooses to impose a Financial Penalty in respect of a breach then the person may not be convicted of that offence. If the person has been convicted of an offence for the same conduct, or criminal proceedings for that offence been instituted against that person and the proceedings have not been concluded then the Council may not impose a Financial Penalty.

### **Financial Penalty for Breach of a Banning Order**

**4.42** The Council may impose a Financial Penalty on a person if satisfied, beyond reasonable doubt that the persons conduct amounts to a breach of a BO.

**4.43** Only one Financial Penalty may be imposed in respect of the same conduct unless the breach continues for more than 6 months, when a further Financial Penalty can be imposed for each additional 6 month period for the whole or part of which the breach continues,

**4.44** The Council will determine the amount of the Financial Penalty in accordance with appendix 2, and any current guidance made by the Secretary of State.

### **Banning Order Publicity**

**4.45** The Government encourages local housing authorities to publish details of successful BOs, including the names of individual landlord's and businesses, at a local level. Details of a BO will also be made available to a tenant upon request. The Council shall seek legal advice and consider local circumstances when determining whether a BO will be publicised

### **Other Impacts of Banning Orders**

**4.46** A landlord is unable to transfer their property(s) to certain persons whilst a BO is in force.

**4.47 A prohibited person is:**

- A person associated with the landlord (including family members, spouses and financial partners)
- A business partner of the landlord
- person associated with a business partner of the landlord
- A business partner of a person associated with the landlord
- A body corporate of which the landlord or person mentioned above is an officer
- A body corporate in which the landlord has a shareholding or other financial interest; or
- In the case where a landlord is a body corporate, anybody corporate that has an officer in common with the landlord.

**4.48** A BO does not invalidate a tenancy agreement held by the occupiers in the property regardless of whether the agreement was issued before or after the BO was made. This is to ensure an occupier of the property does not lose their rights under the terms and conditions of their tenancy agreement.

**Management Orders**

**4.49** The Council will consider the use of management orders (MO) for properties affected by BOs if deemed necessary. A MO enables the Council to take over the management of a privately rented property in place of the landlord. A MO ensures that health and safety of occupiers and persons living or owning property nearby are protected, or ensures that a property is still available to rent. The ability of the Council to take over the management of a private rented home under certain circumstances was created by Part 4 of the Housing Act 2004.

## **Appendix 5 Database of Rogue Landlords and Property Agents**

### **Purpose**

**5.1** This section of the Policy details how the Council will use the database of rogue landlords. The database is a new tool for local housing authorities in England to keep track of offences committed by rogue landlords and property agents. The database is operated by the Secretary of State for Housing, Communities and Local Government, but local housing authorities in England have responsibility for maintaining its content.

**5.2** The new requirements permit the Council to add entries to the database. The Council can also view all entries on the database including those made by other local housing authorities to help keep track of known rogues', especially those operating across council boundaries to allow local housing authorities to target their enforcement activities on individuals and organisations who knowingly flout their legal obligations.

### **Legislation**

**5.3** Housing and Planning Act 2016, Part 2, Chapter 3

### **Use of information in the database**

**5.4** The Council may only use the information obtained from the database:

- For purposes connected with its functions under The Housing Act 2004
- For the purposes of a criminal investigation or proceedings relating to a banning order offence
- For the purposes of an investigation or proceedings relating to a contravention of the law relating to housing or landlord and tenant.
- For the purposes of promoting compliance with the law relating to housing or landlord and tenant by any person in the database, or
- For statistical or research purposes

### **Making an entry**

**5.5** Government guidance has been produced to assist the Council in deciding whether to make an entry onto the database and to provide practical guidance so that the database can be used effectively.

**5.6** Under section 29 of the Act the Council must make an entry on the database for a person or organisation that has received a Banning Order following an application by the Council and no entry was made under section 30 before the banning order was made, on the basis of a conviction for the offence to which the banning order relates.

**5.7** An entry made under section 29 must be maintained for the period for which the banning order has effect and must then be removed.

**5.8** Under section 30 of the Act, the Council may make an entry on the database for a person or organisation who has been convicted of a banning order offence that was committed at a time when they were a registered landlord or property agent; and/or

**5.9** Who has received two or more Financial Penalties in respect of a banning order offence within a period of 12 months committed at a time when the person was a residential landlord.

### **Deciding whether to make an entry under Section 30**

**5.10** The Council will always consider whether it would be appropriate to make an entry on to the database when a landlord has been convicted of a banning order offence or received two or more Financial Penalties over a 12-month period.

