



**Private Sector Housing Enforcement:  
Housing Standards Policy**



Date: 7<sup>th</sup> December 2023

Version: 2.0

<b><u>Version Control</u></b>		
<b>Title</b>	Private Sector Housing Enforcement: Housing Standards Policy	
<b>Owner</b>	Service Manager – Strategic & Private Sector Housing	
<b>Version</b>	<b>Date</b>	<b>Comments</b>
1.0	Approved by Cabinet - 17 <sup>th</sup> March 2022	Updated legislation
2.0	8 <sup>th</sup> December 2023 – Approved by Assistant Director for Housing	Updated Civil Penalty legislation and consistency with other policies.

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## 1. Policy Statement

The purpose of this policy is to address the legal responsibilities, policies, principles, and priorities, that Wigan Council will adhere to when undertaking enforcement action in relation to private sector housing and certain related matters of public health. The policy aims to provide a clear, informed and coordinated framework demonstrating our approach and processes which the Council will follow to achieve our ambitions for a high-quality and safe local housing sector. This Policy should be read in conjunction with wider, relevant Council policies and strategies of a related consequence.

## 2. Introduction and Local Context

In 2010 Wigan Council launched 'The Deal', an informal agreement between the Council and residents to work together in new ways to nurture our communities. The Deal is about recognising the importance of happiness, of feeling connected and being valued, and recognising that we all have to take more responsibility so that we can live in a happy and thriving community.

Embodying the principles of The Deal, in July 2019 Wigan Council launched The Deal 2030, which provides a 10-year unifying strategy for the whole of the borough to make it a fantastic place to live. As part of The Deal 2030, Wigan Council commits to creating a home for all. It aims for a borough that provides quality, affordable homes that are right for residents and pledges to further improve the work being done to prevent homelessness and to support people to make a success of their home. To make this ambition a reality, in 2020 Wigan Council published its Housing Strategy informed by a wealth of local housing and demographic data and wide-ranging sector engagement.

Our Housing Strategy not only sets out plans to build more of the right homes to create better housing options in all parts of the borough; it equally focusses on the importance of making existing homes right for people and families, ensuring that all of our residents have a healthy, suitable and stable home. In addition, our Housing Strategy also sets out our commitments to making our homes, both new and existing, and communities, greener and more environmentally responsible to achieve our ambitious climate objectives.

Wigan is the second largest local authority by population in the Greater Manchester Combined Authority, and the fifth largest in the North West. Around 13% of Wigan's household/property tenures are privately rented, this equates to 15,875 households. Across the country, the private rented sector is only expected to grow. As such, the private rented sector is set to form an increasingly important role in Wigan's housing market and provision. The private rented sector can be a great asset, providing decent homes for a range of people and playing a significant role in housing provision throughout our borough. Furthermore, the wider private housing sector counted for over 68% of our borough's households. Overall, the private sector dominates in terms of our local housing provision, and hence it is critical for

the Council to ensure that private sector housing is of a high-quality standard for our residents.

We recognise that the majority of our borough's private sector housing is in good condition and the market is functioning well, with properties in good condition and well-managed. However, there are pockets of the sector that can be less satisfactory and require intervention. Poor property conditions or management can have wide-ranging effects upon health and wellbeing and can also potentially lead to wider problems such as anti-social behaviour, homelessness and the safety and cohesion of our neighbourhoods and communities, all of which brings down the sector and places additional and avoidable strain on services. We therefore want to support homeowners, landlords, and tenants, to know their rights and responsibilities and to make a success of their home, and in doing so promote wellbeing, stability, and resilience, in a key sector of the housing market. We want to encourage homeowners and landlord to go a good job in maintaining their properties in a good state of repair, whilst at the same time as supporting tenants and helping them to make good choices, and ensure a high-quality, safe home for all.

The Council has a responsibility to deal with any unsatisfactory housing that presents problematic health and safety hazards to the occupiers. This policy will document the legal powers that are available to Wigan Council to ensure that the housing standards are adhered to and tackle those that repeatedly fail to act to support tenants and landlords.

Key to the efficacy of this policy is partnership working; we will work with colleagues and partners to ensure we fully understand each case and take the best course of action and make the best use of resources available. This policy is designed to reflect the spirit of The Deal 2030 and ultimately set forth the Council's understanding of, and approach to, private sector housing standards.

### 3. Policy Objectives

This Policy sets out when enforcement action will be carried with the principal objectives to ensure that:

- Tenants of private landlords and registered providers live in homes which are free of significant risks to their health, wellbeing and safety.
- Privately owned property and land does not present a statutory nuisance to other landowners and does not directly or indirectly present an unacceptable risk to the public health, safety, or the environment.
- The Council meets its statutory duties in relation to hazards within housing in so far as dealing with Hazards recognised under the Housing Health and Safety Rating System (HHSRS) and under the provisions of the Housing Act 2004.
- All Houses in Multiple Occupation (HMOs) are appropriate to be used as an HMO, are safe and well managed, and all relevant Management Regulations are adhered to.

- All licensable HMOs are licensed, and all licensing conditions are met.
- All properties in Wigan borough comply with the legal requirements in relation to smoke and carbon monoxide regulations.
- All privately rented properties in Wigan borough comply with the legal requirements in relation to Electrical Safety Regulations 2020;
- All applicable properties have a valid EPC as per the Energy Performance of Buildings (England and Wales) Regulations 2015.
- All privately rented properties in Wigan borough comply with the legal requirements in relation to Minimum Energy Efficiency Standard Regulations 2019.
- Letting agents and property management agents in Wigan borough are registered with one of three approved Government Ombudsman Schemes.
- Letting agents and landlords handle tenants' money appropriately.

## 4. Scope and Responsibilities

### 4.1. Scope

The provisions of this policy primarily apply to residential properties, i.e. non-commercial properties, within Wigan Council's local authority area, which are part of our local private housing sector. This non-exhaustively includes the private rental sector, owner-occupied dwellings, empty properties, and properties let by Registered Providers of Social Housing.

Not all provisions in this policy will be applicable to all types of private sector housing. The private housing sector is both nationally and locally the largest housing sector, and there's a great wealth of legislation concerning various aspects of the sector, and hence provisions within this policy will only apply where appropriate and relevant.

The provisions in this policy not only apply to or affect residential, private sector housing properties, but also to actors operating in the sector in their capacity as landlord, tenant, owner, occupier, owner-occupier, and else as appropriate. That is, this policy applies not only to properties in the private housing sector, but also to persons natural and legal.

Furthermore, legislation pertaining to housing standards and enforcement is wide ranging and multifaceted, and often broaches upon other areas of standards, regulation, and enforcement, such as those concerning environmental or public health. The standards and enforcement practices falling within scope of this policy are those which this policy explicitly mentions or outlines. However, given the wide ranging and multifaceted nature of housing standards and enforcement, provisions and principles contained within this policy may at times be further utilised and applied to areas of private sector housing standards and enforcement which do not explicitly fall within scope of this policy, but may do so tacitly or by principled extension.

## 4.2. Responsibilities

Each employee of Wigan Council, most notably those in housing, enforcement, or customer service roles has a responsibility to adhere to this policy in so far as is appropriate for their role. The Senior Management Team at Wigan Council are responsible for the oversight and execution of the processes and procedures in this policy.

Responsible officers will conduct their duties in line with the following principles, they will:

- Ensure that staff exercising the provisions contained within this policy are appropriately trained and supported by colleagues to apply and deliver the policy professionally and to a high standard;
- Monitor on-going compliance with this policy;
- Endeavour to engage with stakeholders in an efficient and straightforward way, listening and considering a range of views;
- Provide clear information, guidance, advice, and support, to those persons falling under the scope of this policy, helping them to meet their responsibilities, and using simple English as appropriate to ensure accessibility;
- Provide both a robust and transparent approach to regulatory and enforcement activities;
- Comply with any other such practices, procedures, or principles as requires by primary or secondary legislation, or by best practice guidance from the Government, Official Regulators, or established sector stakeholder organisations.

## 5. Relevant Legislation

There are numerous pieces of both primary and secondary legislation which pertain to the scope of this policy. Given below are the principal pieces of legislation which are pertinent, followed by auxiliary legislation of a related but more limited consequence. The pieces of legislation below are not intended to form an exhaustive list and should be understood in reference also to any associated amending or replacement legislation or Statutory Instruments, Regulations, Bylaws or Orders.

### 5.1. Principal Legislation

- Housing Act 2004
- Housing Act 1985
- Housing and Planning Act 2016
- Legislative and Regulatory Reform Act 2006
- Homeless Act 2002

### 5.2. Auxiliary Legislation

- Environmental Protection Act 1990
- Building Act 1984
- Local Government (Miscellaneous Provisions) Act 1982



- Local Government (Miscellaneous Provisions) Act 1976
- Local Government Act 1972
- Local Land Charges Act 1975
- Law of Property Act 1925
- Public Health Act 1961
- Public Health Act 1936
- Prevention of Damage by Pests Act 1949
- Caravan Sites and Control of Development Act 1960
- The Energy Act 2013
- Coronavirus Act 2020
- Anti-social Behaviour Crime and Policing Act 2014

## 6. What is Enforcement?

Enforcement means any action which is undertaken in the exercise of, or against the background of, statutory enforcement powers. Enforcement is hence a wide-ranging category which includes formal actions such as prosecution, the imposition of fixed penalty notices or the service of other such legal notices, applications for rent repayment orders, and many more. It also includes wider actions such as inspections, investigations, or information gathering related to property or land, and any relevant person, where the purpose is checking compliance with legislation, or to provide advice and guidance on how to comply with legal obligations.

## 7. The Housing Health and Safety Rating System (HHSRS)

The Housing Health and Safety Rating System (HHSRS) was introduced by the Housing Act 2004 and remains the principal system of assessing and enforcing housing standards in England.

