

Private Sector Housing Enforcement and Licensing Policy

March 2021

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1. THE COUNCIL'S FRAMEWORK FOR ENFORCEMENT ACTION

- 1.1. This Policy sets out the general principles, relevant legislation and guidance, which will be applied in relation to enforcement action taken by Dartford Borough Council ('the Council') in respect of private housing in the borough of Dartford. Its implementation and effectiveness will be monitored and reviewed as and when there are changes to the legislation or the environment in which the service is operating.
- 1.2. The Policy is designed to:
 - Set out the legal requirements and the Council's approach to enforcement, including charges that may be imposed for enforcement
 - Enable the Council to make reasoned and consistent decisions regarding enforcement
 - Inform the public of the principles by which enforcement action is determined and subsequently taken
- 1.3. The Council operates with due regard to legislation and statutory guidance issued by the Ministry of Housing, Communities & Local Government (MHCLG) and any enforcement action taken will be compliant with statutory guidance.
- 1.4. All enforcement action follows four key principles:
 - Proportionality in the application of the law and in securing compliance
 - Consistency of approach
 - Transparency about how the Council operates and what those regulated may expect
 - Targeting of enforcement action
- 1.5. All investigations into alleged breaches of legislation will follow best professional practice and the requirements of the:
 - Police and Criminal Evidence Act 1984
 - Criminal Procedure and Investigation Act 1996
 - Data Protection Act 2018
 - UK GDPR
 - Human Rights Act 1998
 - Regulation of Investigatory Powers Act 2000
 - Criminal Justice and Police Act 2001
 - Criminal Justice Act 2003
 - Legislative and Regulatory Reform Act 2006
 - Regulatory Enforcement and Sanctions Act 2008
 - Equality Act 2010
- 1.6. It is recognised that there may be circumstances where shared or co-ordinated enforcement action may be taken with other agencies. In these cases, the Council will liaise with the other body to ensure that:
 - Any action is effectively co-ordinated;
 - Proceedings instituted are for the most appropriate offence; and
 - Duplication and inconsistencies are avoided.

- 1.7. Other bodies may include the Police, the Health and Safety Executive, Kent County Council, Immigration Services, Kent Fire & Rescue Service (KFRS) and the Council's internal departments such as Planning, Building Control and the Community Safety Unit. The Council benefits from close working arrangements with the local Fire Safety Officers.
- 1.8. The Housing Act 2004 and the Regulatory Reform (Fire Safety) Order 2005 place duties on both the Council and KFRS to enforce fire safety provisions within housing in the borough. The Housing Act 2004 (Section 10) places a duty on local authorities to consult with the Local Fire Authority where they intend to take action to remedy a fire safety hazard found in any HMO or common parts of a building containing one or more flats. Close working arrangements alongside the legislation helps to promote efficient use of resources, identify specific areas for inspection and enforcement and allow for appropriate monitoring and reviewing arrangements. It also provides for urgent or complex requests for assistance from either party.

2. GENERAL PRINCIPLES

- 2.1. The Council's aim is to improve the housing conditions in the private sector by the provision of advice and education. However, there are occasions where these methods are not successful in improving conditions and it may be necessary to consider enforcement action. All remedial work that is required must be sufficient to adequately remove or reduce risks but subject to having achieved these ends, not so excessive as to be burdensome.
- 2.2. In carrying out its duties, the Council will follow the framework outlined in [Section 1](#) of this document and will aim for transparency in any decision making and will keep clear and up to date records.
- 2.3. Officers will use their skill, knowledge, experience and judgement to decide how individual cases should be dealt with and whether a situation should be resolved by informal means or by formal proceedings. Officers will take advice and guidance from managers where appropriate.
- 2.4. Enforcement will be carried out with due regard to the circumstances of the individual or business and to ensure that the rights of individuals and organisations are safeguarded.

3. LEGISLATION

3.1. The Council is responsible for enforcing a wide range of statutory provisions relating to housing standards and environmental conditions affecting health and safety. The relevant legislation under which the Council will enforce is:

- Public Health Act 1936 (as amended)
- Caravan Sites and Control of Development Act 1960
- Local Government (Miscellaneous Provisions) Act 1976
- Protection from Eviction Act 1977
- Building Act 1984
- Housing Act 1985
- Landlord & Tenant Act 1985
- Environmental Protection Act 1990
- Housing Act 2004
- The Management of Houses in Multiple Occupation (England) Regulations 2006
- The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007
- Mobile Homes Act 2013
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order
- Housing and Planning Act 2016
- The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (amended)
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
- Regulator's Code of Practice 2014
- Smoke & Carbon Monoxide Alarm (England) Regulations
- The Housing & Planning Act 2016 (Banning Order Offences) Regulations 2017
- Deregulation Act 2015
- The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licenses) (England) Regulations 2018
- Housing, England The Licensing Of Houses In Multiple Occupation (Prescribed Description) (England) Order 2018

3.2. Relevant guidance underpinning legislation includes:

- MHCL Guidance for Local Housing Authorities "Civil Penalties under the Housing and Planning Act 2016"
- MHCL Guidance for Local Housing Authorities "Rent repayment orders under the Housing and Planning Act 2016"
- MHCL document "Housing Health & Safety Rating System; Enforcement Guidance"
- Retaliatory Eviction and the Deregulation Act 2015: guidance note
- Banning Order Offences under the Housing and Planning Act 2016 Guidance for Local Housing Authorities

- Database of rogue landlords and property agents under the Housing and Planning Act 2016 Statutory guidance for Local Housing Authorities
- Houses in multiple occupation (HMO) and residential property licensing reform: guidance for local housing authorities
- 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 (April 2020)
- Guide for local authorities: electrical safety standards in the private rented sector (June 2020)
- Retaliatory Eviction and the Deregulation Act 2015 - A guidance note
- Mobile Homes Act 2013 - A Best Practice Guide for Local Authorities on Enforcement of the New Site Licensing Regime

4. SCOPE & SERVICE STANDARDS

- 4.1. The types of properties dealt with by the Council include HMOs, single dwellings, empty properties and caravans. Cases are assessed and prioritised using professional judgement and knowledge and assigned an appropriate action, which may be in the form of advice, information being sent or a visit being made.
- 4.2. In the case of a complaint, where the Council deems that there is an imminent risk of harm to the health and safety of the occupiers then more immediate action may be taken. Issues falling into this category could include electrical, gas, water and structural issues.
- 4.3. Non-urgent single-family accommodation; complainants are initially advised to inform their landlord in writing of any defects and ask for these to be rectified within a reasonable period from the date of the letter. Should the landlord fail to carry out repairs or offer an acceptable response, or the complainant has already followed this process, then the case will be passed to a Private Sector Housing Officer. Informal action may be taken; this could include via telephone or written communication or a full formal Housing Health & Safety Rating System (HHSRS) inspection of the property.
- 4.4. In prioritising demand for action, if the Council, on reviewing housing conditions within the borough (or following a complaint or for any other reason), considers it appropriate to determine that a Category 1 or 2 hazard exists under the HHSRS, an inspection will be undertaken. Formal enforcement by way of serving of a Notice will not be undertaken where only Category 2 (low bands F – J) is evident; with the exception of Hazard Awareness Notices.
- 4.5. Registered social landlord complaints: The Council often receives complaints from housing association (HA) tenants requesting action against their landlord. Enforcement action will be limited to cases where the tenant is able to show that the internal complaints process of the HA has been exhausted and it would be inappropriate to refer the matter to the Housing Ombudsman because of outstanding health and safety concerns without a timely plan of action being provided by the HA.

In all other situations e.g. dissatisfaction with the HA's timescales, the tenant will be redirected to [The Housing Ombudsman Service](#).

4.6. **Leaseholder complaints**

The Council often receives complaints from leaseholders requesting assistance in taking action against other leaseholders or freeholders. Enforcement action will be limited to failure to licence enforcement, Category 1 hazards and high Category 2 hazards, where the leasehold flat is tenanted.

4.7. In all other situations e.g. civil disputes between freeholder and leaseholder, the leaseholder will be redirected to [The Leasehold Advisory Service](#).

4.8. **Owner-occupiers**

HHSRS does apply to owner-occupiers, however, the Council may choose to take informal action or serve a Hazard Awareness Notice in these cases. However, in circumstances where a hazard has implications for neighbouring properties/area and visitors to the dwelling, formal enforcement action may be suitable.

4.9. **Houses in Multiple Occupation (HMOs)**

A mandatory licence is currently required for HMOs with five or more occupiers living in two or more households sharing some facilities (but not a purpose-built flat situated in a block comprising three or more self-contained flats). **Full details of the Council's Licensing Policy can be found in the Council's Policy Guide to Mandatory Licensing of Houses in Multiple Occupation at [Annex 3](#).**

4.10. Regardless of whether they require to be licensed, HMOs are a priority, because of the increased risk of health and safety issues, and the Council will investigate any information received relating to the condition or management of an HMO that the Council is not aware of.

4.11. Information received regarding an HMO can come from a variety of sources such as other internal departments including Council Tax, Housing Benefit, Planning Enforcement, Housing Solutions, or externally via members of the public, tenants, landlords, agents, Kent Fire & Rescue Service, Immigration Service etc. In the case of an unknown HMO, further desktop investigations will be made which may include:

- Examining historic information held
- Internet resources
- Information provided on a Housing Act 2004 HHSRS Questionnaire
- Information gathered by an Officer whilst conducting an initial external visit/site inspection of a property to verify occupancy/property type etc. (The Housing Act 2004 allows access without prior notification where it is suspected HMO Licensing Management Regulations offences may have occurred)
- The issuing of a Local Government Miscellaneous Provisions Act 1974 Section 16 Requisition for Information form requiring the owner to declare their interests and occupation of the property

- 4.12. Where a new HMO is confirmed, a risk assessment will be completed to establish when an inspection will be made. In cases where an immediate inspection does not take place, a letter will be sent to the landlord advising of their responsibilities and standards required in an HMO. It will confirm that an inspection will take place to ensure that all relevant standards are being met and if non-compliant, formal enforcement action may follow.
- 4.13. After the inspection/enforcement action, as outlined in paragraph 4.12, the Council may conduct periodic 'desk top' reviews of an HMO by requesting submission of required certification such as annual Gas Safety Certification, fire detection servicing documents and electrical condition reports etc. Any non-compliance of such requests will be dealt with accordingly.
- 4.14. In the case of complaints received, with regard to a known and established HMO, a similar process to that outlined in paragraph 4.2 to 4.3 is followed. Issues relevant to paragraph 4.3 where imminent risk of harm requires immediate action would include those relating to fire detection and safe route of escape.
- 4.15. Licensed HMOs will be inspected at least once every 5 years from the date of application and the Council will carry out an annual desktop review to ensure compliance with licence conditions.

5. LEVELS OF ENFORCEMENT ACTION – GENERAL PRINCIPLES

- 5.1. Whilst formal enforcement action is a necessary and important part of the enforcement process, it is generally viewed as a last resort. The Council will comply with legislation by one or more of the following methods:
- 5.2. **Provision of advice and guidance**
Advice and guidance will be given to individuals, existing and prospective businesses and other organisations to comply with their legal obligations. This will be achieved by providing appropriate information, leaflets and may include face-to-face contact to discuss and help resolve potential problems.
- 5.3. **Informal enforcement**
In most cases, the Council will endeavour to seek the desired improvements or protection of the public's health and safety by working initially on an informal basis with those involved. Informal action may take a variety of forms, for example:
- Verbal requests
 - Letters or e-mails
 - Schedules of work

The advice will make clear what is expected to be done to meet a legal requirement. It will be made clear that formal action could follow if there is a failure to meet informal requests to carry out works to meet legal requirements.

5.4. Enforcement will normally progress from advice to formal enforcement. In serious cases, for example where the offence involves a significant breach of the law such that the residents' health, safety, environment or well-being is or has been put at risk, it may be appropriate to commence formal enforcement immediately. It may also commence immediately where HMOs owners/landlords/agents have already received guidance via a HMO information letter or email.

5.5. **Formal enforcement**

Formal action may be taken where:

- Informal action has failed
- There is a Category 1 hazard
- There is an actionable hazard which puts at risk a person's health and safety
- There are multiple hazards creating a more serious situation or overall lack of repair/maintenance of a property
- There is a history of non-compliance/poor management

This is not an exhaustive list; each case will be considered individually.

Formal action includes:

- The use of statutory (legal) notices
- Formal cautions
- Financial penalties (see [Annex 4](#) and [Annex 5](#))
- Prosecution

5.6. **Immediate action**

This includes the power to take emergency action by entry to premises (with a warrant if necessary) and making safe areas or articles, which cause imminent danger or serious harm.

5.7. **Interim measures**

In the case of both HMOs and single households, the Council may request that short-term interim measures are taken by the appropriate person to improve health and safety at the premises. Types of works may include the installation of battery operated smoke/heat detectors, clearance of escape routes or provision of a 30-minute fire door on a kitchen.

Circumstances where these measures may be requested include when the HMO occupancy is likely to cease within a short period (such as 28 days) or whilst a planning application is being considered for a change of use of the premises. These requests are at the discretion of a Manager and may not be appropriate for all HMOs or single households.

6. ENFORCEMENT POWERS UNDER THE HOUSING ACT 2004

- 6.1. The Housing Health and Safety Rating System (HHSRS) is an evidence based risk assessment system utilising statistical data on the impact of housing conditions on health and safety. The system assesses the likelihood of an occurrence that could cause harm and the probable severity of the outcome of such an occurrence within a 12-month period. The first part of the process involves the inspection of a dwelling and identifying whether there are any of 29 hazards present. Each identified hazard is then scored and this score (the hazard rating) places the hazard in one of 10 bands A to J. Any hazards scoring within a band A, B or C are classed as Category 1 hazards, whilst those falling in bands D to J are known as Category 2 hazards.
- 6.2. In the case of a Category 1 hazard, the Council has a duty to act. For hazards classed as Category 2, the Council has discretion to act.
- 6.3. There are a number of enforcement tools available to deal with Category 1 and 2 hazards in privately rented properties. The Council can:
- Serve a Hazard Awareness Notice
 - Serve an Improvement Notice
 - Make a Prohibition Order
 - Take Emergency Remedial Action (Category 1 only)
 - Make an Emergency Prohibition Order (Category 1 only)
 - Make a Demolition Order
 - Declare a Clearance Area
 - Require the production of documentation
- 6.4. The Council cannot take more than one of these actions (unless it is an emergency action) at any one time but can vary the action required if one of the actions taken has proved unsuccessful.
- 6.5. Section 8 of the Act requires that all Notices and Orders should have a statement of reason attached to them. The statement should include why one type of enforcement action was taken over another. A copy of the statement must accompany the Notice or Order.
- 6.6. When an Improvement Notice is served and there is a change in ownership of the property, the Notice can be enforced on the new owner or recipient. However, any outstanding liabilities such as fines will remain with the original owner or recipient of the Notice.
- 6.7. It is likely that Improvement Notices, Hazard Awareness Notices and Emergency Remedial Action will be the most frequently used courses of action. With the exception of a Hazard Awareness Notice, other Notices/Orders are registered as a local land charge.
- 6.8. If an Enforcement Notice is served on an HMO and it reverts to a single occupation, the Council will consider whether the impact of the hazard has diminished and take appropriate action i.e. to withdraw the Notice or amend.

6.9. See [Annex 1](#) for a flowchart of the enforcement procedure.

6.10. **Level of remedial works required**

As a minimum, Category 1 hazards must be reduced to a low Category 2. Where this is not possible, all reasonable steps must be taken to reduce the hazards as far as reasonably practicable. In some cases, such as listed buildings, Category 1 hazards may remain. This scenario will have been considered when deciding which course of action is most appropriate and may influence the Council's decision as to which type of enforcement action to take.

When deciding on the remedial works, regard must be given to the seriousness of the hazard, the ideal that the property should achieve, and the level of work required that is reasonable to reduce the hazard significantly without incurring excessive cost. For the hazard of fire, where the property is an HMO, the Council will consult with the Fire Authority before taking any action as required under section 10 of the Housing Act 2004.

6.11. **Category 1 and Category 2 hazards – risk assessment**

Where a Category 1 hazard exists, the Council has a duty to take action. The Council aims to prioritise cases in order of greatest risk and taking account of the vulnerability of the occupant. [Annex 2](#) illustrates prioritisation of hazards and options for action.

In the case of Category 2 hazards regard will be made to:

- The number of individual Category 2 hazards at the property which would appear to create a more serious situation when looked at together
- Whether the Council is already taking action to deal with Category 1 hazards in which case moderate Category 2 (D and E) hazards should be enforced at the same time
- The potential for the hazard to become a Category 1 hazard within a short duration (under 2 years)

6.12. **Hazard Awareness Notices**

The Hazard Awareness Notice is discretionary and may be used as a response to a minor hazard. There is no appeal and the Notice is not registered as a local land charge. It may be considered where the landlord has agreed to carry out repairs informally. It may also be considered for Category 1 hazards where the Council wishes to inform an owner-occupier of a particular hazard. In consideration of this, the Council will take account of the likelihood of harm to people who may visit the property and the vulnerability of the occupants. The Council will justify why a more lenient approach was taken. It may not be appropriate to serve a Hazard Awareness Notice where there are risks of falling objects such as slates from a roof. This is because it would be a clear risk to those visiting the premise as well as the owner-occupier.

6.13. **Improvement Notices**

An Improvement Notice can be served on all Category 1 and 2 hazards. It must, as a minimum, remove all Category 1 hazards and the hazard should not reoccur within 12 months of the Notice. A Notice can contain more than one hazard and it is the Council's policy to deal with all Category 1 and Category 2 hazards at the same time.

Timescales for remedial works to start must be 28 days or more from the date of service of a Notice. Different deadlines may be set for different hazards; these will be assessed on an individual basis by the Council and consideration will be given to the urgency, complexity and quantity of works required.

In general, **minor works** will be classed as those costing up to £1,500 to be completed by a professional tradesperson, and the landlord will be given 28 days for the works to be completed. **Intermediate works** will be classed as those costing up to £7,000 to be completed by a professional tradesperson, and the landlord will be given 2 months for the works to be completed. **Major works** will be classed as those costing over £7,000 to be completed by a professional tradesperson, and the landlord will be given 3 months for the works to be completed. Once the work has been completed, the Notice will be revoked formally in writing. Improvement Notices are registered as local land charges and any appeal must be made within 21 days of the service of a Notice.

