



ASHFORD
BOROUGH COUNCIL

Private Sector Housing Enforcement and Prosecution Policy

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1. INTRODUCTION

This Policy is consistent with the Council's Policy on the use of enforcement powers. This approach ensures that firm but fair enforcement action will be taken on a case by case basis guided by the law.

This policy details how the Council will use its enforcement powers relating to legislation covering Housing and Environmental Protection issues affecting poor housing conditions only

Ashford Borough Council will seek to resolve problems and achieve the right outcomes at the earliest possible stage with regard to our housing and environmental duties. When appropriate we will look to engage with other agencies such as Kent Fire and Rescue Service (KFRS), in order to rectify problems in a constructive manner. At times enforcement action may be required to resolve issues and such action will be in accordance with this Enforcement Policy.

The Council's approach will be in accordance with the principles of the national Concordat on Good Enforcement as promoted by the government and formally adopted by the Council. This means the Council will carry out their functions in an equitable, practical and consistent manner to secure a safe and healthy environment for all residents.

Our objectives are to ensure that the conditions in the private rented sector, including houses in multiple occupation (HMO's) comply with statutory standards, making the most effective use of capital and manpower resources and reduce the number of long term empty dwellings.

2. METHODS OF ENFORCEMENT

We recognise that prevention is better than cure, but where necessary enforcement action will be taken. The term "enforcement" has a wide meaning and applies to all dealings between the Council and those on whom the law places a duty. The range of actions available to the authority include:-

- No action
- Informal action and advice
- Housing Act Notices
- Local Government Act Notices
- Public Health Act Notices
- Building Act Notices
- Smoke and Carbon Monoxide Alarms– Remedial Notices
- Works in default
- Charges for enforcement
- Standards of Houses in Multiple Occupation
- Management of Houses in Multiple Occupation
- Licensing of Houses in Multiple Occupation

- Simple Caution
- Prosecution
- Rent Repayment Orders
- Compulsory Purchase Orders
- Penalty Charge Notices
- Civil Penalties

2.1 Legislative Powers

The principal piece of legislation used by the Private Sector Housing team is the **Housing Act 2004** (referred to as “the Act”). However, there are circumstances where other pieces of legislation may be more appropriate in dealing with the identified problem. Officers are expected to use professional judgement to determine the most appropriate piece of legislation to use. In some cases it may be appropriate to use a range of enforcement tools.

A list of legislation is attached at **Appendix 1**. This list is not infinite

A list of enforcement powers under the Housing Act 2004 at **Appendix 2**.

General Principles

When carrying out enforcement action it is important that the Council works within the statutory framework set out and that it follows best practice and procedure.

In particular, the Council is committed to acting in a fair and consistent manner and has adopted this enforcement policy as part of this commitment. When exercising its enforcement functions, the Council will act in such a way that is

- Transparent
- Accountable
- Proportionate
- Consistent

2.2 Decision Making

The decision to take action, whatever that action may be, will be based on the available evidence and professional judgement.

All prosecutions must be endorsed by the Head of Housing. Prior to submitting a prosecution file to the Head of Housing Services, the Case Officer must first consult with the Private Sector Housing Manager to ensure that the prosecution is in accordance with this enforcement policy. The Case Officer must then consult with the appropriate Officer from Legal Services to ensure that the case has been properly considered and is sound.

2.3 Formal Enforcement

Enforcement action may only be initiated by Officers who are authorised to do so.

The Private Sector Housing Team recognises and affirms the importance of achieving and maintaining consistency in its approach to making all decisions which concern enforcement action, including prosecution. The Council follows the principles of the Enforcement Concordat. It will also ensure that all actions will be consistent with the Human Rights Act 1998.

The Council will, other than in exceptional cases, always ensure that landlords, tenants and owners have the opportunity to discuss the Council's proposed action before a notice is served.

Exceptional circumstances will normally only be such situations where this might cause an unacceptable delay in alleviating the hazard.

It is our policy to ensure that enforcement decisions are always consistent, balanced, and fair and ensure the public is adequately protected. In coming to any decision many criteria will be taken into account including the seriousness of the offence, the individual's past history, the confidence we have in the management, the consequences of non-compliance, and the likely effectiveness of the various enforcement options.