The HHSRS provides local authorities with a risk-based assessment tool which is used to assess the risk, or the likelihood and severity, of a hazard, actual or potential, in residential housing, to the health and safety of the occupants. The HHSRS is tenure neutral in that it is used to assess hazards in both private and social rented housing, and also in owner-occupied housing.

The HHSRS is not a pass/fail test, rather, it provides a risk-based assessment matrix which provides a score for the property in terms of its conditions.

A HHSRS score is calculated following an inspection by an authorised council officer. The formal HHSRS scoring system aids in demonstrating the seriousness of present or potential hazards that can cause harm within dwellings and is prescribed by the Housing Health and Safety Rating system (England) Regulations 2005, along with supplementary operating guidance as provided by the Government.

There are at least 29 potential hazards which are assessed and scored for their severity and risk to health and safety. The scores for each are ranked in bands. There are two categories of possible hazards which are then identified from the bands:

- **Category 1 Hazards:** (bands A-C) represent a serious danger to health and the Council has a duty to take appropriate action to deal with these;
- **Category 2 Hazards:** (bands D-J) represent less danger and the Council has the power, but no duty, to reduce category 2 hazards through appropriate action.

A range of enforcement powers are available to the Council to remove or reduce any hazards identified to an acceptable level. Where an authorised Council officer believes that an identified risk to the health and safety of occupants should be dealt with, they will utilise these various powers at the Council's disposal to ensure that property owners and landlord take the appropriate corrective measures.

In most cases, the Council will generally follow a process in which it will seek to work with landlord or owner to reduce or remove hazards. However, this may not be appropriate in all cases, such as when there is an imminent risk of serious harm to the health or safety of occupants. Therefore, each case will be risk-assessed on its own merits to determine the appropriate course of enforcement action.

Given that hazards are scored on the basis of risk to the potential occupant who is most vulnerable to that specific hazard, in determining what action to take, the Council will take account of the hazard assessment score; whether the Council has a duty to take action or discretion to act; the views of the occupiers; the risk to the current and likely future occupiers and regular visitors; and the presence of other significant hazards in the property.

## 8. Our Approach to Enforcement

### 8.1. The Principles of Enforcement

In accordance with section 21 of the Legislative and Regulatory Reform Act 2006, Wigan Council will carry out enforcement-related activities in-line with the following principles:

- **Proportionate** – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence.
- **Consistent** – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities, without fettering our discretion.
- **Targeted** – we will primarily focus our resources on higher-risk activities, reflecting local needs and national priorities.
- **Transparent** – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return.

- **Accountable** – our activities will be open to public scrutiny with clear and accessible policies and fair and efficient complaint procedures.

Furthermore, all enforcement actions, policies, and guidance, will be undertaken with regards to the principles and directions specified in the Regulator’s Code, alongside any future guidance, made under sections 22 and 23 of the same Act. Under the Regulator’s Code, local authorities must base their regulatory activities on risk and ensure that they take an evidence-led approach in determining priority risks in their local authority area. Therefore, ensuring those resources are allocated where they would be most effective in promoting positive change.

## 8.2. Our Approach

The form of enforcement activity undertaken will vary according to the legislation applicable to the given case. In some instances, certain enforcement actions may be mandated by statute, provided certain criteria are met. In other cases, officers may have wider scope for discretion as to the utilisation of both formal and informal enforcement mechanisms available.

Cases, breaches, and complaints will be evaluated on their own facts, and the Council’s approach to each case, whilst following the prescribed general process guidelines, will be largely evidence-led. When considering an approach and response to cases of harassment and unlawful eviction, professional discretion is always available for exercise by the Council, as not all actions nor methods of enforcement may be deemed appropriate given the case at hand.

Generally, in the first instance, we will always try to seek to resolve matters informally where this is appropriate; offering advice, support, guidance, and mediation to reach a swift and satisfactory solution without need for escalation of the issue or complaint.

Where this type of engagement fails to achieve the necessary result, or there is a failure to comply of a sufficiently serious magnitude, officers will use the full range of enforcement options available to them under the relevant legislation to achieve the required results or level of compliance to protect those at risk. For the most serious contraventions, possible action will include prosecution.

The type of enforcement action(s) pursued is always considered on a case-by-case basis, based on the individual particulars of the given case. Following consideration of the specific circumstances of a case, the most appropriate enforcement option(s) will be applied accordingly. In each case enforcement seeks to:

- Educate, promote and achieve sustained compliance with the law;
- Ensure that landlords take action to deal immediately with serious risks;
- Ensure that landlords who breach legislative requirements are held to account.

Any actions taken by the Council are so taken with the reasonable expectation of the cooperation of the resident(s) affected throughout the process, where appropriate. Residents should also be aware that our investigations into complaints may also ordinarily involve looking at the conduct and possible motivations of any residents involved, including tenants, occupiers, and neighbours.

At all times throughout the process, officers undertaking enforcement activities will be mindful of wider factors and support needs which may be a contributory factor to investigated complaints. Where identified, officers will endeavour to refer and engage with other agencies and stakeholders appropriately, gaining permission to do so where necessary. Examples non-exhaustively include where additional support or advice may be required with regards to activities such as hoarding, anti-social behaviour, or harassment by a landlord.

### 8.3. Identifying the Need for Action

Wigan Council will aim to take a balanced approach in the identification and investigation of the need to take enforcement action, and thereby aim to successfully manage the private housing sector, by both reactive and proactive engagement; reactively responding to issues as and when they arise, and proactively looking to intervene before potential issues arise or worsen.

Reactive engagement involves, non-exclusively, activity undertaken in response to received complaints, requests for assistance, or other such contact received indicating a need for Council assistance. Proactive engagement involves, non-exclusively, the proactive inspection of dwellings, targeted action, licensing, multi-agency and partnership working, and stakeholder engagement.

Such a balanced approach means that Wigan Council can help to ensure adequate resources are available to reactively deal with ad-hoc issues as they arise and so remain abreast of the sector overall, while proactive engagement will help to support and identify potentially vulnerable residents, who may be private tenants afraid to raise issues or unaware of their rights, or owner-occupiers who are in need of additional support. It will also aid in the early identification of possible concerns or breaches before they develop into more serious problems.

Furthermore, the long-term aim of shifting from reactive enforcement to proactive management is a key factor in changing behaviours of agents in the sector, such as landlords, incentivising good agents whilst targeting resources at combating rogue agents.

Where we consider it appropriate to inspect a premises to determine whether a hazard or other such compliance issue within scope exists, we have a duty to do so.

All issues encountered during inspections, incidents, and complaints reported to us, will be thoroughly assessed and where appropriate investigated before any decisions are taken in respect of enforcement action.

#### 8.4. Powers of Entry

In certain circumstances, Powers of Entry into a property are provided to authorised officers in accordance with legislation under which the Council operates. In general, these powers will allow an officer at any reasonable time to:

- Enter a property to carry out an inspection or gather evidence.
- Take another person with them to carry out the function which they are there for.
- Take equipment or materials with them.
- Take measurements, photographs or make recordings.
- Leave recording equipment on the premises for later collection.
- Take samples of any substances or articles found on the premises.
- In some cases, carry out works.
- Where necessary to protect the health and safety of any person, or to protect the environment without delay.

Generally, these powers will be used where they are deemed necessary in order to:

- Carry out a statutory duty or power.
- Investigate an offence.
- Prevent obstruction of officers.

In most cases notice of entry must, and will, be given to owners and occupiers. The notice period applicable is dependent upon the provisions of the given legislation being enforced but is usually a minimum of 24 hours' notice. Notice will usually be given in writing, by letter or email, but may in some circumstance be given verbally, dependent upon the relevant statutory or regulatory provision.

There may be circumstances in which entry without notice is permitted and utilised, for example, to investigate whether a property is an unlicensed HMO or an otherwise unlicensed property.

### 9. Enforcement Options and Powers

This section outlines the types of enforcement options and powers more commonly applied or considered by Wigan Council for activity falling within scope of this policy. However, it is not an exhaustive list of the enforcement actions available to the Council, or which may be considered by the Council, and is furthermore not intended as a full statement of the law, nor intended to be an authoritative interpretation of the legislation and readers must not rely on it as an authoritative source. Where there are any doubts about the interpretation of the legislation readers are strongly advised to seek their own independent legal advice.

## 9.1. Informal Enforcement Activity

### (i) No Action

In certain circumstances it may be most appropriate for the Council to take no, or minimal, action in regard to an alleged housing standards issue raised. This may be when the impact on the occupier, or wider neighbourhood, is negligible or of limited consequence, or where claim of a breach of obligations is unsubstantiated.

### (ii) Advice, Guidance, and Mediation

Officers dealing with issues raised will always endeavour to offer quality, up-to-date, relevant advice, and support, based on the latest guidance or legislation, and help residents with concerns to solve the issue using an asset-based approach.

### (iii) Verbal or Written Warning

The Council uses compliance advice guidance and support as a first response for many cases of identified breaches of legislation. This advice or support may sometimes be provided in the form of a warning letter from the Council to assist individuals, businesses, and other organisations in having breaches rectified as quickly and efficiently as possible, avoiding the need for progression to further enforcement action.

### (iv) Indirect Action

Where appropriate, the Council will refer cases to other agencies, authorities, or Council departments, for further action or support, for example, the Fire Authority, Local Authority Planning Enforcement, or the Police.

### (v) Promoting Good Landlord Standards

A key strategic objective for Wigan Council in delivering its housing ambitions is to promote a high-quality, sustainable, and well-functioning private rental sector. The Strategic & Private Sector Housing team undertakes regular engagement with sector stakeholders to build positive relationships in the sector and provide invaluable support and advice, alongside offering incentive schemes, to help achieve this aim and drive-up standards.

