



Scrutiny Panel - Performance

To All Members of the Performance Scrutiny Panel on Wednesday, 15 June 2022

Date of meeting: Thursday, 23 June 2022

Time: 18:30

Venue: Council Chamber
Council Offices, Adam and Eve Street, Market Harborough.

The meeting will be open to the public.

Agenda

- 1 Election of the Chairman for the Year 2022/23**
- 2 Appointment of the Vice Chairman for the Year 2022/23**
- 3 Apologies for Absence and Notification of Substitutes.**
- 4 Declarations of Members' Interests**
- 5 Minutes - To Follow**
To approve as a true record the Minutes of the previous Meeting.
- 6 Lightbulb Service Delivery Presentation**
Verbal Update
- 7 Housing Enforcement Policy and Financial Penalties**

Housing Enforcement Policy and Financial Penalties 3 - 69
- 8 Regulation of Investigatory Powers Act (RIPA)**

9 Any Urgent Business

To be decided by the Chairman.

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And all other Councillors for information

Harborough District Council

Report to the Scrutiny Panel for Performance

Meeting of 23rd June 2022



Item Number:	7
Title:	Housing Enforcement Policies and Financial Penalties
Status:	Public
Key Decision:	No
Report Author:	Elaine Bird Regulatory Services Manager e.bird@harborough.gov.uk
Portfolio Holder:	Cllr Whelband
Appendices:	<ol style="list-style-type: none">1. Appendix A – Housing Enforcement Policy2. Appendix B – Housing Enforcement Civil Penalties Policy3. Appendix C – Minimum Energy Efficiency Standards Policy4. Appendix D – Smoke and Carbon Monoxide Policy

Executive Summary

The Housing Enforcement Policy will complement the Council's approved generic enforcement policy and sets out clearly the Council's approach to enforcement to reduce the risk of successful challenge.

Formal enforcement action is only considered as a last resort or where there is a serious and imminent risk to tenants and officers will work with landlords in the first instance to resolve issues informally.

The Housing Enforcement Policy and financial penalties do not impose any additional regulatory burden on private landlords as they should already be compliant with the various legislative requirements.

The introduction of Civil Penalties and other financial penalties provides a wider range of tools to the Council when considering the most appropriate course of action to take where there has been a breach of relevant legislation and landlords have not complied with an enforcement notice served on them.

Recommendations

For the Performance Scrutiny Panel to consider the draft Housing Enforcement Policy and to consider the introduction of civil penalties and

other financial penalties for private housing as set out in Appendix A – D of the report.
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Reasons for Recommendations

To consider the draft Housing Enforcement Policy and financial penalties policies before being considered for approval by Cabinet.

1. Purpose of Report

- 1.1.1 To present to Scrutiny Panel the Council's approach to housing enforcement to ensure that there is transparency for owners, landlords, agents and tenants of private sector and social housing properties through the Housing Enforcement Policy and more specific enforcement powers including the introduction of civil penalties for certain housing offences.

2. Background

- 2.1 The Council has a statutory duty to enforce a wide range of legislation, with regulatory functions being delivered by several service areas across the council. To ensure there is transparency and consistency in the approach to enforcement across the council there is a General overarching Enforcement Policy which was approved by Cabinet in December 2015.
- 2.2 The council is now looking to introduce an overriding private sector housing enforcement policy that sits under the Generic Enforcement Policy and to consider new ways of dealing with offences by way of civil penalties for example
- 2.3 Whilst the council will always try and work with landlords, there are occasions where more formal action is required. The policy sets out the approach of the council to housing enforcement and it sets out what owners, landlords, their agents and tenants can expect from officers and reduces the risk of successful challenge.
- 2.4 Authorised officers within the Environment Team have both statutory duties and discretionary powers to undertake enforcement action, using a range of legislation to address issues arising at rented properties, caravan sites and mobile home sites.
- 2.5 None of the policies within this report increase the regulatory burden on landlords who should already be compliant with the legislation but provide officers with alternative means of enforcement for those few landlords in the district who are not willing to comply with existing legislation.

3. Detail

Housing Enforcement Policy

3.1 Whilst the Council will try to work with landlords informally to ensure they are compliant with the various pieces of legislation covering the private rental of properties, there is on occasion, the need to take more formal action to remove an immediate issue or where landlord do not engage or do not undertake any improvement works required informally for example.

3.2 This draft Enforcement Policy aims to:

- Demonstrate transparency of enforcement with respect to private sector housing, caravan sites and mobile home sites within the district by setting out legal requirements, policies and principles that officers will follow when enforcing legislation.
- Ensure that all properties let as residential properties throughout the district, including those in private ownership, are of good quality and well managed.
- Ensure that all residents of Harborough have a home that is safe, secure, dry and not overcrowded.
- Improve the condition and energy efficiency of homes in the private rented sector through maintaining decency standards and raising them where possible.
- Ensure Houses in Multiple Occupation (HMO's) are safe and well managed, and all relevant Management Regulations are adhered to;
- Ensure Private Sector Housing is not left empty for an unreasonable period of time or becomes an eyesore and nuisance to neighbouring homes.

The policy applies to both individuals and businesses and should be read in conjunction with the Council's General Enforcement Policy which sets out the overarching parameters of enforcement.

3.3 The main objectives of the policy are to ensure that:

- Privately rented accommodation, including houses in multiple occupation ("HMO"), and accommodation provided by registered providers of social housing, are free from actionable hazards that affect the health and safety of the tenant, licensee or any visitor.
- Private rented accommodation and tenancies are managed in accordance with relevant statutory requirements.
- Privately rented accommodation meets minimum energy efficiency ratings.
- All licensable properties are licensed, with licence conditions being met.
- Targeted action is taken to bring empty homes back into use.

- Owners or occupiers of privately owned accommodation or land do not cause a statutory nuisance, or an unacceptable risk to public health and safety, or to the environment or neighbourhood.
- Caravan and mobile home sites are managed in compliance with site licence conditions and relevant statutory requirements. The domestic minimum energy efficiency standard regulations and assessments for hazards under the Housing Act 2004 do not apply to rented caravans or mobile homes as this property type falls outside the scope of these regulations.

- 3.4 The Environment Team will respond to enquiries and complaints about substandard, unsafe, problematic or empty housing and where standards are not met enforcement action may be taken. The team will always endeavour to work with landlords and tenants to try and resolve issues informally unless there are serious concerns regarding non-compliance.
- 3.5 Decisions will be made by competent and authorised officers, in accordance with legislation and by having regard to enforcement guidance as to the most appropriate course of action. In line with the policy, generally an incremental approach to enforcement will be implemented and where there is non-compliance after an informal approach has been made, formal action will be considered. However, where there are serious breaches of legal requirements, the council will consider formal action in the first instance to safeguard the health, safety and welfare interests of occupiers, visitors and members of the public.
- 3.6 There has been an increase in the number of housing related enquiries received by the team over the past 5 years, with the most significant increase over the duration of the Covid pandemic as more people were at home for longer periods. The specific Housing Enforcement Policy will ensure a fair and transparent approach to housing and should reduce the risk of successful challenge against any enforcement action if due regard for the policy has been taken in the decision-making process.

Table 1 – housing complaints received by the team over a 5-year period

Year	Number of Complaints received
2021-22	88
2020-21	67
2019-20	54
2018-19	34
2017-18	29

There are currently 7 licenced Houses in Multiple Occupation across the district. A copy of the draft Housing Enforcement Policy can be found in Appendix A.

Civil Penalties Policy

- 3.7 Serious offences and breaches of legislation have until now always been dealt with through the courts, but the reality is that such occurrences are rare. To take a prosecution the case must meet certain tests and action has to be in the public interest. Although the courts can give out fines to non-compliant landlords, the cost to the council both financially and in terms of time is great. Judges are required to make allowances for personal circumstances/mitigation and therefore cases can easily be lost on a technicality.
- 3.8 Section 126 and Schedule 9 of the Housing and Planning Act 2016 introduces a number of amendments to the Housing Act 2004. The Housing and Planning Act 2016 provides powers that allow the Council to impose a financial penalty as an alternative to prosecution for specific offences under the Housing Act 2004.
- 3.9 A civil penalty is a financial penalty that may be imposed in instances where there are breaches of legislation which is considered to be a criminal act. However, before imposing a civil penalty the council must be satisfied 'beyond all reasonable doubt' that a persons' conduct amounts to the relevant housing offence as defined by The Housing Act 2004.
- 3.10 A civil penalty can be imposed on a landlord or letting agent or both. The civil penalties are intended to be issued against landlords or letting agents that are in breach of one or more of the sections of the Housing Act 2004 and the Housing and Planning Act 2016 as detailed below:
- Section 30 – Failure to comply with an Improvement Notice
 - Section 72 – Offences in relation to licensing of Houses in Multiple Occupation (HMO)
 - Section 95 – Offences in relation to licensing of houses under Part 3 (Inc. Selective Licensing)
 - Section 139 – Offences of contravention of an overcrowding notice
 - Section 234 – Failure to comply with management regulations in respect of HMO
 - Breach of a banning order (section 21 of the Housing and Planning Act 2016)
 - Breach of any of the landlord duties prescribed under regulation 3 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.
- 3.11 When determining the level of the civil penalty the severity and harm of the offence must be considered as stated in Section 143(1) Criminal Justice Act 2003: "in considering the seriousness of any offence the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably cause". Harm includes actual harm caused as well as risk of harm.

- 3.12 There is a right of appeal to a Civil Penalty. The person served with the Final notice has the right to appeal to the First Tier Tribunal against the decision to impose a penalty; or the amount of the penalty. The appeal must be made within 28 days of the date the final notice was issued. If a person appeals, the final notice is suspended until the appeal is determined or withdrawn.
- 3.13 Appeals can be very time consuming and costly for the Council, so we are considering including an early bird payment discount to encourage prompt payment. The council can offer a discount to landlords and agents who pay the civil penalty in full within 28 days of the Final Notice being issued. The level of discount applied is based on the Court's national sentencing guidelines and the one third early payment amount mirrors the guidance.
- 3.14 Recovery of an unpaid Civil Penalty would be through the council's debt recovery process.
- 3.15 Where a civil penalty is appealed and the First Tier Tribunal confirms or varies the penalty, this decision will be automatically registered on the Register of Judgments, Orders and Fines when it is accepted by the County Court. This may affect the landlord's ability to obtain financial credit due to the Register of Judgment Order made against the individual.

A copy of the draft Civil Penalties Policy can be found in Appendix B.

Other financial Penalties.

Domestic Minimum Energy Efficiency Standards Regulations (MEES)

- 3.16 Legislation has been introduced for the regulation of energy efficiency within the private rented housing sector. This imposes an obligation on private sector housing landlords to achieve a minimum energy performance within their properties, demonstrated by an Energy Performance Certificate a rating of at least E or to register a relevant exemption to the regulations. There are several different exemptions within the Regulations which a landlord could apply if they are relevant.
- 3.17 A domestic private rented property is deemed "sub-standard" where the energy performance indicator of the property is below the minimum level of energy efficiency of Band E. The energy bandings for a property go from A to G with A being the highest and G being the lowest.
- 3.18 The regulations apply to properties let through an assured tenancy, regulated tenancy or a domestic agricultural tenancy and the property is legally liable to have an Energy Performance Tenancy (EPC).
- 3.19 Within the regulations there is a cap on the expenditure landlords are required to invest to improve energy rating of their property. Landlords will

not be required to spend more than £3,500 (including VAT) on energy efficiency improvements. If a landlord cannot improve their property to EPC E for £3,500 or less, they should make all the improvements which can be made up to that amount, then register a relevant exemption.

3.20 If a local authority believes a landlord may be in breach, they may serve a compliance notice requesting information to help them decide whether a breach has occurred. They may serve a compliance notice up to 12 months after a suspected breach occurred. Failure to comply with a compliance notice may result in a financial penalty being applied.

3.21 In order to enforce the regulations, the Council needs to have a policy on the financial penalties to be applied should a landlord be found to be in breach of the following:

- In breach of the prohibition on letting sub-standard property or
- In breach of the requirement to comply with a compliance notice or
- Guilty of uploading false or misleading information to the Exemptions Register.

The council as the enforcement authority has the discretion to decide on the value of the financial penalties, up to the maximum limits set by the regulation. The proposed scale of financial penalties is set out in in table 2

Table 2 – Proposed Scale of Financial Penalties under The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

Breach	Max Financial Penalty	Proposed Financial Penalty
A) Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than three months	£2000 plus a publication penalty	£1000 plus a publication penalty for first offence at property (33% early payment discount)* £2000 plus Publication penalty for subsequent offences at property (33% early payment discount)
B) Where the landlord has let a sub-standard property in breach of the Regulations for three months or more	£4000 plus a publication penalty	£2000 plus a publication penalty for first offence at property (33% early payment discount) £4000 plus Publication penalty for subsequent

		offences at property (33% early payment discount)
C) Where the landlord has registered false or misleading information on the PRS Exemptions Register	£1000 plus a publication penalty	£1000 plus a publication penalty (33% early payment discount)
D) Where the landlord has failed to comply with compliance notice	£2000 plus a publication penalty	£2000 plus a publication penalty (33% early payment discount)

*early payment discount applies if penalty paid within 14 days of issue. The discount would be removed if an appeal against the notice is submitted. As before the level of discount mirrors the national sentencing guidelines.