6.14. **Prohibition Orders**

A Prohibition Order can be served for both Category 1 and Category 2 hazards and is effective 28 days after it has been served (if no appeal has been submitted). It may prohibit the use of part or all of the premises for some or all purposes or occupation by a particular number of households or individuals. For example:

- Where remedial action is unreasonable or impractical and conditions present a high risk
- To specify the maximum number of persons that should occupy a dwelling
- To specify the maximum number of person or households who should occupy the dwelling where there are insufficient facilities
- To prohibit the use of a dwelling to a specific group of people

In deciding whether a Prohibition Order should be served, regard will be given to the risk of social exclusion, whether the premises are listed or in a conservation area, whether the owner proposes to consider alternative uses, the effects on the community and the effect on the availability of local accommodation for re-housing any displaced occupants.

Prohibition Orders will be registered as local land charges and any appeal against an Order must be made within 28 days.

Compensation may be available in certain cases, for example if an appeal is successful.

6.15. **Suspending a Notice or Order**

The Council may suspend the action specified in an Improvement Notice or Prohibition Order. The Notice to Suspend may specify certain trigger points such as non-compliance of an undertaking given to the Council or a change in occupancy. The trigger points will be clearly stated in the Notice. The Council needs to consider the likely tenants who, in the next 12 months, could potentially occupy a premise, before deciding to suspend a Notice.

6.16. **Emergency measures**

Where the Council is satisfied that a hazard presents an imminent risk to the occupants of a premises emergency measures can be taken. It is for the Council to determine what constitutes an imminent risk. Emergency measures include emergency remedial action or an emergency Prohibition Order. Any appeal must be made within 28 days. An appeal will not prevent emergency action from being taken.

6.17. **Emergency Remedial Action**

Where a Category 1 hazard exists and there is an imminent risk of harm to the occupier, the Council may enter a premise to take remedial action to remove the imminent risk of serious harm. The Council will serve a Notice within 7 days of remedial action.

6.18. **Emergency Prohibition Orders**

If, in the view of the Council, the hazard involves a serious risk of harm to the occupant, the Council may enter a premise to prohibit its use. The Order will take effect immediately. It is for the Council to consider whether the action carried out gives grounds to revoke or vary the order.

6.19. **Demolition Orders**

This is a possible response to a Category 1 hazard. In deciding whether to issue an Order, the Council will:

- Take into account the availability of replacement housing for the occupants
- Take into account the demand for and sustainability of the accommodation if the hazard was remedied
- Consider the prospective use of the cleared site
- Consider the local environment and the impact of a cleared site on the appearance and character of the neighbourhood.

6.20. **Clearance Area**

The Council will declare an area a Clearance Area if it is satisfied that each of the residential buildings in the area contains one or more Category 1 hazards (or these buildings are dangerous/harmful to the health and safety of the occupants as a result of bad arrangements), and any other buildings in the area that are dangerous or harmful to the health of the inhabitants. Significant statutory public consultation forms part of this process.

6.21. **Overcrowding Notices for non-licensable HMOs**

The Council may serve an Overcrowding Notice on one or more of the relevant persons if it considers that an excessive number of persons are, or are likely to be, accommodated in the HMO.

6.22. **Service of formal Notices or Orders**

Notices and Orders will comply with and be served in accordance with the requirements of the relevant legislation and guidance. The person on whom the Notice or Order is served will be informed of the reason that this action is being taken, the timescale for completion of any works, the works that are legally required, representations that may be made, relevant appeal periods, details of any charges (see 6.28) and the consequences of non-compliance.

Contact details will be provided so that the detail and requirements of the Notice can be explained.

6.23. **Powers of entry**

The Council has the power of entry to properties to carry out its duties under the Housing Act 2004 provided that:

- Council officers have written authority stating the purpose for which entry is authorised
- The Council has given 24 hours' notice to the owner or occupier of the premises that they intend to enter (Section 239)

6.24. Failure to gain entry to the premises after all the above steps have been taken, may lead to the Council obtaining a warrant from a Justice of the Peace to include the power of entry by force if necessary.

6.25. If prior warning of entry is likely to defeat the purpose of the entry e.g. to establish whether an offence has been committed, then a warrant can also be obtained.

6.26. **Appeals**

All recipients of Notices and Orders made by the Council will be informed of their right to appeal to the First-Tier Tribunal Property Chamber (Residential Property) if they believe the Notice or Order has been served in error or if the recipient believes the proposed course of action is unjustified.

6.27. **Documents/information**

The Council also has the power, by Notice, to require documentation to be produced in connection with its enforcement, for example Gas Safety Certificates or Fire Detection Installation Certificates under Parts 1–4 of the Housing Act 2004, Section 235. The Notice will specify the consequences of not complying.

The Council may serve Section 16 Local Government (Miscellaneous Provisions) Act 1976 Notices requiring information relating to ownership, occupancy, rents etc.

6.28. **Power to charge for enforcement action**

The Council will make a reasonable charge as specified in Section 49 of the Housing Act 2004, to recover certain administrative and other expenses incurred in taking enforcement action. This charge is currently £420 plus VAT flat rate, however an extra charge may be made for any additional works. Charges are reviewed annually. Please note however, additional costs may also be payable if external specialist advice is needed e.g. a structural report. Enforcement action, which can incur a charge, includes:

- Serving an Improvement Notice
- Making a Prohibition Order
- Taking Emergency Remedial Action
- Making an Emergency Prohibition Order
- Making a Demolition Order

The Council will charge for taking enforcement action unless there are extenuating circumstances. Where this occurs the Head of Housing will make the final decision.

Examples of extenuating circumstances are where the landlords providing accommodation for others and is:

- Vulnerable due to their personal circumstances
- Financially vulnerable i.e. in receipt of a means tested benefit

6.29. **Non-compliance**

If a Notice is complied with, no further action will be necessary and it will be revoked. However, if the Notice is not complied with the Council will consider the following options:

- Prosecution
- Carry out the works in default
- Carry out the works in default and prosecute
- Consider whether a formal caution is appropriate
- Consider a Civil or Financial Penalty (see [Annex 4](#) and [Annex 5](#))
- Rent Repayment Order (see [Section 10](#))

The Council's aim is to ensure that instructions to commence legal proceedings are with the Council's Legal Service within 8 weeks of the expiry of the period for complying with a formal Notice, unless an extension is granted.

6.30. **Prosecution**

When there is failure to comply with an Improvement Notice without reasonable excuse, this constitutes an offence and the responsible person may be liable to prosecution. On summary conviction, persons can be fined up to level 5 on the standard scale (£5,000.00 maximum). The obligation to carry out the remedial works continues despite the fact that the period for completion has expired.

When there is failure to comply with a Prohibition Order, this also constitutes an offence if the premises is used in contravention to the Order, or permission is given for the premises to be used in contravention to the Order. Conviction fines up to level 5 on the standard scale (£5,000.00 maximum) may be levied. In addition, there is a further fine of up to £20 per day for every day or part day after conviction that the property is used in contravention.

6.31. **Works in default**

The Housing Act 2004 makes provisions for the Council to carry out the works to a property where the person responsible has failed to comply with a Notice. Works in default can be carried out instead of a prosecution or in addition to a prosecution. This is a discretionary power. Decisions to carry out works in default will be made in consultation with an appropriate manager. The cost of works plus administration charges will be recovered either as a civil debt or by virtue of a 'charge' being placed on the property records. Interest is added to outstanding charges at 4.5% above the current bank rate calculated on a daily basis.

Generally, works in default are used where there is an imminent risk to health and safety and where the remedy is relatively easy to achieve. If it is to be used in other circumstances, full justification based on the merits of the case will be required.

It may also be used in conjunction with prosecution where it is appropriate to do so. This will depend on the nature of the hazard but will be considered due to the delays often experienced during the prosecution procedure. The delays often result in the remedial action being postponed leaving the occupier living in unacceptable conditions.

In deciding whether works in default is an option, the Council will consider the imminent risk to health and safety and whether undue delay would put the occupier(s), visitors or the public at increased risk. The Council will also consider what the minimum works required would be to remove the risk. Works in default cannot be carried out if, as a result of the action a second, different hazard will result. Any remedial works must be extensive enough to remove the Category 1 hazard and reduce the level of Category 2 hazards to an acceptable level.

6.32. Action by agreement

The Housing Act 2004 also makes provision for remedial works to be carried out by agreement. The Council will arrange for the works to be carried out at the request of the person responsible. The person will be charged the full cost (including administration charges).

If the above action is taken, the Council will aim to ensure that the cost of the works will be repaid in full once the work is complete. If the costs incurred cannot be paid, they will be placed as a charge against the property. The Enforced Sale Procedure may then be used if considered appropriate (see paragraph 6.40).

6.33. Management Orders

Orders can be varied or revoked in accordance with the provisions of Part 4 of the Housing Act 2004. If a property is a licensable HMO, but, for whatever reason(s), there is no reasonable prospect of granting a licence, the Council will introduce a Management Order. The Council also has a duty to make an Order where the health and safety conditions (as described in Section 104 of the Act) are met.

Management Orders effectively mean that the Council (or its Agent) will take over the running of the property as if it were the landlord, including collecting rents, forming tenancies, carrying out repairs and other management matters. Duties can vary between different Orders, however, the owner retains certain rights depending on the type of Order including receipt of surplus rental income. Relevant costs are recoverable by the Council.

6.34. **Interim Management Orders**

The Council will make an Interim Management Order (IMO) if it is anticipated that the HMO will be licensed in the near future or because the Council has revoked the license. An IMO lasts no longer than 12 months and the expiry date of the IMO will be determined by the Council when it is made.

6.35. **Final Management Orders**

Final Management Orders (FMO) will last for no longer than 5 years and will be made on expiry of the IMO where a licence cannot be granted. When a FMO expires, a new one may be issued if necessary.

6.36. **Special Interim Management Orders**

Special Interim Management Orders (SIMO) are Orders authorised after a successful application to a First-Tier Tribunal Property Chamber (Residential Property). Where circumstances fall within a category prescribed by the national authority and it is necessary to protect the health, safety and welfare of occupants, visitors or neighbours. A FMO can follow a SIMO to protect persons on a long-term basis.

6.37. **Empty Property Management Orders**

Similarly, the Council can decide to take over the management of some empty properties in order to bring them back into use (see the Council's Empty Property Strategy).

6.38. **Interim Empty Dwelling Management Orders**

These are authorised after a successful application to a First-Tier Tribunal Property Chamber (Residential Property). The dwelling must have been wholly unoccupied for at least six months and there is no reasonable prospect that the dwelling will become occupied in the near future. An interim Empty Dwelling Management Order (interim EDMO) enables the Council to take steps to ensure, with the consent of the proprietor, an empty dwelling becomes occupied. An interim EDMO lasts no longer than 12 months.

6.39. **Final Empty Dwelling Management Orders**

These may replace an Interim Empty Dwelling Management Order (EDMO) if the Council believes that, the dwelling will become or remain empty and all appropriate steps have been taken under the Interim Order. A final EDMO lasts for 7 years. Once a Final EDMO expires, a new one may be issued if necessary. The Council has a duty to issue Interim and Final Management Orders where necessary but only as a last resort.

6.40. **Other actions for empty properties**

In addition to actions available under the Housing Act 2004, the following actions may be considered when dealing with empty properties and these may be instigated by other departments within the Council:

- Town and Country Planning Act 1990, Section 215. Notices can be served where a property is said to be “detrimental to the amenities of the neighbourhood”.
- Building Act 1984, Sections 76 – 79 provides powers to tackle “dangerous and ruinous structures”.

- Local Government (Miscellaneous Provisions) Act 1982, Section 29 gives power to the Council to secure empty properties against access, where there is considered to be a danger to public health.
- Environmental Protection Act 1990, Sections 79 – 82 gives power to enforce remedy of a condition prejudicial to health or that constitutes a statutory nuisance.
- Housing Act 1985, Sections 17, 289, and Local Government and Housing Act 1989, Section 93 provide the basis for the commencement of a compulsory purchase order.
- Law of Property Act 1925, Section 101 – enforced sales can be used when costs incurred as part of enforcement action cannot be paid and have been placed as a charge against the property. It can be an effective way of dealing with long term empty properties where the owner cannot be traced or is unwilling to work with the Council to bring the property back into occupation.

An enforced sale can only be carried out when the Council has placed a local land charge on the property. This would be carried out if the Council has undertaken Works in Default action (where the Council has paid for works to be done in lieu of the owner who is unwilling to act or is untraceable), or other debts to the Council such as non-payment of Council Tax.

The owner is given the opportunity to repay the debt prior to sale. If the monies are not paid within a specified period the Council can effectively act as a mortgagee and bring the property to sale on the open market at an auction or to a preferred buyer. All charges would be cleared from the proceeds of the sale, allowing the Council to recover the cost of the works previously carried out and the remainder would be paid to the owner.

7 CIVIL PENALTIES

- 7.1. Under the Housing Act 2004 and the Housing and Planning Act 2016, the Council may impose a Civil Penalty, as an alternative to prosecution, up to a maximum of £30,000 in respect of the following offences:
 - Failure to comply with an Improvement Notice (Housing Act 2004)
 - Failure to license or other licensing offences relating to HMOs (Housing Act 2004), which applies to both mandatory and additional HMO Licensing Schemes
 - Failure to comply with an Overcrowding Notice (Housing Act 2004)
 - Failure to comply with a regulation in respect of an HMO (Housing Act 2004)
 - Breaching a Banning Order (Housing and Planning Act 2016) (see [Section 8](#))
- 7.2. In setting the amount for the Civil Penalty, the Council will have regard to relevant statutory guidance.
- 7.3. **Details of the Council's enforcement procedure in respect of Civil Penalties can be found in [Annex 4](#).**
- 7.4. **Full details of the Council's statement of principles for the issuing of Civil Penalties can be found in [Annex 5](#).**

8 BANNING ORDERS

8.1. Banning Orders

Section 15(1) of the Housing and Planning Act 2016 provides for local authorities to apply for a Banning Order against a person who has been convicted of a Banning Order offence.

8.2. A Banning Order is an Order by the First-Tier Tribunal Property Chamber (Residential Property) which 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

8.3. A landlord subject to a Banning Order is unable to hold a licence for a HMO and their property may be subject to a Management Order.

8.4. Full details of Banning Orders can be found in [Annex 6](#).

9. ROGUE LANDLORD DATABASE

9.1. The Rogue Landlord Database records landlords and agents that are subject to a Banning Order or have committed a Banning Order offence. Only local authorities can make entries to the database.

9.2. Under the Housing and Planning Act 2016, local authorities have a **mandatory duty** to make an entry on the database where a landlord or property agent has received a Banning Order. They have the **discretion** to make entries where a landlord or property agent has been convicted of a Banning Order offence or has received two or more Civil Penalties within a 12-month period.

9.3. When considering its discretionary powers to make an entry, the Council will have regard to the following factors:

- The severity of the offence
- Any mitigating factors
- Culpability and serial offending
- How it may act as a deterrent for repeat offending

9.4. The Head of Housing will make the final decision on these issues.

9.5. Before making an entry on the database, the Council must issue the person with a Decision Notice of at least 21 days before making an entry, specifying the period for which the entry will be maintained.

9.6. When deciding the length of time the entry will be maintained, the Council will have regard to all the above factors.

9.7. All entries in the database are subject to variation or removal by the Council.

- 9.8. The Council will remove an entry if it was made based on one or more convictions for a Banning Order offence, all of which have been overturned on appeal.
- 9.9. The Council may also remove an entry or reduce the period it is on the database, if:
- One or more convictions for a Banning Order offence, but not all, have been overturned on appeal
 - One or more convictions for a Banning Order offence are spent
 - At least a year has elapsed since an entry was made because the landlord/agent received two or more Civil Penalties in a 12-month period

9.10. **Appeals**

A landlord or agent has no right to appeal to the First-Tier Tribunal Property Chamber (Residential Property) when an entry has been made after a Banning Order has been obtained.

A landlord or agent has the right to appeal to the First-Tier Tribunal Property Chamber (Residential Property) against the Council's decision to make an entry on the database under its discretionary powers. The appeal must be made before the end of the period in the Council's Notice. An entry must not be made until the appeal is decided or withdrawn.

10. RENT REPAYMENT ORDERS

- 10.1. The Housing and Planning Act 2016 revised the powers local authorities have in respect of Rent Repayment Orders (RRO). A RRO requires a landlord to repay a specified amount of rent (up to 12 months) in certain circumstances.
- 10.2. The Council can make an application to the First-Tier Tribunal Property Chamber (Residential Property) for a RRO to recover benefit payments related to housing, where the landlord has:
- Failed to comply with an Improvement Notice under the Housing Act 2004.
 - Failed to license a property requiring a license under the Housing Act 2004.
 - Failed to comply with a Prohibition Order under the Housing Act 2004.
 - Breached a Banning Order under the Housing and Planning Act 2016.
 - Used violence to secure entry to premises under the Criminal Law Act 1977.
 - Illegally evicted or harassed occupiers under the Protection of Eviction Act 1977 (see [Section 15](#))
- 10.3. The Council will consider making an application for a RRO when investigating the above offences. An application to the First-Tier Tribunal Property Chamber (Residential Property) for a RRO can be made if a conviction has been secured or a Civil Penalty issued or where there is no prior conviction.
- 10.4. Where there is a prior conviction, or a Civil Penalty has been issued (where there is no prospect of appeal), the full amount of rent (up to a maximum of 12 months) will be applied for and the First-Tier Tribunal Property Chamber

(Residential Property) is compelled by law to make an Order for that amount (if it has been correctly calculated).

10.5. Where a conviction has not been secured, the First-Tier Tribunal Property Chamber (Residential Property) will determine whether the Council has met the criminal standard in relation to the relevant offence. The Council will have regard to Government statutory guidance and will consider the following before deciding to make an application:

- **Punishment of the offender** – the Council will consider if making an application for an RRO will have a real economic impact on the offender. Where this is unlikely, i.e. where the amount of rent paid over the preceding 12 months is minimal and does not reflect the severity of the offence, the Council will consider prosecution or the issue of a Civil Penalty (where it can do so) as well as applying for a RRO
- **Deterrence** – The Council will consider whether the impact of a RRO is just financial or whether it will substantially deter and dissuade the offender and others from committing similar or repeat offences by making the RRO publicly available. Where this is unlikely, the Council will consider prosecution or the issuing of a Civil Penalty (where it can do so) as well as applying for an RRO
- **Removal of financial benefit** – The Council will only consider making an application for a RRO where the impact of such an Order will reflect any benefit gained from not being a responsible landlord. E.g. not carrying out necessary works to improve standards. Where it is unlikely that the amount recoverable is sufficient to mitigate the benefit, the Council will consider prosecution or the issue of a Civil Penalty (where it can do so) as well as applying for a RRO

10.6. Before making an application, the Council will serve a Notice of its intention to make an application, which will state the reasons for doing so. This will cover the above issues (where a conviction has not already been secured), the amount being sought and invite representations to be made within 28 days. The Council will consider any representations before making an application to the First-Tier Tribunal Property Chamber (Residential Property).