### (vi) Leasehold Contract Disputes

For disputes of this nature, the Council will promote resolution through civil litigation rather than use statutory enforcement as a first resort. Leaseholders will be advised of the services, including informal dispute resolution services, offered by The Leasehold Advisory Service (LEASE), a government funded body providing independent advice for residential leaseholders and park home residents.

## 9.2. Formal Cautioning

Wigan Council has the power to issue simple cautions for certain offences where the perpetrator admits to the offence and consents to the simple caution. This may be used as an alternative to prosecution where the offence is less serious or the public interest in

prosecution is limited. Where a simple caution is offered and declined, we are likely to proceed to prosecution.

### 9.3. Prosecution

We may decide to prosecute in respect of serious or recurrent breaches or offences, or where other enforcement action, such as statutory notices have failed to secure the required compliance.

When deciding whether to undertake proceedings, Wigan Council will follow the Crown Prosecution Service's Code for Crown Prosecutors (hereafter 'the Code') as a guiding framework in the decision and assessment of which cases are to be progressed or pursued.

The Code is issued by the Director of Public Prosecutions and prescribes the general principles Crown Prosecutors ought to follow when evaluating the merits of cases.

There are two standards a case must meet in order for it to be considered viable under the Code. These are the evidential test, and the public interest test.

The evidential test requires that prosecutors must be "satisfied that there is sufficient evidence to provide a realistic prospect of conviction". The Code provides various considerations which ought to be taken when assessing the sufficiency of the evidence gathered. These considerations will be undertaken by Wigan Council during any individual investigation into alleged offences.

The public interest test assesses whether a prosecution is required in the public interest. It involves evaluating whether or not, for the case under consideration, the factors against prosecution outweigh those in favour. The Code provides various considerations which ought to be taken when evaluating the public interest in prosecuting, or not prosecuting, a given case. These considerations will be undertaken by Wigan Council during any individual investigation it undertakes. (see CPS 'Code' <https://www.cps.gov.uk/publication/code-crown-prosecutors>).

Any decisions by Wigan Council to prosecute are based on the particulars of the case concerned. Given the standards necessary for proceedings to be considered, any decision to, or not to prosecute, is liable to change when relevant and new evidence, circumstances, or factors arise.

### 9.4. Statutory Notices and Orders

#### (i) Banning Orders (BOs)

Banning Orders, made by the First-tier Tribunal (Property Chamber) following successful application from a local authority, prohibit a person from the following activities (England only):

- Letting/Renting-out residential housing or accommodation

- Engaging in letting agency work;
- Engaging in property management work;
- Provisions may also be included to prohibit the person being involved (directly or indirectly) in any body corporate, i.e. business or other organisation, which engages in the same activities.

A banning order also prohibits a person from holding a HMO licence or a licence granted under a selective licensing scheme, and any such license held must be revoked by the local authority once a Banning Order is issued.

A Banning Order must last for a minimum of 12 months and there is no statutory upper time limit.

Banning Orders may contain certain exceptions to a ban for some, or all, of the period to which the ban relates, for example, to deal with cases where there are existing tenancies and the landlord does not have the power to bring them to an immediate end, or to allow letting agents sufficient time to wind down their business.

A Banning Order may be made against a landlord or agent who has been convicted of a Banning Order Offence. These are set out in regulation 3 of the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 SI 2018/216 as over 40 separate offences, and include:

- failure to comply with an Improvement Notice or Prohibition Order (under the Housing Act 2004, s.30 and s.32, respectively);
- breach of gas safety regulations (under Health and Safety at Work etc Act 1974, s.33);
- unlawful eviction or harassment (under Protection from Eviction Act 1977, s.1);
- having control of, or managing, an unlicensed HMO or other property, or breaching a condition of a licence (under Housing Act 2004, s.72 [as amended by para 3 Sch. 9 Housing and Planning Act 2016] and s.95 [as amended by para 4 Sch. 9 Housing and Planning Act 2016], respectively);
- failure to comply with HMO management regulations (under Housing Act 2004, s.234);
- failure to comply with overcrowding notices or fire safety regulations (HMOs only) (under s.139 Housing Act 2004 and Art.32 Regulatory Reform (Fire Safety) Order 2005, respectively);
- breach of right to rent provisions (criminal prosecutions only) (under ss.33A and 33B Immigration Act 2014 [as amended by s.39 Immigration Act 2016]);
- using or threatening violence for securing entry into premises (under Criminal Law Act 1977, s.6)

Further offences are set out in the regulations which do not directly relate to housing, such as fraud, misuse of drugs, theft, stalking, and sexual assault.



To obtain a Banning Order, the local authority must first serve a notice on the landlord or agent within 6 months of the conviction for the Banning Order offence, stating:

- The reasons a Banning Order is being sought;
- The length of the Order being applied for;
- That the person has at least 28 days to make representations in their defence.

After considering any representations the authority must apply to a First-tier Tribunal (Property Chamber).

Sanctions for breaching a banning order include:

- Prosecution by the local authority (using powers provided by s.222 Local Government Act 1972) or the police, with summary conviction potentially resulting in imprisonment for a period not exceeding 51 weeks, or a fine, or both;
- Imposition of a Civil Penalty by the local authority up to £30,000 as an alternative to prosecution;
- Application by the local authority for a management order, in respect of a HMO, to protect the health, safety or welfare of residents.

Furthermore, a local housing authority may require a person to provide specified information for the purpose of enabling the authority to decide whether to apply for a banning order against the person, and it is an offence for the person to fail to comply with such a requirement (unless there is a reasonable excuse) or to knowingly provide false or misleading information. A person who commits such an offence is liable on summary conviction to a fine.

#### (ii) Compulsory Purchase Orders (CPOs)

Compulsory Purchase Orders enable the local authority to acquire property and land without the agreement of the owner or occupier in order to carry out a function deemed to be in the public interest.

Various statutes provide enabling powers for compulsory purchase, each specifying the bodies that are acquiring authorities for the purposes of the power and the purposes for which the land can be acquired. Local authorities can use a CPO to facilitate the carrying out of development, redevelopment or improvement of land where it will promote or improve the economic, social or environmental well-being of an area. CPOs can also be used to clear unfit housing, bring empty properties back into use, develop or regenerate an area or to construct local road schemes.

#### (iii) Emergency Action

A local authority has discretionary powers to undertake Emergency Remedial Action or make an Emergency Prohibition Order.

These may be made where there is:

- A Category 1 hazard (HHSRS);

- An imminent risk of serious harm to the health or safety of an occupier;
- No current Management Order in force (usually in relation to a HMO).

Emergency Remedial Action enables the local authority to take action in relation to any premises in relation to which remedial action could be required to be taken by the issuing of an Improvement Notice, and subsequently recover the costs of doing so.

When intending to undertake Emergency Remedial Action, the local authority is required, within 7 days of starting to take the action, to serve a notice of their intention on the person(s) on whom the local authority would be required to serve an Improvement Notice. Such a Notice must state:

- the nature of the hazard and the residential premises on which it exists;
- the deficiency giving rise to the hazard;
- the premises in relation to which emergency remedial action has been or is to be taken, and the nature of the action;
- the power under which the remedial action was or is to be taken;
- the date when the action was or is to be started;
- information about the right to appeal.

The owner of a property will be able to appeal and must do so within 28 days of the date Emergency Remedial Action is to be started to the First-tier Tribunal (Property Chamber). However, any appeal will not prevent the action from being taken.

Similarly, for Emergency Prohibition Orders. A local authority may enter the premises at any time to make such an Order, prohibiting the use of all or any part of the premises with immediate effect.

The order must specify:

- the nature of the hazard and the residential premises on which it exists;
- the premises in relation to which prohibitions are imposed;
- any remedial action which would result in the order being revoked;
- information about the right to appeal.

An Emergency Prohibition Order is served on the day it is made. The local authority is responsible for determining whether subsequent action taken by the owner gives grounds to revoke or vary the order. Once issued, an Emergency Prohibition Order can be reviewed and varied or revoked in the same way as ordinary Prohibition Orders.

#### (iv) Empty Dwelling Management Orders (EDMOs)

Empty Dwelling Management Orders enable local authorities to take over the management of certain residential premises which have been empty for at least two years. This enables the local authority to bring private, empty dwelling stock back into occupation.

EDMOs may be initially interim, or final. Interim EDMOs allow a local authority to take over management and proceed to let out the property without the owner's consent to do so. They normally last for 12 months. Where the owner will not prove their consent to the local authority to let the property, an Interim EDMO may be revoked and replaced by a Final EDMO, under which the local authority does not require any such consent in order to let the property. Final EDMOs remain in force for a fixed period of no more than 7 years.

To obtain an EDMO, the local authority must successfully apply to the First-tier Tribunal (Property Chamber) to authorise the Order. Before the local authority may apply to the Tribunal, it must make reasonable efforts to serve notice on the owner.

Failure to locate the owner after reasonable efforts does not preclude the making of an application to the Tribunal.

Before making an application to the Tribunal, the local authority must give due consideration and take account of the rights of the owner, balanced against the interests of the wider community. That is, it should on the one hand consider both the benefits of obtaining an EDMO, such as the potentials for crime and anti-social behaviour reduction, improvements to quality of life, and improvements to the area, including its value, and the costs of making the property fit for occupation and of ongoing maintenance. On the other hand, the local authority should consider whether interference with the owner's right to quiet enjoyment of the property by making an EDMO is proportionate to the benefits to be obtained.

#### (v) Improvement Notices and Remedial Action

An Improvement Notice requires the person on whom it is served to carry out remedial action to reduce or remove any identified hazard(s) with a given timeframe. Improvement Notices may apply to a whole dwelling, including common areas. For Improvement Notices served in relation to Category 1 hazards (HHSRS), remedial action must at least ensure that the hazard ceases to be a Category 1 hazard, though often the Improvement Notice will require more than this minimal action. An improvement notice is secured as a local land charge.