A local authority can impose more than one financial penalty if there have been multiple breaches up to a maximum of £5000 per property.

The draft Minimum Energy Efficiencies Standards Financial Penalties Policy/Statement can be found in Appendix C

Smoke and Carbon Monoxide (England) Regulations 2015

- 3.22 The regulations place a duty on landlords, which include freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence. The regulations exclude registered providers of social housing. The duty requires that landlords ensure that:
- A smoke alarm is installed on each storey of premises where there is living accommodation
 - A carbon monoxide alarm is installed in any room of premises used as living accommodation, which contains a solid fuel burning appliance
 - That checks are made by the landlord, or someone acting on his behalf, that the alarm(s) is/are in proper working order on the day the tenancy starts
- 3.23 Where the council believes that a landlord is in breach of one or more of the above duties, the council must serve a remedial notice on the landlord.
- 3.24 If the landlord then fails to take the remedial action specified in the notice within the timescale, the council can require the landlord to pay a penalty charge. The charge potentially made up of two parts, the punitive element (punishment) for failure to comply with the absolute requirement to comply with a remedial notice and a cost element relating to any remedial works arranged and carried out by the council's contractors.

- 3.25 The council has discretion to offer an early payment reduction if a landlord pays the penalty charge within 14 days beginning with the day the penalty charge notice is served. Should a subsequent appeal be made it is proposed that the discount will be removed.

The proposed charges are as follows:

- £2,500 for the first breach to comply with a remedial notice: £1,675 for early payment (33% reduction)
- £5,000 for each subsequent breach to comply with a remedial notice: £3,350 for early payment, (33% reduction)

The draft Smoke and Carbon Monoxide Financial Penalties/Statement can be found in Appendix D.

Early payment discount applies if payment is made within 14 days of the penalty notice being issued and will be suspended if an appeal against the notice is submitted and the amount of discount mirrors the Court's sentencing guidelines.

4. Implications of Decisions

4.1. Corporate Priorities;

Promoting health and wellbeing and encouraging healthy life choices
Creating a sustainable environment to protect future generations

4.2. Financial;

Income received from financial penalties is retained by the Council if it is used to support statutory functions in relation to its private rented sector enforcement. There is currently insufficient information to be able to estimate the level of income that may occur from the introduction of any of the policies.

Any legal action can be costly and demanding on resources and the ability to consider an alternative to prosecution as a penalty for non-compliance is supported. Offering an early payment discount may reduce the risk of appeal against a civil penalty or other financial penalty notice which whilst reduces the income received by the council, would reduce the resource demands of the legal and environment teams to respond to any appeal.

4.3. Legal;

There are many statutory or discretionary pieces of legislation enforceable by the council. The housing enforcement policy provides open and transparent information on the Council's approach to housing enforcement and reduces the risk of legal challenge.

The civil penalties and other financial penalties policies widen the enforcement tools that are available to the enforcement officers to encourage compliance by landlords.

- 4.4. **Policy;**
The council is not able to impose financial penalties without having an approved and published policy
- 4.5. **Environmental Implications including contributions to achieving a net zero carbon Council by 2030;**
The Minimum Energy Efficiencies Standards Financial Penalties policy provides a regulatory framework for improving the energy efficiency in the private rented sector.
- 4.6. **Risk Management;**
Having clear and transparent published policies will reduce the risk of successful challenge against any proposed housing enforcement action.
- 4.7. **Equalities Impact;**
Initial Equality Impact Assessment has been undertaken and the assessment will be reviewed following the consultation process.
- 4.8. **Data Protection;**
Not applicable
- 5. Summary of Consultation and Outcome**
- 5.1 Not applicable for this report however a consultation exercise will be undertaken prior to the approval of the final policies.
- 6. Alternative Options Considered**
- 6.1 Not applicable
- 7. Background papers**
- 7.1 None

Version	Date	Author	Name of report assessed:	Comments
0.7	11.01.2022	SCC	Housing Enforcement Policy	Finalisation
0.8	09.06.2022	EB	Housing Enforcement Policy	Draft for Scrutiny

Housing **Enforcement Policy**



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1 Introduction

Local Housing Authorities (“LHA”) are the primary enforcement agency for ensuring the protection of the health, safety and welfare rights for occupiers and visitors in private sector housing within England and Wales.

The council’s overall approach to enforcement is set out in its General Enforcement Policy.

This policy sets out the general approach of Harborough District Council (“the council”) to private sector housing enforcement and it sets out what owners, landlords, their agents and tenants of private sector properties can expect from officers.

Authorised officers (“officers”) within the Environment Team have both statutory duties and discretionary powers to undertake enforcement action, using a range of legislation to address issues arising at private rented properties, caravan sites and mobile home sites.

2 Equality Statement

The council and its officers are committed to the Equality of Opportunity in employment and the provision of services. In developing this policy, the council has recognised its responsibility under the Equality Act 2010 to have due regard to its Equality Plan 2021-2024.

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- Advance equality of opportunity between people who share protected characteristics and those who do not;
- Foster good relations between people who share a protected characteristic and those who do not.

An Equality Analysis is attached as Appendix A.

3 Approval of the Enforcement Policy

TBC following internal governance process. .

4 Aim of the Policy

This Enforcement Policy aims to:

- Demonstrate transparency of enforcement with respect to private sector housing, caravan sites and mobile home sites within the district by setting out legal requirements, policies and principles that officers will follow when enforcing legislation;
- Ensure that all properties let as residential properties throughout the district, including those in private ownership are of good quality and well managed;
- Ensure that all residents of Harborough have a home that is safe, secure, dry and not overcrowded;
- Improve the condition and energy efficiency of homes in the private rented sector through maintaining decency standards, and raising them where possible;
- Ensure Houses in Multiple Occupation (HMO's) are safe and well managed and all relevant Management Regulations are adhered to;
- Ensure Private Sector Housing is not left empty for an unreasonable amount of time or becomes an eyesore and nuisance to neighbouring homes.

This policy applies to both individuals and businesses and should be read in conjunction with the General Enforcement Policy which sets out the general parameters of enforcement.

5 Enforcement

5.1 Regulators Code

The Legislative and Regulatory Reform Act 2006ⁱ (the 2006 Act) requires the council to have regard to the Regulators' Codeⁱⁱ (BRDO 2013). This enforcement policy has regard to the Regulators code in that it follows the principles of good regulation set out in the 2006 Act, in that regulatory activities are carried out in a way that are transparent, accountable, consistent, proportionate to risk and targeted at cases where action is required.

Local authorities are required by the Regulators' Code to publish a clear set of service standards, including their enforcement policy, explaining how they respond to non-compliance.

Our Service Standards can be found on the Harborough District Council Website.

5.2 Enforcement Objectives

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

- Privately rented accommodation, including houses in multiple occupation ("HMO"), and accommodation provided by registered providers of social housing, are free from actionable hazards that affect the health and safety of the tenant, licensee or any visitor;
- Private rented accommodation and tenancies are managed in accordance with relevant statutory requirements;
- Privately rented accommodation meets minimum energy efficiency ratings;
- All licensable properties are licensed, with licence conditions being met;
- Targeted action is taken to bring empty homes back into use;
- Owners or occupiers of privately owned accommodation or land do not cause statutory nuisance, or an unacceptable risk to public health and safety, or to the environment or neighbourhood;
- Caravan and mobile home sites are managed in compliance with site licence conditions and relevant statutory requirements.

6 Tenure Groups

The Environment Team has investigative and enforcement powers relating to all private housing regardless of tenure. However, the approach may vary depending on the tenure of the household. Tenure falls into broadly three main groups:

6.1 Private landlords and tenants

Tenants are reliant on their landlord or their managing agent to adequately maintain their home in accordance with legal requirements.

6.2 Owner occupiers

The prime responsibility for maintaining and improving this type of housing tenure is the responsibility of the owner. Enforcement action will only be considered against this type of tenure if there is a serious and imminent risk to health and safety, or there is a risk of nuisance caused to neighbours.

6.3 Registered social landlords

Registered Providers (RP's) are governed by the Regulator of Social Housing. Registered providers have their own procedures in place for reporting problems and making complaints.

The Environment Team will not normally take action against an RP unless the problem in question has been properly reported to the RP who has then failed to take appropriate action.

The council will consider enforcement action against an RP where there are imminent and significant risks to the health and safety of tenants and or the wider Public.

7 Inspections

Where there are reasonable grounds to suspect a failure or where there is a statutory duty to do so authorised officers will inspect properties in the private rented sector that fail to meet regulatory housing standards. Where such inspections have been completed, the council will consider whether further action is necessary, if it is, what action is most appropriate to the particular circumstances of the case and may decide to exercise enforcement powers if the circumstances of the case make it necessary to do so. The council will consider an inspection where there are imminent and significant risks to the health and safety of tenants and or the wider public.

7.1 Reactive Inspections

Reactive inspections will be carried out on those premises that are statutory requirements and or present the greatest risk to occupiers and the public, for example where:

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

7.2 Proactive Inspections

Proactive inspections will be carried in respect of private rented accommodation that is subject to HMO and Discretionary Licensing under Parts 2 and 3 of the Housing Act 2004 respectively and inspection of caravan sites and mobile home sites licenced by the council for assessing compliance with:

- Licence conditions;
- Licence evasion;
- Housing conditions;
- Property Management

7.3 Targeted Inspections and Proactive Interventions

Targeted Inspections may take place of property owned or managed by landlords or managing agents who have poor history of legal compliance with regard to providing satisfactory housing conditions and / or management practices. Intelligence of legislative breaches may be gathered from partner agencies and identifying those with previous enforcement action or via lack of engagement.

This service will not usually act on anonymous complaints, unless there is good cause for further investigation such as an imminent risk or danger. Relevant information will be recorded in case of any future complaints.

8 Enforcement Action

The Environment Team will respond to enquiries and complaints about substandard, unsafe, problematic and empty housing and where standards are not met enforcement action may be taken.

Decisions will be made by competent and authorised officers, in accordance with legislation and by having regard to enforcement guidance, as to the most appropriate course of action. Where there is non-compliance after an informal approach has been made, formal action will be considered. However, where there are serious breaches of legal requirements, the council will consider formal action in the first instance to safeguard the health, safety and welfare interests of occupiers, visitors and members of the public.

8.1 Prevention

The Environment Team encourages compliance with meeting regulatory housing standards for the maintenance of minimum housing standards and fair treatment of tenants by offering free information, assistance and advice to landlords, tenants and other.

8.2 No Action

In some cases, it may not be appropriate for the council to take any enforcement action. The circumstances in which the council may consider no action appropriate include:

- Where the risk is low and does not sufficiently present a significant risk to the occupiers, visitors or members of the public;
- The breach is of a technical nature;
- The allegations are unsubstantiated and unwitnessed;
- The tenant or occupier does not support enforcement action and the council takes the decision enforcement action is not appropriate in the circumstances;
- Where there are special circumstances regarding the person against whom action would be taken.

8.3 Informal Action

In the first instance, for most cases tenants are encouraged to take their own action and report the problem to their landlord. This will usually be in the form of a written complaint affording the landlord sufficient time to respond. Where the problem cannot be resolved and a complaint is received by this service, tenants will be asked to provide a copy of any such correspondence prior to initiating action.

Where defective housing conditions are evidenced to justify investigation and action and it is considered appropriate to take action, the Environment Team aim to offer landlords, managing agents, owners and service users an opportunity to work informally with the Service to effect change to meet regulatory compliance and establish good management practices in respect of lower risks.

The circumstances in which the council may consider informal action appropriate include:

- If taking no action presents a significant risk of harm to the occupiers, visitors or members of the public;

- Where the issue is not sufficiently serious to warrant formal action or where formal action will not achieve the desired result;
- To allow responsible landlords, managing agents and owners an opportunity to comply with regulatory requirements and agree to undertake the works required by the council in a short time scale.

8.4 Formal Action

When considering if formal enforcement action is to be taken, the council will have regard to the impact the informal action has made, the lack of confidence in the property owner with the council, including any history of non-compliance and the health, safety and welfare of the occupants at the property. Anyone likely to be subject to formal enforcement action will receive clear explanations of what they need to do to comply and have an opportunity to resolve difficulties before formal action is taken.

The circumstances in which the council may consider formal action appropriate include:

- If taking informal action has not achieved an expected outcome to the request to take action or carry out works;
- The council has a duty to serve a notice or order or take specific action;
- Remedial action needs to be taken quickly due to significant risk to the health, safety and welfare of the occupants;
- There is evidence of previous non-compliance;
- There is a long-term empty property.