**5.11** The database is designed to be a tool which will help local housing authorities to keep track of rogue landlords and focus their enforcement action on individuals and organisations who knowingly flout their legal obligation. The more comprehensive the information on the database, the more useful it will be to the Council. Such information will also encourage joint working between local housing authorities who will be able to establish whether rogue landlords operate across their local housing authority areas.

**5.12** The Council is required to have regard to the following criteria when deciding whether to make an entry in the database under section 30;

- a) The severity of the offence – The more serious the offence, the stronger the justification for including the offence on the database
- b) Mitigating factors – where a less serious offence has been committed and/or there are mitigating factors, the Council may decide not to make an entry on the database. Mitigating factors could include personal issues, for example, health problems or a recent bereavement. The Council will decide on a case by case basis whether mitigating factors are strong enough to justify a decision not to record a person's details on the database.
- c) Culpability and serial offending – when an offender has a history of failing to comply with their obligations. Where there is a clear history of knowingly committing banning order offences and/or non-compliance, the stronger the justification for making an entry on the database. Conversely where it is a first offence and/or where it is relatively minor, the Council may decide that it is not appropriate to record a person's information on the database.
- d) Deter the offender from repeating the offence – the goal is to prevent landlords and property agents who have failed to comply with their legal responsibilities, repeating the offence. An important part of deterrence is the realisation by the offender that the Council has the tools and is proactive in recording details of rogue landlord and property agents, and, that they will be unable to simply move from one local authority area to another.

- e) Deter others from committing similar offences - Knowing they may be included on the database if they are convicted of a banning order offence or receive multiple financial penalties, may deter some landlord's from committing banning order offences in the first place.

### **Deciding how long a database entry under Section 30 should last**

**5.13** The Council will have regard to the following criteria when deciding the period to specify in a decision notice:

- a) a) Severity of offence – the severity of the offence and related factors, such as whether there have been several offences over a period of time will be considered. Where an offence is particularly serious and/or there have been several previous offences; and/or the offences) have been committed over a period of time, then the decision notice may specify a longer period of time. When one or more of those factors are absent, it may be appropriate to specify a shorter period.
- b) Mitigating factors – these could include a genuine one-off mistake, personal issues such as ill health or a recent bereavement. When this is the case, the Council may decide to specify a shorter period in the decision notice
- c) Culpability and serial offending – a track record of serial offending or when the offender knew, or ought to have known, that they were in breach of their responsibilities may suggest a longer time period would be appropriate
- d) Deter the offender from repeating the same offence – the data should be retained on the database for a reasonable time period so that it is a genuine deterrent to further offences.

### **Procedure for database entries under Section 30**

**5.14** The Council may make an entry onto the database if a person or organisation;

- Has been convicted of a banning order offence and the offence was committed at a time when the person was a residential landlord's or property agent
- Has within a period of 12 months, received a financial penalty in respect of a banning order offence committed at a time when the person was a residential landlord or a property agent. A financial penalty can and will only be taken into consideration if the period for appealing the penalty has expired and any appeal has been finally determined or withdrawn.

**5.15** An entry made under section 30 must be maintained for the period specified in the decision notice as described below before the entry was made (or that period as has been reduced in accordance with section 36) and must then be removed at the end of that period.

## **Section 30 Database Entry - Decision Notice**

**5.16** Prior to making an entry on the database in respect of a person under s30, the Council must issue a decision notice. The decision notice must be issued within 6 months, beginning with the day on which a person was convicted of the banning order offence to which the notice relates, or, received the second of the financial penalties to which the notice relates.

**5.17** The decision notice must;

- Explain that the authority has decided to make the entry in the database after the end of the period of 21 days beginning with the day on which the notice is given (“the notice period”), and
- Specify the period for which the persons’ entry will be maintained, which must be at least two years beginning with the day on which the entry is made.
- Summarise the notice recipients appeal rights

**5.18** An entry on to the database will then be made once the notice period has ended and there is no appeal received.

**5.19** The Council will take reasonable steps to keep information on the database up to date.

## **Appeals**

**5.20** A person receiving a decision notice may appeal to the First-tier Tribunal against;

- The decision to make the entry in the database in respect of the person, or
- The decisions as to the period for which the person’s entry is to be maintained.

**5.21** An appeal must be made before the end of the notice period specified in the decision notice, however the Tribunal may allow an appeal to be made to it after the end of the notice period if satisfied that there is good reason for the persons failure to appeal within the period (and for any subsequent delay).