Improvement Notices, once served, may come into effect no earlier than 21 days after the date of issue. After being served on the person required to remedy a hazard, an Improvement Notice must then within 7 days be also served on the occupier of the dwelling (if different) and on anyone who the local authority knows to have a relevant interest in the dwelling.

Any Improvement Notice must specify whether it has been made in order to deal with Category 1 or 2 hazards (under HHSRS), the issues at the property giving rise to the hazard(s), the nature of the hazard(s), what remedial actions are required, and the dates when remedial action is to be started and completed. At least 28 days' notice must be provided for a start date of undertaking remedial action.

Failure to comply with an Improvement Notice without a reasonable excuse, is an offence and one or more of the following actions may then be taken by the local authority:

- It may do the required work and charge the costs back;
- Prosecute;
- Impose a Civil Penalty as an alternative to Prosecution up to £30,000 (where the relevant offence is committed by a company, the sum of the Civil Penalties issued against the company and its director can exceed the £30,000 cap);
- Apply for a Rent Payment Order or Banning Order

The local authority may agree to suspend an improvement notice if it believes it is safe to postpone the work.

#### (vi) Prohibition Orders (POs)

A Prohibition Order prevents the use of residential premises (or parts of), including HMOs, for all or any specified purpose and may extend to common areas of properties if applicable. Prohibition Orders may also specify the maximum number of people that may occupy the dwelling or restrict the type of people allowed to live there. Prohibition Orders require an immediate cessation of the unsafe activities identified giving rise to health and safety risks.

Any Prohibition Order must specify whether it has been made to deal with Category 1 or 2 hazards (under HHSRS), the issues at the property giving rise to the hazard(s), the nature of the hazard(s), and what works are required in order to rectify the hazards and have the Order revoked.

Prohibition Orders come into immediately and are secured via a local land charge.

A local authority may agree to suspend a PO if it believes it is safe to postpone the works required.

Failure to comply with a Prohibition Order is an offence and renders the person liable for prosecution, a fine, or being subject to a Banning Order or Rent Repayment Order, or any combination of those as deemed appropriate to successfully pursue by the local authority.

#### (vii) Rent Repayment Orders (RROs)

The granting of an RRO by the First-tier Tribunal (Property Chamber) following successful application by a local authority requires a landlord or agent who has committed a liable offence, to repay rent, Housing Benefit, or housing costs of Universal Credit, originally paid with regards to a given tenancy or licence. An RRO can require the repayment of a sum of up to a maximum of 12 months' rent. Local authorities are also empowered to help occupiers apply for an RRO, for example by conducting proceedings on their behalf or though advice on how to do it.

It is not necessary for the landlord or agent to have been convicted of an offence for an RRO to be granted as long as the Tribunal (Property Chamber) is satisfied beyond all reasonable doubt that a liable offence has been committed.

Liable offences which can result in an RRO include:

- Failure to comply with an Improvement Notice or Prohibition Order
- Breach of Banning Order.
- Having control of, or managing, an unlicensed HMO or other property, or breaching a condition of a licence.
- Illegal eviction or harassment.
- Using or threatening violence for securing entry into premises.

HMO licences cannot be transferred from one person to another, so a landlord who acquires a tenanted property which requires a licence cannot use an existing licence in place, they must apply for a new one, and they commit an offence if they do not.

Where the tenant's immediate landlord is an intermediate landlord, a Rent Repayment Order can only be made against that landlord. It cannot be made against the superior landlord.

To obtain an RRO, the local authority must first serve a notice on the landlord or agent within 6 months of the conviction for the Banning Order offence, stating:

- The reasons a Banning Order is being sought;
- The amount being sought for repayment (not exceeding the amount of Housing Benefit or Universal Credit paid (directly or indirectly) to the landlord or agent in the relevant period).;
- State the period (of maximum 12 months) of the landlord/agent committing the offence which the RRO is for;
- That the person has at least 28 days to make representations in their defence.

After considering any representations the authority must apply to a First-tier Tribunal (Property Chamber). Application and hearing fees may apply, but may be recoverable upon successful granting of an RRO.

In certain instances, a local authority must consider applying for an RRO. This applied where a landlord has been convicted of an offence which either was first committed on or after 6<sup>th</sup> April 2017, or is a licensing offence first committed before that date and continuing after 5<sup>th</sup> April 2018.

## 9.5. Licensing

### (i) Houses in Multiple Occupation (HMOs)

Under legislation all properties that are occupied by five or more people, from two or more households, and sharing an amenity, will be subject to mandatory HMO licensing, irrespective of the number of storeys they contain. This means that such HMOs must be licensed by Wigan Council, and the granting of HMO licences is subject to receipt of the required information and eligible application. Further guidance on HMO licensing is available on our website, including details of licence fees and charges.

All HMOs inspected will be assessed in accordance with the Council's approved standards for HMOs. These standards are available on the Council's website.

The Council will seek to identify all HMOs in the Borough and will, in the first instance, assess each property under its approved risk assessment process and identify those that require a licence. It will endeavour to re-assess properties at least once every five years and owners, agents and occupiers will be encouraged to assess their own houses and to agree to carry out phased improvements.

The Council will endeavour to ensure that owners are fully aware of their responsibilities and do not unnecessarily expose themselves to enforcement action through lack of understanding or information. Properties inspected which fail to meet the relevant standards or licence conditions will be subject to appropriate enforcement action to remedy all deficiencies.

Licences for the mandatory HMO licensing scheme will normally be granted for a 5-year period, however, those who are late in making a licence application will be issued with a reduced term licence. Documentation issued as part of an HMO licence will include details of the appeals process.

The Council will endeavour to inspect all licensed HMOs at least once during the licence period for that property. Properties inspected which fail to meet the relevant standards or licence conditions will be subject to appropriate enforcement action to remedy all deficiencies.

The Council has a zero-tolerance approach concerning the mandatory licensing of HMOs. It is a criminal offence to operate a HMO without a licence, and a landlord will also commit a criminal offence if they fail to comply with any of the conditions of their licence.

Where the Council becomes aware of a licensable HMO that is being operated without a licence it will normally take formal enforcement action, such as issuing a civil penalty notice or prosecution. In these circumstances the Council may issue a reduced term licence and remove any entitlement to any fee discount. In line with legislation, the Council can refuse to issue, to vary or revoke a HMO licence. Where such action is deemed appropriate, details of the decision will be documented.

The Council also has powers, under Part 2 of the Housing Act 2004 to implement an additional licensing scheme for HMO above the national mandatory licensing scheme. Any such additional scheme will be outlined and published as its own separate policy, with the provisions of this policy by default applying also to additional licensing schemes, unless stated otherwise.

Wigan Council may also have in place an article 4 Directive which may remove permitted development rights for changes of use from individual dwelling houses to small houses in multiple occupation (HMOs). This does not mean that HMOs will no longer be allowed in affected areas, it simply means that, regardless of size, they will require planning permission, and changes of use from dwellings to small HMOs outside of affected areas will remain as permitted development and will not require planning permission.

## (ii) Selective and Additional Licensing Schemes

Local authorities are provided with discretionary powers to designate one or more areas of the borough as subject to a Selective Licensing scheme.

Where a Selective Licensing designation is made, it applies to all privately rented properties in the area, subject to certain exemptions, excluding HMOs which require licensing, Mandatory and Additional. This means that all privately rented properties before they can be let will require a license granted by Wigan Council.

The aim of Selective Licensing is ultimately to drive-up standards in a localised area. Where an area has a high proportion of private rented properties and is subject to significant levels of either low housing demand, anti-social behaviour, poor property conditions, migration, deprivation, or crime, the imposition of Selective Licensing aims to help the Council to combat the issues being faced and ensure the area is better managed, and a safe, secure, quality place to live.

A license would be required for each privately rented dwelling in the designated area, and license holders would need to be deemed a fit and proper person to hold such a licence, with satisfactory management arrangements in place.

Under Selective Licensing, there are mandatory conditions which are attached to each licence:

- the production of a gas safety certificate (if applicable)
- electrical appliances and furniture are kept in a safe condition
- installation of smoke alarms in proper working order
- tenants or occupiers must be supplied with a written statement of the terms of their occupancy by the licence holder
- a requirement that the licence holder obtains references for potential occupiers
- other conditions imposed by regulations, for example the provision of Energy Performance Certificates

The Council may also attach certain discretionary conditions to the licence, including restrictions or prohibitions on the use or occupation of particular parts of the property, requiring landlords to take reasonable steps to prevent anti-social behaviour, and requiring landlords to attend a training course in tenancy management.

It is a criminal offence for a person without a licence to manage or have control of a property subject to a Selective Licensing designation. The offence is punishable on conviction by the courts to an unlimited fine. A Civil Penalty may also be imposed as an alternative to prosecution.

The Council has a zero-tolerance approach concerning the mandatory licensing of HMOs. It is a criminal offence to operate a HMO without a licence, and a landlord will also commit a criminal offence if they fail to comply with any of the conditions of their licence.

The introduction of Selective Licensing needs to carefully consider the impact on the private rented market, and assess the risk of landlords exiting the marketing, a reduction in a much needed supply of housing and also the staffing capacity required to effectively enforce it.

Where Wigan Council believes that a Selective Licensing designation is warranted and required, it may seek to apply for such a designation. Any such Selective Licensing scheme implemented by Wigan Council will be outlined and published as its own separate policy, with the provisions of this policy by default applying also to Selective Licensing schemes, unless stated otherwise.

#### 9.6. Civil Penalties and Other Financial Penalty Notices and Charges

Civil Penalties are a financial penalty imposed by a local authority on an individual or organisation. They are an alternative to prosecution which may be considered for certain housing-related offences.