10.7. A tenant of a property, where a relevant offence has been committed by their landlord, can also make an application to the First-Tier Tribunal Property Chamber (Residential Property) for a RRO. The Council **will** inform tenants of this right and will assist tenants in preparing an application if necessary.

10.8. Failure to pay the amount required by a RRO will result in the Council pursuing recovery of the debt through the county court.

11 RE-DRESS SCHEME FOR LETTINGS AGENCY WORK AND PROPERTY MANAGEMENT WORK

- 11.1. Introduced in October 2014, it is a legal requirement for all lettings agents and property managers to belong to a Government approved Redress Scheme.
- 11.2. The two approved Redress Schemes are:
- Property Redress Scheme
 - The Property Ombudsman
- 11.3. The Council is the enforcing authority for this requirement and Government guidance states a £5,000 penalty for contravention should be the norm. A lower penalty will only be charged if the Council is satisfied that there are extenuating circumstances.
- 11.4. Any representations the lettings agent or property manager makes during the 28 day period following the Council's Notice of Intention to issue a fine will be taken into account, including whether the penalty would be disproportionate to the turnover/scale of the business or would lead to an organisation going out of business.
- 11.5. The decision as to whether a fine should be reduced and by how much will be made by the Head of Housing. A final appeal can be made by the landlord to the First-Tier Tribunal Property Chamber (Residential Property).
- 11.6. [Annex 7](#) outlines the enforcement process in more detail.

12. MINIMUM ENERGY EFFICIENCY STANDARDS

- 12.1. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended) requires that private sector landlords:
- Have an Energy Performance Certificate (EPC) and provide a copy to tenants whenever they rent their properties out; and
 - Ensure all rented homes have at least an E rating on the EPC.
- 12.2. **Details of the Council's procedure in respect of the Minimum Energy Efficiency Standards can be found in [Annex 8](#).**
- 12.3. **Full details of the Council's statement of principles for the issuing of financial penalties under the Minimum Energy Efficiency Standards can be found in [Annex 9](#).**

13. THE SMOKE & CARBON MONOXIDE ALARM (ENGLAND) REGULATIONS 2015

- 13.1. Private sector landlords are required to have:
- At least one smoke alarm installed on every storey of their properties
 - A carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire, wood burning stove)
 - Landlords must make sure the alarms are in working order at the start of each new tenancy
- 13.2. The Council can impose a fine of up to £5,000 where a landlord fails to comply with a Remedial Notice.
- 13.3. **As required by Regulation 13, the Council has issued a ‘Statement of Principles for Determining Financial Penalties as prescribed under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015’ (see [Annex 10](#)).**
- 13.4. Where the Council undertakes remedial action, the type of smoke detection fitted will, if reasonable and practical, meet the ideal standard. Normally the ideal standard would meet the minimum requirements contained in British Standard 5839 part 6:2019.

14. THE ELECTRICAL SAFETY STANDARDS IN THE PRIVATE RENTED SECTOR (ENGLAND) REGULATIONS 2020

- 14.1. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force from the 1 June 2020. The Regulations apply to new tenancies from 1 July 2020 and existing tenancies from 1 April 2021.
- 14.2. Under the Regulations, private sector landlords are required to have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at least every 5 years. Landlords must provide a copy of the electrical safety report to their tenants, and if requested, provide a copy to the Council.
- 14.3. Under these Regulations, the Council can issue a Remedial Notice to require landlords to carry out remedial works or arrange for the works to be carried out by the Council with the costs recovered from the landlord
- 14.4. The Council can impose a financial penalty of up to £30,000 where it is satisfied, beyond reasonable doubt, that a landlord has breached a duty under the Regulations.
- 14.5. **Details of the Council’s procedure in respect of the Electrical Safety Standards in the Private Rented Sector can be found in [Annex 11](#).**
- 14.6. **Full details of the Council’s statement of principles for the issuing of financial penalties under the Electrical Safety Standards in the Private Rented Sector can be found in [Annex 5](#).**

15. ILLEGAL EVICTION & HARASSMENT & RETALIATORY EVICTIONS

- 15.1. The Council has the legal power to investigate and prosecute under the provisions of the Protection from Eviction Act 1977.
- 15.2. The law makes it an offence to:
- Act in a manner likely to interfere with the peace or comfort of a tenant or anyone living with him or her;
 - Persistently withdraw or withhold services for which the tenant has a reasonable need to live in the premises as a home;
 - Take someone's home away from them without following the due process of the law.
- 15.3. The Council has a staged approach to enforcement wherever possible to ensure solutions are initially sought through education, co-operation and agreement.
- 15.4. Where mediation/negotiation is not successful, formal action will be necessary, which may ultimately lead to the issuing of a formal caution, prosecution or other summary action. The decision to prosecute will be made by the Head of Housing.
- 15.5. Retaliatory eviction was introduced by the Deregulation Act 2015 and applies to all new assured shorthold tenancies that started on or after 1 October 2015. Retaliatory eviction is where a tenant makes a legitimate complaint to their landlord about the condition of their property and, in response, instead of making the repair, their landlord serves them with an eviction Notice (Section 21).
- 15.6. If the tenant receives a Section 21 Notice, a court will refuse to order an eviction if:
- The tenant contacted their landlord or letting agent in writing before they received a Section 21 Notice
 - The tenant complained to the Council because the landlord did not take steps to fix the problem
 - The Council sent the landlord a Notice telling them to make improvements or saying it will do emergency work
- 15.7. A Section 21 Notice served between the time of the written complaint, and the Council issuing an improvement or emergency work notice, will also be treated as invalid.
- 15.8. In these circumstances, the Council will support the tenant with relevant evidence to support their claim of retaliatory eviction.

16. MOBILE HOMES

- 16.1. The Mobile Homes Act 2013 amends the Caravan Sites and Control of Development Act 1960 (CSCD), the Caravan Sites Act 1968 and the Mobile Homes Act 1983.
- 16.2. All relevant sites must have a licence to operate and the Mobile Homes Act 2013 legislates for a site licensing regime for relevant protected sites, giving councils more effective control of conditions. In appropriate cases, it provides councils with the tools required to take enforcement action including the power to serve Compliance Notices in relation to breaches of site licence conditions, emergency action powers, and the ability to carry out works in default and recover expenses.
- 16.3. The Act gives the Council powers to enforce site licence conditions against owners. If an owner is in breach of any of its site licence conditions, the Council may serve a Compliance Notice on the owner. A Compliance Notice must:
 - Set out the condition which, in the opinion of the Council, has been breached and the details of the failure;
 - Detail the steps the site operator must take to remedy the breach of the site licence condition(s); and
 - Specify a timescale for completion; and
 - Explain the right of appeal to the First-Tier Tribunal Property Chamber (Residential Property) against the Notice.
- 16.4. Failure to comply with a Compliance Notice within the period specified in the Notice is an offence, which on summary conviction carries a level 5 fine.
- 16.5. As a last resort, and where the licence holder has been convicted on two or more previous occasions of failing to comply with a Compliance Notice, the Council may apply to the court for revocation of the site licence.
- 16.6. Following a successful prosecution for breaching a Compliance Notice the Council may enter the site, carry out the necessary works, and recharge the owner. Unpaid charges can be placed as a charge against the site owner's land.
- 16.7. The Council may take emergency action where the site operator has failed or is failing to comply with a site licence condition and, as a result of such failure, there is an imminent risk of serious harm to the health or safety of any person who is or may be on the land.
- 16.8. Where the Council proposes to take emergency action a Notice must be served, giving the site operator reasonable notice of intended entry.
- 16.9. The emergency works carried out by the Council should be those works necessary to remove the imminent risk. It is possible that these works fall short of the standard required to comply with the site licence conditions. In those cases, the emergency action would need to be followed up by a Compliance Notice.

- 16.10. Within seven days of any emergency action being started, the Council must serve another Notice on the site operator.
- 16.11. The site operator has the right of appeal to the First-Tier Tribunal Property Chamber (Residential Property) on the grounds there was no imminent risk of serious harm or the action taken was not necessary to remove the imminent risk.
- 16.12. Subject to any appeal decision, the Council is entitled to recover, from the site operator, expenses incurred, including interest.
- 16.13. Expenses include the cost incurred in:
- Deciding whether to take the action
 - Preparing and serving any Notice or a demand for expenses and taking the action
- 16.14. The debt will be registered as a local land charge from the time it becomes payable (after the end of the period for appealing the demand, if no appeal is brought) and removed on payment.
- 16.15. **Fees and charges**
The Council can charge for functions associated with licensing and enforcement. The Council's fee setting policy can be found on [Dartford Borough Council's website](#). Fees and Charges are updated annually.

17. EQUALITY AND DIVERSITY

- 17.1. The Council is committed to welcoming and valuing diversity, promoting equality of opportunity, tackling unlawful discrimination and fostering good relations in accordance with the Equality Act 2010 and the Council's [Comprehensive Equality Policy](#). The Council, in delivering this policy, will ensure that no individual is discriminated against based on their sex, sexual orientation, marital status, pregnancy and maternity, gender reassignment, race, religion, belief, disability or age.
- 17.2. In carrying out its functions, the Council must have regard to the Public Sector Equality Duty and the need to achieve the objectives set out under s149 of the Equality Act 2010 to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

This a duty on the Council and that responsibility cannot be delegated to a contractor/service provider and is a continuing duty.

18. DATA PROTECTION

- 18.1. The Data Protection Act 2018 and UK GDPR regulate the processing of information relating to individuals, which includes the obtaining, holding, using or disclosing of such information.
- 18.2. The Council needs to collect and use certain types of information about its service users in order to carry out its everyday business and to fulfil its objectives and its statutory functions.

The Council's:

- **Data Protection Policy** sets out how it will protect special category and criminal convictions personal data; and
 - The **Private Sector Housing Privacy Notice** explains that the Council collects your personal information to administer these services.
- 18.3. The Council is signed up to the **Kent and Medway Information Sharing Agreement** and will abide by the conditions set out in the Agreement to ensure that information is used appropriately in accordance with the Data Protection Act 2018, UK GDPR and the Human Rights Act 1998.
- 18.4. The Council will treat all information received with the strictest of confidence wherever possible. Information relating to complainants and perpetrators may however be shared with other agencies for lawful purposes such as the purpose of preventing anti-social behaviour, crime or if there is a serious safeguarding concern.

19. COMPLAINTS PROCEDURE

- 19.1. Dissatisfaction with any actions or decisions must in the first instance be dealt with through the Council's **Corporate Complaints Procedure**. Complaints leaflets are also available from the Council offices.

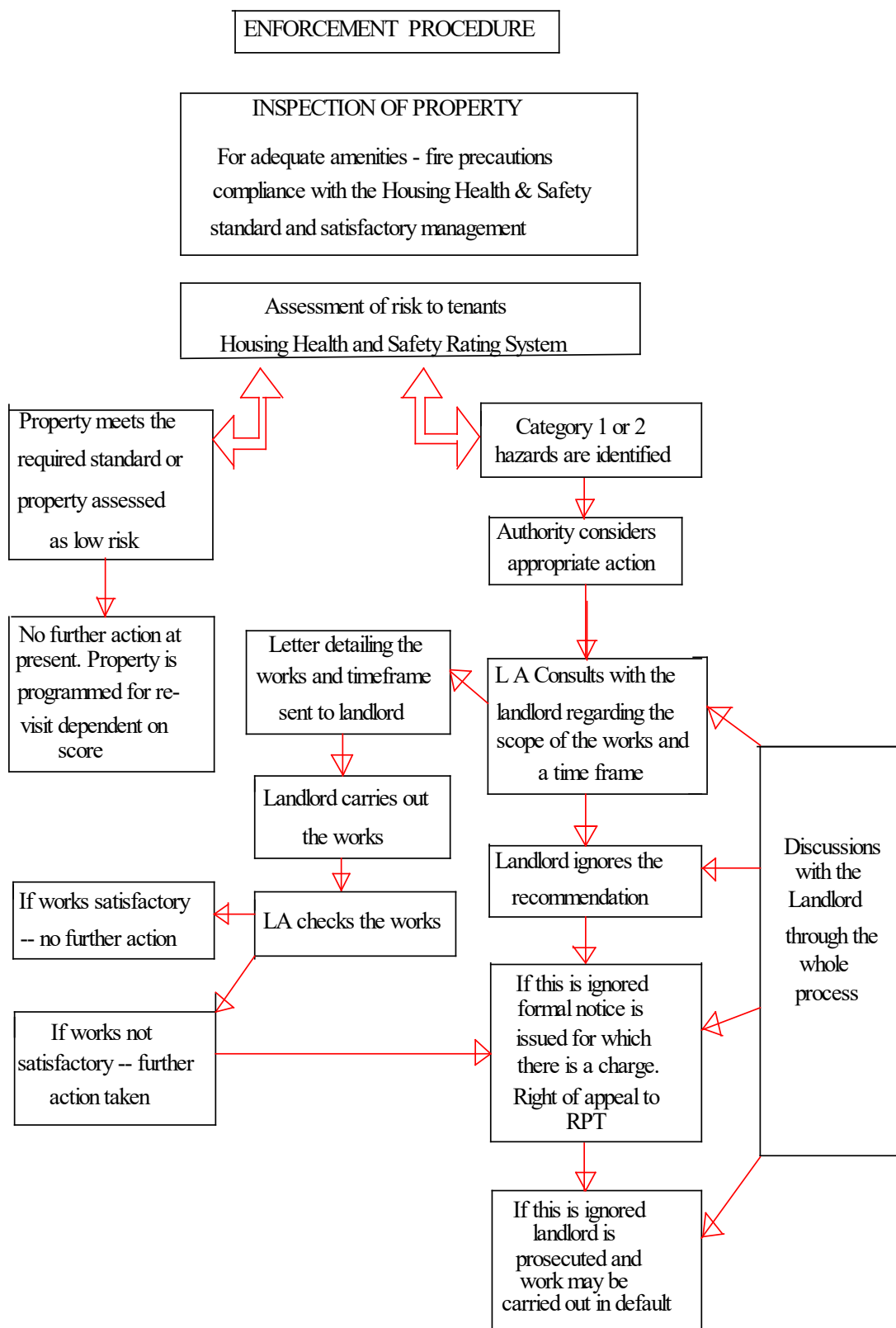
20. HOW TO CONTACT US

- 20.1. For all enquiries relating to this document and for general enquiries please call 01322 343152 or write to: Dartford Borough Council, Private Sector Housing Team, Civic Centre, Home Gardens, Dartford, Kent, DA1 1DR.

Email: housingprivatesector@dartford.gov.uk

ANNEX 1

ENFORCEMENT PROCEDURE



ANNEX 2

PRIORITISATION OF HAZARDS AND OPTIONS FOR ACTION

Priority (P)		Main options for Action	Other options available for consideration
Category one			
Immediate action	P1 - Highest band A+ Imminent risk to health and safety.	Emergency Remedial Action Emergency Prohibition Order Prohibition Order Demolition Order Improvement Notice	Clearance Order Suspended action Hazard Awareness Notice
High Priority	P2 – Hazard Bands A - C	As Above	Clearance Order Suspended action Hazard Awareness Notice
Category two			
Medium Priority	P3 - Hazard Bands High bands D - E	Improvement Notice Suspended action Hazard Awareness Notice	Prohibition Order
Low Priority	P4 – Hazard Bands Low bands F - J	Hazard Awareness Notice Suspended action	Improvement Notice Prohibition Order

ANNEX 3

POLICY GUIDE TO MANDATORY LICENSING OF HOUSES IN MULTIPLE OCCUPATION IN DARTFORD

This document contains the policy and procedural information for the Licensing of Houses in Multiple Occupation (HMOs) in the borough of Dartford in accordance with Housing Act 2004 Part 2. All applications will be dealt with in accordance with the Act, Government guidance and this policy.

1. **Purpose and aims of licensing**

- 1.1. The private rented sector has a valuable role to play in meeting demand and offering choice and flexibility in the housing market. However, historically, there have been concerns regarding the condition, safety and reputation of the sector.
- 1.2. It is against this backdrop that licensing seeks to ensure that:
 - Landlords or their agents are fit and proper persons
 - Standards of tenancy relations management and property management employed by a landlord or agent are adequate
 - Councils have measures available to ensure that landlords are encouraged to cooperate with licensing
 - Properties of landlords who are unwilling to or unable to meet the required criteria, are managed by Councils
 - Vulnerable tenants, in HMOs, are protected

2. **Application of the scheme**

- 2.1. A full definition of what constitutes an HMO is contained in sections 254 and 258 of the Housing Act 2004 (see [Annex 3.1](#)). This scheme applies to **all** HMOs that meet the following criteria:
 - is occupied by five or more persons
 - is occupied by persons living in two or more separate households; and meets:
 - a. The standard test under section 254(2) of the Act; any building in which two or more families/individuals share basic amenities
 - b. The self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or
 - c. The converted building test under section 254(4) of the Act. any converted building which comprises of one or more units of accommodation that are not self-contained
 - 2.2. The scheme will apply to the whole of the borough of Dartford currently administered by Dartford Borough Council ('the Council').
- #### 3. **HMO declarations**
- 3.1. Where it is unclear whether households are occupying the building as their only or main residence, the Council can declare the building to be an HMO to remove any doubt.

- 3.2. The Council must serve a Notice under Section 255 on the landlord or manager of the property within 7 days of deciding to make the declaration stating:
- The date of the Council's decision to serve the Notice
 - The date on which the Notice will come into force (which must be not less than 28 days from the date the Notice is served)
 - The recipients right to appeal to the First-Tier Tribunal (Property Chamber) (FFT) within 28 days of the Council's decision
- 3.3. If no appeal is made within 28 days, the Notice comes into force on the day stated on the Notice. If an appeal is made in time, the Notice does not come into force until the appeal procedure has been completed.
4. **Revocation of HMO declaration**
- 4.1. An HMO declaration can be revoked if:
- 4.2. The Council determines the declaration no longer applies
OR
The relevant person applies to have declaration revoked and it is granted by the Council.
- 4.3. If an application to revoke an HMO declaration is refused the Council must without delay serve a Notice on the applicant informing them of the:
- a. Decision
 - b. The reasons for it and the date made and,
 - c. The right to appeal to the First-Tier Tribunal Property Chamber (Residential Property) within 28 days of date of decision.
5. **Exemptions**
- 5.1. Certain buildings cannot be defined as HMOs, irrespective of whether they meet the definitions above:
- If it is occupied by only two people
 - If it is occupied by the owner (and their family if any) and one or two lodgers
 - If it is occupied by a religious community
 - If the occupiers have their main residence elsewhere
 - If no one in the property is required to pay rent
 - If the owner or manager is a public body
 - If the owner or manager is an educational institution
 - A building of self-contained flats if two thirds or more of the flats are owner-occupied
 - If the property is part of a guest house or hotel (unless an 'HMO declaration' is made)
(Further details are listed in [Annex 3.2](#))
- 5.2. The Housing Act 2004 gives the Council a general duty to take all reasonable steps to ensure that those whose properties fall within a licensing scheme apply for a licence. Every property subject to the mandatory licensing must be licensed unless:

- A Temporary Exemption Notice is in force (see [Annex 3.3](#)), or
- An Interim or Final Management Order is in force (see section 6.33 of the Private Sector Housing Enforcement and Licensing Policy)

6. **Processing a licence/renewal application**

- 6.1. A person having control of, or managing a licensable HMO must apply for a licence.
- 6.2. For the purposes of the application, the proposed licence holder will be:
 - a. the applicant, or
 - b. some other person, if both he/she and the applicant agree
- 6.3. The proposed licence holder must complete, sign and return, with all relevant information, an application form as supplied by the Council.

