

Private Sector Housing Enforcement Policy 2023



HILLINGDON
LONDON

www.hillingdon.gov.uk

Private Sector Housing Enforcement Policy 2023

Contents	Page
Introduction	3
When the policy applies	3
Shared Enforcement Responsibilities	4
Working with other Agencies	4
Enforcement Approach	4
Identifying the need for action	4
Enforcement Options	5
1. Informal Action	5
2. Service of Statutory Notices and Prohibition Orders	6
3. Works in Default	6
4. Emergency Remedial Action	7
5. Other Orders	7
5.1 Interim and Final Management Orders (Housing Act 2004)	7
5.2 Compulsory Purchase Orders	7
5.3 Rent Repayment Orders	7
5.4 Banning Orders (Housing and Planning Act 2016)	7
6. Charging for Enforcement Action	8
7. Financial Penalties -	8
Housing & Planning Act 2016	8
Smoke and Carbon Monoxide Regulations 2015	8
Minimum Energy Efficiency Standards	9
8. Prosecution	9
9. The Decision to Prosecute/Issue a Civil Penalty/Simple Caution	9
10. Simple Caution	10
11. Publicity	10
12. 'Rogue Landlords' Database	10
13. Caravan Licensing	11
14 Tenant welfare	11
Appendices	
Appendix 1: Procedure and Charging Schedule for Housing Offences Civil Penalties and Rent Repayment Orders	12
Appendix 2: Smoke and Carbon Monoxide Alarm (England) Regulations 2015	22
Appendix 3: Minimum Energy Efficiency Standards (MEES) enforcement and penalty charges	25

Review Date March 2026

Introduction

The Private Sector Housing Team is responsible for ensuring that housing conditions are safe and healthy for private tenants and occupiers. They do this by enforcing housing law, mainly in the Housing Act 2004 and the Housing and Planning Act 2016.

The Housing Act 2004 introduced the housing health and safety rating system (HHSRS) which is a risk-based evaluation tool to help local authorities identify and protect against potential risks and hazards to health and safety from any deficiencies identified in dwellings. . The HHSRS is a risk-based assessment that identifies hazards in dwellings and evaluates their potential effects on the health and safety of occupants and their visitors, particularly vulnerable people. The most serious hazards are called Category 1 hazards and where these exist in a home, it fails to meet the statutory minimum standard for housing in England. The HHSRS assesses 29 categories of housing hazard. Each hazard has a weighting which will help determine whether the property is rated as having category 1 (serious) or category 2 (other).

If a category 1 hazard is identified the council must take action to remove or reduce the hazard. If a category 2 hazard is identified the council has discretion as to whether or not to take action.

This policy is specific to enforcement action taken by the Private Sector Housing Team. It should be read in conjunction with the Council's approved Enforcement Policy which provides an overarching approach across the Council in terms of enforcement activity.

When the policy applies

This policy outlines the enforcement approach and the available powers we have at our disposal to regulate and manage non-compliance, predominantly within the private rented sector. It also includes those properties owned and managed by registered providers but can apply to owner occupied homes in some circumstances.

This policy reinforces the Council's robust enforcement stance against landlords who do not comply with their statutory obligations and enables us to penalise the worst landlords by direct financial sanctions. It is in line with the Government's intention to prevent landlords from benefiting from any criminal behaviour. We aim to deliver swift action against rogue landlords resulting in financial penalties being paid directly to the Council. These can then be used to further improve conditions and management in the private rented sector.

When discharging its duties in relation to private sector housing, the Council will follow the principles of good enforcement set out in the following:

- Regulators Compliance Code
- The Police and Criminal Evidence Act 1984 (as amended)
- Criminal Procedures and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Civil (financial) penalties under the Housing and Planning Act 2016
- Hillingdon's Prosecutions and Sanctions Policy

Shared Enforcement Responsibilities

In circumstances where enforcement responsibility is shared between or rests fully with external organisations, officers will have regard to protocols agreed with other enforcement agencies. Where appropriate, officers will ensure that referrals are passed to the appropriate enforcing authority promptly and in accordance with any agreed procedure.

Working with other Agencies

Where officers identify regulatory issues outside of their jurisdiction they will refer information received to other relevant regulators. Where appropriate, enforcement activities will be planned and coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness and consistency of any enforcement. We will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies. These may include (but are not limited to) Government Agencies and Departments, other Local Authorities, Police Forces and Fire Authorities.

Enforcement Approach

The type of enforcement taken will vary according to the legislation being applied. In some cases, taking enforcement action is a statutory duty, provided certain criteria are met. In some circumstances officers may use informal action to offer advice, information and assistance to aid compliance with housing related legislation, working with landlords and residents. However, robust action will be taken to deal with housing contraventions.