More specifically, Civil Penalties may be used as an alternative to prosecution for the following offences:

- Failure to comply with an Improvement Notice.
- Offences in relation to licensing of Houses in Multiple Occupation.
- Offences in relation to licensing of houses.
- Offences of contravention of an overcrowding notice.
- Failure to comply with management regulations in respect of Houses in Multiple Occupation.
- Breach of a Banning Order.

Only one penalty can be imposed in respect of the same offence, and one may not be imposed for an offence which has been, or currently undergoing, prosecution. The same criminal standard of proof is required for a civil penalty as for prosecution.

The maximum Penalty which can be imposed is £30,000. The penalty amount is to be determined by the local authority in each case. We are guided by the Association of Greater Manchester Authorities (AGMA) Policy on Civil (Financial) Penalties as an Alternative to Prosecution under the Housing and Planning Act 2016. A downloadable version of this guidance can be found on our website. [Enforced Sale](#)

Wigan Council may invoke enforcement measures, using powers provided to local authorities under legislation, to undertake works to a property in the event the owner expresses no interest in bringing the property back into use or up to a required standard. Where the Council carries out such works in default, it is often able to recover the costs through Enforced Sale.



Once works in default are completed, some statutes enable the local authority to secure repayment of the costs of the work as a local land charge registered against the property. This helps to ensure that the owner is not able to dispose of the property with the benefit of the improvements made by the Council.

As a last resort, the Council may then decide to exercise its power of sale conferred by the land charge and enforce that the property is sold on the open market at auction, with the costs of the works in default secured by the charge being repaid from the sale proceeds, before any remaining equity is provided to the original owner. It is the same power that a bank or building society uses to sell a house when the owner has defaulted on the mortgage payments.

## 10. Publicity of Offences

### 10.1 Rogue Landlord Database

The Database of Rogue Landlords and Property Agents, established by the Housing and Planning Act 2016, provides a national record of landlords and property management agents who have received a Banning Order, or who have been convicted of certain other offences.

Local authorities in England are under a mandatory duty to make an entry on the database when it has obtained a banning order against a landlord or agent.

Local authorities in England also have the discretionary power to make an entry in the database in respect of a person where either:

(a) the person has been convicted of a banning order offence and the offence was committed as a time the person was a residential landlord or a property agent; or

(b) the person has, at least twice 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, and no financial penalty considered is still able to be appealed or has a final appeal decision still outstanding.

Government guidance states that the more comprehensive the database is, the more useful it will be, but does also stipulate that in deciding whether to use this discretionary power of entry, local authorities ought to consider the following:

- The severity of the offence – The greater the seriousness of the offence, the stronger the justification for entry.
- Mitigating factors – For example personal issues of the landlord or agent which would discourage entry on the register, such as health problems or a recent bereavement.
- Culpability and serial offending – Where there is a clear history of offences or non-compliance, the stronger the justification for making an entry.

- Deterrence of the offender from repeating the offence – Knowing that they risk being included on the database if the local authority actively exercises its discretionary powers of entry may deter some landlords from repeat offending, as they will be unable to simply move from one local housing authority to another and repeat the same offences as the information will be available to other local housing authorities.
- Deterrence of others from committing similar offences – Knowing that they risk being included on the database if the local authority actively exercises its discretionary powers of entry may deter some landlords from committing banning order offences in the first instance.

Before a local authority may make a discretionary entry, it must give the landlord or agent at least 21 days' notice advising that it has decided to place them on the database, and the notice must be provided within 6 months of the conviction or receipt of the second civil penalty.

When placing an entry onto the database, the local authority must record the following, and take reasonable steps to keep the information up to date.

The following information must be recorded where a landlord or agent is placed on the database:

- Full name and address of landlord or agent (or registered address for a company);
- Addresses of all properties owned, let, or managed by the landlord or agent;
- National Insurance number and date of birth of the landlord or agent (unless a company);
- Length of the ban
- Date for removal from the database
- Description of each Banning Order offence
- Description of each banned activity (when applicable)
- Local authority making the entry

A landlord or agent remains on the database for the period a Banning Order is in effect, or for at least two years for a discretionary entry.

When exercising these powers in relation to entries in the Database, Wigan Council will follow the provisions of both legislation and applicable Government guidance.

## 10.2. Other Court Convictions

Verdicts and sentences in criminal cases are made in open court and are usually a matter of public record. Evidence suggests that the public want to know about local court cases and judgements.

The Council may publish the outcome of criminal cases and basic personal information about the offender, and this will always be in accordance with guidance issued by the Criminal Justice System (Publishing Sentencing Outcome, CJS, 2011).

The reasons are to:

- Reassure the public that offences are dealt with;
- Increase trust and confidence in the criminal justice system;
- Improve the effectiveness of the criminal justice system;
- Discourage offending or re-offending.

Providing this information to the public is a legitimate way of engaging communities and making criminal justice more transparent and accountable, whilst also providing a deterrence effect for potential offenders.

## 11. Charging for Enforcement Action

The Housing Act 2004 allows us to charge for taking enforcement action, where enforcement action involves the service of statutory notices and orders notices.

In prosecution cases the Council will seek to recover the costs incurred in taking a prosecution case, which include administrative costs incurred for preparing the prosecution file; attendance at court and Legal costs for preparing and presenting the case.

In cases where a property has been let illegally, or where there has been a breach of legal requirements, the Council will consider applying to the First Tier Tribunal Service to recover rent from a landlord through a Rent Repayment Order. It will also give advice to tenants on how they may recover rents through applying to the Tribunal Service in these circumstances.

Where there is substantial financial gain for a landlord or owner through non-compliance with legislative requirements in the private rented sector, the Council will consider taking action to confiscate or recover monies gained through illegal activities under the Proceeds of Crime Act 2002.

See Appendix A for detailed information surrounding Civil Penalties.

## 12. Information and Data Management

In operating this Policy, the Council will collect and hold information, including personal data, such as case files and incident reports, containing personal information (names, addresses, contact details, etc), and timelines of events.

In some cases, the Council will also collect and hold copies of photos, video recordings, text/online messages, emails, tenancy agreements, etc., to use as an evidence base for any enforcement action taken.

Records will normally be held in electronic format, but may, on occasion, be held in hard copy.

The Council holds personal data in accordance with the General Data Protection Regulation (GDPR).

The Council will hold personal data as set out in the [Data Privacy Primary Notice](#) and [Private Sector Housing Privacy Notice](#).

The Council will retain information in line with the relevant Retention Schedule for Private Sector Housing.

### 13. Reviewing the Policy

The policy will be reviewed on a three-yearly basis, or as and when any significant changes are made to legislation or Council strategy which would affect the scope, objectives, functionality, or efficacy, of this policy as directed by the Council's Senior Management team. A review effected on the latter basis of a change in legislation or Council strategy.

### 14. Compliments and Complaints

If you are unhappy that the Council has taken enforcement action (for example a Notice has been served on you or work in default has been undertaken), we suggest that you first discuss the matter with the officer assigned to your case to aim to resolve the matter.

Officers of the Council will provide an effective and courteous service to landlords and others against whom enforcement action may be taken. Any complaints regarding the behaviour of staff will be dealt with according to Wigan Council's complaint procedure. If you feel that we have failed to act or treat you in accordance with the provisions outlined in this policy, then please contact us.

Should you fail to reach a resolution, you do have a right of appeal to the First-Tier Tribunal (Property Chamber), depending on the type of Notice you have received. Information concerning the relevant appeal process will be included on any legal Notice you are served with.

As required by the Regulators Code, the authority has a Compliments and Complaints Procedure which allows all service users to give a compliment, give feedback or make a formal complaint. This can be accessed through the Council's website or by telephoning the contact centre.

### 15. Accessible Formats

For copies of this policy in alternative or accessible formats, please contact the email address [pshadvice@wigan.gov.uk](mailto:pshadvice@wigan.gov.uk), or call on 01942 489204.

## 16. Further Information

For further information or questions regarding this policy, please contact us using the following details:

- Email: [pshadvice@wigan.gov.uk](mailto:pshadvice@wigan.gov.uk)
- Telephone: 01942 489204.
- Address: Wigan Council, Strategic & Private Sector Housing, PO Box 100, Wigan, WN1 3DS

## 17. Appendix A - Policy on Civil Penalties

### **Policy on Civil Penalties as an alternative to prosecution under The Housing and Planning Act 2016**

#### **Introduction**

The Housing and Planning Act 2016 introduced Civil Penalties of up to £30,000 from 6<sup>th</sup> April 2017 as an alternative to prosecution for certain offences under the Housing Act 2004.

These are:

- **Section 30 (failure to comply with an Improvement Notice)**
- **Section 72 (offences in relation to licensing of HMOs)**
- **Section 95 (offences in relation to licensing of houses under Part 3 (Selective Licensing))**
- **Section 139(7) (failure to comply with an overcrowding notice)**
- **Section 234 (breach of Management Regulations in respect of an HMO)**

The power to impose a civil penalty as an alternative to prosecution for these offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

In determining the Civil Penalty amount, the Local Housing Authority will have regard to the statutory guidance issued under schedule 9 of the Housing and Planning Act 2016 and also to the Government's Department of Communities and Local Government (DCLG) developed Civil Penalty Matrix.

#### **Burden of Proof**

The criminal burden of proof, i.e. beyond all reasonable doubt, must be satisfied before a Civil Penalty can be issued as an alternative to prosecution. The Local Housing Authority must satisfy itself that there would be a realistic prospect of conviction, applied objectively, given the evidence available.

In assessing the evidence, regard must be given to the Code for Crown Prosecutors and, when deciding whether there is sufficient evidence to prosecute, consideration must be given as to whether the evidence can be used and is reliable.

Due regard must be given to any potential defense's available and, in certain circumstances, the Local Housing Authority may decide to conduct an interview under caution in accordance with PACE codes of practice to assist in determining whether the issue of a Civil Penalty is appropriate or not.