- **Formal Notices**

Formal notices can be an effective way of securing the undertaking of necessary remedial works where an informal approach is unsuccessful or inappropriate. For most types of notice, the recipient has the right to appeal to the Courts.

A range of enforcement options are available to the Council and how these discretionary powers are used in Ashford will depend on the circumstances of each case. In making decisions the following will be taken into account except that where a category 1 hazard exists within a property the Council must take some action

- The nature of the hazard
- The nature and circumstances of the current occupier (Age, vulnerability etc.)
- Views of the occupiers
- Local priorities for improving housing conditions
- Availability of other forms of Housing Assistance
- Action must be proportionate to the risk

The Government has issued guidance both on the operation of the HHSRS and on the enforcement framework. Ashford will at all times have regard to available government guidance before taking enforcement decisions.

- **Formal Enforcement – Prosecution**

The Council will generally initiate prosecution where:-

- The person served with a notice fails to comply with the requirements of the notice and
- There has been no appeal against the terms of the notice or any appeal made has not been upheld

In deciding to prosecute the Council will deem it appropriate to do so having considered both the evidential evidence and whether it's in the public interest.

- **Civil Penalties**

The Housing & Planning Act 2016 introduced changes to the Housing Act 2004 to allow the Council to issue civil penalties of up to £30,000.

Appendix 3 to this policy sets out the decision making process regarding whether to use a civil penalty and at what level it should be charged.

2.4 Informal Action

There may be circumstances in which informal action is appropriate. Many persons, having had a problem for which they are responsible drawn to their attention, will be anxious to comply with their statutory obligations. In such cases the Officer's role will be to guide and support.

Officers will supply appropriate guidance on legislation, Council procedures and criteria used to assess the extent of the problem whenever a complaint is received or a problem is otherwise drawn to the Officer's attention.

- Any requirements will clearly identify whether they are mandatory or advisory in nature. If the requirements are mandatory, a timescale for compliance will be specified
- Due regard will be had to any special circumstances when a timescale for compliance is specified

It is appropriate to use informal action in the following circumstances:-

- When the act or omission is not serious enough to warrant formal action
- When, from the individual's/enterprise's past history it can be reasonably expected that informal action will achieve compliance
- When confidence in the individual's/enterprise's management is high
- When the consequences of non-compliance will not pose a significant risk to public health.

2.5 Charges for Enforcement Action

The Council reserves the right to charge and recover its costs where we have the right or permitted to do so.

Landlords have a duty of care to their tenants and should provide accommodation that is both free from significant hazards and properly maintained, thus avoiding the need for intervention from the Council. The Housing Act 2004 enables the Council to recover its reasonable expenses associated with serving notices and other enforcement activity. The enforcement expenses will be considered on a case by case basis.

2.6 Emergency Action

In certain emergency situations where it is not possible to contact the relevant person and gain their co-operation enforcement action will be taken that will involve carrying out work without the prior need to serve legal notice, for example:

- Where there is an imminent risk of serious harm to the health or safety of occupiers or others
- Where there is an immediate need to secure a building against unauthorised entry or to prevent it becoming a danger to public health

2.7 Simple Cautions

The decision to issue a simple caution will be made by the Head of Housing Services in consultation with the Legal Services.

A simple caution may be an appropriate course of action where there is a criminal offence but the public interest does not require a prosecution.

In considering whether a Caution is appropriate, the Council will consider the following questions:-

- Has the suspect made a full and frank admission of the offence (either verbally or in writing)?
- Is there a realistic prospect of conviction if the offender were to be prosecuted?
- Is it in the public interest to use a Caution as the appropriate means of disposal?

2.8 Banning Orders

The council may apply for a banning order at first tier tribunal. A list of Banning Order offences can be found in the Housing and Planning Act 2016 (Banning Order) Regulations 2018.

2.9 Rogue Landlord Database

The council can enter details of landlords considered to be “rogue” onto the government database. It is available to all Local Authorities to enable them to share information about criminal landlords who operate in multiple areas.