7. **Valid applications (new licences)**

- 7.1. An application will **not** be accepted as valid or be processed until the following is received:
 - a. A fully completed application form
 - b. All required supporting documentation
 - c. Current i.e. within last 12 months Gas Safety Certificate
 - d. Current (i.e. within last 5 years) Electrical Installation Condition Report completed by a competent person such as NAPIT, ELECSA, NICEIC contractor
 - e. Fire Detection systems – for systems less than 12 months old – the design, installation and commissioning certificates for the system
 - f. Or if older than 12 months, the most recent servicing/maintenance certification for the system
 - g. Emergency lighting – for systems less than 12 months old, the installation certificate
 - h. For systems older than 12 months, the most recent servicing/maintenance certification
 - i. Copy of a Tenancy Agreement
 - j. Proof of address of the applicant
 - k. Annotated floor plan showing rooms sizes and fire safety measures
 - l. Proof of payment of licence fee is provided

8. **Licensing process**

- 8.1. The Council aims to process an application within 12 weeks of a valid application being received. Occasionally, the Council requests a landlord's agreement for an extension to this processing time. Each application will be processed in accordance with the Licensing Application Flowchart found in [Annex 3.4](#).

9. **Property inspection**

- 9.1. The Council will assess when an HHSRS inspection of the HMO is required using a risk assessment matrix based on information already held and provided within the licence application (see [Annex 3.5](#)).

- 9.2. Those assessed as posing a high risk to occupiers will be inspected as soon as possible during the licensing application process. All licensed HMOs will be inspected during their licence period. Any Category 1 Hazards will be dealt with as outlined in the Private Sector Housing Enforcement & Licensing Policy.
- 9.3. An annual desktop review/risk assessment may be undertaken. The Council will prioritise works according to the level of risk. The Council cannot attach conditions to the licence on the expectation of the works being carried out. Where applicable, the owner will be informed by a variation to the initial licence of works required and timescales for completion in accordance with these aforementioned policies/legislation.
10. **Standards**
- 10.1. HMOs should be free of any Category 1 Hazards, meet the standards outlined in the Council's Amenity Standards (see [Annex 3.6](#)) and comply with legislation and statutory guidance issued.
- 10.2. A licence shall be granted for a period of five years unless special circumstances are identified where it is appropriate for a licence to be issued for a shorter amount of time, or refused.
- 10.3. On or before expiry of the licence, the licence holder must apply to renew the licence. Where a licence has been issued for a period less than five years, no additional monies will be payable until the expiration of a five year period from the date of the first instance, except on change of a licence holder where an administration charge would apply.
- 10.4. On **renewal**, the licence holder will complete an application form detailing any changes, in respect of the HMO, using a Licence Renewal Application Form; a fee is payable.
- 10.5. During any period of the licence, the licence holder shall notify the Council of any changes to any particulars relating to the house and/or the licence.
- 10.6. The licence holder or an interested party may request in writing for the licence to be revoked or varied at any time.
- 10.7. The Council may also revoke or vary a licence at any time.
11. **Public register**
- 11.1. The Council must establish and maintain a public register of all the licences granted by them, of all Temporary Exemption Notices served by them and of all Management Orders that are in effect. An edited version is available on the Council's website, whilst an unedited version is available on written request.
12. **Refusal to grant a licence**
- 12.1. The Council may refuse to grant a licence if it is not satisfied that the house is reasonably suitable for occupation by the maximum number of households or persons specified in the application for the licence, and the house cannot be made suitable by the imposition of conditions in the licence and/or it fails to provide adequate amenities in accordance with the Council's Amenity Standards Guidance in [Annex 3.6](#).

12.2. The Council may refuse a licence if:

- The proposed licence holder is not a fit and proper person (see below)
- The proposed licence holder is not the most appropriate person to hold the licence
- The proposed manager of the house is not a fit and proper person
- The proposed management arrangements for the house are not satisfactory

13. **Fit and proper person criteria**

13.1. The Council must consider evidence relating to whether the proposed licence holder or the manager is a fit and proper person. They must also consider any evidence regarding any person associated or formally (previously) associated with the proposed licence holder or manager, whether on a personal, work or other basis if this is relevant.

13.2. The Council will consider offences regarding:

- Fraud, or other dishonesty
- Violence
- Drugs
- Sexual Offences Act Schedule 3

(See [Annex 3.7](#) for details of spent offences)

13.3. The Council will also consider any unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in connection with a business.

13.4. The Council will consider if there has been a contravention of any provision of housing or landlord and tenant law. In particular, within the last five years, whilst in control of any property that:

- Has been subject to a control order
- Has been subject to proceedings by a local authority
- Has had to have works in default carried out by any local authority
- Has been subject to a Management Order under the Housing Act 2004
- Has been refused a licence or breached conditions of a licence
- Is subject to a Banning Order – Housing and Planning Act 2016
- Is listed on the Rogue Landlord Database – Housing and Planning Act 2016

13.5. The final decision as to whether an applicant is unfit will be made by the Head of Housing.

14. **Management Orders**

14.1. Where there is no prospect of an HMO being licensed, the Act requires that the Council use its Interim Management Order powers. This enables the Council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. In appropriate cases, this can be extended via a Final Management Order to five years, with the Council also having the power to grant tenancies. Financial Management Orders may be applied beyond the five year period.

15. **Licence fee**

- 15.1. Section 63 (3) of the Act states that the Council may require the application to be accompanied by a fee fixed by the Council.
- 15.2. Paragraph (7) of this section allows the Council when fixing fees under this section, **to take into account all costs incurred in carrying out their function to grant licences for certain HMO's.**
- 15.3. The fees for licensing and re-licensing are calculated using a matrix, which includes Officer time, as well as administrative costs. The Council will require an application for a licence to be accompanied by a fee. Licence fees are reviewed annually and published on the Council's website.

16. **Conditions of the licence**

- 16.1. Each licence must contain the following standard conditions:
- The licence holder must supply, for the Council's inspection, a valid current Gas Safety Certificate, obtained in regard to the property which is renewed annually
 - The licence holder must keep electrical appliances and furniture made available by the landlord in the house in a safe condition and to submit, on demand, a declaration of their safety
 - The licence holder must ensure that smoke alarms are correctly positioned and installed in the house, and to keep them in proper working order. They will submit, on demand, a declaration of their condition and location in the property
 - To supply to the occupants a written statement of the terms on which they occupy it
- 16.2. **Minimum sleeping room sizes:**
- a) 6.51 m² for one person over 10 years of age
 - b) 10.22 m² for two persons over 10 years of age
 - c) 4.64 m² for one child under the age of 10 years
- 16.3. The license holder must comply with any scheme which is provided by the Council to the license holder and which relates to the storage and disposal of household waste at the HMO pending collection.
- 16.4. The Council has the power to include further conditions as necessary that regulate the management, use and occupation of the house and the condition and contents of the house. These conditions will be specific to the circumstances found in each individual HMO.
17. **Breach of conditions**
- 17.1. Where a person managing or having control of an HMO permits another person to occupy the house and this results in the house being occupied by more households or persons than is authorised by the licence, the person in control or managing will be liable on summary conviction to a fine up to level 5 on the standard scale or a Civil Penalty (see Civil Penalty Procedure at [Annex 4](#)).

17.2. A person managing or having control of an HMO that is required to be licensed under this scheme, will be committing an offence if he/she does not licence the HMO, and will be liable, on summary conviction, to a fine up to level 5 on the standard scale or a Civil Penalty.

17.3. The licence holder or a person, on whom restrictions or obligations under a licence have been imposed, will have committed an offence if he/she fails to comply with any of the conditions on the licence and will be liable on summary conviction to a fine up to level 5 on the standard scale or a Civil Penalty.

18. **Ending the licence**

18.1. There are a number of ways in which the licence can be ended. However, if the licensed property ceases to require a licence (because it no longer falls within the mandatory, discretionary or selective licensing regimes), the licence continues in force.

This is important because the conditions applicable to the licence will continue and will have to be adhered to by the licence holder. The licence can only end in one of the following ways:

- **Passage of time** - The licence expires on the date stated within it, unless a new licence is granted following a fresh application
- **Death of the licence holder** - The licence ceases to be in force upon the death of the licence holder. However, for a period of 3 months from the date of the licence holder's death, the property is to be treated as if, on the date of death, a Temporary Exemption Notice (TEN) had been served (see **Temporary Exemption Notices** at [Annex 3.3](#)). This ensures that, although the licence is no longer in force, there is no immediate threat of enforcement proceedings
- During the initial 3 months, the personal representatives of the licence holder can request the service of a further TEN, to take effect as the first period of exemption comes to an end. If the Council refuses to serve a further TEN, they must comply with the notice provisions explaining their reasons (see [Annex 3.3](#) for further details)
- **Sale of the property** - If the property is sold and the licence holder is no longer the landlord or manager of the property, the licence is no longer effective (since licences are non-transferable). The new owner will need to make arrangements to apply for a new licence or a Temporary Exemption Notice (see [Annex 3.3](#)), as the case may be

19. **Revocation**

19.1. The Council may revoke a licence (i.e. bring it to an end before it expires by passage of time) in the following circumstances:

- a. With the agreement of the licence holder
- b. There has been serious or repeated breaches of a licence condition
- c. The licence holder is no longer a fit and proper person to hold the licence e.g. in receipt of a Banning Order
- d. The management of the property is no longer being carried out by persons who are fit and proper persons to be involved in its management

- e. In respect of a property subject to selective licensing, a HMO licence has been granted (allowing for the selective licence to be revoked)
- f. The property ceases to fall within the mandatory, discretionary or selective licensing regimes and the Council considers, were a new application to be made for a licence, the structure of the property is such that a new licence would not be granted

19.2. A licence is non-transferable and applies to the named licence holder at the given address only. If the property is sold or transferred or the licence holder changes, a new application will be necessary and fees will be charged in accordance with Officer time spent processing this.

20. **Rights of appeal**

20.1. Where the Council has refused an application for a licence the applicant, or any relevant person, may appeal to the First-Tier Tribunal Property Chamber (Residential Property) against the decision within 28 days of the date specified in the appropriate notice.

20.2. Where the Council has granted a licence the applicant, or any relevant person, may appeal to the First-Tier Tribunal Property Chamber (Residential Property) against the decision or the conditions that apply, within 28 days of the date specified in the appropriate notice.

20.3. Where the Council has made a decision to either vary or revoke a licence, or has refused to vary or revoke a licence, the licence holder, or any relevant person, may appeal to the First-Tier Tribunal Property Chamber (Residential Property) against the decision within 28 days of the date specified in the appropriate notice.

20.4. The First-Tier Tribunal Property Chamber (Residential Property) may allow an appeal outside of these periods if it is satisfied there is a good reason.

20.5. Contact details: First-Tier Tribunal (Property Chamber) Residential Property, Havant Justice Centre, The Court House, Elmleigh Road, Havant, Hampshire, PO9 2AL
Telephone No: 01243 779394

21. **Unlicensed HMOs**

21.1. Unlicensed HMOs may be identified during pro-active investigations by the Council or brought to the attention of the Council. Where such premises are identified, formal action such as Civil Penalty/legal proceedings/Rent Repayment Order may be considered and the landlord will be invited to make representations. They will also be encouraged to make a licence application as soon as possible. Licences will only be issued following receipt of a valid application and to 'fit and proper' persons.

21.2. Landlords who fail to reapply for a licence in properties that require a renewal of their licence or fail to provide the required information or the appropriate fee within 28 days may also be investigated for failing to licence a licensable property.

- 21.3. All practical steps will be taken to assist the owner of the property to satisfy the licensing requirements.
- 21.4. The Council or tenant may make an application for a Rent Repayment Order (see [Section 10](#) of the Private Sector Housing Enforcement & Licensing Policy) to the First-Tier Tribunal (Property Chamber (Residential Property)), where a landlord has failed to license a property requiring a licence under the Housing Act 2004.

ANNEX 3.1

Housing Act 2004 Section 254

Meaning of "house in multiple occupation"

ANNEX 3.2

Housing Act 2004 SCHEDULE 14 Section 254

Buildings, which are not HMOs for purposes of this Act (Excluding Part 1)

Housing Act 2004 Section 258

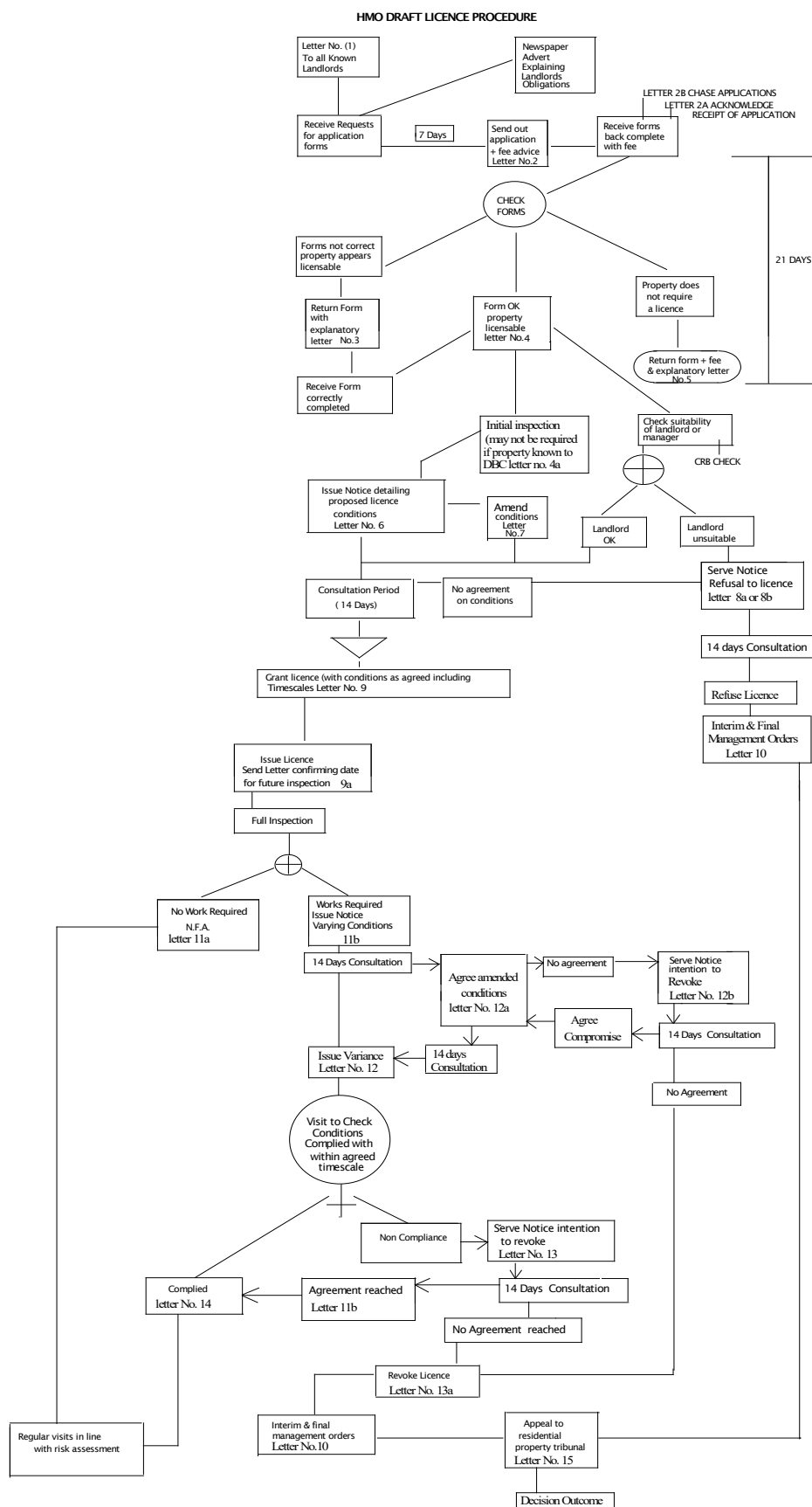
HMOs; persons not forming a single household

ANNEX 3.3

TEMPORARY EXEMPTION NOTICES

- 1.1. The Council may, if it thinks fit, serve a Temporary Exemption Notice (TEN) where a person who is required to be licensed notifies the Council that they propose to take steps to secure that the property is no longer required to be licensed. The TEN is served on that person. A TEN may also be used on death of a licensee/sale of a property.
- 1.2. The TEN exempts that property from being licensed for a period of 3 months (from the date the Notice is served). In exceptional circumstances, the Council may serve a second TEN, that lasts for a further 3 months and that takes effect when the first TEN ends. No further TEN can be served after the expiry of the second TEN.
- 1.3. If the Council decide not to serve a TEN, they must serve on the person requesting the TEN a Notice informing them of:
 - a. Their decision
 - b. The reasons for it and the date on which it was made
 - c. The right to appeal against that decision to the First-Tier Tribunal FFT (Property Chamber)
 - d. The time limit for appealing (28 days from the date the decision was made)
- 1.4. Where a TEN is not served, it is a defence to any enforcement proceedings for failing to hold a licence that the time limit for appealing is still running or, as the case may be, an appeal is being pursued.