**5.22** The Tribunal may confirm, vary or cancel the decision notice upon appeal. If an appeal is received within the notice period then the Council will not make an entry in the database until;

- The appeal has been determined or withdrawn, and
- There is no possibility of further appeal (ignoring the possibility of an appeal out of time)

## **Removing or Variation of an Entry**

**5.23** An entry made in the database may be removed or varied; If an entry was made based on one or more conviction all of which are overturned on appeal, the Council must remove the entry.

**5.24** The Council may remove an entry or reduce the period for which the entry must be maintained under the following circumstances:

**5.25** If the entry was made on the basis of;

- more than one conviction and some of them (but not all) have been overturned on appeal
- one or more convictions that have become spent (for the purposes of the Rehabilitation of Offenders Act 1974).
- that the person has received two or more financial penalties and at least one year has elapsed since the entry was made

**5.26** The Council also have the power under the above circumstances to;

- remove an entry before the end of the two-year period
- reduce the period for which an entry must be maintained to less than the two-year period.

#### **Receipt and consideration of requests to remove entries or reduce entry time Periods;**

**5.27** The Council will receive requests in writing from a person in respect of whom an entry is made in the database under section 30 to remove and entry or reduce the period for which the entry must be maintained.

#### **Request Decision notice**

**5.28** On receipt of a request in writing the Council must:

- decide whether to comply with the request, and
- give the person notice of its decision

**5.29** If the Council decide not to comply with the request the decision notice must include the reasons for the decision and a summary of the persons rights of appeal.

#### **Appeals against a decision not to comply with a request**

**5.30** Appeal by a person given a notice confirming that the Council has decided not to comply with the request can be made to the First-tier Tribunal within 21 days beginning on the day on which the notice was given. On appeal the Tribunal may order the Council to remove the entry or reduce the period for which the entry is maintained.

#### **Power to Require Information**

**5.31** Under Section 35 of the Act the Council may require a person to provide specified information for the purpose of enabling them to decide whether to make an entry in the database in respect of the person.

**5.32** The Council may require from a person that they have made an entry about or are proposing to make an entry about, any information needed to complete the person's entry or keep it up to date.

**5.33** It is an offence, on conviction with a fine, for a person to fail to comply with a section 35 requirement, unless the person has a reasonable excuse for the failure. It is also an offence for the person to provide information that is false or misleading if the person knows that the information is false or misleading or is reckless as to whether it is false or misleading.

## **Appendix 6 The Redress Schemes for Lettings Agency Work and Property Management Work**

### **Legislation**

**6.1** The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014<sup>30</sup>

**6.2** From 1st October 2014, it is a legal requirement for all lettings agents & property managers to belong to a government approved redress scheme.

**6.3** The two approved redress schemes are:

- Property Redress Scheme ([www.theprs.co.uk](http://www.theprs.co.uk))
- The Property Ombudsman ([www.tpos.co.uk](http://www.tpos.co.uk))

**6.4** Whilst the majority of lettings agents and property managers provide a good service there are a minority who offer a poor service and engage in unacceptable practices. This requirement will mean that tenants and landlords with agents in the private rented sector and leaseholders and freeholders, dealing with property managers in the residential sector, will be able to complain to an independent person about the service they have received. Ultimately the requirement to belong to a redress scheme will help weed out bad agents and property managers and drive up standards.

**6.5** The requirement will be enforced by local authorities who can impose a fine of up to £5,000 where an agent or property manager who should have joined a scheme has not done so.

**6.5** Trading Standards is the enforcing team for this requirement. For further information please contact the Trading Standards team

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<sup>30</sup> <http://www.legislation.gov.uk/uksi/2014/2359/contents/made>

## Appendix 7 Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

### Legislation

7.1 Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2016<sup>31</sup>

### Background

7.1 The Minimum Energy Efficiency Regulations (the Regulations) apply to all privately rented properties in England and Wales. From April 2018, all such properties are legally required to have an Energy Performance Certificate (EPC) of at least an E before they can be let on a new tenancy. This requirement will then extend to all such properties by 1 April 2020, even if there has been no change in tenant or tenancy (please see BEIS's published guidance documents for the full details on the standard)<sup>32</sup>and guidance for landlords and Local Authorities on the minimum level of energy efficiency required to let domestic property under the Energy Efficiency (Private Rented Property).<sup>33</sup>

### The minimum standard for lettings

7.2 Properties which have an EPC rating of band E or below are classed as 'substandard' by regulations.

Unless the property is exempt, a landlord should not;

- **from 1 April 2018**, granting a tenancy or renewing an existing tenancy for a property that has an EPC rating below band 'E'. Renewal in this context means when the tenancy is replaced by a new tenancy or becomes statutory periodic
- **from 1 April 2020**, continuing to let a property that has an EPC rating below band 'E'.