Where failure to comply is of a serious nature, officers will use the full range of enforcement options available to them under the relevant legislation to achieve compliance to protect those at risk. In the most serious contraventions possible action will include prosecution.

The type of enforcement action pursued is always considered on a case-by-case basis, based on its own merits. Following consideration of the specific circumstances of the particular case the most appropriate enforcement option will be applied accordingly. In every case enforcement seeks to:

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

Identifying the need for action

Our officers will investigate and identify the need to take enforcement action by:

- proactive inspections of dwellings
- in response to a complaint or request for assistance

Available data and intelligence will be taken into account in identifying potential issues.

Enforcement Options

This section summarises the types of enforcement and legislation most commonly applied. It is not an exhaustive list and is not intended to be a definitive interpretation of the legislation nor provide a full statement of the law.

Action will normally be pursued in the enforcement of proper standards of housing. because it would be wrong to and then prolong this while formal action is being taken.

The Council will avoid informal consultations which lead to undue delays and leave tenants in unhealthy or unsafe housing or where informal case management through consultation letters increases time spent on resolution, multiple visits and possible diminished standards of works that cannot be enforced. The Council may serve a notice without prior consultation and serve or aim to serve a formal notice regardless of consultation response, (unless hazard reduced/addressed) in the following circumstances: -

- If there is more than one Category 1 hazard
- Any single serious (Band A) Category 1.
- Any Cat 1 and vulnerable age group present.
- Significant Cat 2 hazard(s) and vulnerable age group present.
- Fear of retaliatory eviction concerns by tenant*.
- If the property is an unlicensed HMO and subject to other enforcement.
- Any other similar situations as reviewed with managers.

*Retaliatory eviction –only Improvement Notices (Including Suspended Improvement Notices) provide protection under the legislation: Section 33 of The Deregulation Act 2015.

This Council welcomes negotiations and mediation after the notice has been served. With the option to vary if needed.

The Council will always seek to recover full costs as per section 49 of the Housing Act for notices. Any representations in relation to costs will always be considered.

1. Informal action

In certain circumstances where the detrimental impact on the tenant or community is small or a breach is unsubstantiated, we may not be able to take any action e.g. very minor disrepair.

Verbal or written warning: The Council may use compliance advice, guidance and support as a first response in the case of low risk housing hazards or where a very minor breach of legislation has been identified. Advice is sometimes provided in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action.

Only in specified or exceptional circumstances will informal action be considered such as:

- When a tenant will not consent to works being carried out by their landlord, or if their

complaint is vexatious;

- Where a registered social landlord has a planned programme of works (including the works required by the Council) and the programme will be implemented within a short time and achieve a better overall result.

Indirect action: When appropriate we will refer some cases to another authority or agency for further action, e.g. the Fire Authority and Planning Enforcement.

Leasehold contract disputes: We will promote the resolution of this type of dispute through civil litigation between the tenant and landlord rather than use statutory enforcement. Leaseholders will be advised of the informal dispute resolution services offered by the leasehold advisory service.

2. Service of Statutory Notices and Prohibition Orders

We will normally serve a notice requiring works to be carried out within a certain time frame to remedy a hazard, following assessment. A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified.

Prohibition Orders can apply to premises, or parts of premises, which are considered so deficient or hazardous as to warrant a prohibition for habitation. They are also used to prevent or control a certain type of use of a premises, e.g. to remedy instances of overcrowding. Orders may be suspended for a certain period of time to allow compliance, or until a certain event in the future.

Where a Statutory Notice or Order is served, an explanation of the reasons for the decision and the appeals process will be provided to the recipient. Recipients of notices where appropriate will be given notice of the Council's intention to serve a notice or make an order. This will be to avoid any unnecessary appeals and to consider the recipient's views before service.

Where a Statutory Notice is served, if appropriate it will be entered the Local Land Charges records.

3. Works in Default

These enforcement options involve the Council carrying out works, which are then charged to the responsible person (usually the property owner). Every effort is made to secure compliance in the first instance. Where a notice has not been complied with, 'works in default' may follow subject to the level of risk, practical constraints of the case and the financial circumstances. Before doing the work specified in the original notice, the Council will consider carefully the prospect of recovery of any costs incurred.

The Council will make every effort to recover the full cost of any work carried out 'in default' and its own administrative charges. This will include entering all costs on the Local Land Charges records. This does not preclude parallel enforcement action where warranted.

4. Emergency Remedial Action

This use is restricted to situations where there is a Category One hazard that poses an imminent risk of serious harm to any occupier. No Enforcement Notice has to be served before taking this course of action. The use of such powers is a last resort and not commonly used.