## Factors in deciding whether to Prosecute or issue a Civil Penalty

Each case will be decided upon its own merits taking into account all the evidence available.

Where the Local Housing Authority considers that a Housing Act offence has been committed, it must decide whether to prosecute or to issue a civil penalty as an alternative to prosecution. The following factors, whilst not exhaustive, are examples of where it would usually be appropriate to consider prosecution:-

- The seriousness of the offence; e.g. breach of a Prohibition Order would be an offence only suitable for prosecution.
- Forms part of a wider prosecution; e.g. Health and Safety Inspection
- The antecedents of an individual; e.g. a landlord indicates that he / she has been regularly prosecuted for Housing Act or similar offences.

The following factors, whilst not exhaustive, are examples of where it would usually be appropriate to consider the issue of a Civil Penalty:-

- No evidence of previous non-compliance with appropriate legislation.
- Offence was committed as a result of a genuine mistake or misunderstanding, (these factors must be balanced against the seriousness of the offence )
- Prosecution is likely to have a serious adverse effect upon an individual's well-being; e.g. a landlord's physical or mental health, but always bearing in mind the seriousness of the offence.

## Factors in determining the level of Civil Penalty

In order to ensure that the civil penalty is set at an appropriate level the following factors will be considered:-

- The seriousness of the offence, determined by the harm caused and the culpability of the offender
- The history of compliance by the offender
- The punishment of the offender for the offence
- The deterrent value to prevent the offender from repeating the offence
- The deterrent value to prevent others from committing similar offences
- Removing any financial benefit obtained from committing the offence

## Harm Caused

In determining the level of harm the Local Housing Authority will have regard to:

- The person: i.e. physical injury, damage to health, psychological distress
- To the community; i.e. economic loss, harm to public health
- Other types of harm; i.e. public concern/feeling over the impact of poor housing condition on the local neighbourhood

The nature of the harm will depend on the personal characteristics and circumstances of the victim, e.g. the tenant.

Where no actual harm has resulted from the offence, the Local Housing Authority will consider the relative danger that persons have been exposed to as a result of the offender's conduct, the likelihood of harm occurring and the gravity of harm that could have resulted.

Factors that indicate a higher degree of harm include:

- Multiple victims
- Especially serious or psychological effect on the victim
- Victim is particularly vulnerable

## Examples of Harm Categories

<b>High</b>	Housing defect giving rise to the offence poses a serious and substantial risk of harm to the occupants and/or visitors; for example, danger of electrocution, carbon monoxide poisoning or serious fire safety risk.
<b>Medium</b>	Housing defect giving rise to the offence poses a serious risk of harm to the occupants and/or visitors; for example, falls between levels, excess cold, asbestos exposure.
<b>Low</b>	Housing defect giving rise to the offence poses a risk of harm to the occupants and/or visitors; for example, localised damp and mould, entry by intruders.

## Culpability

In determining culpability the Local Housing Authority will have regard to 4 levels of culpability.

Where the offender -

- Has the **intention** to cause harm, the highest culpability where an offence is planned.
- Is **reckless** as to whether harm is caused, i.e. the offender appreciates at least some harm would be caused but proceeds giving no thought to the



consequences, even though the extent of the risk would be obvious to most people.

- Has **knowledge** of the specific risks entailed by his actions even though he does not intend to cause the harm that results.
- Is **negligent** in their actions.

## Examples of Culpability

<b>Very High (Deliberate Act)</b>	Intentional breach by landlord or property agent or flagrant disregard for the law e.g. where an unregistered gas fitter is allowed to carry out gas work and the landlord/property agent knows that he is not registered.
<b>High (Reckless Act)</b>	Serious or systemic failings, actual foresight of or wilful blindness to risk of offending but risks nevertheless taken by the landlord or property agent; e.g. failure to comply with HMO Management Regulations
<b>Medium (Negligent Act)</b>	Failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding commission of the offence; e.g. part compliance with a schedule of works, but failure to fully complete all schedule items within notice timescale.
<b>Low (Low or no culpability)</b>	Offence committed with little or no fault on the part of the landlord or property agent; e.g. obstruction by tenant to allow contractor access, damage caused by tenants

## Correlation between Harm and Culpability in determining the Civil Penalty Amount

In assessing the seriousness there is a need to consider both culpability and harm.

The table below sets out the interrelation between harm and culpability as a determinant of the appropriate Civil Penalty banding level to be applied.

<b>Low Culpability/High Harm</b> Band 4	<b>Medium Culpability/High Harm</b> Band 5	<b>High Culpability/High Harm</b> Band 6	<b>Very High Culpability/High Harm</b> Band 8
<b>Low Culpability/Medium Harm</b> Band 3	<b>Medium Culpability/Medium Harm</b> Band 4	<b>High Culpability/Medium Harm</b> Band 5	<b>Very High Culpability/Medium Harm</b> Band 7
<b>Low Culpability/Low Harm</b> Band 1	<b>Medium Culpability/Low Harm</b> Band 2	<b>High Culpability/Low Harm</b> Band 3	<b>Very High Culpability/Low Harm</b> Band 4

## Level of Civil Penalty to be imposed

In determining the financial value of an imposed penalty, subject to a maximum of £30,000, the Local Housing Authority shall have regard to the Banding Levels referred to in Appendix 1.

Where there is more than one offence each offence will be given a banding level based upon the criteria identified in this Policy. Each of those offences may have a different banding level dependent upon the circumstances of the offence.

The Civil Penalty should be fair and proportionate given the circumstances of the case but in all instances should act as a deterrent and remove any gain as a result of the offence.

The starting point for the Civil Penalty will be the mid –point of the relevant band level and is based upon the assumption that no aggravating / mitigating factors apply to the offence.

An offender will be assumed to be able to pay a penalty up to the maximum amount unless they can demonstrate otherwise.

## Aggravating Factors

The penalty may be increased by £1000 for each aggravating factor up to the maximum of the band level determined in Appendix 1.

## Mitigating Factors

The penalty may be decreased by £1000 for each mitigating factor to the minimum of the band level determined in Appendix 1.

## Sentencing Guidelines

When considering any relevant aggravating and mitigating factors due regard should, inter alia, be given to the Sentencing Council Guidelines.

## Assessment of Assets and Income

Where the Local Housing Authority are satisfied that the assets and income (not just rental income) of the offender are such that it is just and appropriate to increase or reduce the penalty then the penalty may be increased or reduced on a sliding scale, dependent upon the financial circumstances of the offender, up to the maximum or minimum point of the banding level identified for the offence.

## Reduction in Penalty Imposed

The Local Housing Authority may reduce the penalty imposed where corrective action is taken in respect of the offence committed in a timely and appropriate manner in circumstances where the Local Housing Authority have assessed the category of culpability as being low or medium.

Such reduction will only be applied where the corrective action has been taken prior to the service of the Final Notice.

The maximum level of reduction to be applied will be 30% of the penalty amount and each case will be considered on its own merits.

## Civil Penalties

### Multiple Offences

Where the Local Housing Authority are satisfied that more than one offence has been committed concurrently in respect of a single property, they may issue multiple Civil Penalty Notices for each offence (e.g. where there are multiple breaches of the HMO Management Regulations).

### Multiple Penalties

Where satisfied on the merits of the case and/or where the Local Housing Authority consider that issuing multiple penalties at the same time would result in an excessive cumulative penalty, nothing in this policy shall require the authority to do that. The authority may take action in respect of one or some of the offences and warn the offender that future action in respect of the remaining offences will be taken if they continue.

## Process for Imposing Penalty Charges

Where it has been determined that a Financial Penalty may be appropriate to impose as an alternative to prosecution, the Local Housing Authority will apply the following process:-

## Notice of Intent

- A “Notice of Intent” shall be served on the person suspected of committing the offence. The Notice shall specify:
  - a. The amount of any proposed financial penalty
  - b. The reasons for proposing the financial penalty
  - c. Information about the right to make representation to the Local

## Housing Authority

- The person to which the notice relates will be given 28 days to make written representation to the Local Housing Authority about the proposal to impose a financial penalty.
  
- Following the 28 day period the Local Housing Authority will decide:
  - a. Whether to impose a financial penalty on the person, and
  - b. The value of any such penalty imposed.

## Final Notice

- If the Local Housing Authority decides to impose a financial penalty, a final notice shall be issued imposing that penalty. The final notice will specify:
  - a. the amount of the financial penalty,
  - b. the reasons for imposing the penalty,
  - c. information about how to pay the penalty,
  - d. the period for payment of the penalty,
  - e. information about rights of appeal to the First tier Tribunal
  - f. the consequences of failure to comply with the notice.

## Consequences of Non-Compliance and Miscellaneous Provisions

If, after any appeal has been finally determined or withdrawn, a person receiving a financial penalty does not pay all or part of the penalty charge, the Local Housing Authority will recover the penalty by order from a County Court. Where appropriate, the Local Housing Authority will also seek to recover the costs incurred in taking this action from the person to which the financial penalty relates.

Financial Penalties are an alternative to criminal proceedings and as such if a penalty is imposed, no criminal proceedings will be initiated for the same offence.

The Local Housing Authority may, at any time:

- a. Withdraw a notice of intent or final notice
- b. reduce the amount specified in a notice of intent or final notice

Where the Local Housing Authority decides to take either action, it will write to the person to whom the notice was given.

## Record of the Decision

A record of each decision and the reasons for the financial penalty will be made by an appropriate officer and how the amount of the penalty was obtained and the reasons for imposing it.

## Database of Rogue Landlords and Letting Agents

Upon commencement of the statutory provisions relating to the national Rogue Landlord and Letting Agents Database, where a person has received two financial penalties under this legislation in any 12 month period for offences occurring within their Local Housing Authority area. The Local Housing Authority may make an entry on the national database. When considering making an entry, the authority will have regard to any guidance issued by the Secretary of State.