The following options for taking formal action are available:

Action under the provisions of Part 1 of the Housing Act 2004ⁱⁱⁱ to:

- Serve an improvement notice under sections 11 and/or 12
- Serve a suspended improvement notice under section 14
- Make a prohibition order under sections 20 and/or 21
- Make a suspended prohibition order under section 23
- Serve a hazard awareness notice in accordance with sections 28 and/or 29
- Take emergency remedial action under section 40
- Make an emergency prohibition order under section 43
- Make a demolition order under section 46

The council has a general duty to act where category 1 hazards are identified. The council has a discretionary power to act in respect of category 2 hazards. All category 1 hazards will be dealt with as a priority over category 2 hazards.

8.4.1 Serving Statutory Notices or Orders

The council will consider serving these notices when it is identified that a landlord is failing to comply with housing or other health and environmental legislation.

Legal notices served by the council will detail any rights of appeal and any rights to an extension of time to comply with the requirements of the notice, if requested for legitimate reasons.

8.4.2 Housing health and safety rating system (HHSRS)

The Housing Health and Safety Rating System (HHSRS) is a risk-based approach under the Housing Act 2004 used to tackle poor housing conditions and focus on any of the hazards that are potentially present within dwellings including those that are unoccupied. There are 29 hazards that arise from disrepair, lack of maintenance or

poor design. The assessment determines whether there are Category 1 or Category 2 hazards and identifies the type of work that is needed on properties to conform to the requirements of the HHSRS assessment.

8.4.3 Improvement Notice

Section 11 of the Housing Act 2004 – Category 1 hazards;

Section 12 of the Housing Act 2004 – Category 2 hazards

This Notice should be served in response to identified category 1 and category 2 hazard, where reasonable remedial works can be carried out to reduce the hazard sufficiently. Both category 1 and category 2 hazards can be included on the same notice.

8.4.4 Prohibition Order

Section 20 of the Housing Act 2004 – Category 1 hazards

Section 21 of the Housing Act 2004 – Category 2 hazards

This Order should be served in response to identified category 1 and category 2 hazard. It may prohibit the use of part or all of a property for some or all purposes or for occupation by a particular number or description of people. An order may be appropriate where conditions present a risk but remedial action is unreasonable or impractical. In an HMO it can be used to prohibit the use of specified dwelling units. Both category 1 and 2 hazards can be included on the same notice

8.4.5 Hazard Awareness Notice

Section 28 of the Housing Act 2004 – Category 1 hazards

Section 29 of the Housing Act 2004 – Category 2 hazards

This Notice should be served where a hazard has been identified but it is not reasonable or appropriate to take formal action. It is served in an advisory capacity to draw attention to the need for remedial action. This notice is not registered as a land charge and has no appeal procedure and both category 1 and category 2 hazards can be included on the same notice.

8.4.6 Emergency Action

Where there is a Category 1 hazard present that is considered to represent an imminent risk of serious harm to the health and safety of the occupiers of a dwelling, the council may serve an Emergency Prohibition Order or take Emergency Remedial Action. Such emergency actions would involve either the removal of certain defects giving rise to an immediate risk or the closure of part of the dwelling.

8.4.7 Suspended Improvement Notices or Prohibition Orders

The council has the power to suspend action taken under Part 1 of the Housing Act 2004 in situations where it has the power or duty to take enforcement action through the service of an Improvement Notice or a Prohibition Order. Such action would not normally be the preferred enforcement action unless the circumstances of the current occupants were such that other options were not practical or where there is evidence of programmed maintenance by landlords. The suspensions must be registered as a local land charge, and they must be reviewed at the very least every 12 months.

9 Other enforcement action

9.1 Demolition Order

Section 265 of the Housing Act 1985

Demolition Orders are orders requiring the demolition of a property and are used where the property condition is such that hazards are present and remedial works are not possible or reasonable because of excessive cost or other reason. An Order only to be used in response to category 1 hazards, but not if the building is listed.

9.2 Clearance Area

Section 289 of the Housing Act 1985 (as amended).

A Clearance Area can be declared on a single or group of properties as a result of Category 1 hazards and can be served due to the poor arrangement of the street or area to be cleared. The council is required to consult on the declaration of a clearance area and publish its intentions.

9.3 Drainage

Building Act 1984

The council has the power to deal with defects in buildings that amount to require major repairs to drainage systems.

9.4 Enforced Sale

The council has the power to force the sale of a property where it seeks to recover unpaid debts incurred by the council in undertaking essential repair works in default.

Local authorities have the statutory power to force the sale of a property through the Law of Property Act 1925 s103. Where local authorities have carried out work in default under some of the above legislation and are unable to recover the debt, it is possible under this legislation to register a charge on the property. This recharge can then be recovered by way of an enforced sale.

9.5 Rent Repayment Order

The council may apply to the First Tier Tribunal for a Rent Repayment Order (RRO) where a landlord has committed a relevant offence (as set out in Section 40 Housing and Planning Act 2016) requiring the Landlord under a tenancy to repay a specified amount of rent paid by a tenant or a relevant award of universal credit to any person in respect of rent under the tenancy.

An application for a RRO may be in addition to other formal action, such as prosecution proceedings or the imposition of a Civil Penalty. The council will offer advice and guidance to assist Tenants to apply for a Rent Repayment Order in cases where the tenant paid the rent themselves.

9.5.1 Relevant offence

- Failure to obtain a property licence for a House in Multiple Occupation
- (section 72(1) of the Housing Act 2004)
- Failure to obtain a property licence for a house in a designated Selective
- Licensing area (section 95(1) of the Housing Act 2004)
- Failure to comply with an Improvement Notice (section 30 of the Housing Act
- 2004)
- Failure to comply with a Prohibition Order (section 32 of the Housing Act
- 2004)
- Breach of a banning order made under section 21 of the Housing and
- Planning Act 2016
- Using violence to secure entry to a property (section 6 of the Criminal Law
- Act 1977)

- Illegal eviction or harassment of occupiers of a property (section 1 of the Protection from Eviction Act 1977)

9.6 Banning Orders

For serious offenders, where a landlord has committed one or more offences specified in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018, the council may apply to the First Tier Tribunal for a banning order that bans a landlord from:

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

A banning order, if granted, must be for a minimum period of 12 months. There is no statutory maximum period for a banning order.

The council will generally pursue a banning order for the most serious offenders. It will take into account the seriousness of the offence(s), whether the landlord has committed other banning order offences (or received any civil penalty in relation to a banning order offence) and any history of failing to comply with their obligations or legal responsibilities. It will also take into account other relevant factors, including:

- The harm, or potential harm, caused to the tenant
- The need to punish the offender
- The need to deter the offender from repeating the offence
- The need to deter others from committing similar offences

9.7 Electrical Safety Standards

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020^{iv} require that landlords ensure the electrical installations in private rented sector properties are safe for continued use and carry out periodic testing to evidence this.

The Regulations apply to all new relevant tenancies from 1st July 2020, and all existing tenancies from 1st April 2021, and require that landlords carry out electrical testing no more than every five years and provide copies to tenants and to the Council on request.

Where the Council believes that a landlord has breached their duties under the Regulations, they may do one, or a combination of, the following:

- Serve a remedial notice on the landlord, requiring them to take action in respect of the breach;
- Carry out urgent remedial action where a report indicates it is required;
- Carry out remedial action where a landlord is in breach of a remedial notice;
- Issue a financial penalty of up to £30,000 in respect of a breach of the Regulations.

The Harborough District Council Civil Penalties Policy will be used to inform the decisions that the Council will make in regard to determining whether to issue a financial penalty and what level of penalty would be appropriate.

9.8 Protection from unlawful eviction and harassment

The council has the power to take criminal proceedings for offences of illegal eviction and/or harassment. If the evidence justifies it, officers may carry out investigations and the council may consider prosecution if it believes an offence has been committed.

Where the harassment takes the form of the landlord/agent not undertaking necessary repairs, and the property is in poor condition, the council also has powers under the Housing Act 2004 (as amended by the Deregulation Act 2015), through the Housing Health and Safety Ratings System (HHSRS), to take enforcement action to secure improvements to the condition of the property.

9.9 Community Protection Notice

Authorised officers have the power to issue a Community Protection Notice (CPN) under the 43(5) of the Anti-social Behaviour, Crime and Policing Act 2014 to combat anti-social behaviour. Before a CPN is issued the subject will be given a written warning. CPNs can be used to tackle a landlord's behaviour where this is having a detrimental effect on the quality of life of those in the locality.

9.10 Work in default

The Housing Act 2004 and other legal powers outlined in this policy make provision for the council to carry out works to a property where the person responsible has failed to comply with a formal notice. Any action taken would be in accordance with legislative requirements and may be taken either with or without the consent of the responsible person. The council will aim to recover all costs incurred by completing work in default, the sum recoverable becomes a local land charge on the premises concerned.

9.11 Notice of Entry

Officers will give the required written notice under the appropriate power of entry and will clearly state which power of entry is being used and why.

Where the council is unable to gain access using a Notice of Entry or where prior warning is likely to defeat the purpose of the entry the council may apply to the Magistrates Court for a warrant to enter.

If a warrant is authorised entry can be secured by force, if necessary, in association with the Police. Officers will, upon request, produce their identification and written authorisation for inspection.

9.12 Civil Penalties

The council may serve notices imposing Civil Penalties, as an alternative to prosecution under the Housing Act 2004 and Housing and Planning Act 2016, of up to a maximum of £30,000 in respect of the following offences:

- Section 30 – Failure to comply with an Improvement Notice
- Section 72 – Offences in relation to licensing of Houses in Multiple Occupation (HMO)
- Section 95 – Offences in relation to licensing of houses under Part 3 (Inc. Selective Licensing)
- Section 139 – Offences of contravention of an overcrowding notice
- Section 234 – Failure to comply with management regulations in respect of HMO
- Breach of a banning order (section 21 of the Housing and Planning Act 2016)
- Breach of any of the landlord duties prescribed under regulation 3 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

- A further breach of the Tenant Fees Act 2019 that occurs within five years of the imposition of a financial penalty or conviction for a previous breach (A civil penalty of up to £5000 may be imposed in respect of an initial breach of the Tenants Fees Act 2019)

9.13 Simple caution

Simple Cautions may be considered as an alternative to taking a prosecution.

When considering a simple caution, the council will take account of guidance and its General enforcement Policy.

9.14 Prosecution

The council may prosecute where there is a summary offence, a serious or recurrent breach or endangerment, to a serious degree, the health, safety or well-being of people, or where there is a failure to comply with a statutory notice. The officer must investigate the offence, this may involve interviewing relevant people under caution, following the relevant parts of the Police and Criminal Evidence Act 1984^v.

When considering prosecution, the council will follow the Code for Crown Prosecutors^{vi} and its General Enforcement Policy.

In prosecution cases where the defendant is found guilty in a magistrates' court, in addition to any fine imposed the council will seek to recover the costs incurred in bringing a prosecution case, including administrative costs for file preparation, attendance at court and associated legal services.

9.15 Proceeds of crime

The Proceeds of Crime Act 2002 affords the council, where there is non-compliance by a landlord or owner to any legislative requirements in the private rented sector and who is in receipt of substantial financial gain, to consider taking action to confiscate or recover monies gained through illegal activities. The Environment Team will consider using this legislation where appropriate.

9.16 Local land Charge

Certain notices, orders and charges made under the Housing Act 2004 are required to be registered as a local land charge against the property to which it relates until the Notice is either withdrawn or complied with. The Environment Team will use this legislation where appropriate.

9.17 Recovery of costs

The council will aim to recover all the costs and expenses it incurs by carrying out its statutory function. The costs incurred will include the cost by hour of labour, parts and officer time. Action taken by the council to recover costs and expenses will be in accordance with the legislative provisions of the relevant Acts.

The council reserves the right not to invoice or to waive a charge for enforcement action in exceptional circumstances with each case being considered on its own merits.

All charges, where applicable, are set out in the Harborough District Council Fees and Charges Schedule.

10 The Licensing of Houses in Multiple Occupation

The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006.

The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007

Mandatory requirements for licensing apply only to houses (or flats) that are in multiple occupation (HMO). Under current legislation, a property owner or agent must apply to the council for a licence for each residential property having:

- Five or more occupiers living in two or more households
- Two or more households sharing amenities (either a kitchen, living room or bathroom/toilet facilities)

This enforcement policy will also apply to any properties which become HMO properties as result of any future legislative changes.

Councils have discretionary powers to introduce licensing for other residential accommodation through Additional or Selective Licensing schemes.

Additional Licensing can be used for an HMO that is not subject to mandatory licensing.

10.1 Partnership working

We will consult with Leicestershire Fire and Rescue when assessing fire safety in any HMO.