5. Other Orders

We will also consider the following options independently, or collectively with other enforcement action, as particular circumstances permit:

5.1 Interim and Final Management Orders (Housing Act 2004)

To ensure adequate management arrangements are in place in a licensable HMO, we have the power to make an Interim Management Order (“IMO”) in respect of a licensable property where a landlord (or their managing agent) fails to obtain a licence or where it is necessary due to the hazardous condition of the property. Upon the expiry of an IMO, we can make an application to the Residential Property Tribunal to make a Final Management Order and take over the control and management of the property for a period of up to 5 years. This disables the landlord’s ability to manage the property.

An Interim and Final Empty Dwelling Management Order can be made on empty properties and also allows the Council to take control and rent the property out. Rights of appeal exist in relation to these powers and compensation provisions also arise in some cases.

5.2 Compulsory Purchase Orders

The Council may compulsorily purchase property under Section 17 of the Housing Act 1985. This power may be used as a last resort to acquire empty properties in order to bring them back into use. The consent of the Secretary of State is required and compensation provisions for the owner apply.

5.3 Rent Repayment Orders

The use of Rent Repayment Orders under the Housing Act 2004/Housing and Planning Act 2016 is prescribed by law and in statutory guidance. These powers will be considered in response to all serious offences where it is in the public interest and where there is sufficient evidence for a successful application to the First Tier Tribunal.

Rent Repayment Orders (“RROs”) are a means by which we can seek to have up to 12 months of rent, Housing Benefit, or Universal Credit repaid, usually in addition to other fines where we can prove that the landlord is guilty of one of the qualifying offences. In applying for RROs we will follow the statutory guidance

5.4 Banning Orders (Housing and Planning Act 2016)

A Banning Order will prohibit the undertaking of Landlord or Managing Agent activities for a specified period of time. These orders may be made against Landlords and Managing

Agents where they have been convicted of 'Banning Order offences' under the Housing Act 2016. These include, for example, failure to comply with an Improvement Notice. We will apply for Banning Orders to be made where the evidence justifies this course of action and it is considered to be in the public interest to protect against rogue landlords.

6. Charging for Enforcement Action

The Housing Act 2004 allows us to charge for taking enforcement action, where enforcement action involves the service of statutory notices and orders notices. A charge will normally be made for the cost of officer and administration time.

7. Financial Penalties

We will normally issue civil penalty notices for Housing Act offences when we have specific powers to do so. In some very serious circumstances, prosecution may be more appropriate than the issue of a penalty notice. If a penalty is not paid, we will enforce the penalty. Financial penalties can be imposed under the following Acts and Regulations where the evidence has met the criminal standard of proof i.e. 'beyond reasonable doubt'.

Housing & Planning Act 2016: We have the power to impose a civil penalty of up to £30,000 for certain offences prescribed under this Act. The Council has a policy in place for civil penalties and this is detailed in the form of a Statement of Principles in Appendix A, with guidelines and worked examples in a charging matrix, Appendix B. This provides guidelines for the level of penalties for non-compliance under specified offences.

The Matrix allows for maximum penalties to be issued for the most serious offences. In deciding the penalty, the council must consider:

- Severity of the offence
- Culpability and track record of the offender
- The harm caused to the tenant
- Punishment of the offender
- Deterring the offender from repeating the offence
- Deterring others from committing similar offences
- Removing any financial benefit the offender may have obtained as a result of committing the offence

Officers will have regard to the matrix and the statutory guidance. This will determine an indicative level of penalty for the offence under consideration. Having determined an indicative level of penalty, it will be adjusted in each individual case to take into account other mitigating or aggravating factors that are relevant.

The penalty imposed will reflect the type and severity of offence, landlord's compliance history and other relevant factors. This will be done on a case-by-case basis. In considering the decision to issue a civil penalty or not, the Council must also be satisfied that there is sufficient evidence upon which a criminal court could convict and that the action is in the public interest. If a civil penalty option is decided, a prosecution cannot also be instigated.

Smoke & Carbon Monoxide Regulations 2015: We may issue a penalty charge of up to £5,000 where a landlord has breached this duty of compliance. Penalty charge

amounts will be imposed in accordance with the published 'Statement of Principles', Appendix C. Penalty charges are subject to an internal review process and we will ensure any written representations made are considered and responded to. Once a penalty charge has been imposed, and subject to any decision made during the review process, any unpaid penalty charges will be referred for debt collection.

Minimum Energy Efficiency Standards (MEES): MEES are government regulated standards aimed at improving the overall energy efficiency of privately let buildings. Since their implementation on 1st April 2018, The Energy Efficiency (Private Rented Sector) (England and Wales) Regulations 2015 no longer allows residential properties with the two lowest grades of energy efficiency (F or G) to be rented. Under Minimum Energy Efficiency Standards, the rating must be at grade E or higher for a property to be let in accordance with the law. Failure to comply with the MEES regulations may lead to the imposition of a civil penalty. A statement of principles for determining the appropriate level of penalty under the MEES Regulations is attached at Appendix 3.