HMO LICENCE PROCEDURE



ANNEX 3.5

RISK ASSESSMENT FORM

Dartford Borough Council

H.H.S.R.S. RISK ASSESSMENT FORM

HMO & SINGLE HOUSEHOLD PROPERTIES

PROPERTY DETAILS

Address Details	Total Points =
	481 + Points Year 1 405 - 480 Points Year 2 330 - 404 Points Year 3 230 - 329 Points Year 4 0 - 229 Points Year 5
Date of Assessment :	
OFFICER :	YEAR VISIT REQUIRED:

CRITERIA	CONDITIONS	SCORING
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1) Planning / Building Control Consent	No	30 Points
	Yes/not required	0 Points

2) Storey Heights	4+	100 Points
	3	60 Points
	2	20 Points
	1	10 Points

3) Hazard Category	1	100 Points
	2	20 Points

4) Number of Occupants	8+	100 Points
	7	80 Points
	6	70 Points
	5	60 Points
	4	40 Points
	3	30 Points
	2	20 Points
	1	0 Points

5) Property Type	HMO No Resident Landlord	60 Points
	HMO with Resident Landlord	40 Points
	Self Contained Flats	10 Points
	Single Occupation	5 Points

6) Means of Escape (Fire Doors) Smoke Seals & Intumescent Strips	None	60 Points
	Partial	30 Points
	Complies	0 Points

7) Other Fire Precautions (Fire Alarms etc)	None	60 Points
	Partial	30 Points
	Complies	0 Points

8) Provision of Amenities	Unsatisfactory	40 Points
	Partial	20 Points
	Satisfactory	0 Points

9) Sharing of Amenities	All Shared	40 Points
	Partial	20 Points
	Exclusive	0 Points

10) Date of last HHSRS Inspection	5+ years	50 Points
	4 years	40 Points
	3 years	30 Points
	2 years	20 Points
	1 year	10 Points
	Less than one year	0 Points

11) Additional Risks		
At the discretion of PSH Officer in Consultation with Senior PSH Officer Example: Portable gas /paraffin heaters, petrol storage, residential occupation above commercial premises, history of poor management/non compliance.	High Risk	100 Points
	Medium Risk	50 Points
	Minor Risk	20 Points
	None	0 Points

Total	
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ANNEX 3.6

GUIDANCE TO HMO AMENITY STANDARDS

Guidance to HMO Amenity Standards

ANNEX 3.7

INFORMATION ON DISCLOSURE AND SPENT OFFENCES

Under the Housing Act 2004, licence holders and managers of houses in multiple occupation must be fit and proper persons to undertake the responsibilities of running them. In order to assist the Council in making proper assessment of your suitability, you are asked to provide details about previous convictions for criminal offences. Under the Rehabilitation of Offenders Act 1974, you are not required to provide details about previous convictions which are "spent". A conviction becomes spent after a certain length of time, which changes depending upon the sentence and your age at the time of conviction (the periods are halved if the conviction took place when you were aged 17 or less).

Sentence	Period of good conduct needed for conviction to be spent
6 months to 2½ years imprisonment	10 years
Less than 6 months' imprisonment	7 years
Borstal Training	7 years
A fine or Community Services Order	5 years
Probation Order, Conditional Discharge, or Bind Over	1 year
An Absolute Discharge	6 months

Note:

If a person is sentenced to more than 2½ years in prison, his/her conviction can never become "spent".

ANNEX 4

CIVIL PENALTIES ENFORCEMENT PROCESS

1. **The prosecution principle**
 - 1.1. The Council will carry out the investigation into the case as it would any other case it considers for criminal proceedings. The Council will satisfy itself that there would be a reasonable expectation of securing a conviction and that the case would be proven 'beyond a reasonable doubt' (the criminal standard).
 - 1.2. A case file will be developed in line with the Council's internal procedures for criminal investigations. Each case will be required to satisfy:
 - a. **The evidential stage** – The Council will be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. In doing so the Council will also consider any defence there may be, and how it is likely to affect the prospects of conviction.
 - b. **The public interest stage** – even if the evidential stage is met the Council will also consider whether a prosecution would be in the public interest and will consider the following factors in determining this; the circumstances of and the harm caused to the victim, whether the suspect is under the age of 18 at the time of the offence, the impact on the community, whether a prosecution is a proportionate response and whether sources of information require protecting (this usually only applies to issues of international relations and national security).
 - 1.3. Each case will be presented to the Housing Solutions & Private Sector Manager and the Council's Legal Service to review and confirm these stages have been satisfactorily met before considering the imposition of a Civil Penalty.
2. **The Notice process**
 - 2.1. Before imposing a Civil Penalty, the Council will serve a Notice of Intent. This will be served within 6 months of determining whether an offence(s) has been committed. The recipient of the Notice may make written representations to the Council. Any representations must be made within a 28-day period and will be fully considered by the Council. It is recommended that any representations made are accompanied by supporting evidence. After the end of the period for representations the Council will:
 - a. Decide whether to impose a financial penalty.
 - b. If it decides to impose a financial penalty, decide the amount of the penalty.
 - c. In determining whether to impose a financial penalty, and the level of any penalty, the Council will consider any representations received.
 - 2.2. The Council's expectation is that a landlord/letting agent will also use the 'Notice of Intent' stage to set out their financial circumstances and supply supporting evidence of this, which will then be considered in whether to proceed to a Final Notice and the amount of penalty to impose.

- 2.3. If the Council decides to impose a financial penalty a Final Notice will be served. This will set out:
- a. The amount of the financial penalty (and any relevant discount),
 - b. The reasons for imposing the penalty,
 - c. Information about how to pay the penalty,
 - d. The period for payment of the penalty (28 days),
 - e. Information about rights of appeal,
 - f. The consequences of failure to comply with the Notice.
- 2.4. The Council 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.
- 2.5. **Annex 5 details the Council's statement of principles for the issuing of Civil Penalties.**
3. **Appeals**
- 3.1. A recipient of a Final Notice may appeal to the First-Tier Tribunal Property Chamber (Residential Property) against the decision to impose a penalty, or the amount of the penalty within 28 days of receiving the Final Notice.
- 3.2. If an appeal is lodged the Final Notice is suspended until the appeal is determined or withdrawn.
- 3.3. The First-Tier Tribunal Property Chamber (Residential Property) has the power to confirm, vary (increase or reduce) the size of the Civil Penalty imposed or to cancel the Civil Penalty.
- 3.4. Where an appeal results in the First-Tier Tribunal Property Chamber (Residential Property) confirming or varying the Civil Penalty the Council will offer the recipient the early payment discount of 50% if the penalty is paid within 14 days of receipt of written confirmation of the First-Tier Tribunal Property Chamber's (Residential Property) decision.
4. **Recovery**
- 4.1. Where the Civil Penalty is not paid the Council will seek to recover the amount (and any legal costs for doing so) through the County Court.

ANNEX 5

STATEMENT OF PRINCIPLES FOR THE ISSUING OF CIVIL PENALTIES AND FINANCIAL PENALTIES UNDER THE ELECTRICAL SAFETY STANDARDS

1. **Purpose**

1.1. This statement sets out the principles that Dartford Borough Council ('the Council') will apply when considering the imposition of penalties under the following statutes:

- The Housing Act 2004 (as amended) and the Housing and Planning Act 2016 in respect of Civil Penalties; and
- The Housing and Planning Act 2016 in respect of financial penalties under the Electrical Safety Standards in the Private Rented Sector (England) Regulations

1.2. The Government has issued statutory and non-statutory guidance, which the Council will consider when deciding whether to issue penalties.

2. **Overarching principles for issuing a penalty**

2.1. These principles are:

- I. To lower or remove the risk to tenant's/occupant's health and safety
- II. To remove financial gain or benefit from non-compliance
- III. To protect the interests of the public
- IV. To penalise the perpetrator for the offence(s)
- V. To change the behaviour of the perpetrator and to prevent future non-compliance
- VI. To dissuade others from offending

[The Council considers points I. and II. to be the most significant and in-line with the objectives of the Council in protecting the health, safety and welfare of private tenants and improving standards in the private rented sector].

2.2. **Civil Penalties** – The Council may impose a Civil Penalty, as an alternative to prosecution, up to a maximum of £30,000 in respect of the following offences:

- Failure to comply with an Improvement Notice (Housing Act 2004) - Where there is a successful prosecution the courts can impose an unlimited fine
- Failure to license or other licensing offences relating to HMOs (Housing Act 2004), which applies to both mandatory and additional HMO Licensing Schemes - Where there is a successful prosecution the courts can impose an unlimited fine
- Failure to comply with an Overcrowding Notice (Housing Act 2004) - Where there is a successful prosecution the courts can impose an unlimited fine
- Failure to comply with a regulation in respect of an HMO (Housing Act 2004)
- Breaching a Banning Order (Housing and Planning Act 2016) - Where there is a successful prosecution the courts can impose an unlimited fine and up to 51 days imprisonment

- 2.3. **Electrical Safety Standards financial penalties** – The Council may impose a financial penalty up to a maximum of £30,000 in respect of a breach under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.
- 2.4. In setting the amount of the penalty the Council will have regard to statutory guidance.
- 2.5. The level of penalty levied will reflect the severity of the offence and the offenders previous record of offending. The factors that guidance requires the Council to consider are:
- 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 penalty
 - d. **Punishment of the offender** - A 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 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
 - f. **Deter others from committing similar offences** - While the fact that someone has received a 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 penalty. An important part of deterrence is the realisation that (a) the Council is proactive in levying penalties where the need to do so exists and (b) that the level of 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 because of committing the offence** - The guiding principle here should be to ensure that the offender does not benefit because of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed

3. **Penalties Matrix**

3.1. **Civil Penalties** – The Ministry of Housing, Communities and Local Government (MHCLG) have provided guidance on a methodology for setting the level of Civil Penalty, which the Council has had regard to in devising its own methodology for determining the level of Civil Penalty to impose.

3.2. **Electrical Safety Standard financial penalties** – The MHCL's non-statutory guidance recommends that local authorities may wish to consider the policy they use for Civil Penalties in developing a policy on issuing financial penalties under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020. The methodology for these particular financial penalties therefore utilises the same methodology used for the setting of Civil Penalties.

3.3. The Council operates a 9-stage process in determining the level of penalty.

3.4. **Stage 1 – The culpability of the offender**

For example, was the offence committed deliberately, the length of time the offence continued, whether the offence was repeated, whether the offence was pre-meditated.

In making this assessment, the Council considers that renting is a business activity to make a profit and therefore should be treated as any other business and that ignorance of the law is not an excuse. However, it expects landlords/letting/managing agents with larger portfolios of properties and those that are members of professional organisations and/or accredited to have a higher-level knowledge and experience and therefore will be considered more culpable in setting the level of penalty.

3.5. **Stage 2 – The seriousness and level of harm caused by the offence**

The Council will consider:

- a. The legislative level of punishment that can be imposed. All the offences carry an unlimited maximum fine. However, breaching a Banning Order can also result in a prison sentence of up to 51 weeks
- b. The number of people affected
- c. Whether the impact on the victim(s) (actual or potential) is serious, long-term, life-altering or potentially fatal
- d. Whether the victim(s) were vulnerable, e.g. families with children, a vulnerable adult, discrimination (protected characteristics under the Equality Act 2010), etc.
- e. Whether there was harm (actual or potential) caused to the surrounding area or community

[The Council considers this aspect particularly significant and therefore applies extra weighting to this category to reflect its seriousness].

3.6. **Stage 3 – Punishment of the offender**

The Council will consider:

- a. Whether there was any attempt to cover up evidence of the offence, mislead officers or harass occupants and witnesses
- b. A landlords/agent's refusal to accept or respond to the Council's (or other enforcement agency) advice and recommendations regarding their responsibilities
- c. Did the offence relate to other crime, e.g. illegal eviction, harassment, enviro crimes, modern slavery, prostitution or drug production/distribution

3.7. Stage 4 – Remove any financial benefit gained in committing the offence(s)

The Council considers this aspect particularly significant and will make a financial assessment of the costs associated with committing the offence(s). The level of penalty applied will always be higher (subject to the maximum level of £30,000) than the financial benefit gained from committing the offence. Where the financial benefit exceeds the maximum amount, the Council will also, where legislatively possible, apply to the First-Tier Tribunal Property Chamber (Residential Property) for a Rent Repayment Order and/or assist a tenant to do so (see [Section 10](#) of the Private Sector Housing Enforcement & Licensing Policy).

3.8. Stage 5 – Deter the offender from repeating the offence and from others committing similar offences

The Council will consider whether the level of penalty imposed would act as a deterrent to the offender and others. Where this is unlikely, the Council will consider prosecution and/or the application, where legislatively possible, to the First-Tier Tribunal Property Chamber (Residential Property) for a Rent Repayment Order and/or assist a tenant to do so. (See [Section 10](#) of the Private Sector Housing Enforcement & Licensing Policy).

3.9. Stage 6 – Assessment of assets and income

In setting the level of penalty, the Council will take account of the offender's income and assets and adjust accordingly. The guiding presumption will be that the penalty will not automatically be revised downwards simply because an offender has (or claims to have) a low income. The value of an offender's assets, e.g. their rental portfolio, as well as their income, will be considered when determining an appropriate penalty. For example, a landlord with a large portfolio where a low-level penalty is initially assessed will have the penalty level adjusted upward to reflect the value of their assets.

3.10. Stage 7 – Mitigation

The Council will consider:

- a. Steps voluntarily taken to remedy the problem (see the discounts available).
- b. The offender is fully co-operative with the investigation.
- c. Good record of maintaining property and compliance with legislation, statutory standards prior to the offence(s).
- d. The offender self-reports (e.g. for failing to license), co-operates with the Council and accepts responsibility.
- e. The offender has a mental disorder or learning disability, which is linked to the commission of the offence.

- f. The offender has a serious medical condition(s) requiring urgent, intensive or long-term treatment, which was linked to the commission of the offence.
- g. Age and/or lack of maturity where it affects the responsibility of the offender.
- h. Any further factors that the offender wishes to draw to the Council's attention.

In determining mitigating factors and how they will apply to the level of penalty, the Council will consider any that they are aware of as part of the assessment process. The offender can also use the 'Notice of Intent' stage to inform the Council of any other mitigating factor they believe relevant. The Council will expect any mitigating factors pleaded to be accompanied by supporting evidence.

3.11. **Stage 8 – Totality principle**

This applies where there is the possibility of imposing more than one penalty. Where there are multiple offences resulting from the same incident/conduct the Council will take account of each offence as set out in the previous stages and add up the penalties and apply the aggregate total as one penalty to reflect the most serious of the offences found from the incident/conduct (subject to the maximum of £30,000). Where aggregate total exceeds the maximum amount, the Council will consider prosecution and/or the application, where legislatively possible, to the First-Tier Tribunal Property Chamber (Residential Property) and/or assist a tenant to do so.

Where there are multiple offences arising from separate incidents/conduct the Council will assess each individually as set out in the previous stages and apply separate penalties, where it is proportionate to do so.

3.12. **Stage 9 – Review and check**

Prior to the issue of a Notice of Intent, the process and level of penalties will be reviewed and checked. The purpose of this is to check the process has been correctly applied and that the resulting level penalty/penalties is/are reasonable and proportionate. The Case Officers Line Manager will be responsible for this review with the final decision to proceed taken by the Head of Housing.

3.13. **Annex 5.1** outlines the Penalty Scoring Matrix.

4. **Discounts**

- 4.1. The Council will apply the following discounted rates to any imposed financial penalty in the following circumstances:
 - a. Compliance Discount - A 20% discount will be applied if the offender complied with the identified breach, e.g. carrying out the works required by the Improvement Notice, within the 28 days given to make representations at the 'Notice of Intent' stage.
 - b. Early Payment Discount - A 50% discount of the original calculated amount (before any compliance discount is applied) should the penalty be paid within 14 days.

5. **Unpaid penalties**

- 5.1. **County Court** – The Council will take robust action to recover any financial penalty (or part thereof) not paid within the period set out in a Penalty Notice.
- 5.2. An application for an order of the County Court will usually be made in respect of all unpaid financial penalties.
- 5.3. In taking court action, the Council would seek to recover interest and any court expenses incurred, in addition to claiming the full amount of unpaid financial penalty.
- 5.4. **Enforcement** – If an offender does not comply with an order of the court, the Council will usually make an application to enforce the judgement. The type of enforcement action pursued would depend on the circumstances of the case and the amount owed. The most likely types of enforcement action are shown below.
- 5.5. **Court bailiffs** – A court bailiff will ask for payment. If the debt is not paid, the bailiff will visit the offenders home or business address to establish whether anything can be seized and sold to pay the outstanding debt.
- 5.6. **Charging order - Order of sale** – The Council can apply to place a charging order on any property owned by the offender. If a debt remains outstanding after a charging order has been registered, the Council can make an application for an order of sale. The property would then be subject to an enforced sale and the proceeds used to settle the debt owed to the Council.
- 5.7. **Attachment to earnings order** – If the offender is in paid employment; the Council can apply to the court for an attachment to earnings order. Such an order would require the offender's employer to make salary deductions. Amounts would be deducted regularly at the direction of the court until the debt owed to the Council has been fully discharged.

ANNEX 5.1

PENALTY SCORING MATRIX

Factors	Not Applicable	Minor	Moderate	Serious	Severe	Total
	Score = 1	Score = 5	Score = 10	Score = 15	Score = 20	
Breach of a Banning Order? - this offence carries the greatest possible punishment upon a successful prosecution and therefore extra weighting is applied to reflect the severity of the offence – additional score of 10						
The culpability of the offender	Short term offence, no premeditation and no previous history.	First time offence. The offence has been ongoing for a short time. Minor prior infractions, which may include a repeat of the current offence	Second or third time offender. No premeditation. The offence has been ongoing for a moderate period of time. A case history of non-cooperation and relevant prior offending which may include a repeat of the current offence	Multiple offender. Some premeditation. The offence has been ongoing for a significant period of time. A case history of non-cooperation and relevant prior offending including a repeat of this offence.	Serial offender (10 + times). Premeditation. The offence has been ongoing for a significant period of time. A case history of non-cooperation and relevant prior offending including a repeat of this offence.	
Portfolio landlord (more than 5 properties) or letting agent? - Multiplier of 2						
Level of harm	Very little or no harm caused. One victim household. No vulnerable occupants.	Low-level health risk(s)/harm(s) identified. One victim household. No vulnerable occupants.	Moderate-level health risk(s)/harm(s) identified. Two to four victim households. Vulnerable occupants potentially exposed.	Severe-level health risk(s)/harm(s) identified. Two to four victim households.	Severe-level health risk(s)/harm(s) identified. Five or more victim households.	