10.2 Overcrowding

Officers will investigate complaints about overcrowded conditions from:

- Private rented sector tenants complaining about their own property;
- Other parties concerned about children or vulnerable adults;
- Other parties where there are significant conditions that are legitimately impacting on a neighbour's health, safety or welfare;
- In certain circumstances, advice may be given to the occupiers that their health and safety is at risk from the overcrowded conditions, but no enforcement action will be taken against the property owner;
- Where enforcement action is taken that requires tenants to move out of a property, this service will liaise with the council's Housing Options Team, who will be able to give advice;
- Harassment, Illegal Eviction and Retaliatory Eviction

The effect of an overcrowding notice is that the person served must comply with the terms of the notice and if they fail to do so they commit an offence for which the council may consider prosecution. An overcrowding notice may either prohibit new residents or limit the number of people sleeping in the HMO, or both of these requirements on the same notice. Overcrowding in Non-HMOs is classed as a hazard and may be dealt with by using the Housing Health & Safety Rating System and Housing Act 2004 Notices as detailed above.

10.3 Management Orders

Schedule 3 of the Housing and Planning Act 2016 amends the Housing Act 2004 to allow interim and final management orders to be made in cases where a banning order has been made.

10.3.1 Management Regulations

Management Regulations made under the Housing Act 2004 impose duties on property owners and managers of all HMOs (whether or not subject to licensing). There are no notice serving powers under the Management Regulations, but the council can prosecute for breach of the regulations.

10.3.2 Interim and final management order

The council is under a duty to make Interim and Final Management Orders where necessary. The council team will instigate this action where necessary but as a last resort. All practical steps will be taken to assist the owner of the property to satisfy the licensing requirements.

An interim management order is made for the purpose of securing any action that the council considers necessary, to protect the health, safety and welfare of the occupants.

The council has a duty to make an interim management order in respect of a property where there is no reasonable prospect of it being licensed in the near future or it is necessary to protect the health, safety and welfare of the occupants.

An order can also be served in circumstances that the Council thinks are appropriate with a view to ensuring the proper management of the house pending the licence being granted.

Where a licence has been revoked for any reason and the property remains a licensable property an interim management order must be made if there is no reasonable prospect of the property regaining its licence.

Once an interim management order has been served the council must take over the management of the property for up to 12 months. This includes carrying out any remedial works necessary to deal with the immediate risks to health and safety.

If there is still no prospect of a licence being granted after 12 months then a final management order must be made which may be in force for up to 5 years. If after 5 years there is no prospect of the property being licensed a further management order must be made.

Management orders can be varied or revoked at any time as a result of a request from the owner or on the initiative of the council.

11 Review

This policy will be reviewed every 3-5 years or sooner if there are change in structure, titles and responsibilities.

12 Covid-19 (Coronavirus) and other outbreaks

Officers will aim to maintain effective enforcement of standards in private rented properties by way of routine inspections and enforcement action. Inspections and enforcement action take place with due regard to statutory and non-statutory guidance, any current public health guidance and in consideration of any related local health and safety policies and procedures.

13 Links with other policies

This policy has been considered alongside the following policies:

- The General Enforcement Policy
- The Civil Penalties Policy
- Other Housing related Financial Penalties Policies
- Empty Property Strategy
- Private Sector Renewal Strategy
- Regulatory Reform Policy

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Appendix A – Key Legislation

Housing Enforcement issues can sometimes be resolved through the use of other, more appropriate legislation, regulations, orders or guidance. The Council will consider the use of, but is not limited to, the following relevant legislation to meet the aims of this Policy.

- The Housing Act 2004
- Prevention of Damage by Pests Act 1949
- Local Government Miscellaneous Provisions Act 1982
- Building Act 1984
- Caravan Sites and Control of Development Act 1960 and Caravan Sites Act 1968
- Environmental Protection Act 1990
- Housing Act 1985
- Law of Property Act 1925
- Local Government (Miscellaneous Provisions) Act 1976
- Local Government (Miscellaneous Provisions) Act 1982
- Prevention of Damage by Pests Act 1949
- Public Health Act 1936
- Town and Country Planning Act 1990
- Energy Act 2011; 2013
- Police and Criminal Evidence Act 1984
- Regulatory of Investigatory Powers Act 2000
- Enterprise and Regulatory Reform Act 2013
- Mobile Homes Act 1983; 2013

ⁱ [Legislative and Regulatory Reform Act 2006](#)

ⁱⁱ [Regulators Code](#)

ⁱⁱⁱ [Housing Act 2004 - Part 1](#)

^{iv} [Electrical safety standards in the private rented sector: guidance for landlords, tenants and local authorities](#)

^v [Police and Criminal Evidence Act 1984](#)

^{vi} [The Code for Crown Prosecutors](#)

Harborough District Council

Civil Penalty Policy

Version Control

Version	Date	Author	Name of report assessed:	Comments
0.0	26.11.2021	SM	Civil Penalty Policy	First draft
0.1	05.12.2021	SM	As above	Revised
0.2	09.12.2021	SM	As above	Revised
0.3	29.12.2021	SM	As Above	Revised
0.4	05.1.2022	SM	As Above	Revised calc and gov guidance
0.5	6/1/22	RC	As above	Revised inc calc and worked examples x2
0.6	06.1.22	SM	As above	Revised last sections of policy
0.7	7.01.22	RC	As above	Revised 3. And calc and WE.
0.8	9.1.2022	SM1	As above	Revised whole document
0.9	09.06.2022	ED	As above	Draft for Scrutiny

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Appendix 1 Worked examples

1. Introduction

Harborough District Council ("the Council") is committed to improving the standards of homes within the private rented sector, ensuring that all accommodation is safe, well managed, adequately maintained and compliant with regulations and requirements.

The Council acknowledges that the majority of landlords and letting agents operate their businesses in a professional and legal manner. However, it is also recognised there are some landlords and letting agents within the private rented sector that poorly manage and fail to maintain their properties to a safe standard and in some cases knowingly and wilfully disregard the law.

This policy set out below is supplementary to the Private Sector Housing Enforcement Policy and applies to both individuals and businesses.

This document follows the DCLG guidance in using the term "civil penalty", but the terms "civil penalty" and "financial penalty" are interchangeable.

2. What is a Civil Penalty?

Section 126 and Schedule 9 of the Housing and Planning Act 2016 introduces a number of amendments to the Housing Act 2004. The Housing and Planning Act 2016 provides powers that allow the Council to impose a financial penalty as an alternative to prosecution for specific offences under the Housing Act 2004.

A civil penalty is a financial penalty that may be imposed in instances where there are breaches of legislation and is considered to be a criminal act. Therefore, before imposing a civil penalty the council must be satisfied 'beyond all reasonable doubt' that a persons' conduct amounts to the relevant housing offence as defined by section 249A(2).

The exception to this is the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 as this is not considered as a criminal offence, however a financial penalty may still be served. To impose a civil penalty the council must still be satisfied beyond reasonable doubt that the landlord has breached a duty under regulation 3.

The maximum fine that can be imposed is £30,000 per offence. The Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities¹ stipulates that the maximum penalty is for the worst offenders.

2.1 Offences Covered under the Civil Penalties

A civil penalty can be imposed on a landlord or letting agent or both. The power to impose a civil penalty as an alternative to prosecution for certain specified housing offences is stated in section 126 and Schedule 9 of the Housing and Planning Act 2016. The civil penalties are intended to be issued against landlords or letting agents that are in breach of one or more of the sections of the Housing Act 2004 and the Housing and Planning Act 2016 as detailed below:

- Section 30 – Failure to comply with an Improvement Notice¹
- Section 72 – Offences in relation to licensing of Houses in Multiple Occupation (HMO)²
- Section 95 – Offences in relation to licensing of houses under Part 3 (Inc. Selective Licensing)³
- Section 139 – Offences of contravention of an overcrowding notice⁴
- Section 234 – Failure to comply with management regulations in respect of HMO⁵
- Breach of a banning order (section 21 of the Housing and Planning Act 2016)⁶
- Breach of any of the landlord duties prescribed under regulation 3 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.⁷

Civil penalties can be imposed under regulation 11 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (the Electrical Regulations) where the authority is satisfied beyond reasonable doubt that a landlord has breached a duty under regulation 3.

¹ <https://www.legislation.gov.uk/ukpga/2004/34/section/30>

² <https://www.legislation.gov.uk/ukpga/2004/34/section/72>

³ <https://www.legislation.gov.uk/ukpga/2004/34/section/95>

⁴ <https://www.legislation.gov.uk/ukpga/2004/34/section/139>

⁵ <https://www.legislation.gov.uk/ukpga/2004/34/section/234/2005-06-06>

⁶ <https://www.legislation.gov.uk/ukdsi/2017/9780111162224>

⁷ <https://www.legislation.gov.uk/uksi/2020/312/contents/made>

The breach of a Prohibition Order under section 30 of the Housing Act 2004 is not one of the specified offences. Where appropriate, the council will be able to seek a rent repayment order in addition to prosecuting the landlord for the offence.

Sometimes minor offences and those that are less serious may be better addressed using a civil penalty. A prosecution can easily be lost on technicalities or error in court. Court time is relatively limited, and the public interest test is applied before a prosecution is decided to be taken. The most appropriate course of action will be considered on a case-by case basis. This is in line with the councils Housing Enforcement Policy.

In circumstances where both a landlord and letting/managing agent have committed the same offence, a civil penalty can be imposed on both as an alternative to prosecution.

2.2. Burden of proof.

The same criminal standard of proof is required to serve a civil penalty as to bring a criminal prosecution. The Council must therefore be satisfied that, before a civil penalty can be imposed, it can demonstrate it is satisfied 'beyond all reasonable doubt' that criminal offence(s) have been committed by either a landlord or letting / managing agent, and if the matter were to be prosecuted in the Magistrates Court, there would be a realistic prospect of conviction

In determining whether there is sufficient evidence to secure a conviction, the Council will have regard to its own Enforcement Policies and the Crown Prosecution Service Code for Crown Prosecutors. The council must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each offender on each charge. The Code Crown Prosecutors has two stages, the evidential stage and the public interest stage and both will be considered during the council's decision for the most appropriate course of action when considering a financial penalty being issued.

2.3 Considerations prior to a Civil Penalty being issued.

The Council must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against the landlord and that the public interest will be properly served by imposing a civil penalty. The following questions should be considered:

- Does the Council have sufficient evidence to prove beyond reasonable doubt that the offence was committed by the landlord in question?
- Is the public interest properly served by imposing a Civil Penalty on the landlord in respect of the offence?
- Has the evidence been reviewed by the appropriate senior colleague at the Council?
- Has the evidence been reviewed by the Council's legal services?
- Are there any reasons why a prosecution may be more appropriate than a civil penalty? I.e., the offence is particularly serious and the landlord has committed similar offences in the past and/or a banning order should be considered.
- The Council will consider its own Housing Enforcement Policy when determining whether it is appropriate to serve a civil penalty an alternative option for prosecuting for the relevant offence.

3. Determining Level of Civil Penalty

When determining the level of the civil penalty the severity and harm of the offence must be considered as stated in Section 63 Sentencing Act 2020: "in considering the seriousness of any offence the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably cause".⁸ Harm includes actual harm caused as well as risk of harm.

The Government has laid out statutory guidance as to the process and the criteria that need to be considered when determining Civil Penalties.

⁸ <https://www.legislation.gov.uk/ukpga/2020/17/contents>

3.1 Considerations

a) Severity of the offence. The more serious the offence, the higher the penalty should be.

b) Culpability and track record of the offender. A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that

they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

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

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

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

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

g) Remove any financial benefit the offender may have obtained as a result of committing the offence. The guiding principle of civil penalties is that they should remove any financial benefit to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed⁸

3.2 Civil Penalty Calculator

The Council have adopted the following approach which is based on the same approach devised by West Lindsey District Council and subsequently adopted by Blaby District Council.

Matrices

Table 1 details the overall calculation process. Each of the 3 columns are totalled to give the cumulative total in Column 4 which is applied.

Table 1: Civil Penalty level for relevant offences

Column 1 + Column 2 + Column 3 = Column 4

1	2	3		4
Offence specific penalties	Further penalties (if any)	Table 3 impact matrix score A	Level of penalty	Cumulative total
Total for each penalty shown in Table 2, column	Total for each penalty shown in Table 2, columns B and / or C	20 – 30	£500	Level of civil penalty to be applied (maximum £30,000)
		40 – 80	£1,000	
		90 – 120	£2,500	
		130 – 170	£5,000	
		180 – 230	£10,000	
		240	£20,000	

Step 1/ Column 1 in table 1 involves detailing what “Offence specific penalties” apply. This will involve going through the case in question and comparing the offences the officer is able to demonstrate “beyond all reasonable doubt” to column A of Table 2 (below). For example, an offence of failing to obtain a HMO licence under section 72 of the Housing Act 2004 will automatically get an offence specific penalty of £2,500. If more than one offence has been committed at a property, then they must be added together. So, for example in at HMO the officer notes a series of offences under the HMO management regulations, then each breach of a regulation has an associated offence specific penalty and must be must be aggregated (added together). Where a licensing offence is also an HMO management regulation offence the Licence offence will take primacy.

Step 2/ Column 2 in table 1, involves looking at column B and C of Table 2 (below).