8. Prosecution

We may decide to prosecute in respect of serious or recurrent breaches, or where other enforcement action, such as statutory notices have failed to secure compliance. When deciding whether to prosecute we will have regard to the provisions in The Code for Crown Prosecutors as issued by the Director of Public Prosecutions. Prosecution will only be considered where we are satisfied that we have sufficient evidence to provide a realistic prospect of conviction, this will include consulting any criminal landlord database available to us.

In most cases, we will consider the use of civil penalties as an alternative to prosecution where it is felt appropriate to do so. Similarly, consideration will be given to the use of Rent Repayment Orders in addition to prosecution and/or civil penalties for Housing Act offences where justified.

We have the power to issue simple cautions as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, we are likely to consider prosecution.

9. The Decision to Prosecute/Issue a Civil Penalty/Simple Caution

Two tests are applied in determining whether a Prosecution, civil penalty or a Simple Caution is viable and appropriate. We follow guidance issued by the Crown Prosecution Service when applying the tests. More information can be found at: Code for Crown Prosecutors.

A Simple Caution or Prosecution proceedings will only be progressed when the case has passed both the evidential test and the public interest test. The principles outlined also apply to the other types of formal enforcement actions that are available.

The Evidential Test

We must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. In considering the evidence, officers

should have regard to any lines of defence which are open to or have been indicated by the accused, as well as any other factors likely to affect the prospects of conviction including admissibility of the evidence and reliability of witnesses. This must be an objective test since a conviction will only be obtained if the Court or the jury is sure of a defendant's guilt.

The Public Interest Test

The public interest test must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. We will balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the defendant. Some factors may increase the need to prosecute whilst others may suggest that another course of action would be more appropriate.

10. Simple Caution

There are three preconditions, which must all be satisfied if a matter is to be dealt with by simple caution, as follows:

- There is sufficient evidence to give a realistic prospect of conviction,
- The offender admits his or her guilt,
- The person being cautioned agrees to it, having been made aware that the caution may be cited in Court if the person is found guilty of other offences in the future.

The reasons for issuing a simple caution instead of prosecution in the courts would commonly be that the offender has no previous history in relation to the offence and has done everything in their power to make amends. Depending on the circumstances, this would usually entail remedial work to premises and/or taking proper steps to ensure that the offence cannot recur. If a simple caution were to be offered and refused by the offender, then the case would proceed to court.

Following the acceptance of a caution, the offender may be invited to contribute towards the Council's costs in investigating and preparing the case, if these are significant. However, a caution cannot be granted on condition that the Council's costs are paid.

11. Publicity

The Council will consider publicising any conviction, rent repayment order, banning order or civil penalty notice which could serve to draw attention to the need to comply with requirements, or deter anyone tempted to disregard their responsibilities under the law enforced. We will seek to ensure all publicity is released on the day of conviction or soon afterwards.

12. 'Rogue Landlords' Database

Under the provisions within the Housing and Planning Act 2016 the government will establish and maintain a database intended to record details of Landlords and Managing Agents given a Banning Order or convicted of certain offences on a nationwide basis. Application to have Landlord/Agents details entered on the database is a statutory duty where a Banning Order has been given and is at the discretion of the Housing Authority in other circumstances. We will apply to have Landlord's details entered on the database

where there is a duty to do so, and in other cases where the law allows discretion when it is in the public interest to do so.

We are also committed to the Greater London Authority (GLA) Rogue Landlord and Agent Checker which is published on the Mayors website and cites criminal landlords and letting agents who have been successfully prosecuted for housing offences.

13 Caravan Licensing

The Council can serve compliance Notices (subject to appeal) on site owners where site licence conditions are breached. These Notices will set out what the site owner needs to do to correct the breaches, and the timescales. A fee may be charged for the Notice. Failure to comply with the Notice is a criminal offence and Hillingdon Council has the power to carry out works in default.

Licensing Officers of the authority have the right to enter, at all reasonable hours (after having given twenty-four hours' notice) land which is used as a caravan site or in respect of an application for a site licence has been made.

14 Tenant welfare

The Council recognises that enforcement action can have a knock-on effect on tenants in terms of occupation and displacement. We will liaise with the Homelessness Prevention Service when required. Where this is the direct result of a prohibition order, support and compensation will be considered.

Where retaliatory eviction is threatened/suspected we will use powers to prevent this. When illegal eviction occurs, we will work with housing colleagues and take this into account when considering the public interest or aggravating circumstances to the Private Sector Housing intervention taken.