Weighting multiplier of 2					
Punishment of the offender	No other crime, no perversion and a willingness to adhere to advice	Minor previous infractions, no perversion and a willingness to adhere to advice	Minor previous infractions, attempts to pervert, unwilling to cooperate	Significant other crime. Offender made attempts to pervert and hostile to cooperation	Severe harm resulting from other crime. Offender made attempts to pervert and hostile to the Council and others
Financial benefit	Negligible financial impact	Low to moderate financial impact.	Medium level financial impact.	Large financial impact.	Maximum financial impact available
Weighting multiplier of 2					
Deter the offender & others	No or little deterrence likely. Repeat offending possible.	Low level offence, unlikely to be reported on. Mild deterrence	Some publicity may result. Will act as a mid-term deterrent from repeating offence(s).	Publicity will be sought. Large deterrence to offender and landlord community	Publicity inevitable via numerous methods. Massive deterrence to re-offending and to wider landlord community.
Assets and income	No demonstrable or significant assets. Doesn't apply to agents	Low asset value (e.g. single property landlord). Doesn't apply to agents	Small portfolio landlord/agent (less than 5 properties) and/or other moderate assets/income.	Small/medium portfolio landlord/agent (between 3 – 10 properties) with other assets/income.	Large portfolio landlord/agent. Wider assets/income considered
Mitigating factors (score inverted, i.e. subtracted rather than addition)	None	Minor mitigating factor	One major or multiple minor mitigating factors	Two or more major mitigating factors	Multiple major mitigating factors

Score Range	Fee
1 – 10	£250
11 – 30	£500
31 – 50	£750
51 – 70	£1,000
71 – 90	£2,500
91 – 100	£5,000
101 – 120	£10,000
121 – 140	£15,000
141 – 160	£20,000
161 – 180	£25,000
181 – 200	£30,000

Notes:

- I. Each offence will be assessed and then the totality principle applied.
- II. Assessments will be carried out prior to the issue of a Notice of Intent. A reassessment will then be carried out following any representations received by the offender.

ANNEX 6

BANNING ORDERS POLICY AND PROCEDURE

1. **Banning Orders**

- 1.1. Section 15 (1) of the Housing and Planning Act 2016 provides for Councils in England to apply for a Banning Order against a person who has been convicted of a Banning Order offence.
- 1.2. A Banning Order is an Order by the First-Tier Tribunal Property Chamber (Residential Property) 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
- 1.3. A landlord subject to a Banning Order is also unable to hold a licence for a HMO and their property may be subject to a Management Order.
- 1.4. **Annex 6.1** outlines Banning Order offences.
- 1.5. There are some conditions on what constitutes a Banning Order offence; these are set out in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017:
 - If a person has received an absolute and/or conditional discharge for a relevant housing offence then that offence cannot be regarded as a Banning Order offence (items 1-5 of the Schedule of offences).
 - If a person has committed a serious criminal offence they must have been sentenced in the Crown Court in order for that offence to be regarded as a Banning Order offence (items 7-14 of the Schedule)
 - Certain offences are only Banning Order offences where the offence can be linked to the tenant or other occupier or the property owned or rented out by the landlord

2. **Decision to apply for a Banning Order**

- 2.1. The Council will pursue a Banning Order for the most serious offenders only and the Head of Housing will make the decision. Any decision will be made on a case-by-case basis with regard to the following factors:

3. **The seriousness of the offence**

- 3.1. The Council will consider the sentence imposed by the Court in respect of the Banning Order offence itself. The more severe the sentence imposed by the Court, the more appropriate it will be for a Banning Order to be made. Consideration will be given as to whether the offender received a maximum or minimum sentence or received an absolute or conditional discharge.

4. **Previous convictions/rogue landlord database**

- 4.1. The Council will check the Rogue Landlord Database in order to establish whether a landlord has committed other Banning Order offences or has received any Civil Penalties in relation to Banning Order offences. A Banning Order may be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities.
- 4.2. The Council will also consider the likely effect of the Banning Order on the person and anyone else that may be affected by the Banning Order. These factors include;
- The potential harm that may be caused to the tenant if no Banning Order were imposed
 - The proportionality of the punishment depending on the severity and previous offending
 - The length of the ban to act as a deterrent from future offending
 - Deterring others from committing similar offences
- 4.3. Section 198 of the Housing and Planning Act 2016 provides that the Council can require a landlord to provide information for the purpose of enabling it to decide whether to apply for a Banning Order. This could include requiring a landlord to provide information on all properties in his/her ownership.
- 4.4. It is an offence for a landlord not to comply with this request, unless they can provide a reasonable excuse. It is also an offence to provide information that is false or misleading. Failure to provide information or providing false or misleading information is punishable on summary conviction to a fine.

5. **Procedure for making a Banning Order**

- 5.1. The Council will issue a Notice of Intent within 6 months of conviction of an offence, then:
- The landlord has 28 days to make representations
 - The Council will consider representations during the Notice period
 - The Council will decide whether to issue the Banning Order
- 5.2. If the Council proceeds an application will be made to the First-Tier Tribunal.
- 5.3. The First-Tier Tribunal Property Chamber (Residential Property) will issue a Banning Order if it is minded to do so and determine the length of the Banning Order.
- 5.4. A Banning Order must specify the duration of the Order and it must last for at least 12 months. A breach of a Banning Order, upon summary conviction, is punishable by either a fine, or imprisonment, for a period not exceeding 51 weeks or both.
- 5.5. Only the First-Tier Tribunal Property Chamber (Residential Property) can revoke or vary a Banning Order - Section 20 Housing and Planning Act 2016.

- 5.6. A landlord is prevented from transferring the property to certain persons whilst the Banning Order is in force including family members, business partners and their associates or a corporate body for which the landlord is an officer.
- 5.7. A Banning Order does not invalidate any tenancy agreement held by occupiers in the property, regardless of whether the agreement was issued before or after the Banning Order was made. This is to ensure an occupier of the property does not lose their rights under the terms and conditions of their tenancy agreement.
- 5.8. A landlord may appeal to the Upper Tribunal against the decision of the First-Tier Tribunal Property Chamber (Residential Property) to make the Banning Order under Section 53 of the Housing and Planning Act 2016. An appeal cannot be made unless permission is granted by either the First-Tier Tribunal Property Chamber (Residential Property) or the Upper Tribunal.
- 5.9. The Ministry of Housing, Communities & Local Government 'Banning Order Offences under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities' encourages local housing authorities to publicise successful Banning Orders for individual landlords. As recommended in this guidance document, the Council will have regard to Ministry of Justice guidance which sets out the factors a Council should consider when deciding whether to publicise sentencing outcomes.

6. **Breach of Banning Orders**

- 6.1. Breach of a Banning Order is a criminal offence. Where a landlord or agent breaches a Banning Order:
- S/he can be prosecuted by the Council (using its powers under section 222 Local Government Act 1972) or the police. If convicted s/he can be imprisoned for a period not exceeding 51 weeks and/or fined
 - The Council can impose a Civil Penalty of up to £30,000 as an alternative to prosecution (see [Annex 4](#) and [Annex 5](#))
 - If the breach continues after conviction, the person commits a further offence and is liable on summary conviction to a fine not exceeding one-tenth of level 2 on the standard scale for each day or part of a day on which the breach continues.
- 6.2. The Council can also apply for a Management Order in respect of a HMO, in order to protect the health, safety or welfare of residents.
- 6.3. In addition, a Council or a tenant (or licensee of the landlord) can apply to a First-Tier Tribunal Property Chamber (Residential Property) for a Rent Repayment Order where a landlord has breached a Banning Order.

ANNEX 6.1

BANNING ORDER OFFENCES UNDER SCHEDULE 1 OF THE HOUSING AND PLANNING ACT 2016 (BANNING ORDER OFFENCES) REGULATIONS [2017]

Relevant offences from Eviction Act 1977	housing Protection Act 1977	Section 1(2), (3) and (3A)	Unlawful eviction and harassment of occupier
Criminal Law Act 1977		Section 6(1)	Violence for securing entry
Housing Act 2004		Section 30(1)	Failing to comply with an Improvement Notice
Housing Act 2004		Section 32(1)	Failing to comply with a prohibition order
Housing Act 2004		Section 72(1), (2) and (3)	Offences in relation to licensing of Houses in Multiple Occupation
Housing Act 2004		Section 95(1) and (2)	Offences in relation to licensing of houses under Part 3 of the Act
Housing Act 2004		Section 139(7)	Contravention of an overcrowding notice
Housing Act 2004		Section 234(3)	Failure to comply with management regulations in respect of Houses in Multiple Occupation
Housing Act 2004		Section 238(1)	False or misleading information
Regulatory Reform (Fire Safety) Order 2005		Article 32 paragraphs (1) and (2)	Fire safety offences
Health and Safety at Work Act 1974		Section 33(1)(c) where a person contravenes Regulation 36 of the Gas Safety (Installation and Use) Regulations 1998(6)	Gas safety offences-duties on landlords

Immigration Offences

Letting to someone disqualified from renting as a result of their immigration status, resulting in an offence under Part 3 of the Immigration Act 2014 (as amended)

Immigration Act 2014	Section 33A(1) and (10)	Residential tenancies – landlord offences
Immigration Act 2014	Section 33B(2) and (4)	Residential tenancies – agent offences

Serious Criminal Offences -

These are serious criminal offences for which an offender may have received a custodial sentence upon conviction.

Fraud Act 2006	Section 1(1) Section 6(1) Section 7(1) Section 9(1) Section 11(1) Section 12(2)	Fraud offences
Criminal Justice Act 2003	Schedule 15	Specified violent and sexual offences
Misuse of Drugs Act 1971	Section 8 Section 9 Section 9A(1) and (3) Section 18(1), (2), (3) and (4) Section 19 Section 20 Section 21	Offences involving the misuse of drugs
Proceeds of Crime Act 2002	Section 327	Concealing criminal property
Proceeds of Crime Act 2002	Section 328	Arrangements
Proceeds of Crime Act 2002	Section 239	Acquisition, use and possession
Protection from Harassment Act 1997	Section 2	Offence of harassment
Protection from Harassment Act 1997	Section 2A	Offence of Stalking
Anti-social behaviour, Crime and Policing Act 2014	Section 30	Breach of criminal behaviour order
Anti-social behaviour, Crime and Policing Act 2014	Section 48	Failure to comply with Community Protection Notice
Damage Act 1971	Section 1(1)	Destroying or damaging property
Criminal Damage Act 1971	Section 2	Threats to destroy or damage property
Criminal Damage Act 1971	Section 3	Possessing anything with intent to destroy or damage property
Theft Act 1968	Section 7	Theft
Theft Act 1968	Section 9	Burglary
Theft Act 1968	Section 21	Blackmail
Theft Act 1968	Section 22	Handling stolen goods

ANNEX 7

PROPERTY REDRESS SCHEME ENFORCEMENT PROCESS

Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014

1. **Step 1: Notice of Intent**

- 1.1. The Council must give a written Notice of Intent to impose a penalty, setting out:
 - a. The reasons for the penalty;
 - b. The amount of the penalty; and
 - c. That there is a 28 day period to make written representations or objections, starting from the day after the date on which the Notice of Intent was sent.
- 1.2. This Notice must be served within 6 months of the date on which the Council is in the position to issue the fine (having gathered sufficient evidence and be satisfied that a fine is appropriate).
- 1.3. The Council may withdraw the Notice of Intent or reduce the amount specified in the Notice at any time by giving notice in writing.

2. **Step 2: Representations and objections**

- 2.1. The person who the Notice of Intent was served on has 28 days starting from the day after the date the Notice of Intent was sent to make written representations and objections to the Council in relation to the proposed fine.
- 2.2. A lower penalty should only be charged if the Council is satisfied that there are extenuating circumstances. It will be up to the Council to decide what such circumstances might be, taking into account any representations the lettings agent or property manager makes during the 28-day period following the authority's Notice of Intent to issue a fine. Guidance states that such matters could include whether a £5,000 fine would be disproportionate to the turnover/scale of the business or would lead to an organisation going out of business. The Head of Housing will make the decision as to whether a fine should be reduced.

3. **Step 3: Final Notice**

- 3.1. At the end of the 28-day period the Council must decide, having taken into account any representations received, whether to impose the fine and, if so, must give at least 28 days for payment to be made. When imposing a fine, the Council must issue a Final Notice in writing which explains:
 - a. Why the fine is being imposed;
 - b. The amount to be paid;
 - c. How payment may be made;
 - d. The consequences of failing to pay;
 - e. That there is a right to appeal against the penalty to the First-Tier Tribunal and that any appeal must be made within 28 days after the imposition of the fine.

- 3.2. The Council may withdraw the Final Notice or reduce the amount specified in the Notice at any time by giving notice in writing.

4. **Step 4: Appeals**

- 4.1. If an appeal is lodged the fine cannot be enforced until the appeal is disposed of. Appeals can be made on the grounds that:

- a. The decision to impose a fine was based on a factual error or was wrong in law;
- b. The amount of the fine is unreasonable; or
- c. That the decision was unreasonable for any other reason.

- 4.2. The First-Tier Tribunal Property Chamber (Residential Property) may agree with the Council's Notice to issue a penalty or may decide to quash or vary the Notice and fine.

5. **Step 5: Recovery of the penalty**

- 5.1. If the lettings agent or property manager does not pay the fine within the period specified, the Council can recover the fine with the permission of the court as if payable under a court order. Where proceedings are necessary for the recovery of the fine, a certificate signed by the Council's Section 151 Officer stating that the amount due has not been received by a date stated on the certificate will be taken as conclusive evidence that the fine has not been paid.

ANNEX 8

MINIMUM ENERGY EFFICIENCY STANDARDS ENFORCEMENT PROCEDURE

1. Introduction

- 1.1. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended) requires that private sector landlords:
 - Have an Energy Performance Certificate (EPC) and provide a copy to tenants whenever they rent their properties out; and
 - Ensure all rented homes have at least an E rating on the EPC.
- 1.2. Since 1 April 2016, tenants can request energy efficiency measures and landlords may not unreasonably refuse consent.
- 1.3. From 1 April 2018, all tenancies starting new or renewing after this date **MUST** have at least an E rating on the property's EPC by law.
- 1.4. From 1 April 2020, all other privately rented homes (i.e. those on continued tenancies) **MUST** have at least an E rating on the EPC to be lawfully let out.
- 1.5. The Regulations apply to all properties that are:
 - Legally required to have an EPC; and
 - On an assured, regulated or agricultural tenancy type.
- 1.6. A recommended energy efficiency measure will only be a 'relevant energy efficiency improvement' for the purposes of the Regulations if:
 - Third-party funding is available to cover the full cost of purchasing and installing the improvement(s) (for example, Energy Company Obligation, a Green Deal Finance Plan, or where local authority funding is available); or
 - Where third-party funding is unavailable, the improvement(s) can be purchased and installed for £3,500 or less (inclusive of VAT) using the landlord's own funding; or
 - The improvement(s) can be installed through a combination of landlord self-funding and third party funding with a total cost of £3,500 or less (inclusive of VAT).
- 1.7. Compliance with the Regulations means landlords improving a property to **EPC band E or registering an exemption** where applicable.

2. Exemptions

- 2.1. Exemptions are available where it is not possible or practical to get the property to EPC band E. The majority of exemptions are valid for 5 years. Exemptions are available where:
 - All the relevant energy efficiency improvements have been installed within the cost cap of £3,500 (inc. VAT) (or there are no energy efficiency improvements that can be made) and the property remains below an E rating;

- A recommended measure is not a relevant energy efficiency improvement because the cost of purchasing and installing it would exceed the £3,500 cap (inc. VAT);
- Wall insulation (cavity wall, external wall or internal wall insulation) is not appropriate for the property due to its potential negative impact on the fabric or structure of the property;
- The landlord cannot obtain required third party consents/permissions for improvement work, or consent is provided with unreasonable conditions;
- The landlord has obtained written advice from a qualified expert that the measures will reduce a property's value by more than 5%;
- Temporary exemption due to recently becoming a landlord in certain circumstances (six month exemption):
 - 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;
- 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 temporary exemption may be registered.

3. **The PRS Exemptions Register**

3.1. The PRS Exemptions Register enables landlords to register exemptions against relevant exemption types and upload supporting evidence. The PRS Exemptions Register:

- Provides access to local authorities to support monitoring and enforcement;
- Allows members of the public to access high level (non-personal) data related to exemptions; and
- Enables local authorities to publish (non-personal) information related to breaches and penalties.

3.2. 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.

3.3. **[Annex 8.1](#) shows the Minimum Level of Energy Provisions Flowchart.**

4. **Enforcement**

4.1. The Council has the power to check for different forms of non-compliance with the Regulations including:

- Where the property is sub-standard and let in breach of the Regulations;
- Where the landlord has registered any false or misleading information on the PRS Exemptions Register;

- Where the landlord has failed to comply with a Compliance Notice, (see Section 5).

4.2. **Annex 8.2 shows a Minimum Level of Energy Efficiency Provisions Compliance and Enforcement Flow Chart.**

5. **Compliance Notices**

5.1. The Council will issue a Compliance Notice where it believes that a landlord may be in breach of the prohibition on letting a sub-standard property (currently or during the past 12 months). A Compliance Notice may request either the original or copies of the following information:

- The EPC that was valid at the time 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 Council requires in order to carry out its compliance and enforcement functions.

5.2. The Compliance Notice may also require the landlord to register copies of the requested information on the PRS Exemptions Register. The Compliance Notice will specify:

- The name and address of the person that a landlord must send the requested information to;
- The date by which the requested information must be supplied (the Notice must give the landlord at least one calendar month to comply).

5.3. A Compliance Notice will be made in writing and may be sent in hard copy or electronically.

5.4. A landlord must comply with the Compliance Notice by sending the requested information to the Council and allow copies of any original documents to be taken. Failure to provide documents or information requested by a Compliance Notice, or failure to register information on the PRS Exemptions Register as required by a Compliance Notice, may result in a financial penalty being issued (see Section 6).

5.5. The Council may withdraw or amend the Compliance Notice at any time in writing, for example, where new information comes to light. The Council may also use the documents provided by the landlord or any other information it holds to decide whether a landlord is in breach of the Regulations.

6. **Financial Penalty**

6.1. The Council may issue a financial and/or publication penalty on a private landlord who breaches a duty under the Regulations. Where the Council decides to impose a financial penalty, it has the discretion to decide on the amount of the penalty, up to maximum limits set by the Regulations. The decision as to whether to impose a financial penalty will be made by the Head of Housing.

6.2. The maximum penalties are outlined in the below table:

Infringement	Penalty (less than three months in breach)	Penalty (three months or more in breach)
Renting out a non-compliant property	Up to £2,000, and/or Publication penalty	Up to £4,000, and/or Publication penalty
Providing false or misleading information on the PRS Exemptions Register	Up to £1,000, and/or Publication penalty	
Failing to comply with a compliance notice	Up to £2,000, and/or Publication penalty	

- 6.3. **Annex 9** details the Council's statement of principles for the issuing of financial penalties under Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.