This step applies where offences have been noted under sections 30, 139, or the Electrical safety standards legislation. For example, if in the improvement notice that

has been failed to have complied with, an offence may have occurred under section 30. If the notice relates to three hazards (e.g. Excess cold rated as an A, damp and mould rated as a D and falls between levels rated as B) then an additional £2000 is added under Column B. An additional £1,000 is then added for column C as there are 3 or more “high scoring hazards”, as all hazards were scored E or higher).

Table 2: Offence specific penalty and other penalties

Offences		A		B		C	
Housing Act 2004 Offences	Section 30	Non-compliance with improvement notice.	£2,000	There are 2 or more category 1 hazards.	£3,000	Where there are 3 or more high scoring hazards. ¹	£1,000
	Section 72	Failure to obtain a property licence.	£2,500				
		Breach of conditions – The HMO is licenced under this section and there is a breach of licence conditions (penalty per breach).	£1,000				
	Section 139	Non-compliance with an overcrowding notice.	£500	Penalty per additional person. <input type="text"/>	£200		
	Section 234	Failure to comply with management regulations in respect of HMOs (penalty per breach).	£500				
Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 – Regulation 3		Breach of a duty of private landlords in relation to electrical installations (penalty per breach)	£1,000	There is one identified Code 1 defect, or three or more identified 'relevant defects'. ²	£3,500	There is one or more identified relevant defect(s).	£2,500

¹A high scoring hazard is defined as a hazard achieving a score rating of E or higher using the HHSRS

² A relevant defect for the purpose of this matrix is defined as a defect which would result in an 'Unsatisfactory' grading on an Electrical Installation Condition Report (EICR). Namely, a defect given a C1, C2 or F1 observation code.

Step 3 involves evaluating the impact and this requires table 3 (below) to be considered and applied.

The officer is required to answer questions 1-5 and score appropriately using the evidence of the case. It is important the officer records these in a narrative or tabulated form including their evidence that they are relying upon. This may be required to be evidenced in next stages.

Table 3: Impacts scoring matrix

Answer each of the questions 1 – 5 below and apply the score shown in the column header

Score		0	20	30	40
1	Severity of harm or potential harm caused x 2 (the relevant column score is double)	Low No identified risk Previous/current occupant not in vulnerable category. No impact assessed	Moderate Moderate level risk(s) to relevant persons. Previous/current occupant not in vulnerable category. Low impact assessed	High High level risk(s) to relevant persons. Previous/current occupant in vulnerable category. Occupants affected frequently or by occasional high impact occurrences.	Severe High level of risk(s) to relevant persons. Previous/current occupant in vulnerable category. Multiple individuals at risk. Occupants are severely and/or continually effected.
2	Number of properties owned/managed	1	2 – 3	4 – 7	8+
3	Culpability and Track record	No previous enforcement history. Minimal prior contact. Clear evidence of action not being deliberate	1 or more previous enforcement notice served. Clear evidence of action not being deliberate	1 or more enforcement notice served. Offender ought to have known that their actions were in breach of legal responsibilities	Significant evidence of historical non-compliance Actions were deliberate or offender knew or ought to have known that their actions were in breach of their legal responsibilities
4	Removal of financial incentive	Little or no income received	Low income received	Moderate income received	High income received
5	Deterrence and prevention	High confidence that penalty will deter repeat offence.	Medium confidence that penalty will deter repeat offence.	Low confidence that penalty will deter repeat offence.	No confidence that penalty will deter repeat offence.

Note that the score for row 1 should be multiplied by two (doubled). When each question is completed, and the total aggregated the total is compared to Table 1 column 3 so that an appropriate level of penalty for column 3 is apportioned. A number of worked examples are included at the end of the document.

The assessment of the impacts scoring matrix may make consideration to the following:

1) Severity of the Offence and Severity of Harm– the more serious the offence, a higher penalty should be imposed. The greater the harm or the potential for harm, the higher the amount should be when imposing a civil penalty. The severity of harm will also consider whether the property is occupied by a vulnerable individual (as detailed in the HHSRS operating guidance). A vulnerable individual is one who is at greater risk of harm, and therefore the penalty should be greater when vulnerability is an issue. This assessment will consider both harm and potential harm within the property. The level of severity will be determined by whether Category One or Category Two hazards are present.

2) Number of properties owned/managed – Consideration here is made towards the number of properties that are owned and/or managed by the offender.

3) Culpability and track record of the Offender – Culpability levels will be considered higher if the offender has a large portfolio. Landlords, including property

managers and agents are running a business and are expected to be aware of their legal obligations. A higher penalty will be appropriate where there is a history of failing to comply with obligations and that they were in breach of their legal responsibilities.

An assessment of culpability and track record includes any past enforcement action taken by the council. This assessment can include, but is not limited to, the history held of the landlord or letting agent, the number of Housing Act 2004 Notices served, previous Civil Penalties served, simple cautions issued, whether works in default have been undertaken by the Council as a result of relevant notices being breached, subject to either an Interim or Final Management Order, registration on either the Rogue Landlord Database or Banning Order.

4) Removal of Financial Incentive

The principle is to ensure that the offender does not benefit due to committing an offence. The council will consider the financial advantage as a result of the offence, including but not limited to, rental income gained, financial benefit from not undertaking remedial works contained within an enforcement notice, and/or financial benefit in failing to obtain a property licence when required to do so.

5) Deterrence and Prevention:

A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty.

3.3 Recording the decision: The officer making the decision shall be accountable to outline the rationale for imposing the penalty, giving reasons for coming to the amount of financial penalty which is to be imposed.

4. The Procedure for Imposing the Civil Penalty

The Housing and Planning Act 2016 lays out the process in which council must undertake when imposing a civil penalty.

4.1 Notice of Intent - Housing Act 2004 Schedule 13 A, paragraph 1

The council will firstly serve a Notice of Intent on the person suspected of committing the offence. This notice must be served within 6 months of the last day the council has evidence of the offence occurring. The Notice will specify:

- The amount of any proposed financial penalty
- The reasons for proposing the financial penalty
- Information about the right to make representation to the Council.

4.2 Written Representations following Notice of Intent.

Any person in receipt of the Notice of Intent has the right to make representations in writing to the council within 28 days of the date in which the notice was given. The representations will be reviewed by a senior officer within the Environment Team.

Written responses will be provided by the council detailing the decision once the case has been reviewed and consideration to the representations made.

4.3 Final Notice - Housing Act 2004 Schedule 13 A, paragraph 6

After the Appeal period if the Council still consider the issue of a Civil Penalty is correct a Final Notice will be served, signed by the PEHO. This Notice will include the following information:

- the amount of the financial penalty;
- the reasons for imposing the penalty;
- information about how to pay the penalty;
- the period for payment of the penalty (28 days);

- information about rights of appeal to the First Tier Tribunal;
- the consequences of failure to comply with the notice.

The local housing authority may at any time: withdraw a notice of intent or final notice; or reduce the amount specified in a notice of intent or final notice.

The period of payment for the civil penalty must be 28 days beginning with the day after that on which the notice was served, unless appealed.

At any time, the Council may either withdraw the notice of intent or final notice. The council may reduce the amount specified in the notice of intent or final notice at any time. This will be by a written notice to the person on whom the notice was served. The Council may decide to withdraw the civil penalty; however it reserves its right to pursue a prosecution for the original offence where appropriate to do so.

The Council will take into account a reduction of the level of penalty for an admission of guilt.

4.4 Right of Appeal

The person served with the Final notice has the right to appeal to the First Tier Tribunal against: The decision to impose a penalty; or The amount of the penalty. The appeal must be made within 28 days of the date the final notice was issued. If a person appeals, the final notice is suspended until the appeal is determined or withdrawn.

5. Discount for paying civil penalty within specified period.

To encourage the prompt payment of civil penalties, the Council will offer a discount of 1/3 reduction in line with the sentencing guidelines to landlords and agents who pay the civil penalty in full within 28 days of the Final Notice being issued. Both amounts will be included in the Final Notice.

6. Recovering an unpaid Civil Penalty

It is the policy of the Council to consider all legal options available for the collection of unpaid civil penalties and to the council will commence proceedings to recover the debts owed. The council will endeavour to recover these debts through the County

Court, usually in form of a Court Order. Some of the Orders available to the Council through the County Court are as follows:

- A Warrant of Control for amounts up to £5000;
- A Charging Order,
- A Third Party Debt Order;
- and; Bankruptcy or insolvency.

In the first instance, a Certificate, signed by the Council's Chief Finance Officer which states the outstanding amount has not been received by the date of the Certificate. This will be accepted by the Courts as conclusive evidence of the outstanding payment due to the council.

When considering which properties to apply for a Charging Order against, the Council can consider all properties owned by the landlord and not just the property to which the offence relates. After obtaining a Charging Order the Council may consider applying for an Order for Sale against the property or asset in question.

Where a civil penalty is appealed and the Property Tribunal confirms or varies the penalty, this decision will be automatically registered on the Register of Judgments, Orders and Fines when it is accepted by the County Court. This may affect the landlords ability to obtain financial credit due to the Register of Judgment Order made against the individual.

The recovery of the debt may be undertaken by third party Enforcement Agents (Bailiffs) and this may lead to additional fees being applied to the outstanding amount.

7. Income from Civil Penalties

Income received from a civil penalty is retained by the Council provided that it is used to statutory functions in relation to its private rented sector enforcement activities as specified in the Statutory Instrument 367 (2017)⁹. There is no time limit imposed by the Housing and Planning Act 2016 for the Council to use the income gained from a civil penalty.

8. Enforcement or other consequences.

Where a civil penalty has been imposed on a landlord or agent, this will form part of the Council's consideration when it reviews the HMO licence applications relating to properties in which that person has had some involvement.

Although the imposition of a civil penalty will not automatically prevent the Council from granting a licence where such persons are involved, the reasons for imposing the penalty and the extent of the person's involvement in the property will be considered when deciding whether or not to grant an HMO licence. Where a landlord has two civil penalties imposed on them within a period of 12 months and each relates to a Banning Order offence for the purposes of the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018, the Council will seek to register the landlord's details on the Database of Rogue Landlords and Property Agents.

9. Further guidance

The 'Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities' is statutory guidance which Local Housing Authorities must have regard to and has been reviewed as part of developing the Civil Penalty Policy. The Policy has also been developed with specific regard to the Housing Act 2004, Housing and Planning Act 2016 and Harborough District councils Housing Enforcement Policy.

Appendix 1 Worked Examples

Worked example 1

Landlord Mr Smith has a number of HMO, he has forgotten to licence one of them.

He is interviewed under PACE and admits that it was an oversight by one of his members of staff, for which he is responsible. He takes full responsibility of the oversight and has applied immediately upon finding two months after it expired previously.

He is genuinely remorseful and is happy to accept a CPN instead of prosecution which would affect his ability to hold a licence. The HMO is relatively safe, complaint with LACORS fire guide and in good condition with correct facilities and the certificates etc are up to date despite being unlicensed.

The Council officer judge it to be Low harm level and high culpability.

He otherwise has an exemplary record and has licensed properties for a number of years.

The Council decide that he should receive a CPN as he was sent a reminder letter which apparently was lost by junior staff in his office as they have a note as having received it in their mail log but didn't action a response to the reminder.

Table 1: Civil Penalty level for relevant offences

Column 1 + Column 2 + Column 3 = Column 4

1	2	3		4
Offence specific penalties	Further penalties (if any)	Table 3 impact matrix score A	Level of penalty	Cumulative total
Total for each penalty shown in Table 2, column	Total for each penalty shown in Table 2, columns B and / or C	20 – 30	£500	Level of civil penalty to be applied (maximum £30,000)
		40 – 80	£1,000	
		90 – 120	£2,500	
		130 – 170	£5,000	
		180 – 230	£10,000	
		240	£20,000	

Table one determines the overall process and cumulative total.

Therefore, we next look at Table 2 below.

The offence is under Section 72 of the Housing Act 2004- a failure to obtain a HMO licence. Which has a £2,500 offence specific penalty.

There are no hazards noted so nothing added from column B and/or Column C.

Table 2: Offence specific penalty and other penalties

Offences		A		B		C	
Housing Act 2004 Offences	Section 30	Non-compliance with improvement notice.	£2,000	There are 2 or more category 1 hazards.	£3,000	Where there are 3 or more high scoring hazards. ¹	£1,000
	Section 72	Failure to obtain a property licence.	£2,500				
		Breach of conditions – The HMO is licenced under this section and there is a breach of licence conditions (penalty per breach).	£1,000				
	Section 139	Non-compliance with an overcrowding notice.	£500	Penalty per additional person.	£200		
	Section 234	Failure to comply with management regulations in respect of HMOs (penalty per breach).	£500				
Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 – Regulation 3		Breach of a duty of private landlords in relation to electrical installations (penalty per breach)	£1,000	There is one identified Code 1 defect, or three or more identified 'relevant defects'. ²	£3,500	There is one or more identified relevant defect(s).	£2,500

¹A high scoring hazard is defined as a hazard achieving a score rating of E or higher using the HHSRS

² A relevant defect for the purpose of this matrix is defined as a defect which would result in an 'Unsatisfactory' grading on an Electrical Installation Condition Report (EICR). Namely, a defect given a C1, C2 or F1 observation code.