Rent repayment orders when applicable will be pursued where housing benefits have been paid to the owner and (when there is capacity) tenants will be supported in applying to the First Tier Tribunal for orders. The health benefits from enforcement will be recorded and reported on to show the value of this policy and the team's interventions.

Appendix 1

Procedure and Charging Schedule for Housing Offences Civil Penalties and Rent Repayment Orders

Charging Schedule for determining the value of Financial Penalties in relation to offences under the Housing Act 2004 and the Housing and Planning Act 2016

Magistrates Sentencing Guidelines have been considered in constructing the level of civil penalties in this charging schedule

Failure to comply with an Improvement Notice (Section 30)		£
1 st offence	(note 1)	10,000
2 nd subsequent offence by same person/company	(note 2)	15,000
Subsequent offences by the same person/company	(note 6)	25,000
Premiums (use all that apply)		
Acts or omissions demonstrating high culpability	(note 7)	2,500
Large housing portfolio (10+units of accommodation)	(note 3)	2,500
Multiple Category 1 or high Category 2 Hazards	(note 4)	2,500
Vulnerable occupant and/or significant harm occurred as a result of housing conditions	(note 5)	2,500
Offences in relation to licensing of HMOs under Part 2 of the Act (Section 72)		
Failure to obtain property licence (section 72 (1))	(note 1)	10,000
2 nd subsequent offence by same person/company	(note 2)	30,000
Breach of licence conditions (section 72 (2) and (3)) – per licence breach		5,000

Offences in relation to licensing of HMOs under Part 3 of the Act (section 95)		
Failure to licence (section 95 (1))	(note 1)	10,000
2 nd subsequent offence by same person/company	(note 2)	30,000
Breach of licence conditions (section 95 (2)) – per licence breach		5,000
Offences of contravention of an overcrowding notice (section 139)		
1 st relevant offence	(note 1)	10,000
2 nd subsequent offence by same person/company	(note 2)	15,000
Premiums (use all that apply)		
Acts or omissions demonstrating high culpability	(note 7)	2,500
Vulnerable occupant and/or significant harm occurred as a result of overcrowding	(note 3)	2,500
Failure to comply with management regulations in respect of HMOs (section 234)		
1 st relevant offences	(note 1)	1,000 / offence
2 nd subsequent offences by the same person/company for the same offence		3,000 / offence
Premiums (use all that apply)		
Acts or omissions demonstrating high culpability	(note 7)	2,500
Large housing portfolio (10+ units of accommodation)	(note 3)	2,500

Vulnerable occupant and/or significant harm occurred as a result of housing conditions	(note 5)	2,500
Preparation of file costs may be added to the final amount but the final amount will not exceed £30,000		

NOTES

Note 1: Offences that may be dealt with by way of imposing a financial penalty

The starting point for a financial penalty is based on the number of previous convictions or imposition of a financial penalty for the same type of offence in the previous four years.

After the starting point has been determined, relevant Premiums are added to the starting amount to determine the full financial penalty to be imposed.

No single financial penalty may be over £30,000. Where the addition of all relevant premiums would put the penalty above the maximum, it shall be capped at £30,000.

Note 2: 2nd subsequent offence by same person/company

The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

Note 3: Large housing portfolio (10+ units of accommodation)

The premium is applied where the perpetrator has control of or manages 10 or more units of accommodation.

For the purposes of this premium, the definition of a person having control and person managing are as defined by the Housing Act 2004 Section 263.

Note 4: Multiple Category 1 or high Category 2 Hazards

This premium will apply where the failure to comply with the Improvement Notice relates to three or more Category 1 or high scoring Category 2 hazards associated with different building deficiencies. For the avoidance of doubt this means that where two hazards are present but relate to the same property defect, they are counted as one hazard for purposes of this calculation.

For the purpose of this premium, a high scoring category 2 hazard is defined as one scored following the Housing Health and Safety Rating System as "D" or "E".

Note 5: Vulnerable occupant and/or significant harm occurred as a result of housing conditions

This premium will be applied once if either the property is occupied by a vulnerable person or if significant harm has occurred as a result of the housing conditions.

For purposes of this premium a vulnerable person is defined as someone who forms part of a vulnerable group under Housing Health and Safety Rating System relating to hazards present in the property or an occupant or group of occupants considered by the Council to be at particular risk of harm that the perpetrator ought to have had regard.

For purposes of this premium, significant harm is defined as a physical or mental illness or injury that corresponds to one of the four classes of harm under the Housing Health and Safety Rating System Operating Guidance¹.

At the time of publication this document can be found at www.gov.uk and a summary table of vulnerable age in relation to hazards is below.