7. **Publication of Penalties**

- 7.1. A publication penalty under Regulation 39 consists of publishing the details of the landlord's breach on the PRS Exemptions Register.

- 7.2. The Council has determined to impose a publication penalty in respect of all breaches that are subject to a Penalty Notice, unless there are exceptional circumstances.

- 7.3. Under Regulation 39(2), local authorities may decide how long the details of each breach should stay on the PRS Exemptions Register, subject to a minimum period of 12 months. The Council has determined that all breaches will be registered on the PRS Exemptions Register for a period of three years, with the option to reduce this period in exceptional circumstances.

- 7.4. The information the Council may publish is:

- The landlord's name (except where the landlord is an individual);
- Details of the breach;
- The address of the property in relation to which the breach occurred; and
- The amount of any financial penalty imposed.

- 7.5. Information cannot be published whilst a Penalty Notice could be, or is being, reviewed by the Council (see Section 9), or while the decision to uphold the Penalty Notice could be, or is being, appealed (see Section 10).

8. **Penalty Notices**

- 8.1. If the Council decides to impose a financial and/or publication penalty, it will serve a Penalty Notice on the private landlord. A Penalty Notice may be served in respect of an ongoing breach or a breach that occurred in the 18 months preceding the date of the service of the notice. A further Penalty Notice may be issued if the action required in the Penalty Notice is not taken in the period specified.

8.2. The Penalty Notice will set out:

- The provisions of the Regulations the Council believes the landlord has breached;
- The details of the breach;
- The action the Council requires the landlord to take to remedy the breach, and the date within which this action must be taken (the date must be at least a month after the Penalty Notice is issued);
- The amount of the financial penalty imposed and how it has been calculated;
- Whether a publication penalty has been imposed;
- The date by which payment of the penalty must be made, the name and address of the person to whom it must be paid and the method of payment (the date must be at least a month after the penalty notice is issued);
- The right to request a review of the Council's decision to serve the Penalty Notice, including the name and address of the person to whom the review request must be sent (see Section 9);
- The right of appeal against any decision to uphold the decision to serve the Penalty Notice following a review (see Section 10); and
- That if the landlord does not pay any financial penalty within the specified period, the Council may bring court proceedings to recover the money from the landlord

9. **Right to request a review of the Council's decision to serve a Penalty Notice**

9.1. The Council may decide to review its decision to serve a Penalty Notice, for example, when new information comes to light.

9.2. A landlord also has the right to ask the Council to review its decision to serve a Penalty Notice. This request must be made in writing within 28 days of the service of the Penalty Notice. When the Council receives the request, it must consider everything the landlord has said in the request and decide whether or not to withdraw the Penalty Notice. The final decision will be made by the Housing Solutions & Private Sector Manager within 28 days of receipt.

9.3. The Council will withdraw the Penalty Notice if:

- It is satisfied that the landlord has not committed the breach set out in the Penalty Notice;
- Although the Council believes the landlord committed the breach, it is satisfied that the landlord took all reasonable steps, and exercised all due diligence to avoid committing the breach, or;
- It decides that because of the circumstances of the landlord's case, it was not appropriate for the Penalty Notice to be served.

9.4. If the Council does not decide to withdraw the Penalty Notice, it may decide to waive or reduce the penalty, allow the landlord additional time to pay, or modify the publication penalty, and will explain the appeals process and how financial penalties can be recovered. The landlord will be informed of the decision in writing.

10. **Appeals**

10.1. If on review, the Council decides to uphold the Penalty Notice, the landlord may then appeal to the First-Tier Tribunal (General Regulatory Chamber) against that decision on the grounds that:

- the Penalty Notice was based on an error of fact or an error of law;
- the Penalty Notice does not comply with a requirement imposed by the Regulations; or
- It was inappropriate to serve a Penalty Notice on them in the particular circumstances.

10.2. A landlord has 28 calendar days to submit an appeal from the date of the Council's decision. Completed notices of appeal should be sent to:

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

10.3. The General Regulatory Chamber can be contacted on 0300 123 4504 and at grc@justice.gov.uk for advice on the process.

10.4. If a landlord does appeal, the Penalty Notice will not have effect while the appeal is ongoing. A landlord may also wish to seek legal advice as part of considering or making an appeal, if they have not already done so.

10.5. Based on the facts of the case, the First-Tier Tribunal may decide to quash the Penalty Notice or affirm the Penalty Notice in its original or a modified form. If the Penalty Notice is quashed, the Council must reimburse the landlord for any amount paid as a financial penalty under the Notice.

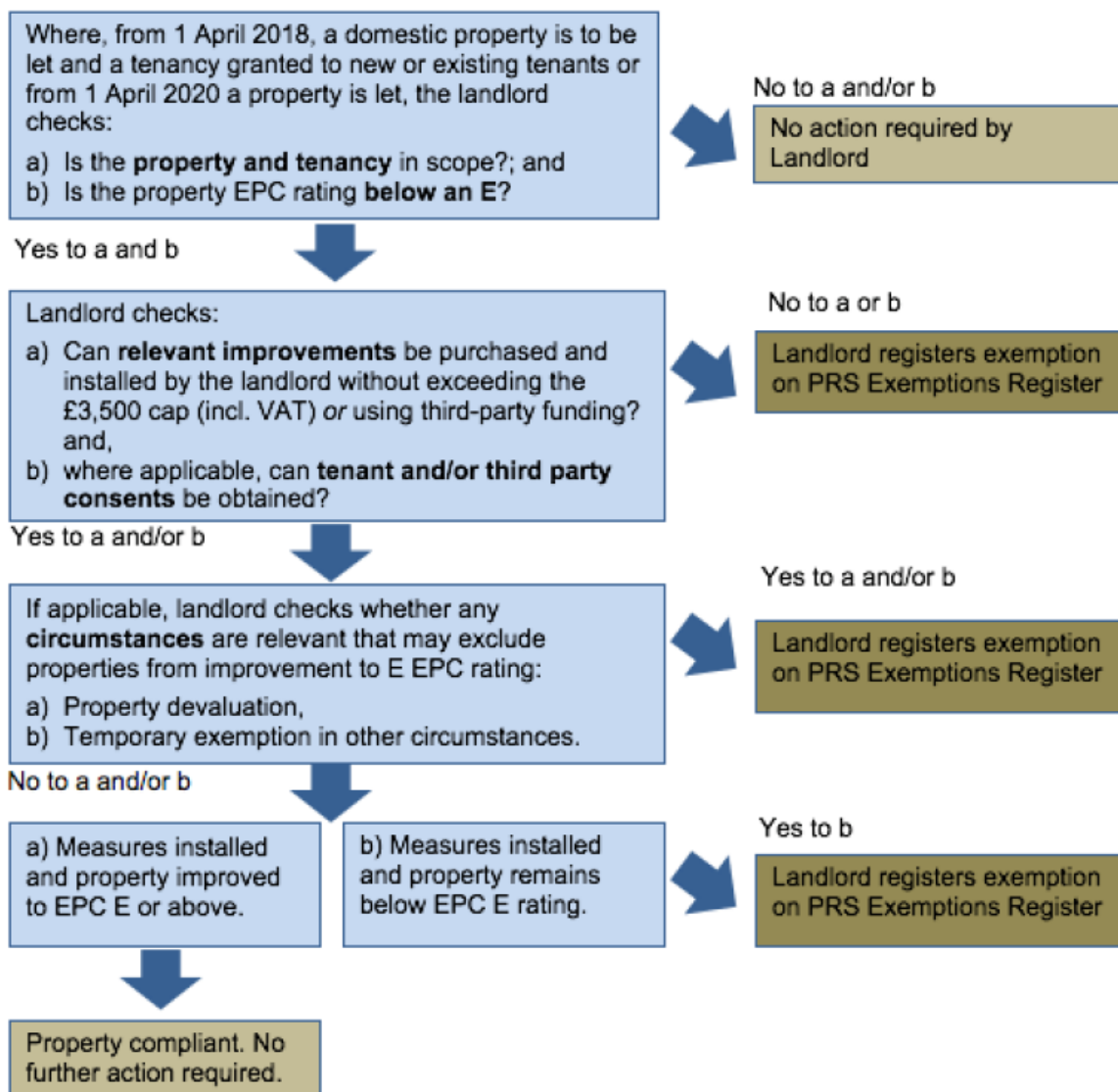
11. **Guidance**

11.1. The following amended non-statutory guidance was issued by the Department for Business, Energy & Industrial Strategy in April 2020 in respect of the Minimum Energy Efficiency Standards:

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

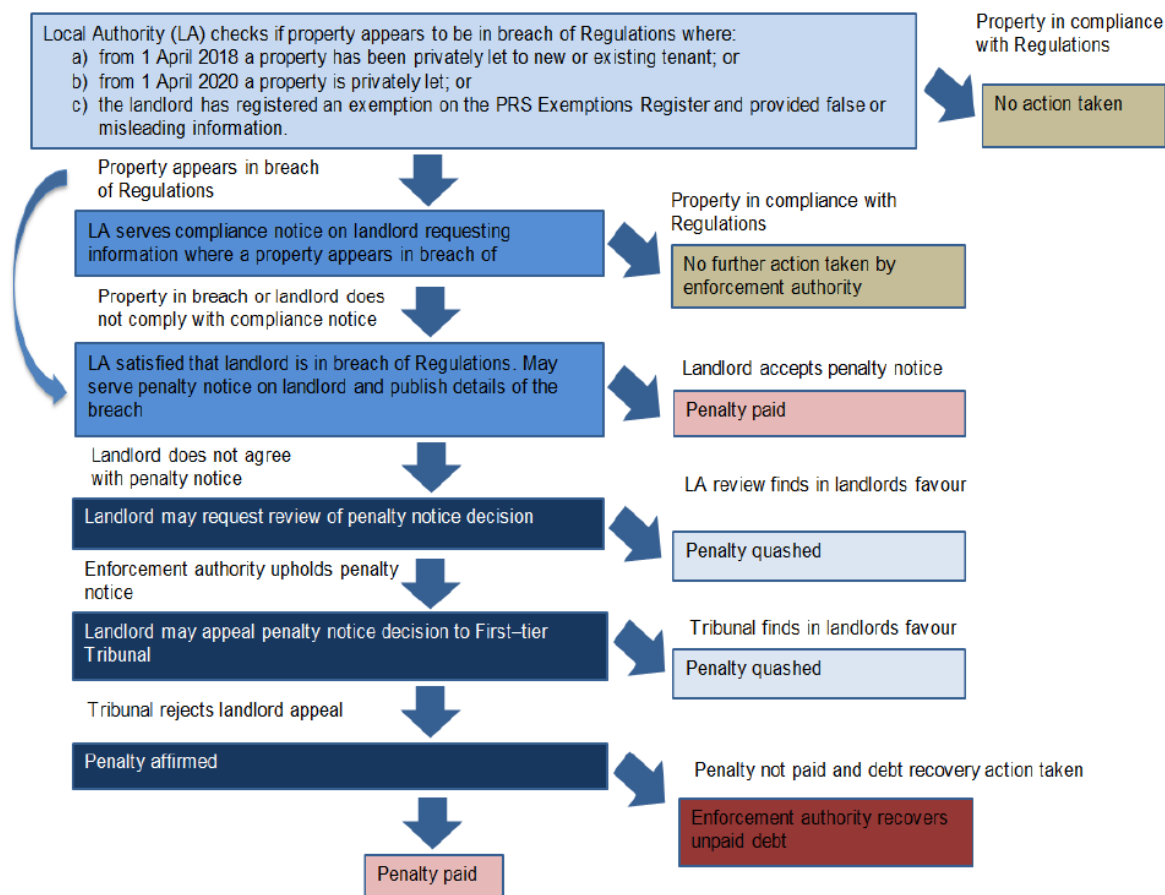
ANNEX 8.1

MINIMUM LEVEL OF ENERGY EFFICIENCY PROVISIONS FLOWCHART



ANNEX 8.2

ENERGY EFFICIENCY STANDARDS - COMPLIANCE AND ENFORCEMENT FLOWCHART



ANNEX 9

STATEMENT OF PRINCIPLES FOR THE ISSUING OF FINANCIAL PENALTIES UNDER ENERGY EFFICIENCY (PRIVATE RENTED PROPERTY) (ENGLAND AND WALES) REGULATIONS 2015

1. **Purpose**

- 1.1. This statement sets out the principles that the Dartford Borough Council ('the Council') will apply when exercising its powers to issue financial penalties under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended).
- 1.2. The Council's approach ensures that the financial penalty should be proportionate and reflect the severity of the breach, and should be set high enough to help ensure that it has a real economic impact on the landlord and demonstrates the consequences of not complying with their responsibilities. The landlord's track record will be taken into account in each case.

2. **The maximum level of financial penalties**

- 2.1. Where the Council decides to impose a financial penalty, it has the discretion to decide the amount of the penalty, up to maximum limits set by the Regulations. The maximum penalties are as follows:
 - a) Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than three months, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.
 - b) Where the landlord has let a sub-standard property in breach of the regulations for three months or more, the Council may impose a financial penalty of up to £4,000 and may impose the publication penalty.
 - c) Where the landlord has registered false or misleading information on the Private Rented Sector Exemptions Register, the Council may impose a financial penalty of up to £1,000 and may impose the publication penalty.
 - d) Where the landlord has failed to comply with Compliance Notice, the Council may impose a financial penalty of up to £2,000 and may impose the publication penalty.
- 2.2. The Council may not impose a financial penalty under both paragraphs (a) and (b) above in relation to the same breach of the Regulations. However, it may impose a financial penalty under either paragraph (a) or paragraph (b), together with financial penalties under paragraphs (c) and (d), in relation to the same breach. Where penalties are imposed under more than one of these paragraphs, the total amount of the financial penalty may not be more than £5,000. The maximum amount of £5,000 applies per property, and per breach of the Regulations.

3. **Financial penalty policy**

- 3.1. The Council has determined to take the following approach when imposing financial penalties under the Regulations:
- 3.2. **Early payment reduction** – The Council has discretion to offer an early payment reduction of 25% in the amount of financial penalty payable if a landlord can

demonstrate an early acceptance of guilt by paying the penalty charge within 21 days beginning with the day the Penalty Notice is served.

- 3.3. A landlord would not be demonstrating an early acceptance of guilt if they decided to request a review of the Council's decision to serve a Penalty Notice. If the Council confirms a Penalty Notice after such a request, the full amount of the financial penalty will be payable and the option to make a payment in the reduced sum will not be available.
- 3.4. The financial penalties are set out as follows:

Either a) Breaching the prohibition on letting a sub-standard (EPC rated F or G) property for less than three months (Regulation 23) (Statutory maximum: £2,000)

	Penalty	Early payment within 21 days
First breach	£1,000	£750
Other breaches	£2,000	£1,500

Or b) Breaching the prohibition on letting a sub-standard (EPC rated F or G) property for three months or more (Regulation 23) (Statutory maximum: £4,000)

	Penalty	Early payment within 21 days
First breach	£2,000	£1,500
Other breaches	£4,000	£3,000

And

c) Registering false or misleading information on the PRS Exemptions Register (Regulation 36 (2)) (Statutory maximum: £1,000)

	Penalty	Early payment within 21 days
First breach	£500	£375
Other breaches	£1,000	£750

d) Failing to comply with a Compliance Notice (Regulation 37 (4) (a)) (Statutory maximum: £2,000)

	Penalty	Early payment within 21 days
First breach	£1,000	£750
Other breaches	£2,000	£1,500

4. **Criteria for determining the amount of the financial penalty**

- 4.1. **First breach** – When determining the financial penalty the Council will take the landlord's track record into account as to whether it is their first breach under these Regulations or not. For the purposes of this statement, the "first breach" means the first breach by the private landlord of any duty under the Regulations, and does not refer to the first breach under each specific type of breach.
- 4.2. For the purposes of identifying a first breach, only penalty notices that have been served on the private landlord within the previous five-year period will be taken into account.

- 4.3. **Multiple breaches** – In respect of any single tenancy, the Council may not impose a combination of financial penalties on a landlord that in total exceeds the statutory maximum of £5,000. However, when considering imposing more than one Penalty Notice on a landlord as a consequence of that landlord committing one or more breaches at multiple properties, the Council will carefully consider whether the cumulative financial penalty would be just and proportionate in the circumstances having regard to the offending behaviour as a whole.
- 4.4. The Council will initially determine the amount of financial penalty that should be imposed in respect of each of the breaches identified at the properties under consideration. Subject to the statutory maximum for each tenancy, the Council will then add up the financial penalties and make an assessment as to whether the cumulative total is just and proportionate.
- 4.5. If the Council considers the cumulative total to be just and proportionate, it will normally impose a financial penalty for each breach identified. However, if the Council considers the cumulative total to be unjust and disproportionate, the Council may use its discretion and decide not to impose a financial penalty in respect of every breach under consideration.
- 4.6. **Repeat breaches** – If there are repeat breaches the Council may use its discretion to apply the full penalty with no reduction for early payment. This decision will be made by the Housing Solutions & Private Sector Manager.
5. **Unpaid financial penalties**
- 5.1. **County Court** – The Council will take robust action to recover any financial penalty (or part thereof) not paid within the period set out in a Penalty Notice.
- 5.2. An application for an order of the County Court will usually be made in respect of all unpaid financial penalties.
- 5.3. In taking court action, the Council would seek to recover interest and any court expenses incurred, in addition to claiming the full amount of unpaid financial penalty.
- 5.4. **Enforcement** – If an offender does not comply with an order of the court, the Council will usually make an application to enforce the judgement. The type of enforcement action pursued would depend on the circumstances of the case and the amount owed. The most likely types of enforcement action are shown below.
- 5.5. **Court bailiffs** – A court bailiff will ask for payment. If the debt is not paid, the bailiff will visit the offenders home or business address to establish whether anything can be seized and sold to pay the outstanding debt.
- 5.6. **Charging order - Order of sale** – The Council can apply to place a charging order on any property owned by the offender. If a debt remains outstanding after a charging order has been registered, the Council can make an application for an order of sale. The property would then be subject to an enforced sale and the proceeds used to settle the debt owed to the Council.
- 5.7. **Attachment to earnings order** – If the offender is in paid employment, the Council can apply to the court for an attachment to earnings order. Such an order would require the offender's employer to make salary deductions. Amounts would be deducted regularly at the direction of the court until the debt owed to the Council has been fully discharged.