We then look at Table 3.

Table 3: Impacts scoring matrix

Answer each of the questions 1 – 5 below and apply the score shown in the column header

Score		0	20	30	40
1	Severity of harm or potential harm caused x 2 (the relevant column score is double)	Low No identified risk Previous/current occupant not in vulnerable category. No impact assessed	Moderate Moderate level risk(s) to relevant persons. Previous/current occupant not in vulnerable category. Low impact assessed	High High level risk(s) to relevant persons. Previous/current occupant in vulnerable category. Occupants affected frequently or by occasional high impact occurrences.	Severe High level of risk(s) to relevant persons. Previous/current occupant in vulnerable category. Multiple individuals at risk. Occupants are severely and/or continually effected.
2	Number of properties owned/managed	1	2 – 3	4 – 7	8+
3	Culpability and Track record	No previous enforcement history. Minimal prior contact. Clear evidence of action not being deliberate	1 or more previous enforcement notice served. Clear evidence of action not being deliberate	1 or more enforcement notice served. Offender ought to have known that their actions were in breach of legal responsibilities	Significant evidence of historical non-compliance Actions were deliberate or offender knew or ought to have known that their actions were in breach of their legal responsibilities
4	Removal of financial incentive	Little or no income received	Low income received	Moderate income received	High income received
5	Deterrence and prevention	High confidence that penalty will deter repeat offence.	Medium confidence that penalty will deter repeat offence.	Low confidence that penalty will deter repeat offence.	No confidence that penalty will deter repeat offence.

From Table 3 (above) we judge that the severity of harm or potential for harm is low. So zero scored for row 1.

We noted that the Landlord has 5 other HMOs, totalling 6. So that row totals 30.

Row three – he has an exemplary record, so the officer scored this 0.

Row 4- Little or no income received, it had only just expired, and he has since put in an application so is no better off by not complying with the law. Interest rates are low so any financial income from that money being in his account for slightly longer is negligible. Landlord is also liable to a Rent Repayment Order should a tenant apply.

Row 5 – High confidence this will have the desired effect of making him manage his properties licenses better. The fine is enough to make him take note both financially and reputationally. Next time he would likely risk prosecution. Row 5 scored 0.

Totalling the 5 rows we get an impact matrix score of 30. Which has an additional fine of £500.

Going back to table 1, we thus score,

Column 1=£2500

Column 2=0

Column 3=£500

Cumulative total of £3000. So the total to be included without early repayment deduction is £3000.

Worked example 2

A freeholder has given his property to his Letting agent to hold the licence and manage the HMO as he is away from the Country for part of the year. The agents are specialist in managing HMO, hold 50 licenses and have previously had an adequate compliance record, though standards appear to have fallen. An officer has done a compliance inspection of a three storey, licensed student HMO.

The HMO is licensed for 5 people in five bedrooms. It was noted that two bedrooms had two people living in them with no alternative living arrangements. The Landlord had consented to this but didn't charge them additional money for it. The additional persons noted were in relationships with the student on the agreement for the room they were found in. This is a HMO licence condition offence.

The fire safety was adequate, fire doors were closing though the letting agent hadn't provided any additional facilities and though one bathroom with WC with an extra separate WC downstairs was OK for 5 people, it doesn't meet the Councils standards for 7 people. The existing licence required an additional WC room to have been provided 6 months ago. This hasn't been provided and is a HMO licensing offence.

The garden is overgrown with a wall partially knocked over by tree roots. The bins are a mess and recycling hasn't been collected for some time due to them being contaminated with non-recyclable materials. These are all HMO licence conditions offences (totalling 3 offences).

The front door lock was damaged to the front door leaving the house insecure if pushed and a bedroom where a tenant is alleged to have kicked his door in having lost his door key 6 months ago hasn't been repaired. This has been evidenced by the students and he has offered to pay for the damage he caused. It still hasn't been repaired. 2 HMO management regs offences

There is a leak going down the living room wall from the WC pan connector in communal bathroom, which has been present for months and has been reported to

the agent by the student's numerous times. They evidence these texts during the inspection and sent to the Council following the inspections. 1 HMO management regs offence.

There are few working lightbulbs in any communal areas and the handrail to stairs has fallen off and is in the front garden. 2 HMO management regs offences

Radiators to two top floor bedrooms don't work as the system doesn't have enough power/ pressure to go to the top of the house. The rooms are noticeably cold in autumn. This again is evidenced by the students as having been reported and the Licence holder refuses to spend the money to address the problem. 2 HMO management regs offences

Table 2: Offence specific penalty and other penalties

Offences		A		B		C	
Housing Act 2004 Offences	Section 30	Non-compliance with improvement notice.	£2,000	There are 2 or more category 1 hazards.	£3,000	Where there are 3 or more high scoring hazards. ¹	£1,000
	Section 72	Failure to obtain a property licence.	£2,500				
		Breach of conditions – The HMO is licensed under this section and there is a breach of licence conditions (penalty per breach).	£1,000				
	Section 139	Non-compliance with an overcrowding notice.	£500	Penalty per additional person.	£200		
	Section 234	Failure to comply with management regulations in respect of HMOs (penalty per breach).	£500				
Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 – Regulation 3		Breach of a duty of private landlords in relation to electrical installations (penalty per breach)	£1,000	There is one identified Code 1 defect, or three or more identified 'relevant defects'. ²	£3,500	There is one or more identified relevant defect(s).	£2,500

¹A high scoring hazard is defined as a hazard achieving a score rating of E or higher using the HHSRS

² A relevant defect for the purpose of this matrix is defined as a defect which would result in an 'Unsatisfactory' grading on an Electrical Installation Condition Report (EICR). Namely, a defect given a C1, C2 or F1 observation code.

Looking initially at table 2, we have a string of offences under the breach of licence conditions, and a string of HMO management offences. Where licence conditions overlap with HMO management regs offences we pursue under the licence condition offence as the primary offence.

In total we note 5 failures to comply with licence conditions and 7 HMO management regs offences.

From table two we calculate £5,000 and £3,500 respective offence specific penalties in relation to these offences.

Table 3: Impacts scoring matrix

Answer each of the questions 1 – 5 below and apply the score shown in the column header

Score		0	20	30	40
1	Severity of harm or potential harm caused x 2 (the relevant column score is double)	Low No identified risk Previous/current occupant not in vulnerable category. No impact assessed	Moderate Moderate level risk(s) to relevant persons. Previous/current occupant not in vulnerable category. Low impact assessed	High High level risk(s) to relevant persons. Previous/current occupant in vulnerable category. Occupants affected frequently or by occasional high impact occurrences.	Severe High level of risk(s) to relevant persons. Previous/current occupant in vulnerable category. Multiple individuals at risk. Occupants are severely and/or continually effected.
2	Number of properties owned/managed	1	2 – 3	4 – 7	8+
3	Culpability and Track record	No previous enforcement history. Minimal prior contact. Clear evidence of action not being deliberate	1 or more previous enforcement notice served. Clear evidence of action not being deliberate	1 or more enforcement notice served. Offender ought to have known that their actions were in breach of legal responsibilities	Significant evidence of historical non-compliance Actions were deliberate or offender knew or ought to of known that their actions were in breach of their legal responsibilities
4	Removal of financial incentive	Little or no income received	Low income received	Moderate income received	High income received
5	Deterrence and prevention	High confidence that penalty will deter repeat offence.	Medium confidence that penalty will deter repeat offence.	Low confidence that penalty will deter repeat offence.	No confidence that penalty will deter repeat offence.

Row 1; Officer observed it's a high risk regarding both the front door, missing handrail on steep stairs and the excessive number of people using one bathroom so $40 \times 2 = 80$.

Row 2; More than 8+ properties managed. So scored 40.

Row 3; Actions were deliberate so 40.

Row 4; Income 0 as no additional rent requested.

Row 5; Medium confidence=20 They're a big going concern. This was only one property though if standards don't improve, suggest straight to prosecution next time, depending on details of case (if similar) next time.

Total for table 3= 180 which equates to £10,000 according to table 1 below.

Table 1: Civil Penalty level for relevant offences

Column 1 + Column 2 + Column 3 = Column 4

1	2	3		4
Offence specific penalties	Further penalties (if any)	Table 3 impact matrix score A	Level of penalty	Cumulative total
Total for each penalty shown in Table 2, column	Total for each penalty shown in Table 2, columns B and / or C	20 – 30	£500	Level of civil penalty to be applied (maximum £30,000)
		40 – 80	£1,000	
		90 – 120	£2,500	
		130 – 170	£5,000	
		180 – 230	£10,000	
		240	£20,000	

Therefore as per the table above, the cumulative total of table one is £18,500 for Column 1, 2&3. This is the amount to include on the proposed civil penalty notice before any early repayment discount.

Worked example 3- Electrical

Landlord Mrs Dench rents out her property to Mr and Mrs Smith and their young family including 2 small children under 5 years old. The date they moved in on the tenancy agreement was 3rd July 2020. Mrs Dench provided an EICR to Mr and Mrs Smith when they moved in . It stated that there were 2 issues. Firstly, exposed wiring due to a smashed double switched socket in the children’s bedroom. This was stated to be a “C1” and there was also a lack of supplementary bonding to radiators meaning the radiators and hot water system wasn’t earthed. This was a C2. Mrs Dench owns 3 properties, has no history of noncompliance but failed to address the issues in 28 days stating they were caused by the previous tenant. She had pushed a bed frame against the damaged socket it an attempt to prevent its use. When questioned by the EHO she didn’t think the bonding was that serious as was stated to be a C2.

Thus, using tables 1,2 and 3 above we note 2 breaches of the regulations in failing to ensure that the electrical safety standards are met during any period when the residential premises are occupied under a specified tenancy. So the table 2 details that 2x £1000 offence specific penalties are noted.

We have noted from the EICR one CODE 1 (C1) which entails a penalty of £3500 in column 2 and another £1000 for the column 3 C2 defect. Totalling £6500 for columns 1 and 2 in table 1.

Looking at table 3 we note that children under 5 were present and they are the most vulnerable to electrical safety hazards. So we score $40 \times 2 = 80$ for row 1.

For row 2 she has 3 properties so scores 20

Row 3, the offender ought to have known she was in breach of the law. She was advised to sort it out by the certificate/ electrician but instead ignored that advice and moved a bed over the damaged socket. So we scored this 30. Though 40 would also be ok.

Row 4 the cost of works wasn't even that high, perhaps 200 pounds. So she hasn't benefitted financially excessively. So, we have scored that as 20 for low income.

Row 5 we scored as 0, as we have high confidence that this penalty will deter her from doing so again.

Total for table 3 is 150 which when we convert to £ in table 1 = £5,000

So, the cumulative total is $£6,500 + £5000 = £11,500$ which is an effective deterrent.



Policy for Imposing Financial and Publication Penalties

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

MEES Enforcement Policy

MEES Enforcement Policy

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1. Background Legal Context

The Domestic Minimum Energy Efficiency Standard (MEES) Regulations ('MEES Regs') provide a minimum energy efficiency standard ('MEES') for domestic private rented properties.

Where a property falls below the MEES Energy performance indicator rating of Band E, a landlord is legally obligated to make energy efficiency improvements which to raise the EPC to at least a Band E before they let the property as a rented dwelling.

The MEES Regulations apply to all domestic private-rented properties which are let on specific types of tenancy agreements and which are legally required to have an Energy Performance Certificate ('EPC').

Part 1 of the MEES Regulations allows a tenant to request permission from a landlord to make energy efficiency improvements to a private rented property.

Under Part 3 of the MEES Regulations, where private rented property's EPC is below the minimum level of energy efficiency, it is illegal for the landlord to:

- grant a new tenancy of a property (including an extension or renewal) after 1 April 2018;
- continue to let the property (on an existing tenancy) after 1 April 2020.

Since 1 April 2019, landlords of domestic properties with an EPC rating below E must carry out up to £3,500 worth of works to improve energy efficiency if they cannot obtain third-party funding to meet the costs (the £3,500 figure includes VAT).

The £3,500 cap is an upper ceiling and not a target nor a spending requirement; landlords may, if they wish to, spend more than £3,500 on energy efficiency improvement to their let property.

If a landlord can improve their property to Band E (or higher) for less than £3,500 then they will have met their obligation.

2. Introduction

Under most circumstances, a private sector tenant must, by law, be provided with an appropriate EPC certificate by a landlord. However, in some cases, statutory exemptions exist for certain types of properties whereby EPC legal provisions are not applicable.

Under Regulation 34, Harborough District Council ('the Council') is under a statutory duty enforce the regulations in respect of domestic private rented properties and may serve compliance notices on any landlord who is currently in breach of Regulation 23 and any landlord who (at any time within the 12 months before the date of service of the compliance notice) has previously been in breach of Regulation 23.