Hazard	Vulnerable age group (age of occupant)
Damp and mould growth	14 and under
Excess Cold	65 or over
Excess Heat	65 or over
Carbon Monoxide	65 or over
Lead	under 3 years
Personal Hygiene, Sanitation and Drainage	under 5 years
Falls associated with baths etc.	60 or over
Falling on level surfaces etc.	60 or over

¹ Housing Health and Safety Rating System Operating Guidance:
<https://www.gov.uk/government/publications/hhsrs-operating-guidance-housing-act-2004-guidance-about-inspections-and-assessment-of-hazards-given-under-section-9>

Falling on stairs etc.	60 or over
falling between levels	under 5 years
Electrical hazards	under 5 years
Fire	60 or over
Flames, hot surfaces etc.	under 5 years
Collision and entrapment	under 5 years
Collision and entrapment - low headroom	16 or over
Position and operability of amenities etc.	60 or over

Note 6: Previous history of non-compliance with these provisions

This premium is applied where there has been a conviction or imposition of a financial penalty for the same type of offence in the previous four years.

The Council will take into account any such convictions or financial penalties irrespective of the locality to which the offence relates.

Note 7: Acts or omissions demonstrating high culpability

This premium will be applied where, the person to which the financial penalty applies, acted in a reckless or deliberate manner in not complying with the statutory notice or previous relevant formal advice.

Note 8: Acts or omissions demonstrating high culpability

This premium will be applied where, the person to which the financial penalty applies, acted in a reckless or deliberate manner in not complying with the statutory notice or previous relevant formal advice.

Process for imposing penalty charges

1. The Council can impose a civil penalty as an alternative to prosecution for the following offences under the Housing Act 2004 and Housing and Planning Act 2016:
 - Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004);
 - Offences in relation to licensing of Houses in Multiple Occupation (section 72 of the Housing Act 2004);

Private Sector Housing Enforcement Policy 2023

- Offences in relation to licensing of Houses under Part 3 of the Act (section 95 of the Housing Act 2004);
 - Offences of contravention of an overcrowding notice (section 139 of the Housing Act 2004);
 - Failure of comply with management regulations in respect of Houses in Multiple Occupation (section 234 of the Housing Act 2004);
 - Breach of a banning order (section 21 of the Housing and Planning Act 2016).
2. The power to impose a civil penalty as an alternative to prosecution for these offences was introduced by sections 23 and 126 and Schedule 9 of the Housing and Planning Act 2016.
 3. The Council will have regard to the statutory guidance issued under section 23 (10) and Schedules 1 and 9 of the Housing and Planning Act 2016 in the exercise of its functions in respect of civil penalties.
 4. The maximum penalty is £30,000. In determining an appropriate level of penalty, the Council will have regard to the following factors to help ensure that the civil penalty is set at an appropriate level:
 - 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 know, or ought to have known, that they were in breach of their legal responsibilities.
 - c. **The harm caused to the tenant.** The greater the harm or the potential for harm, the higher the amount of civil penalty that will be imposed.
 - d. **Punishment of the offender.** The penalty will be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending.
 - e. **Deter the offender from repeating the offence.** The level of the penalty will 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.** An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.
 - g. **Remove any financial benefit the offender may have obtained as a result of committing the offence.** It should not be cheaper to offend than to ensure a property is well maintained and properly managed.
 5. The Council will follow the procedure for imposing a civil penalty as set out in Schedule 13A of the Housing Act 2004 and Schedule 1 of the Housing and Planning Act 2016.
 6. A “Notice of Intent” shall be served on the person suspected of committing the offence. The Notice shall specify:
 - a. The amount of any proposed financial penalty
 - b. The reasons for proposing the financial penalty

- c. Information about the right to make representations to the Council.
7. The person to which the notice relates will be given 28 days to make written representation to the Council about the proposal to impose a financial penalty. The representation may be via any legible written format, but to aid respondents, a form will be included with the Notice of Intent.
8. Following the 28 day period the Council will decide:
 - a. Whether to impose a financial penalty on the person, and
 - b. The value of any such penalty imposed
9. If the Council decides to impose a financial penalty, a final notice shall be issued imposing that penalty. The final notice will specify:
 - a. The amount of the financial penalty;
 - b. The reasons for imposing the penalty;
 - c. Information about how to pay the penalty;
 - d. The period for payment of the penalty;
 - e. Information about rights of appeal to the First-tier Tribunal;
 - f. The consequences of failure to comply with the notice.