The EPC must be no more than ten years old.

7.3 The Regulations give enforcement powers to local authorities, and authorities are responsible for ensuring landlord compliance within their area.

Trading Standards is the enforcing team for this requirement. For further information please contact the Trading Standards team.

<sup>31</sup> <http://www.legislation.gov.uk/uksi/2016/660/contents/made>

<sup>32</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/771851/HECA\\_Guidance\\_2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/771851/HECA_Guidance_2019.pdf)

<sup>32</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/824037/Domestic\\_Private\\_Rented\\_Property\\_Minimum\\_Standard\\_-\\_Landlord\\_Guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/824037/Domestic_Private_Rented_Property_Minimum_Standard_-_Landlord_Guidance.pdf)

## Appendix 8 the Tenant Fees Act 2019

### Legislation

#### **8.1 The Tenant Act 2019**

### **Introduction**

**8.2** The Tenant Fees Act 2019, came into force on the 1 June 2019 and bans apply to all assured short hold tenancies, tenancies of student accommodation and licences to occupy housing in the private rented sector in England.

**8.3** The majority of tenancies in the private rented sector are by default assured short hold tenancies. In this policy ‘tenant’ includes licensees and any persons acting on behalf of a tenant or licensee or guaranteeing the rent

### **Assured short hold tenancy**

**8.4** A tenancy is likely to be an assured short-hold tenancy if all the following apply:

- the property is rented privately
- the tenancy started on or after 28 February 1997
- the property is the person’s main accommodation
- the landlord doesn’t live in the property

**8.5** Examples of circumstances that would merit investigation include charging for;

- Tenant referencing
- Credit and immigration checks
- Administration
- Drawing up or renewal

**8.6** What fees Landlords/agents can charge for

**8.7** From 1 June 2019 if you start or renew a tenancy, you can only be charged in the following situations

- Late payment of rent
- Lost keys or fob
- Ending your tenancy early

**8.8** Where the PSH team become aware of an offence, a referral will be made to Medway’s Trading Standards team to investigate.

## **Appendix 9 Homes (Fitness for Human Habitation) Act 2018**

**9.1** The Act<sup>34</sup> came into force on 20 March 2019. It is designed to ensure that all rented accommodation is fit for human habitation and to strengthen tenants' means of redress against the minority of landlords who do not fulfil their legal obligations to keep their properties safe.

**9.2** There are no new obligations for landlords under this Act; the legislation requires landlords to ensure that they are meeting their existing responsibilities with regards to property standards and safety.

**9.3** Under the Act, the Landlord and Tenant Act 1985 is amended to require all landlords (private and social) to ensure that their properties, including any common parts of the building, are fit for human habitation at the beginning of the tenancy and throughout. The Act states that there is an implied agreement between the tenant and landlord at the beginning of the tenancy that the property will be fit for human habitation.

**9.4** The government wants to support the majority of good landlords who provide decent and well-maintained homes. Landlords who do not maintain safe properties prevent the operation of an effective and competitive rental market where all landlords operate on an equal footing. This Act provides an additional means for tenants to seek redress by giving them the power to hold their landlord to account without having to rely on their local authority to do so.

**9.5** The government expects standards to improve as tenants will be empowered to take action against their landlord where they fail to adequately maintain their property. This will level the playing field for the vast majority of good landlords who are already maintaining homes fit for human habitation without serious hazards, by ensuring that they are not undercut by landlords who knowingly and persistently flout their responsibilities.

### **Overview of the Act**

**9.6** The Act applies to the social and private rented sectors and makes it clear that landlords must ensure that their property, including any common parts of the building, is fit for human habitation at the beginning of the tenancy and throughout.

**9.7** To achieve that, landlords will need to make sure that their property is free of hazards which are so serious that the dwelling is not reasonably suitable for occupation in that condition. Most landlords take their responsibility seriously and do this already.

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<sup>34</sup><https://www.gov.uk/government/publications/homes-fitness-for-human-habitation-act-2018/guide-for-tenants-homes-fitness-for-human-habitation-act-2018>

**9.8** Where a landlord fails to do so, the tenant has the right to take action in the courts for breach of contract on the grounds that the property is unfit for human habitation. The remedies available to the tenant are an order by the court requiring the landlord to take action to reduce or remove the hazard, and / or damages to compensate them for having to live in a property which was not fit for human habitation.