ANNEX 10

STATEMENT OF PRINCIPLES FOR DETERMINING FINANCIAL PENALTIES UNDER THE SMOKE AND CARBON MONOXIDE ALARM (ENGLAND) REGULATIONS 2015

1. **Introduction**

- 1.1. This statement sets out the principles that Dartford Borough Council ('the Council') will apply in exercising its powers to require a landlord to pay a financial penalty for non-compliance with the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

2. **Purpose of the Statement of Principles**

- 2.1. The Council is required under these Regulations to prepare and publish a statement of principles and it must follow these principles when deciding on the amount of a penalty charge.
- 2.2. The Council may revise its statement of principles at any time, but where it does so, it must publish a revised statement.
- 2.3. When deciding on the amount for the penalty charge, the Council will have regard to the statement of principles published at the time when the breach in question occurred.

3. **The legal framework**

- 3.1. The Council's powers are derived from the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations), which came into force on 1 October 2015.
- 3.2. 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.
- 3.3. The duty requires that landlords ensure:
 - A smoke alarm is installed on each storey of premises where there is living accommodation
 - A carbon monoxide alarm is installed in any room of premises used as living accommodation, which contains a solid fuel-burning appliance.

AND for tenancies starting from 1 October 2015:

- That checks are made by the landlord, or someone acting on his/her behalf, that the alarm(s) is/are in proper working order on the day the tenancy starts.
- 3.4. Landlords need to take steps to demonstrate that they have met the testing requirements at the start of the tenancy. This can be achieved for example by supplying dated photographs of alarms, together with installation records and by tenants signing an inventory form confirming that the alarm was tested and in working order at the start of the tenancy.

- 3.5. Tenancy agreements can specify the frequency that a tenant should test the alarm to ensure it is in proper working order.
- 3.6. Where the Council believes that a landlord is in breach of one or more of the duties referred to in paragraph 3.3 above, the Council must serve a Remedial Notice on the landlord under Regulation 5 of the Regulations.
- 3.7. If the landlord then fails to take the remedial action specified in the Notice within the specified timescale, the Council can require the landlord to pay a penalty charge under Regulation 8 of the Regulations.
- 3.8. A landlord will not be considered to be in breach of their duty to comply with the Remedial Notice, if they can demonstrate they have taken all reasonable steps to comply. This can be done by making written representations to the Council at the address given at the bottom of this document, within 28 days of the date the Remedial Notice is served.
- 3.9. The Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the requirements specified in the Remedial Notice within the specified timescale.

4. **The purpose of imposing a financial penalty**

- 4.1. The purpose of the Council exercising its regulatory powers is to protect the interests of the public.
- 4.2. The aim of financial penalties on landlords is 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 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.

5. **Criteria for the imposition of a financial penalty**

- 5.1. A failure to comply with the requirements of a Remedial Notice allows the Council to require payment of a penalty charge.
- 5.2. In considering the imposition of a penalty, the Council will look at the evidence concerning non-compliance with the requirements of the Remedial Notice. This could be obtained from a property inspection, or from information provided by the tenant or agent that no remedial action has been undertaken by the landlord.

- 5.3. 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.
- 5.4. In deciding whether it would be appropriate to impose a penalty, the Council will take full account of the particular facts and circumstances of the breach under consideration.
6. **Criteria for determining the amount of a financial penalty**
- 6.1. The Regulations state the amount of the penalty charge must not exceed £5,000.
- 6.2. The penalty charge comprises two parts, a punitive element for failure to comply with the absolute requirement to comply with a Remedial Notice and a cost element relating to the investigative costs, Council officer time, administration and any remedial works arranged and carried out by the Council's contractors.
- 6.3. The penalty charge is payable within 29 days beginning with the day on which the Penalty Charge Notice is served.
- 6.4. 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.

The charges are as follows:

	Penalty Charge	Early payment reduction (50%) if paid within 14 days
1st breach	£2,500	£1,250
Subsequent breaches	£5,000 per breach	£2,500

7. **Procedural matters for Penalty Charge Notices**
- 7.1. 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.
- 7.2. When the Council is satisfied that the landlord has failed to comply with the requirements of the Remedial Notice, the Penalty Charge Notice must be served within 6 weeks.
- 7.3. Where the landlord requests a review of the Council's decision within 29 days from when the Penalty Charge Notice is served, the Council must consider any representations made by the landlord. All representations are to be sent to the address at the bottom of this document. The Council will notify the landlord of its decision by Notice, which will be either to confirm, vary or withdraw the Penalty Charge Notice.

- 7.4. 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 Property Chamber (Residential Property) against the Council's review decision. Appeals should be made within 28 days from the date the Notice is served.
- 7.5. Where a landlord appeals to the First-Tier Tribunal Property Chamber (Residential Property), the operation of the Penalty Charge Notice is suspended until the appeal is finally determined or withdrawn. The First-Tier Tribunal Property Chamber (Residential Property) may quash, confirm or vary the Penalty Charge Notice, but may not increase the amount of the penalty charge.
- 7.6. If the Penalty Charge Notice is not paid, then the Council may recover the penalty charge by an order of the court. Proceedings for recovery will not commence earlier than 31 days from the date the Penalty Charge Notice is served.
- 7.7. However, in cases where a landlord has requested a review of the Penalty Charge Notice, recovery will not commence earlier than 30 days from the date the Notice giving the Council's decision to vary or confirm the Penalty Charge Notice is served. Where landlords appeal to the First-Tier Tribunal Property Chamber (Residential Property), recovery will not commence earlier than 30 days from when the appeal is finally determined or withdrawn.
8. **Remedial action taken in default of the landlord**
- 8.1. Where the Council is satisfied that a landlord has not complied with the requirements of the Remedial Notice within the required timescale and consent is given by the tenant, the Council is required by law to 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.
- 8.2. Smoke Alarms – In order to comply with the Regulations, where the property is considered to be high risk because of:
- 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 a living rooms or kitchens; or
 - is 3 or more storeys high,
- As a temporary measure, smoke alarms will be installed at every storey of residential accommodation.
- 8.3. A full fire risk assessment will subsequently be undertaken, having regard to the Housing Act 2004 (as amended), Housing Health & Safety Rating System and LACORS Housing - fire safety guidance. Consultation with Kent Fire and Rescue Service will also be undertaken.
- 8.4. The full fire risk assessment 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 and protected walls and ceilings. Where further works required to address serious fire safety hazards in residential property cannot be undertaken through informal agreement, the Council will use its enforcement powers under the Housing Act 2004 (as amended), in accordance with its Enforcement Policy

- 8.5. Carbon Monoxide Alarms – In order to comply with the Regulations, a carbon monoxide alarm will be installed in every room containing a solid fuel combusting appliance.

9. **Communications**

- 9.1. All communications for representations made against the Remedial Notice (Regulation 5) or the Penalty Charge Notice (Regulation 8) are to be sent to:

Housing Solutions and & Private Sector Manager
Dartford Borough Council, Civic Centre, Home Gardens, Dartford, DA1 1DR
Or by email to: housingprivatesector@dartford.gov.uk

ANNEX 11

THE ELECTRICAL SAFETY STANDARDS IN THE PRIVATE RENTED SECTOR ENFORCEMENT PROCEDURE

1. **Introduction**

- 1.1. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force from the 1 June 2020. The Regulations apply to new tenancies from 1 July 2020 and existing tenancies from 1 April 2021.
- 1.2. Under the Regulations, private sector landlords are required to have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at least every 5 years. Landlords must provide a copy of the electrical safety report to their tenants, and if requested, provide a copy to the Council.
- 1.3. Under these Regulations, the Council can issue a Remedial Notice to require landlords to carry out remedial works or arrange for the works to be carried out by the Council with the costs recovered from the landlord
- 1.4. The Council can impose a financial penalty of up to £30,000 where it is satisfied, beyond reasonable doubt, that a landlord has breached a duty under the Regulations.

2. **Specified tenancies**

- 2.1. The Regulations apply to all specified tenancies. A 'specified tenancy' means a tenancy of residential premises in England which:
 - Grants one or more persons the right to occupy all or part of the premises as their only or main residence;
 - Provides for payment of rent (whether or not market rent); and
 - Is not an excluded tenancy as set out in Schedule 1 of the Regulations.

3. **Excluded tenancies**

- 3.1. The excluded tenancies set out in Schedule 1 of the Regulations relate to:
 - Private registered providers of social housing;
 - Shared accommodation with landlord or landlord's family;
 - Long leases;
 - Student halls of residence;
 - Hostels and refuges;
 - Care homes;
 - Hospitals and hospices; and
 - Other accommodation relating to health care provision.

4. **Duties on private landlords in relation to electrical installations**

- 4.1. Under the Regulations, private sector landlords are required to:

- Ensure national standards for electrical safety are met. These are set out in the 18th edition of the 'Wiring Regulations', which are published as British Standard 7671;
- Ensure all electrical installations in their rented properties are inspected and tested by a qualified and competent person at least every 5 years;
- Obtain a report from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test;
- Supply a copy of this report to the existing tenant within 28 days of the inspection and test;
- Supply a copy of this report to a new tenant before they occupy the premises;
- Supply a copy of this report to any prospective tenant within 28 days of receiving a request for the report;
- Supply the Council with a copy of this report within 7 days of receiving a written request for a copy;
- Retain a copy of the report to give to the inspector and tester who will undertake the next inspection and test;
- Where the report shows that further investigative or remedial work is necessary complete this work within 28 days or any shorter period if specified as necessary in the report*;
- Supply written confirmation of the completion of the further investigative or remedial works from the electrician to the tenant and the Council within 28 days of completion of the works.

* Results of the inspection and testing:

Inspectors will use the following classification codes to indicate where a landlord must undertake remedial work. More information can be found in the 18th edition of the Wiring Regulations.

- Code 1 (C1): Danger present. Risk of injury
- Code 2 (C2): Potentially dangerous
- Further Investigation (FI): Further investigation required without delay
- Code 3 (C3): Improvement recommended. Further remedial work is not required for the report to be deemed satisfactory

If the report contains a code C1, C2 or FI, then the landlord must ensure that further investigative or remedial work is carried out by a qualified person within 28 days, or less if specified in the report.

5. **Remedial Notice**

5.1. Where the Council has reasonable grounds to believe that a landlord is in breach of one or more of the duties under Regulations and the recent report indicates remedial or further investigative work is required and it is not urgent remedial work, the Council will serve a Remedial Notice on the landlord. The Notice must be served within 21 days of the decision that the landlord has not complied with their duties.

5.2. The Remedial Notice will:

- (a) specify the premises to which the notice relates;
- (b) specify the duty or duties that the Council considers the landlord has failed to comply with;

- (c) specify the remedial action the Council considers should be taken;
- (d) require the landlord to take that action within 28 days beginning with the day on which the notice is served;
- (e) explain that the landlord is entitled to make written representations against the notice within 21 days beginning with the day on which the notice is served;
- (f) specify the person to whom, and the address, or email address to which, any representations may be sent; and
- (g) explain the effect of the financial penalties for breach of duties, including the maximum financial penalty which the Council may impose, and that there is a procedure for appeals against financial penalties.

5.3. The landlord has the right to make written representations within 21 days of the issue of a Remedial Notice. The Notice is suspended while the Council considers the representations; these will be considered by the Housing Solutions & Private Sector Manager. The Council will inform the landlord in writing of the outcome of its consideration of the representations within 7 days beginning from the day on which the appeal period expires. Where a Remedial Notice is confirmed the suspension is lifted and the landlord has 21 days to take the remedial action specified in the Notice.

5.4. The Council may withdraw the Remedial Notice at any time.

5.5. A landlord is not in breach of the duty to comply with a Remedial Notice if the landlord can show they have taken all reasonable steps to comply with the Notice.

5.6. Where a landlord is prevented from entering the property by the tenant, the landlord will not be considered to have failed to have taken all reasonable steps to comply with the duty solely because of a failure to bring legal proceedings with a view to securing entry to the property.

6. **Remedial action following non-compliance with a Remedial Notice**

6.1. The Council may, with the consent of the tenant, arrange an authorised person to carry out remedial work if the landlord does not comply with the Remedial Notice.

6.2. Before the remedial action is taken the Council will service a notice on the landlord specifying:

- (a) the address of the property where the work will be undertaken;
- (b) the power under which the remedial action is to be taken;
- (c) the date when the remedial action will be undertaken (at least 28 days from the date served);
- (d) the right of appeal against this decision.

6.3. A landlord may appeal to the First-Tier Tribunal against the decision of the Council to take remedial action (see Section 10).

6.4. The Council will arrange for an authorised person to take the remedial action within 28 days of the end of the notice period. Where there is an appeal, remedial action must be arranged within 28 days of the appeal decision confirming or varying the decision of the Council.

6.5. When undertaking remedial work, the authorised person must give at least 48 hours' notice to the tenant and if required by the landlord or tenant, produce evidence of identity and authority.

7. Urgent remedial action

7.1. The Council may, with the consent of the tenant, arrange an authorised person to carry out remedial work if the landlord is in breach of one or more of their duties under the Regulations and the report indicates urgent remedial action is required.

7.2. Within 7 days of the authorised person starting to take the urgent remedial action, the Council will either:

- serve a Notice on the landlord and the occupiers of the property in relation to which the authorised person is taking urgent remedial action; or
- affix the Notice to the property.

7.3. The Notice will specify:

- (a) the nature of the urgent remedial action required;
- (b) the property in relation to which that urgent remedial action was (or is being or is to be) taken by the Council;
- (c) the power under which that urgent remedial action was (or is being or is to be) taken by the Council;
- (d) the date when that urgent remedial action was (or is to be) started;
- (e) the right to appeal against the decision of the Council to take the urgent remedial action;
- (f) the period within which an appeal may be made; and
- (g) the effect of the financial penalties for breach of duties, including the maximum financial penalty which the Council may impose, and that there is a procedure for appeals against financial penalties

7.4. A landlord may appeal to the First-Tier Tribunal against the decision of the Council to take remedial action (see Section 10).

7.5. When undertaking emergency remedial work, the authorised person must give at least 48 hours' notice to the tenant and if required by the landlord or tenant, produce evidence of identity and authority.

8. Recovery of costs

8.1. The Council may recover costs reasonably incurred in taking action to carry out remedial works following non-compliance with a Remedial Notice or for urgent remedial works.

8.2. A demand for recovery of costs will be served on the landlord to be payable at the end of the period of 21 days beginning with the day on which the demand is served.

8.3. A landlord may appeal to the First-tier Tribunal against the demand (see Section 10).

9. **Financial penalties**

- 9.1. Where the Council is satisfied, beyond reasonable doubt, that a landlord has breached a duty under the Regulations, the Council may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach.
- 9.2. A financial penalty may be of such amount as the Council determines; but must not exceed £30,000.
- 9.3. The proceeds of the financial penalties can be re-used to fund private rented sector related enforcement work. Any amount that is not used in this way must be paid into the Consolidated Fund, the government's general bank account at the Bank of England.
- 9.4. **Annex 5 details the Council's statement of principles for the issuing of financial penalties under the Electrical Safety Standards in the Private Rented Sector.**
- 9.5. Before issuing a financial penalty on a landlord, the Council will serve a Notice of Intent on the landlord before the end of the period of 6 months beginning with the first day on which the Council is satisfied, beyond reasonable doubt, that a landlord has breached a duty under the Regulations ('the relevant day'). If the breach continues beyond the end of the relevant day, the Notice of Intent may be served at any time the breach is continuing or within the period of 6 months beginning on the last day on which the breach occurs.
- 9.6. The Notice of Intent will specify:
- (a) the amount of the proposed financial penalty;
 - (b) the reasons for proposing to impose the penalty; and
 - (c) information about the right to make representations.
- 9.7. The landlord has the right to make written representations within 28 days of the Notice of Intent was serviced. The Housing Solutions & Private Sector Manager will consider these representations and the Council will inform the landlord in writing of the outcome of its consideration of the representations within 7 days.
- 9.8. If after receiving any written representations (if any), the Council decides that it remains in the public interest to impose a financial penalty, the Council will serve a Final Notice to the landlord imposing the penalty, which will require the penalty to be paid within 28 days beginning with the day after that on which the notice was served.
- 9.9. The Final Notice will specify:
- (a) the amount of the financial penalty;
 - (b) the reasons for imposing the penalty;
 - (c) information about how to pay the penalty;
 - (d) the period for payment of the penalty;
 - (e) information about rights of appeal; and
 - (f) the consequences of failure to comply with the notice.

- 9.10. A landlord may appeal to the First-tier Tribunal against the decision to impose a financial penalty or the amount of the penalty (see section 10).
- 9.11. The Council may at any time withdraw a Notice of Intent or Final Notice; or reduce the amount specified in the Notice of Intent or Final Notice.
- 9.12. Where a landlord fails to pay the whole or any part of the financial penalty, the Council will recover the penalty or part on the order of the county court as if it were payable under an order of that court.

10. **Appeals to the First-Tier Tribunal**

10.1. Landlords have the right of appeal to the First-Tier Tribunal (Property Chamber) for appeals relating to remedial action, urgent remedial action, recovery of costs and financial penalties.

10.2. Appeals must be made in the following timescales:

- Remedial action – within 28 days from the day on which a Remedial Notice is served;
- Urgent remedial action – within 28 days from the date the urgent remedial action was, or was to be, started;
- Demands for the recovery of costs – within 21 days from the day on which the demand is served;
- Decision to impose a financial penalty or the amount of the penalty – within 28 days beginning with the day after that on which a Final Notice to impose a financial penalty was served.

10.3. The current address of the First-Tier Tribunal (Property Chamber Residential Property (Southern Region)) is:

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

The Property Chamber can be contacted on 01243 779 394 and at rpsouthern@justice.gov.uk for advice on the process.

- 10.4. In the case of appeals regarding remedial action, urgent remedial action or the recovery of costs, the Tribunal may allow an appeal to be made after the required timescale if it is satisfied there are good reasons for the failure to appeal on time. An appeal may be brought on the grounds that all reasonable steps had been taken to comply with the Remedial Notice, or reasonable progress had been made towards compliance with that Notice.
- 10.5. In the case of appeals regarding remedial action (not including urgent remedial action), if a landlord appeals, the Remedial Notice is suspended until the appeal is finally determined or withdrawn.

10.6. In the case of appeals regarding financial penalties, the appeal will be a re-hearing of the Council's decision but may be determined having regard to matters of which the Council was unaware when it made that decision. The Final Notice is suspended until the appeal is finally determined or withdrawn.

10.7. The Tribunal may confirm, quash or vary the decision of the Council.

11. **Guidance**

11.1 **Non-statutory Electrical Safety Standards in the Private Rented Sector: Guidance for Landlords, Tenants and Local Authorities**; was issued by the Ministry of Housing, Communities & Local Government in June 2020 in respect of the Electrical Safety Standards in the Private Rented Sector.