Consequences of non-compliance and miscellaneous provisions

10. Financial Penalties are an alternative to criminal proceedings and as such if a penalty is imposed, no criminal proceedings can be initiated for the same offence.
11. The Council may, at any time:
 - a. Withdraw a notice of intent or final notice
 - b. Reduce the amount specified in a notice of intent or final noticeWhere the Council decides to take either action, it will write to the person to whom the notice was given.
12. The Council is required to issue a 'notice of intent' to issue a financial penalty. Under this notice a landlord has 28 days with which to make representations to the Council. At the end of this period, should the Council still propose to issue the financial penalty, the will serve a 'final notice' imposing the penalty.
13. On receipt of a final notice imposing a financial penalty a landlord can appeal to the First-tier Tribunal against the decision to impose a penalty and/or the amount of the penalty. The appeal must be made within 28 days of the date the final notice was issued. The final notice is suspended until the appeal is determined or withdrawn.
14. If a person appeals, the final notice is suspended until the appeal is determined or withdrawn.
15. If, after any appeal has been finally determined or withdrawn, a person receiving a financial penalty does not pay all or part of the penalty charge, the Council will recover the penalty by order from a County Court. Where appropriate, the Council will also seek to recover the costs incurred in taking this action from the person to which the financial penalty relates.

16. Where a person has received two financial penalties under this legislation in any 12 month period, irrespective of the locality to which the offences committed, the Council will consider making an entry on the Greater London Authority database and the National database of rogue landlords and property agents. When considering making an entry, the Council will have regard to any guidance issued.

Rent Repayment Orders

17. The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of Houses in Multiple Occupation (section 72(1)) and offences in relation to licensing of houses under Part 3 of the Act (section 95 (1)).

18. Rent repayment orders have now been extended through the Housing and Planning Act 2016 to cover the following situations:

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

19. A rent repayment order can be applied for when the landlord has committed an offence for which a rent repayment order can be imposed, whether or not a landlord has been convicted to the offence. A criminal standard of proof is required. The First-tier Tribunal must be satisfied beyond reasonable doubt that the landlord has committed the offence or the landlord has been convicted in the courts of the offence for which the rent repayment order application is being made.

20. The Council will have regard to the relevant statutory guidance issued under in the exercise of its functions in respect of rent repayment orders.

21. The Council will consider applying for a rent repayment order if it becomes aware that a person who is a landlord has been convicted of any of the offences for which a rent repayment order can be imposed.

22. The Council will consider each case independently in deciding when to prosecute and when to apply for a rent repayment order.

23. Where a landlord has been convicted of the offence to which the rent repayment order relates, the First-tier Tribunal must order that the maximum amount of rent is repaid (capped at a maximum of 12 months).

24. Where a landlord has not been convicted of the offence to which the rent repayment order application relates, the Council will take the following factors into account when considering how much rent to seek to recover:

- a. Punishment of the offender. Rent repayment orders should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. Factors that a local housing authority may wish to consider include the conduct of the landlords and tenant, the financial circumstances of the landlord and whether the landlord has previously been convicted of similar offences
- b. Deterring the offender from repeating the offence. The level of the penalty should be set a high enough level such that it is likely to deter the offender from repeating the offence;
- c. Dissuading others from committing similar offences. Rent repayment orders are imposed by the First-tier Tribunal and so the fact someone has received a rent repayment order will be in the public domain. Robust and proportionate use of rent repayment orders is likely to help ensure others comply with their responsibilities.
- d. Removing any financial benefit the offender may have obtained as a result of committing the offence. The landlord is forced to repay rent, and thereby loses much, if not all, of the benefit that accrued to them by not complying with their responsibilities.

25. The Council will consider imposing a civil penalty and applying for a rent repayment order for the following offences:

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of Houses of Multiple Occupation (section 7(1));
- Offences in relation to licensing of houses Under Part 3 of the Act (sections 96(1))

26. The Council will consider prosecuting a landlord and seeking a rent repayment or for the same offence.

27. The Council will follow the following process for applying for a rent repayment order:

- Before applying for a rent repayment order, the Council will give the landlord a notice of intended proceedings;
- A notice of intended proceedings will be served within 12 months of the date on which the landlord committed the offence to which it relates;
- A notice of intended proceedings will
 - Inform the landlord that the local housing authority is proposing to apply for a rent repayment order and explain why;
 - State the amount that the local housing authority is seeking to recover;
 - Invite the landlord to make representations within a period specified in the notice which must be at least 28 days.
- The Council authority will consider any representation made within the notice period;
- The Council will not apply to the First-tier Tribunal for a rent repayment order until the period specified in the notice of intended proceedings has expired;

Private Sector Housing Enforcement Policy 2023

- An application for a rent repayment order may be made to the First-tier Tribunal once the notice has been made and the time for representations has passed.

28. If the landlord refuses to pay a rent repayment order, the Council can refer the case to the County Court for an Order of that Court.