### **Banding Levels of Financial Penalties imposed under the Housing Act 2004 (the Act)**

<b>Band 1</b>	<b>£0 - 4999</b>
<b>Band 2</b>	<b>£5000 - 9999</b>
<b>Band 3</b>	<b>£10000 – 14999</b>
<b>Band 4</b>	<b>£15000 - 17999</b>
<b>Band 5</b>	<b>£18000 - 20999</b>
<b>Band 6</b>	<b>£21000 - 23999</b>
<b>Band 7</b>	<b>£24000 - 26999</b>
<b>Band 8</b>	<b>£27000 - 30000</b>

The starting point in each band will be the mid-point, i.e. for Band 3 the mid-point will be £12,500

## 18. Appendix B - Electrical Safety Statement of Principles

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

#### **Statement of Principles for Determining Financial Penalties**

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

This statement is to define the principles that will be applied by Wigan Council (“the Authority”) when determining the level of financial penalty under Regulation 11 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (“ the Regulations”)

##### **Legal background**

##### **Duties placed upon relevant landlords**

The Regulations impose duties in relation to electrical installations (Regulation 3) on all relevant private landlords, including those operating Houses in Multiple Occupations (HMOs).

The duties with which a Landlord must comply are listed in Table 1 under the section heading Principles in determining sum.

There is an additional duty placed upon the private landlord to comply with a remedial notice served by the Authority. There is no specific penalty for a breach of duty to comply with a remedial notice. Any such breach though, will indicate additional culpability in failure to comply with the duties laid out in Regulation 3.

##### **Enforcement**

Where the Authority has reasonable grounds to believe that, in relation to premises situated within its area, a relevant landlord is in breach of one or more of the duties under the Regulations 3(1)(a), (1)(b), (1)(c), (4) and (6) and the most recent report under regulation 3(3) does not indicate that urgent remedial action is required, the Authority must serve a remedial notice on the landlord to include the necessary remedial action within 21 days.

Where a local housing authority is satisfied, on the balance of probabilities, that a landlord has failed to comply with the remedial notice, the Authority may, if the necessary consent is given, arrange for an authorised person to take the remedial action specified in the Remedial Notice and/or Urgent Remedial Action.

##### **Penalty**

Where the Authority is satisfied, beyond all reasonable doubt, that a landlord has breached any duty imposed by Regulation 3 of the Regulations may require the landlord to pay a penalty charge of such amount as the authority may determine.

The amount of the penalty charge must not exceed £30,000.

Where a local housing authority decides to impose a penalty charge, the Authority must serve notice of that fact on the landlord.

### **Principles**

The Authority considers it good practice to prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge.

### **Principles for service of fixed penalty charge**

The purpose of a penalty charge is:

- i. To ensure a relevant landlord gains no financial advantage from not complying with the regulations.
- ii. To improve protection of the public by acting as a deterrent to relevant landlords.
- iii. To reduce the likelihood of future non-compliance
- iv. Influence behaviour of relevant landlords
- v. To reclaim the Authority's expenses to ensure taxpayers are not unfairly penalised.

### **Principles in judgement of duty breach**

A Team Leader in Environmental Health/Housing Standards (or equivalent in the event of change of title) shall review the evidence and determine whether beyond any reasonable doubt a breach of any duty under Regulation 3 of the Regulations has occurred.

In doing so that person may make any reasonable request for information from the investigating officer's case file or question the officer as they consider necessary to make a determination.

### **Principles in determining sum**

The Authority will serve a fixed penalty notice on a relevant landlord who breaches any duty imposed upon them by Regulation 3 of the Regulations.

The financial penalty shall be the accumulative total of the sums shown in Table 1 for each breach of duty identified.

**TABLE 1.**

<b>Offences of breaches under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.</b>			
<b>Relevant Offences</b>	<b>Relevant paragraph of Regulation 3</b>	<b>First penalty (£)</b>	<b>Subsequent penalties (£)</b>
Note that the maximum fine per breach is £30,000			

Failure to ensure that the electrical safety standards are met during any period when the residential premises are occupied.	(1)(a)	1000	2000
Failure to ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified person of intervals of not more than 5 years or lesser time as specified in the report.	(1)(b)	1000	2000
Failure to obtain a report from the person conducting that inspection and test, which gives the results of the inspection and test and the date of the next inspection and test;	(3)(a)	250	500
Failure to supply a copy of that report to each existing tenant of the residential premises within 28 days of the inspection and test;	(3)(b)	250	500
Failure to supply a copy of that report to the local housing authority within 7 days of receiving a request in writing for it from that authority;	(3)(c)	250.00	500.00
Failure to retain a copy of that report until the next inspection and test is due and supply a copy to the person carrying out the next inspection and test;	(3)(d)	250.00	500.00
Failure to supply a copy of the most recent report to— I. any new tenant of the specified tenancy to which the report relates before that tenant occupies those premises; and II. any prospective tenant within 28 days of receiving a request in writing for it from that prospective tenant.	(3)(e)	250.00	500.00
Failure to ensure that further investigative or remedial work is carried out by a qualified person within— a) 28 days; or b) the period specified in the report if less than 28 days	(4)	1,000.00	1,000.00



Failure to obtain written confirmation from a qualified person that the required further investigative or remedial work has been carried out and that- (i) the electrical safety standards are met; or (ii) further investigative or remedial work is required;	(5)(a)	250	500.00
Failure to supply written confirmation, together with a copy of the report under subparagraph (3)(a) which required the further investigative or remedial work to each existing <u>tenant</u> of the residential premises within 28 days of completion of the further investigative or remedial work; and	(5)(b)	250.00	500.00
Failure to supply that written confirmation, together with a copy of the report under subparagraph (3)(a) which required the further investigative or remedial work to the <u>local housing authority</u> within 28 days of completion of the further investigative or remedial work.	(5)(c)	250.00	500.00
<b>Additional weighting for culpability and severity</b>			
Additional penalty where a breach of Regulation 3(1)(a) or 3(4) occurs; and  <ul style="list-style-type: none"> <li>• One to three Code 2 items are identified on the report.</li> <li>• One Code 1 or four or more Code 2 Items are identified on the report.</li> <li>• More than one Code 1 items are identified on the report.</li> </ul>		0.00	0.00
		250.00	500.00
		500.00	1,000.00
Additional penalty in respect of a breach of Regulation 3(1)(b) where additional culpability through failure to comply with the subsequently served remedial notice occurs	N/A	2000.00	5000.00

<p>Additional penalty in respect of a breach of Regulation 3(1)(a) or 3(4) where additional culpability through failure to comply with the subsequently served remedial notice occurs; and</p> <ul style="list-style-type: none"> <li>• One to three Code 2 items are identified on the report.</li> <li>• One Code 1 or four or more Code 2 items are identified on the report.</li> <li>• More than one Code 1 items are identified on the report.</li> </ul>		<p>2,000.00</p> <p>3,000.00</p> <p>4,000.00</p>	<p>10,000.00</p> <p>15,000.00</p> <p>20,000.00</p>
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An early payment reduction of 25% shall apply to first offences only if paid within 14 days.

#### **Service of Notice of Intent to Serve Penalty Notice**

The Authority will serve a notice of its intention to issue a fixed penalty notice within 6 months of non-compliance with a remedial notice in accordance with regulations 11 of the Regulations.

#### **Representation and Review**

The landlord may, within the period of 28 days beginning with the day after that on which the notice of intent was served, make written representations to the Authority about the proposal to impose a financial penalty on the private landlord.

The authority will review its decision based on landlord's representations when made in writing within 28 days from the date stated on the Notice of Intent. All reviews will be conducted by the manager responsible for Environmental Health or alternatively a manager above that level in the corporate structure. The payment period (including the early payment reduction period) shall be suspended whilst the Authority conducts its review.

Where a landlord can show on the balance of probabilities that the sum of the fixed penalty will cause unreasonable hardship to him or his family the reviewer may use discretion to extend the allowable payment period by varying the penalty notice. In extreme cases a senior manager may use their discretion to reduce or waive the penalty but must have consideration of the capital and rental value of the subject premises in doing so.

#### **Issue of Financial Penalty – Final Notice**

After the end of the period of 28 days in which time the landlord may make representations, the Authority must decide whether to impose a financial penalty and, if so, the amount of that penalty.

Where the Authority decides to impose a financial penalty, it must serve a “Final Notice” on the landlord imposing that penalty and requiring it to be paid within the period of 28 days beginning with the day after that on which the notice was served.

#### **Appeals**

A landlord on whom a final notice is served may appeal to the First-tier Tribunal against the decision to impose the penalty or the amount of the penalty.

#### **Revision of statement**

The Authority may revise this statement of principles at any time and, where it does so, it will publish the revised statement.

## 19. Appendix C - Mees Policy Statement of Principles

### **Wigan Council Domestic Private Rented Property Energy Efficiency Policy Introduction**

This policy has been developed in accordance with the Councils' Housing Standards Policy and Government guidance "The Domestic Private Rented Property Minimum Standard" issued by the Department for Business Energy and Industrial Strategy.

#### **Purpose and objective**

Wigan Council (the 'Council') has prepared and published this policy which it will have regard to when exercising its powers under the Energy Efficiency (Private Rented Sector) (England and Wales) Regulations 2015 (the 'Regulations').

Part 3 of the Regulations sets out the domestic minimum level of energy efficiency:

- From 1 April 2018, the landlord/owner of a domestic private rented property cannot grant a new tenancy to new or existing tenants where the Energy Performance Certificate (EPC) rating is F or G unless a valid exemption is in place. Houses in Multiple Occupation (HMO's) must also comply with these minimum standards if the property has been built, sold or rented as a single unit at any time in the past 10 years.
- From 1 April 2020, all domestic private rental properties must be a minimum of EPC band E unless a valid exemption is in place.