### **Who will it apply to?**

The Act will apply to:

- tenancies shorter than 7 years that are granted on or after 20 March 2019 (tenancies longer than 7 years that can be terminated by the landlord before the expiry of 7 years shall be treated as if the tenancy was for less than 7 years)
- new secure, assured and introductory tenancies (on or after 20 March 2019)
- tenancies renewed for a fixed term (on or after 20 March 2019)
- from the 20 March 2020 the Act will apply to all periodic tenancies. This is all tenancies that started before 20 March 2019; in this instance landlords will have 12 months from the commencement date of the Act before the requirement comes into force

### **What exceptions are there?**

**9.9** The landlord will not be required to remedy unfitness when:

- the problem is caused by tenant behaviour;
- the problem is caused by events like fires, storms and floods which are completely beyond the landlord's control (sometimes called 'acts of God')
- the problem is caused by the tenants' own possessions,
- the landlord hasn't been able to get consent e.g. planning permission, permission from freeholders etc. There must be evidence of reasonable efforts to gain permission
- the tenant is not an individual, e.g. local authorities, national parks, housing associations, educational institutions

**9.10** The Act does not cover people who have 'licences to occupy', instead of tenancy agreements. This may include lodgers (people who live with their landlord) some people who live in temporary accommodation, and some, but not all, property guardians.

### **When can tenants start to use the Act?**

**9.11** Once the Act came into force on 20 March 2019, landlords with properties let on existing tenancies had 12 months to comply. For any new tenancies that start on or after 20 March 2019, the Act will apply immediately.

## **Complying with the Act**

**9.12** If a landlord fails to comply with the Act, tenants may have the right to take court action for breach of contract.

**9.13** If the court decides that the landlord has not provided their tenant with a home that is fit for habitation, then the court can:

- make the landlord pay compensation to their tenant
- make the landlord do the necessary works to improve their property

**9.14** If the tenant seeks redress through the courts, this does not stop the local authority from using its enforcement powers. Local authorities have a range of powers which allow them to tackle poor and illegal practices by landlords and letting agents, including when landlords do not carry out necessary works that have been brought to their attention.

## Appendix 10 Harassment / Illegal Eviction

**10.1** Where the PSH team becomes aware of allegations or offences about illegal eviction or harassment that threatens the tenant's rights in their tenancy, a referral will be made to Medway Council Housing Solutions Team to investigate.

**10.2** Examples of circumstances that would merit investigation include:

- Entering the property without the appropriate notice
- Disconnection of utility supplies
- Attempting to terminate a tenancy without serving the appropriate legal notices;
- Attempting to terminate a tenancy as a result of retaliatory eviction.
- Illegal eviction from the property not involving court bailiffs and a possession order from the courts.

### Retaliatory Evictions and the Deregulation Act 2015

**10.3** From 1st October 2015 a number of provisions in the Deregulation Act 2015<sup>35</sup> come into force. These provisions are designed to protect tenants against unfair eviction where they have raised a legitimate complaint about the condition of their home.

**10.4** Where a tenant makes a genuine complaint about the condition of their property that has not been addressed by their landlord and their complaint has been verified by a local authority inspection, and the local authority has served either an improvement notice or a notice of emergency remedial action, a landlord cannot evict that tenant for 6 months using the 'no-fault' eviction procedure (a section 21 eviction<sup>36</sup>). The landlord is also required to ensure that the repairs are completed.

**10.5** The Housing Options Team will support tenants subject to retaliatory eviction by providing the information they need to pursue their case in a timely manner.

**10.6** This process does not offer protection from eviction under section 8 where a landlord can still serve notice due to rent arrears and/or breaking tenancy agreement.

<sup>35</sup> <https://www.gov.uk/government/publications/retaliatory-eviction-and-the-deregulation-act-2015-guidance-note>

<sup>36</sup> <https://www.gov.uk/evicting-tenants/section-21-and-section-8-notices>

## Appendix 9 Fees & Charges 2019/20

### Houses in Multiple Occupation

Licensing of Houses in Multiple Occupation	£1033.30*
Second or subsequent application	£918.40*
Change of licence holder- Must submit a new licence application	£1033.30*
Licence renewal fee- with no significant changes	£ 388.00*
Licence renewal fee- with significant changes	£656.70*
Variation of an existing licence	No Charge
Change in permanent home or business address of licence holder.	No Charge

### Non Statutory Inspections

Accommodation Inspections for UK Entry Clearance	£103.30*
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### Charges for Notices

Section 49 of the Housing Act 2004 gives local authorities the power to make a reasonable charge to recover certain expenses incurred by them when taking enforcement action under the Act. This includes service of statutory notices to remove hazards under sections 11, 12, 20, 21, 40 and 43 of the Act.

Fixed fee of £525\* per statutory notice.

\*Fees are subject to change and will be reviewed annually.