Appendix 2

Smoke and Carbon Monoxide Alarm (England) Regulations 2015

This document forms part of the Private Sector Housing Enforcement Guidance. It contains the Statement of the Principles, required by regulation 13 of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 which the London Borough of Hillingdon will apply in exercising its powers to require a relevant landlord to pay a financial penalty charge. It also outlines the enforcement process and policy that the council will follow in enforcing the Regulations. All of these policies sit under the Council's Prosecutions and Sanctions policy.

Purpose of the Statement of Principles

Regulation 13 places a requirement on the Local Housing Authority to prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge. When determining the amount of a penalty charge regard must be had to the most recent statement of principles prepared and published at this time. The Council may revise its statement of principles at any time, but where it does so, it must publish a revised statement.

The legal framework

The powers come from the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations), being a Statutory Instrument (2015 No 1693) which came into force on 1 October 2015. The Regulations place a duty on Landlords, which include freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence.

The Regulations exclude registered providers of social housing and certain types of tenancies set out in the Schedule to the Regulations. The Regulations also place a duty on the Council to enforce the Regulations and ensure that suitable detection is fitted into the premises.

The duty requires that Landlords ensure that:

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

AND for tenancies starting from 1 October 2015

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

Where the Council believes that a Landlord is in breach of one or more of the above duties, the Council must serve a Remedial Action Notice (Remedial Notice) on the Landlord under Regulation 5 of these Regulations. The Remedial Notice will provide

a list of remedial works to direct the Landlord on how to comply with his duty. Service includes the sending of the Remedial Notice by email. If the Landlord then fails to take the remedial action specified in the Remedial Notice within specified timescale, the Council must do the works in default; additionally, the Council can require a Landlord to pay a penalty charge. The power to charge a penalty arises from Regulation 8 of these Regulations. A Landlord will not be considered to be in breach of their duty to comply with the remedial notice, if he can demonstrate he has taken all reasonable steps to comply. A Landlord can make written representations to the Council within 28 days of when the Remedial Notice is served to explain how he feels he has made all reasonable steps. The Council may impose a penalty charge where it is satisfied, on the balance of probabilities, that the Landlord has not satisfactorily completed the remedial works specified in the Remedial Notice within the required timescale

Enforcement

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

- There are no or insufficient number of smoke alarms or carbon monoxide detectors in the property as required by the regulations or;
- The smoke alarms or carbon monoxide detectors were not working at the start of the tenancy or licence.

The Local Housing Authority shall serve on the landlord in a method prescribed by the Regulations, a remedial notice detailing the actions the landlord must take to comply with the Regulations. If after 28 days the landlord has not complied with the remedial notice a penalty charge notice shall be served. The maximum penalty charge is £5,000.

A landlord may appeal the notice to confirm or vary the penalty charge notice to the First-tier tribunal.

Appeals in relation to a penalty charge notice

The landlord can request in writing no later than 28 days from service that the remedial notice or penalty charge notice be reviewed by the Local Housing Authority who must consider the representation. The local housing authority must consider any representation and decide whether to confirm, vary or withdraw the penalty charge notice. A landlord who is served with a notice confirming or varying a penalty charge notice may appeal to the First-tier Tribunal against the local housing authority's decision.

Recovery of Penalty Charge

The Council may recover the penalty charge on the Order of a Court. Recovery proceedings may not be started before the end of the period by which a Landlord may give written notice for the Council to review the penalty charge notice and where a Landlord subsequently appeals to the First-tier Tribunal against the Council's decision on review; not before the end of the period of 28 days beginning with the day on which the appeal is finally determined or withdrawn.

Private Sector Housing Enforcement Policy 2023

All communications for representations are to be sent to:

Private Sector Housing Manager
Private Sector Housing,
London Borough of Hillingdon,
Civic Centre,
High Street,
Uxbridge, UB8 1UW

Or

By email to: privatesectorhousing@hillingsdon.gov.uk

Appendix 3

Minimum Energy Efficiency Standards (MEES) enforcement and penalty charges

In all cases we will seek to apply the ‘publication penalty’ (entering details of the breach on the public Energy Performance Certificate [EPC] register), together with a financial penalty.

The penalty applied will be the maximum available for the breach(es), that is:

- Where the landlord (L) has breached regulation 23 and, at the time the penalty notice is served has, or had, been in breach for less than three months, the penalty is a financial penalty of £2,000.
- Where L has breached regulation 23 and, at the time the penalty notice is served has, or had, been in breach for three months or more, the penalty is a financial penalty of £4,000.
- Where L has registered false or misleading information under regulation 36(2), the penalty is a financial penalty of £1,000.
- Where L has failed to comply with a compliance notice in breach of regulation 37(4)(a), the penalty is a financial penalty of £2,000.
- Where financial penalties are imposed for breaches of regulation 23 together with breaches of regulation 36(2) or regulation 37(4)(a) in relation to a property the aggregate financial penalty is capped at £5,000.