2.10 Other Powers – works in default

Where the requirements of a notice are not carried out, in many instances the Council is empowered to do whatever is necessary in execution of that notice and recover the costs of doing so from the person responsible. The Council will if deemed necessary and appropriate carry out works in default when:

- The person served with a notice has failed to comply with the requirements of the notice *and*
- There has been no appeal against the terms of the notice or any appeal made has not been upheld

In deciding whether to carry out works in default the Council will consider:

- If it is necessary and appropriate the Council will regard works in default as a more appropriate or effective remedy than prosecution
- The Council may recover the costs of the work from the person responsible as a civil debt or by placing a legal charge on the property, which is a local land charge.

2.11 Powers of Entry

In carrying out their duties, duly authorised Officers have a range of far reaching powers, including the right to enter any premises at any reasonable time in order to:-

- Ascertain whether or not a breach of legislation exists
- Carry out any action or works authorised in accordance with this enforcement policy

Entry to any residential property shall not, except in an emergency, be demanded as of right unless 24 hours' notice has been given. If entry is refused, an Officer may apply to a Justice of the Peace for a Warrant to enter the premises, if needs be, by force.

3. HOUSES IN MULTIPLE OCCUPATION

3.1 Licensing of Houses in Multiple Occupation

Mandatory Licensing

Mandatory Licensing of Houses in Multiple Occupation under part 2 of the Housing Act 2004. The Council is required to have a licensing scheme in place, seek properties that require licenses and license properties that are licensable.

From 1st October 2018 HMO licences are required for all HMOs of any storey height that are occupied by five or more persons, who form two or more households and share facilities (such as kitchens, living rooms and bathrooms).

OR

Purpose built flats where there are up to two flats in the block and one or both of the flats are occupied by 5 or more persons in 2 or more separate households. This will apply regardless of whether the block is above or below commercial premises. This will bring certain flats above shops on high streets within mandatory licensing as well as small blocks of flats which are not connected to commercial premises.

Penalties

A person commits an offence if he manages or is in control of an HMO which should be licensed but does not have one or if he allows the property to be occupied by more than the agreed number of households or persons authorised in the licence conditions. Prosecution can result in unlimited fines and court costs or instead of prosecuting, the council can issue penalty charges of up to £30,000.

Rent re-payment orders – if a person has committed the offence of operating as an HMO without having an HMO licence, the Council or the tenants can apply for a rent repayment order. The First Tier tribunal (FTT) can award the order, which requires the appropriate person to repay all rents, periodical payments and housing benefits for the period up to a licence being issued. The order would state the amount to be repaid.

Termination of Tenancies – Landlords will not be able to issue any section 21 notices under the Housing Act 1988 (termination of a shorthold tenancy and possession of the property), whilst a licensable HMO is unlicensed.

Duration of Licences

Licences will normally be granted for the full five year period. We may reduce the length of the licence from five years to an appropriate lesser period:

Fit and Proper Person Policy

In granting a licence the Council must be satisfied that the proposed licence holder, manager and any person involved in the management of the property are fit and proper persons. A person's fit and proper status may be reviewed at any time if circumstances change. Removal of this status could lead to refusal and or revocation of licence.

The proposed licence holder will need to be exempt from the following before granting a licence:

- Any unspent convictions for offences involving fraud or other dishonesty, or violence or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003
- Any unlawful discrimination on grounds of sex, colour, race, ethnic or national origins, or in connection with the carrying on of a business
- Any contravention of any provision of the law relating to housing or of landlord and tenant law (including any civil proceedings that resulted in a judgement against you)

Discretionary licensing

The Council may, at its discretion bring into force licensing of other residential accommodation, as defined by parts 2 and 3 of the Housing Act 2004, which allows local authorities to require landlords of some privately rented properties to apply for a licence. There are two types of discretionary licensing.

Additional licensing may be appropriate where a large number of HMOs in an area are not being managed effectively and causing particular problems for the people who live in these HMOs or members of the public.

Selective licensing may be appropriate where there is a problem with anti-social behaviour in an area or an area of low housing demand, and that some or all of the landlords in the area are failing to take action to combat the problem.