Giving at least 1 month, a compliance notice enables the Council to monitor compliance by requesting relevant information which can include either clear copies of or, alternatively, originals of:

- the EPC that was valid for the time when the property was let;
- any other EPC for the property in the landlord's possession;
- the current tenancy agreement used for letting the property;
- any Green Deal Advice Report in relation to the property;
- any other relevant document that the enforcement authority requires for the purpose of discharging its duties.

The compliance notice may also require a landlord to register copies of the requested information on the PRS Exemptions Register.

The compliance notice will specify name and address details of the person to whom the landlord must send the requested information as well as the date by which the requested information must be supplied.

3. Objectives of the MEES Regs

The MEES Regs were created for myriad reason which include:

- helping clinically vulnerable private rented tenants who are in most need of thermally efficient home environments
- tackling fuel poverty
- improving the energy efficiency of buildings
- helping tenants to reduce their energy bills

The regulations are also part of the Government's wider approach to reducing the UK greenhouse gas emissions and tackling climate change.

4. Landlords' Legal Duties

Under the MEES Regs, private landlords are legally required to take one of the actions listed below:

- They must ensure that their rented are, at the very least, EPC Band E
- Register a valid exemption on the PRS Exemption Register.

5. Exemptions and the PRS Exemption Register

There are a number of exemptions set out in the guidance and legislation which are available to a private landlord which must be listed on the national Private Rented Sector (PRS) Exemptions Register.

The PRS Exemptions Register is an online platform which allows a landlord (or an agent acting on their behalf) to register valid exemptions from the minimum energy efficiency requirements.

All registered exemptions are valid for a period of five years unless otherwise stated.

It is unlawful to put false or misleading information on the register.

A private landlord may register a valid exemption in the following situations:

- a. Cavity, external or internal wall-insulation has been recommended to help improve energy efficiency, but a recognised surveyor is of the expert written-opinion that such measures could potentially have a negative impact on the fabric or structure of the property (Reg 24(2))
- b. All relevant energy efficiency improvements have been made, within the cost-cap of £3,500 (this figure includes VAT) but the property still remains sub-standard (Reg 25)
- c. there are no relevant energy efficiency improvements possible at the property
- d. The cost recommended for improvements exceeds the £3,500 cost-cap. (This figure of £3,500 includes VAT)

- e. A third party (such as a tenant, superior landlord, mortgage provider, freeholder, or planning authority) refuses to consent to the relevant energy efficiency improvements. However, the landlord must be able to demonstrate that they have made all reasonable efforts to obtain the consent before registering an exemption (Reg 31(1A))
- f. A surveyor or a qualified expert can confirm, in writing, that the recommended improvements would decrease the value of the property by more than 5%, a private landlord may register a valid exemption. (Reg 32)
- g. A person may, on becoming a private landlord in limited circumstances, register a valid (temporary) exemption under the circumstances specified under Regulation 33(1) which are:
 - The grant of a lease due to a contractual obligation.
 - Where a tenant becomes insolvent, and the landlord has been the tenant's guarantor.
 - The landlord having been a guarantor, or a former tenant has exercised the right to obtain an overriding lease of a property under section 19 of the Landlord and Tenant (Covenants) Act 1995.
 - A new lease has been deemed created by operation of law.
 - A new lease has been granted under Part 2 of the Landlord and Tenant Act 1954.
 - A new lease has been granted by a court order, other than under Part 2 of the Landlord and Tenant Act 1954.
- h. When a person becomes a private landlord on purchasing a property, and on the date of purchase it was let to an existing tenant, a valid exemption may be registered under Regulation 33(3)
- i. Temporary exemptions registered under Regulation 33 are valid for a maximum period of 6 months from the date the person became the private landlord of the property

All exemptions must be registered on the PRS Exemptions Register. The register can be found online here: <https://prsregister.beis.gov.uk/NdsBeisUi/used-service-before>

Supporting evidence will need to be submitted when registering a valid exemption.

If a let property is sold, any exemption registered on the PRS Exemptions Register by the previous owner is not transferable to the new owner.

The new owner will be required to improve the property or register their own valid exemption.

6. Government guidance

The Council will have regard to any guidance issued by BEIS when exercising its functions under the regulations.

This policy takes effect from **date** TBC and will apply to all the relevant breaches of regulations which occur on the date the policy takes effect and thereafter.

The Domestic Private Rented Property Minimum Standard - Guidance for landlords and Local Authorities on the minimum level of energy efficiency required to let domestic property under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, as amended, is available online at: <https://www.gov.uk/guidance/domestic-private-rented-property-minimum-energy-efficiency-standardlandlord-guidance>

7. Compliance Notice

The Council will liaise with landlords of properties in breach of the regulations informally at the first instance by sending them reminder letters giving landlords of such properties adequate time frame. Where breach of the regulations cannot be resolved informally through the warning letters, the Council will then proceed to initiate the penalty process as highly in this policy.

Where there is no action taken by the landlord after the 1st and 2nd warning letters have been sent, and If it appears to the council that a private landlord is in breach of the prohibition on letting properties with an energy efficiency rating of F or G, the council may serve a Compliance Notice ('Comp. Not.') on that private landlord requiring such information as it considers necessary to enable it to monitor compliance.

A Comp. Not. may also be served if it appears to the council that the private landlord was in breach of the regulations at any time in the 12 months preceding the date of service of the notice.

The Comp. Not. can formally request copies or originals of the following:

- The EPC for the property which was valid at the time the property was let

- Any other EPC
- Tenancy agreement
- Any qualifying assessment in relation to the property
- Any other document the council considers necessary to monitor compliance with the regulations

In addition, the Comp. Not. may require a private landlord to register copies of any of the above on the PRS Exemptions Register.

The Comp. Not. will specify the name and address of the officer of the Council to whom the documents or other information required must be supplied.

The Comp. Not. will also specify the time-period for compliance which will be no less than 1 month from the date the notice is served.

Under Regulation 37(4), a private landlord must comply with any Comp. Not. served on them by the Council; they must also allow the Council, when requested, to see and take copies of original documents.

8. Financial and Publication Penalties

There are 4 breaches under the regulations for which a private landlord may be given a Financial Penalty (Fin. Pen.).

Regulation 40 sets out the breaches and the statutory maximum amounts that may be imposed in respect of each type of breach. These are as follows:

Breaching the prohibition on letting a property with an F or G rating, in contravention of Regulation 23, for less than 3 months:

Statutory maximum financial penalty of £2,000

Breaching the prohibition on letting a property with an F or G rating, in contravention of Regulation 23, for 3 or more months:

Statutory maximum financial penalty £4,000

Registering false or misleading information on the PRS Exemptions Register under Regulation 36(2):

Statutory maximum financial penalty £1,000

Failing to provide information to the Council demanded by a CN, in contravention of Regulation 37(4)(a):

Statutory maximum financial penalty £2,000

In respect of any one tenancy, a private landlord cannot, owing to Regulation 40(6), be subject to multiple financial penalties that exceeds a total of more than £5,000.

9. MEES – Financial Penalty Policy

The Council has determined to take the following approach when imposing a Fin. Pen. under the regulations. The council has discretion to offer an early payment reduction if a landlord pays the penalty charge within 14 days beginning with the day the penalty charge notice is served. However should a subsequent appeal be made the discount will be removed.

Breaching the prohibition on letting a property with an F or G rating, in contravention of Regulation 23, for less than 3 months:

For the first breach under the regulations for the property: £1,000 with 33% early payment discount

For any subsequent breach under the regulations for the property: £2000 with 33% early payment discount.

Breaching the prohibition on letting a property with an F or G rating, in contravention of Regulation 23, for 3 or more months:

For the first breach under the regulations at the property: £2,000 with 33% early payment discount.

For any subsequent breach under the regulations for the property: £4000 with 33% early payment discount.

Registering false or misleading information on the PRS Exemptions Register under Regulation 36(2):

Breach under the regulations: £1,000 with 33% early payment discount.

Failing to provide information to the council demanded by a Comp. Not., in contravention of Regulation 37(4)(a):

Breach under the regulations: £2,000 with 33% early payment discount.

For the purposes of this policy, where a landlord having been previously fined up to £5,000 for having failed to satisfy the requirements of the Energy Regs then proceeds to unlawfully let a sub-standard property on a new tenancy, a further financial penalty of up to £5,000 can be issued.

The maximum remains but the ability to issue a further Fin. Pen. starts again with a new tenancy.

10. Houses in Multiple Occupation

Where a House in Multiple Occupation ('HMO') is legally required to have an EPC under the provisions of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 and where it is let on one of the qualifying tenancy types, then the HMO, as a whole, is required to comply with the minimum level of energy efficiency.

However, individual rooms within HMOs are not required to have their own EPCs.

In accordance with Regulation 40(6), where a private landlord has committed multiple breaches in respect of a single tenancy and, where such circumstance would make the financial penalty to such landlord to go beyond the £5,000 limit, the Council would consider adjusting one or more of the Fin. Pens. in such a way that the maximum of £5,000 (as permitted under the MEES Regs) is not exceeded.

11. Publication Penalties

Under Regulation 39, a Publication Penalty ('Pub. Pen.') means publication of the following information by the Council, on the PRS Exemptions Register:

- The name of the private landlord, but only where the landlord's name is not an individual;
- Details of the breach;
- The address of the property at which the breach occurred;
- The amount of Fin. Pen. imposed.

Under the provisions of Regulation 39(2), the Council may decide how long the details of each breach should stay on the PRS Exemptions Register, subject to a minimum period of 12 months.

12. The Council's Publication Penalty Policy

The Council shall impose a Pub. Pen. in respect of all breaches that are subject to a Penalty Notice ('Pen. Not. '), unless there are allowed and permitted representations received.

The Council is also determined that all breaches will be registered on the PRS Exemptions Register for a period of minimum 12 months, but not more than 24 months.

13. Penalty Notice Scope

If the Council decides to impose an Fin. Pen. and/or a Pub. Pen. for a breach of the regulations, it will serve a Pen. Not. on the offender.

A Pen. Not. may be served in respect of an ongoing breach or a breach that has occurred in the 18 month period leading up to the date of the service of the Pen. Not.

Where a landlord fails to take the action required by a Pen. Not., within the period specified in that Pen. Not., then the Council can serve a further Pen. Not., however the total amount of all fines, for the same breach, remains capped at £5,000.

The Pen. Not. will set out the following:

- a) the provision within regulations the Council believes the private landlord has breached;
- b) the particulars the Council considers necessary to identify the breach;
- c) the action the Council requires the private landlord to take to remedy the breach;
- d) the timescale in which remedial action must be taken (which must not be less than 1 month);
- e) the amount of the Fin. Pen. imposed and how it has been calculated including any applicable discount;
- f) whether a Pub. Pen. has been imposed;
- g) the time-period in which any Fin. Pen. must be paid (which must not be less than 1 month from the date the Pen. Not. was served)
- h) the name and address of the person to whom any Fin. Pen. must be paid and the method of payment.

- i) The effect of Regulation 42, which sets out the right to request a review of the Council's decision to serve a Pen. Not.
- j) the effect of Regulations 43 to 44, which sets out the right of appeal against any decision to confirm a Pen. Not.
- k) The effect of Regulation 45, which sets out the Council's power to recover any unpaid Fin. Pen. as a debt;
- l) the name and address of the person to whom any request to review the Council's decision (i.e. to serve a Pen. Not.) must be sent and the period within which such a request must be made.

If a private landlord fails to take the action required by a Pen. Not. (i.e. to remedy a breach) then the Council may serve a further Pen. Not.

14. Landlords' Rights re Penalty Notice

A private landlord, on whom the Council has served a Pen. Not. is entitled to request a review of the Council's decision to serve the notice. The Council will accept such a request if it is received within the period of 1 month (commencing the day on which the Pen. Not. was served).

A request for a review, together with any representations received, will be carefully considered by the Council before it makes a final decision as to whether to confirm or withdraw the Pen. Not.

Once the Council has made its decision, it will notify the private landlord of that decision by serving a Notice of Decision Following a Review of a Penalty Notice ("Dec. Not."). To ensure fairness and transparency, every decision to confirm a Pen. Not. following a request for review, will be subject to approval by Regulatory Services Manager.

15. Appealing a Decision Notice

A private landlord, on whom a Pen. Not. or Dec. Not. has been served, may appeal to the First-tier Tribunal ('the Tribunal') on the grounds that:

- The issue of the Pen. Not. was based on an error of fact; or
- The issue of the Pen. Not. was based on an error of law; or
- The Pen. Not. does not comply with a requirement imposed by the regulations; or
- In the circumstances of the case, it was not appropriate for the Pen. Not. to be served.

Appeals must be brought within 28 days from the date on which the Pen. Not. was served. Once an appeal has been made, the Pen. No. is suspended until the appeal has been finally determined by the Tribunal or withdrawn by the landlord.

The Tribunal has the power to quash or affirm the Pen. Not.