The purpose and objective of the policy is to secure compliance within the Council's enforcement area.

#### **Enforcement**

##### **General**

The Council has responsibility for enforcing compliance with the Regulations and carrying out enforcement activities including using the information held on the national PRS Exemptions Register and serving penalty notices where applicable.

In line with its Corporate Enforcement Policy the Council will, wherever possible and appropriate, adopt an informal approach to resolve matters where a landlord has let a property with an EPC of F or G. The Council will provide advice and guidance on how the energy efficiency standards can be met and request a landlord to register an exemption where appropriate.

Landlords will be given reasonable time to implement the requirements but where cooperation is not forthcoming formal enforcement action may commence. The Council reserves the right to commence formal action without giving an informal opportunity in cases where the breach is considered to be serious and/or the landlord has a history of not complying with housing regulations.

Formal action may also include enforcement action taken under other legislation such as a notice requiring remedial works to be carried out (e.g. Improvement Notice) to ensure properties meet the minimum domestic energy efficiency standards. Please note, a landlord cannot assume that satisfying the requirements under the Housing Act 2004 will automatically mean they have met the requirements of the Regulations. A landlord will still need to commission a new EPC that confirms that the property meets the minimum E standard.

There may be charges attached to the service of a remedial notices under the Housing Act 2004. A failure to comply could result in the Council carrying out remedial work in default which will be re-charged to a landlord. In addition, a Civil Penalty Notice may be served upon or legal proceedings instigated against a landlord for failure to comply.

Formal action under the Regulations may include service of a compliance notice on a landlord where further information is required, and a financial penalty notice and/or a publication penalty where there has been a breach of the regulations.

The Council will check the National PRS Exemptions Register. Where there is evidence to suggest that the landlord has registered false or misleading information the Council will investigate and will consider this an aggravating factor.

### **Compliance Notice**

Where a landlord appears to have breached the Regulations in the preceding 12 months, the Council may serve a compliance notice requesting information from the landlord/former landlord, for example, inspection of a tenancy agreement or energy performance certificate ("EPC").

The Council will consider serving a Financial Penalty Notice where a Compliance Notice is not complied with within the specified time limit.

### **Financial penalties**

The Council may serve a financial penalty where it is satisfied that a landlord has breached the Regulations.

The Council will consider serving a Financial Penalty Notice on a landlord up to 18 months after a suspected breach. This means that a person may be served with a penalty notice after they have ceased to be the landlord of a property.

The maximum financial penalties the Council will impose for each offence are set out below:

<b>Infringement</b>	<b>Penalty</b>
Renting out a non-compliant property	If less than 3 months in breach - Up to £2,000, and/or publication penalty.  If more than 3 months in breach - Up to £4,000, and/or publication penalty.
Failing to comply with a compliance notice	Up to £2,000, and/or publication penalty

NB. The maximum penalty amounts apply per property and per breach of the Regulations.

Where penalties are imposed under more than one of these points, the total amount of the financial penalty will not exceed £5,000.

When setting the penalty, the Council will have regard to culpability and harm and consider whether any aggravating or mitigating factors apply as set out in Appendix 1.

### **Publication Penalty**

In addition to or as an alternative to a financial penalty the Council may serve a publication penalty where it is satisfied that a landlord has breached the Regulations.

The effect of a publication penalty will be that details of the landlord breach(es) are published on the National PRS exemption register.

This will include:

- the landlord's name [except where the landlord is an individual]
- the address of the property in relation to which the breach occurred
- details of breach(es)
- the amount of any financial penalty

Any publication must be for a minimum of 12 months, but we will use our discretion to publish for longer in line with the harm/culpability matrix outlined in Appendix 1.

### **Review and Appeals**

The Council has the right at any time to review or withdraw a penalty notice including when new information comes to light. A landlord can ask the Council to review its decision by making a written request. The Council may withdraw the penalty notice if:

- they are satisfied that the landlord has not committed the breach
- they are satisfied that the landlord took all reasonable steps and exercised all due diligence to avoid committing the breach
- they decide that because of the circumstances of the case, it was not appropriate for the penalty notice to be served on the landlord

Should the decision be to uphold the penalty notice the landlord can appeal to the First Tier Tribunal against that decision if they consider either:

- the penalty notice was based on an error of fact or an error of law
- the penalty notice does not comply with a requirement imposed by the regulations
- it was inappropriate to serve a penalty notice on them in the particular circumstances

The Tribunal will hear evidence of the Council's decision to impose the penalty and can quash the penalty notice or affirm the penalty notice in its original or a modified form.

The Council can apply to a County Court for a court order to enforce the penalty and recover the debt where the landlord has not paid within 28 days of the service the charge notice and either the landlord:

- has not made an appeal to the first tier tribunal
- has made an appeal which has since been determined in the council's favour

Sums paid may be used by the Council to assist in the enforcement and promotion of standards in private sector housing.

This policy will be reviewed periodically or in line with changes in relevant legislation, or the Regulators code.

### **Background information/sources**

Relevant background/further information can be found in the following:

- Wigan Council Housing Standards Policy
- Government Guidance: Department for Business, Energy & Industrial Strategy, The Domestic Private Rented Property Minimum Standard: Amended March 2019
- Energy Efficiency (Private Rented Sector) (England and Wales) Regulations 2015: SI 2015 No. 962
- Energy Efficiency (Private Rented Sector) (England and Wales) (Amendment) Regulations 2019: SI 2019 No. 595

**Wigan Council**  
**Domestic Private Rented Property Energy Efficiency Policy**

**Appendix 1**

In determining the level of penalty, the Council will have regard to the seriousness of the offence, determined by the harm caused and the culpability of the offender.

In determining the level of **harm**, the Council will have regard to:

- The person: i.e. physical injury, damage to health, psychological distress
- To the community; i.e. economic loss, harm to public health
- Other types of harm; i.e. public concern/feeling over the impact of poor housing condition on the local neighbourhood

The nature of the harm will depend on the personal characteristics and circumstances of the victim(s), e.g. the tenant. Where no actual harm has resulted, the Council will consider the relative danger that persons have been exposed to, and the likelihood and gravity of harm that could have resulted. Factors indicating a higher degree of harm include multiple victims, a very low EPC score, fuel poverty, and vulnerable tenant(s) occupying the property for an extended period of time since non-compliance.

In determining **culpability**, the Local Housing Authority will have regard to whether the offender:

- Has the **intention** to cause harm and/or is **reckless** as to whether harm is caused
- Has **knowledge** of the specific risks entailed by his actions even though he does not intend to cause the harm that results and/or is **negligent** in their actions.

Factors indicating a higher degree of culpability include landlord having a previous history of non compliance with housing related regulatory requirements and/or Landlord has failed to comply with requests to comply with these regulations, knowingly or recklessly providing incorrect information in relation to exemptions to these regulations.

The tables below set out the interrelation between harm and culpability as a guide to determine appropriate penalty to be applied.

	Low Culpability	High culpability	Notes
Low harm	50%	75%	%= proportion of the maximum financial penalty
High harm	75%	100%	%= proportion of the maximum financial penalty



	Low Culpability	High culpability	Notes
Low harm	12 Months	18 Months	=number of months for publication penalty
High harm	18 Months	24 Months	=number of months for publication penalty

### **Aggravating and Mitigating Factors**

Officers may adjust the penalties from those determined by the matrix if there are aggravating or mitigating factors (factors that are particular to a case which make it more or less serious).

Where these factors come to light as part of the investigation these adjustments will be made, and details included in the notice. Where these are provided in representations from a landlord in a request to review after the notice has been served consideration will be given and the landlord served a notice after the review with an explanation of any adjustments made.

## 20. Appendix D - Smoke Alarms Statement of Principles

### Statement of Principles.

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

##### Introduction

As of the 1st October 2015, a “relevant landlord” of a “specified tenancy” of residential premises must ensure during any period on or after 1st October 2015 when the premises are occupied under the tenancy that:

1. A smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation.
2. A carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
3. Checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

##### Enforcement

Where the Local Housing Authority has reasonable grounds to believe that:

- There are no or insufficient number of smoke alarms or Carbon Monoxide Detectors in the property as required by the regulations or;
- The Smoke Alarms or Carbon Monoxide Detectors were not working at the start of a tenancy or licence.

Then the Authority must serve on the Landlord in a method prescribed by the Regulations a Remedial Notice detailing the actions the landlord must take to comply with the Regulations. If after 28 days, the Landlord has not complied with the Remedial Notice the Local Authority must issue a Penalty Charge shall be levied through a penalty charge notice (PCN).

##### Principles to be followed in determining the amount of a Penalty Charge

The Authority considers that in the interests of proportionality, a lesser penalty will be merited on the occasion of a first offence only and that prompt payment of the penalty on that first occasion should attract a reduced penalty in recognition of early admission of liability.

The level of penalty should, however, as a minimum, cover the cost of all works in default, officer time, recovery costs, administration fee and a fine. This reflected in the calculation of the first-time offence charge.

The Legislation allows the Local Authority to set PCN levels up to a maximum of £5000. Having ensured proportionality, the Enforcement Policy and the interests of regulation, repeat offences should attract a progressively higher penalty in view of a continuing disregard for the legal requirements and tenant safety.

### **Level of Penalty Charge**

The Penalty Charge shall be set at **£550.00** for the first offence but this will be **reduced to £400 if paid within a 14-day period** from the date of service.

	<b>Level of PCN</b>	<b>Reduction for early payment</b>
<b>First offence</b>	£550.00	-£150.00
<b>Second offence</b>	£2500.00	None
<b>Third and subsequent offences</b>	£5000.00	None

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

### **Recovery of Penalty Charge**

The local housing authority may recover the penalty charge as laid out in the Regulations on the order of a Court, as if payable under a Court Order.

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

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.