3.2 Standards of Houses in Multiple Occupation

HMOs will be inspected having regard to the Housing Health and Safety Rating System and the Management Regulations.

If after an inspection it is found the HMO does not meet the Council's standards or has serious hazards under the rating system, enforcement action will be considered.

3.3 Management of Houses in Multiple Occupation

The Management Regulations apply to Houses in Multiple Occupation (HMOs) in England, but do not apply to converted blocks of flats to which section 257 of the Act applies. These are buildings that have been converted into and consist of self-contained flats where the building work undertaken in connection with the conversion did not comply with the appropriate building standards and still does not comply with them, and less than two thirds of the self-contained flats are owner occupied.

3.4 Article 4 Directions

Ashford Borough Council has Article 4 areas within its Borough. This limits the works that can be carried out without needing planning permission from the Council. In respect of this policy Article 4 Direction relates to restrictions on both licensed and non-licensed HMOs in certain areas of the Borough

3.5 Management Orders (Housing Act 2004)

These powers will be used as a last resort where other attempts have failed, where there is no reasonable prospect of a licence being granted or it is necessary to protect the health, safety or welfare of occupiers, visitors or persons living in the vicinity or anti-social behaviour is affecting other occupiers, visitors or persons in the vicinity of the premises.

4. The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022

There is a penalty charge of up to £5,000 for not having a smoke alarm on every level of a premises used as a private rented dwelling and for not having a Carbon monoxide alarm fitted in a rented dwellings which contains a fixed combustion appliance (excluding gas cookers). A fixed combustion appliance means a fixed apparatus where fuel of any type is burned to generate heat. Typically, these appliances are powered by gas, oil, coal; wood, etc., for example, gas or oil boilers, or log-burning stoves. The council has published a statement of principles regarding its fine structure. See **Appendix 4** for more details.

5. Minimum Energy Efficiency Standards

Minimum Energy Efficiency Standards (**MEES**) were introduced by The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (the Regulations), establishing the minimum level of energy efficiency for new and existing tenancies in the private rental sector.

The Council has a duty to ensure that private landlords fulfil their obligations under the Regulations. Since 01 April 2020, it has been unlawful for a private landlord to rent out a domestic property if it has an EPC rating of F or G, unless a valid exemption has been registered on the PRS Exemptions Register. Landlords who breach the regulations may be subject to a penalty notice. The Council has published a fee policy framework regarding its fine structure. See Appendix 5 for further details.

6. Empty properties

The Private Sector Housing Service identifies long term empty properties and will work with the owner to bring back into use.

Action will be tailored to match housing need, nuisance issues and length of time the property has been empty.

Where necessary, we will take enforcement action to deal with the symptoms that arise when a property is left empty.

7. Immigration inspections

The Private Sector Housing team offer a service (chargeable by fee) to persons wishing to sponsor a person from another country to come and stay in the United Kingdom. As part of the visa application, the High Commission Office require a letter or report from the Local Housing Authority to confirm that the accommodation the applicant wishes to stay in is suitable for the number of persons living there and that it is free from hazards.

Any hazards found within the property would need to be remedied before a report can be issued to the visa applicant. This would involve contacting the owner of the property and asking for remedial works to be carried out. Enforcement notices may therefore be served if the responsible person fails to carry out the required remedial works.

8. Owner occupiers

Priority will be given to addressing poor housing conditions that threaten the safety and wellbeing of occupiers.

Enforcement will be targeted particularly at situations where occupiers have little influence over the conditions of the accommodation they occupy. For this reason the service of notices or enforcement action on owner/occupiers will only be used in exceptional circumstances (see informal action).

9. What we will expect of tenants

Before considering taking any action in tenanted properties, we will require the tenant to have contacted their landlord. This applies to both private and housing association tenants. Legislation covering landlord and tenant issues requires that the tenant notify their landlord (preferably in writing) of any problems with the property. Landlords can only carry out their repairing obligations once they are made aware of any problems. Any copies of correspondence between the tenant and the landlord should be provided to Officers.

Tenants will be expected to keep Officers informed of any contact they have with their landlord (or landlord's agent, builder etc.) that may have an effect on what action the Council takes.