If the Tribunal decides to affirm the Pen. Not., it may do so in its original form or with such modification as it may deem fit.

The address and contact details of the Tribunal are as follows:

<https://www.gov.uk/courts-tribunals/first-tier-tribunal-general-regulatory-chamber>

First-tier Tribunal (General Regulatory Chamber) HM Courts and Tribunals Service PO Box 9300 Leicester LE1 8DJ

Email: grc@justice.gov.uk

Phone number: 020 39368963

16. Unpaid Financial Penalties – Implications and enforcement

The Council will take corresponding action to recover any unpaid Fin. Pens. (or part thereof) within the time period stipulated in a Penalty Notice and in line with the council's debt recovery policy.

17. Multiple Breaches

In respect of any single tenancy, the Council may not impose a combination of Fin. Pens. on an offender that, in total, exceeds the statutory maximum of £5,000.

However, when considering imposing more than one Pen. Not. on an offender (resulting from the offender committing 1 or more breaches at multiple properties) the Council will carefully consider whether the cumulative Fin. Pen. would be just and proportionate, in the circumstances, having regard to the offending behaviour, as a whole.

The Council shall operate and maintain a just, equitable and proportionate approach.

18. Further Help & Advice

If you would like further advice or clarification, contact Harborough District Council by telephone on 01858 828282 or by email at environmentteam@harborough.gov.uk

Alternatively, you can write to us at: Harborough District Council, The Symington Building, Adam & Eve Street, Market Harborough Leicestershire LE16 7AG

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Smoke and Carbon Monoxide (England) Regulations 2015 Financial Penalties

Harborough District Council Statement of Principles

Introduction

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

Purpose of the statement of principles

The council is required under these regulations to prepare and publish a statement of principles, which must follow this guide when deciding on the amount of a penalty charge.

The council may revise this statement of principles at any time, but where it does so, we must publish a revised statement.

When deciding on the amount of the penalty charge, the council will have regard to the statement of principles published at the time when the breach in question occurred.

The legal framework

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

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

The duty requires that landlords ensure that:

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

Also for tenancies starting from 1 October 2015:

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

Where the council believes that a landlord is in breach of one or more of the above duties, the council must serve a remedial notice on the landlord. The remedial notice is a notice served under regulation five of these regulations.

If the landlord then fails to take the remedial action specified in the notice within the timescale, the council can require the landlord to pay a penalty charge. The power to charge a penalty arises from regulation eight of these regulations.

A landlord will not be considered to be in breach of their duty to comply with the remedial notice, if they can demonstrate they have taken all reasonable steps to comply. This can be done by making written representations to The Environment Team, Harborough District Council, The Symington Building Adam & Eve Street Market Harborough Leicestershire LE16 7AG or complete our on line contact form, representation must be made within 28 days of when the remedial notice is served.

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

The purpose of imposing a financial penalty

The purpose of the council exercising its regulatory powers is to protect the interests of the public.

The aims of financial penalties on landlords are to:

- Lower the risk to tenant's health and safety
- Reimburse the costs incurred by the council in arranging remedial action in default of the landlord
- Change the behaviour of the landlord and aim to prevent future non-compliance
- Penalise the landlord for not installing alarms after being required to do so, under notice
- Eliminate financial gain or benefit from non-compliance with the regulations
- Be proportionate to potential harm outcomes, the nature of the breach and the cost benefit to comply with these legal requirements

The financial penalty - criteria and amount

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

In considering the imposition of a penalty, the council will look at the evidence concerning the breach of the requirement of the notice. This could be obtained from a property inspection, or from information provided by the tenant or agency that no remedial action had been undertaken.

For example, landlords can demonstrate compliance with the regulations by supplying dated photographs of alarms, together with installation records or confirmation by the tenant that a system is in proper working order.

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

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

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

The regulations state the amount of the penalty charge must not exceed £5,000.

The penalty charge comprises two parts, a punitive element (punishment) for failure to comply with the absolute requirement to comply with a remedial notice and a cost element relating to the investigation (investigative) costs, officer time, administration and any remedial works arranged and carried out by the council's contractors.

The penalty charge is payable within 28 days beginning with the day on which the penalty charge notice is served.

The council has discretion to offer an early payment reduction if a landlord pays the penalty charge within 14 days beginning with the day the penalty charge notice is served. Should a subsequent appeal be made the discount will be removed.

The charges are as follows:

- £2,500 for the first breach to comply with a remedial notice: £1,250 for early payment (33% reduction)
- £5,000 for each subsequent breach to comply with a remedial notice: £2,500 for early payment, (33% reduction)

Steps taken to impose penalty charge notices

The regulations impose a number of procedural steps which must be taken before the council can impose a requirement on a landlord to pay a penalty charge.

When the council is satisfied that the landlord has failed to comply with the requirements of the remedial notice, all penalty charge notices will be served within six weeks.

Where a review is requested within 28 days from when the penalty charge notice is served, the council will consider any representations made by the landlord. All representations are to be sent to The Environment Team, Harborough District Council, The Symington Building, Adam & Eve Street Market Harborough Leicestershire LE16 7AG or complete our contact form. The council will notify the landlord of its decision by notice, which will be either to confirm, vary or withdraw the penalty charge notice.

A landlord who has requested a review of a penalty charge notice and has been served with a notice confirming or varying the penalty charge notice, may appeal to the First-tier Tribunal against the council's decision. Appeals should be made within 28 days from the notice served of the council's decision on review.

If the penalty charge notice is not paid, then recovery of the penalty charge will be in accordance with the council's debt recovery policy.

However, in cases where a landlord has requested a review of the penalty charge notice, recovery will not commence until after 28 days from the date of the notice served giving the council's decision to vary or confirm the penalty charge notice. Where landlords do make an appeal to the First-tier Tribunal, recovery will commence after 28 days from when the appeal is finally determined or withdrawn.

Remedial action taken in default of the landlord

Where the council is satisfied that a landlord has not complied with a specification described in the remedial notice in the required timescale and consent is given by the occupier, the council will arrange for remedial works to be undertaken in default of the landlord. This work in default will be undertaken within 28 days of the council being satisfied of the breach. In these circumstances, battery operated alarms will be installed as a quick and immediate response.

Smoke alarms

In order to comply with these regulations, smoke alarms will be installed on every storey of residential accommodation. This may only provide a temporary solution as the property may be a high risk due to:

- Its mode of occupancy such as a house in multiple occupation or building converted into one or more flats
- Having an unsafe internal layout where fire escape routes pass through living rooms or kitchens
- It being three or more storeys high

A full housing health and safety rating system inspection will be carried out at this point also taking into consideration Local Authorities Co-ordinators of Regulatory Services (LACORS) Housing and fire safety guidance. This will consider the adequacy of the type and coverage of the smoke alarm system, fire escape routes including escape windows and fire separation measures such as fire doors, protected walls and protected ceilings. Any further works required to address serious hazards in residential property, that are not undertaken through informal agreement, will be enforced using the Housing Act 2004, in accordance with our Enforcement Policy.

Carbon monoxide alarms

In order to comply with these regulations, a carbon monoxide alarm will be installed in every room containing a solid fuel combusting appliance.

For more detailed information, including the LACORS fire safety guide provisions for certain types of existing housing, please visit [fire safety law and guidance documents for business \(GOV.UK\)](https://www.gov.uk/guidance/fire-safety-law-and-guidance-documents-for-business)

All communications for representations made against the Remedial Notice (regulation five) or the Penalty Charge Notice (regulation eight) are to be sent to:

Environment Team

Harborough District Council

Adam & Eve Street

Market Harborough

Leicestershire

LE16 &AG

Or by using our contact form

Harborough District Council

Report to the Performance Scrutiny Panel 23rd June 2022



Item Number:	8
Title:	Regulation of Investigatory Powers Act (2000) RIPA
Status:	Public report
Key Decision:	No
Report Author:	Babs Morris, Interim Monitoring Officer
Portfolio Holder:	Councillor Paul Dann
Appendices:	Not applicable

Executive Summary

This report provides details of the use of covert surveillance under the Regulation of Investigatory Powers Act (RIPA) by Harborough District Council.

Recommendations

To note that the Council has not to date had the need to invoke RIPA powers.

Reasons for Recommendations

To comply with the decision of the Council on 4th April 2011 that oversight of the RIPA Policy be referred to Scrutiny.

1. Purpose of Report

- 1.1 To update as required quarterly the Scrutiny Panel on the use of RIPA

2. Background

- 2.1 On 4th April 2011 the Council resolved that: "oversight of the RIPA Policy be referred to Scrutiny" (Council Minute 645(g) 2010/11).

- 2.2 The Human Rights Act 1998 (which became effective on the 2nd October 2000) incorporates into UK law the European Convention on Human Rights, the effect of which is to protect an individual's rights from unnecessary interference by the "State".

The relevant parts of the Regulation of Investigatory Powers Act 2000 (RIPA) are Part II which came into force on 25th September 2000 and regulates covert investigations and Part 1 Chapter II, the acquisition and disclosure of communications data which came into force on 5th January 2004. These provide a framework within which the "State" (the specified public bodies) can work to ensure that law enforcement and other important functions can effectively protect society as a whole.

- 2.3 The Council's Regulation of Investigatory Powers Act 2000 policy ("RIPA Policy") was updated in July 2013 following the coming into force of the Protection of Freedoms Act 2012. Sections 37 and 38 of that Act, amends the Regulation of Investigatory Powers Act 2000 to require that, where an Authorising Officer has granted an authorisation for the use of directed surveillance, the use of covert human intelligence sources or acquisition of communications data, judicial approval will be required.

- 2.4 The Council is required to make an application, without giving notice, to the Magistrates' Court. The Magistrates will give approval if and only if, at the date of the grant of authorisation or renewal of an existing authorisation they are satisfied that:

- (a) There were reasonable grounds for believing that obtaining the covert surveillance or use of a human covert intelligence source and whether it was necessary and proportionate and that these grounds still remain.
- (b) The "relevant conditions" were satisfied in relation to the authorisation.

Relevant conditions include that:

- (i) The relevant person was designated as an Authorising Officer.
- (ii) It was reasonable to believe that using covert surveillance or a covert human intelligence source was necessary and proportionate and that the relevant conditions have been complied with.
- (iii) The grant or renewal of any authorisation or notice was not in breach of any restrictions imposed under section 25(3) of RIPA (restrictions on the rank of the person granting the authorisation).
- (iv) Any other conditions provided for by an order made by the Secretary of State were satisfied.

If the Magistrates' Court refuses to approve the grant of the authorisation, then it may make an order to quash that authorisation.

- 2.5 To ensure compliance with this new requirement the Policy was amended and approved by Council on 29 July 2013. The Policy now provides that any Authorising Officer who proposes to approve an application for the use of directed surveillance, use of a covert human intelligence source or acquisition of communications data, must immediately inform the Senior Responsible Officer who will then make arrangements for an application to be made to the Magistrates' Court. It is anticipated that the Senior Responsible Officer will authorise the Investigating Officer to attend the Magistrates' Court to make the necessary application.
- 2.6 Further restrictions have now been imposed on local authority's use of RIPA. It restricts Authorising Officers from authorising the carrying out of directed surveillance unless it is for the purpose of preventing or detecting a criminal offence unless the criminal offence to be prevented or detected is punishable by a maximum term of at least six months' imprisonment or constitutes an offence under sections 146, 147 or 147A of Licensing Act 2003 (sale of alcohol to children) or section 7 of the Children and Young Persons Act 1933 (sale of tobacco to children under 18 years old). The Policy has been amended to reflect this provision.
- 2.7 Following a remote inspection in July 2020 by the Surveillance Commissioner, the Council was required to update its RIPA Policy to include guidance on the use of internet and social media (which was an outstanding recommendation) and to update the Policy to include changes brought about by the introduction of the Investigatory Powers Act 2016 ("IPA") and linked to the revised Codes of Practice for both Surveillance and CHIS (Covert Human Intelligence Source). The proposed amendments were considered by this Panel prior to the revised RIPA policy being adopted by Cabinet on 8 February 2021.

3. Details

- 3.1 The Panel is asked to note that the Council has not to date needed to invoke RIPA powers.

4. Implications of Decisions

4.1. Corporate Priorities

Monitoring of the policy supports all of the Corporate Priorities.

4.2. Financial

There are no direct financial implications arising from this report.

4.3. Legal

The Public Bodies defined in RIPA include Local Authorities and, therefore, Harborough District Councils' activities are subject to the RIPA framework. The Policy has been amended to reflect the legislative changes enacted by Section 37 and 38 of the Protection of Freedoms Act 2012.

4.4. Policy

Not applicable

4.5. Environmental Implications including contributions to achieving a net zero carbon Council by 2030

Not applicable

4.6. Risk Management

Not applicable

4.7. Equalities Impact

Not applicable

4.8. Data Protection

Not applicable

5. Summary of Consultation and Outcome

Not applicable

6. Alternative Options Considered

Not applicable

7. Background papers

N/A