10. Training and qualifications of enforcement officers

No Officer will carry out enforcement duties unless suitably trained and experienced and authorised by Ashford Borough Council.

Prosecution will only be instigated following a review of the matter by the Case Officer and an appropriate Officer from Legal Services, and authorisation by the Head of Housing.

Training will be provided for all enforcement Officers as required to meet changes in legislation and enforcement procedures.

11. How to complain

If you are dissatisfied with the service you receive please let us know.

- On line at: www.ashford.gov.uk/feedback
- Email: customer.care@ashford.gov.uk
- Call us on: 01233 331111

- In person at the Civic Centre, Ashford

If you are still unhappy you can discuss your complaint with your local ward Councillor, MP or can complain to the Local Government Ombudsman.

12. How to contact us

In the first instance please use the telephone number given on any correspondence we send and speak to the Case Officer dealing with the matter or contact;

Julian Watts
Private Sector Housing Manager

Private Sector Housing Department
Ashford Borough Council
Civic Centre
Tannery Lane
Ashford
Kent TN23 1PL

Tel: 01233 330339 or E-mail Julian.watts@ashford.gov.uk

Information in other languages

If you require this policy in an alternative format please contact – 01233 330339 or Email: Julian.watts@ashford.gov.uk

Appendix 1

Other Legislation

- **Local Government (Miscellaneous Provisions) Act 1976**

This act enables the Council to re-connect or prevent the disconnection of gas, electricity or water supply in tenanted properties. These powers will be used in exceptional circumstances when all other negotiation has failed. These powers will only be used where the tenant is not responsible for the payment of the bill.

- **Local Government (Miscellaneous Provisions) Act 1976**

This act enables the Council to obtain information about the interest in land. The notice is used to determine who owns, manages, and occupies a dwelling. The information must be provided within 14 days of service of the document. Failure to provide the information may result in the Council bringing a prosecution. On summary conviction the Magistrates Court can fine the relevant person.

- **Local Government (Miscellaneous Provisions) Act 1982**

This act enables the Council to board up unsecure empty properties. The Council will attempt to contact the owner to carry out the work. If the property remains unsecure the Council may serve a notice giving the owner 48 hours to make the property secure. If the property remains unsecure after this the Council may carry out the work and re-charge its costs. A local authority need not to give any such notice if it is necessary to undertake works immediately or owner/occupier cannot be reasonably traced.

- **Public Health Act 1961**

This act enables the Council to require owners / occupiers to unblock or repair toilets. If negotiation fails the Council may serve a notice requiring the toilet to be

unblocked within 7 days. After which the Council may carry out the work and re-charge its costs.

If the toilet requires repair the Council may serve a notice requiring the toilet to be repaired within 14 days. After which the Council may carry out the work and re-charge its costs.

- **Environmental Protection Act 1990**

This act enables the Council to deal with premises that are deemed to be a nuisance/prejudicial to health. Prejudicial to health is defined as injurious or likely to cause injury to health.

- **Building Act 1984**

Section 59 of the Building Act 1984 allows by notice the Council to require owners to provide new, repair, or upgrade existing: drains, guttering, cesspools, sewers, drains, soil pipes, and rainwater pipes etc.

The Council must give the owner of the property reasonable time to carry out the work. If the owner fails to carry out the work the Council may carry out the work itself and prosecute.

- **Smoke and Carbon Monoxide Alarm Regulations 2015**

The Council has a duty to serve a remedial notice (within 21 days of having reasonable grounds to believe that a breach of the landlord's duty has occurred) on a private landlord if there is no smoke alarm fitted on each storey of the premises on which there is a room used wholly or partly as living accommodation.

The Council has a duty to serve a remedial notice (within 21 days of having reasonable grounds to believe that a breach of the landlord's duty has occurred) on

a private landlord if there is not a carbon monoxide alarm fitted in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance.

The notice will require the landlord to take action within 28 days.

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

From 1 July 2020, all new private tenancies in England will need to ensure that electrical installations are inspected and tested by a qualified person before the tenancy begins. The landlord will then need to ensure that the installation is

inspected and tested at least every five years – and more often if the most recent safety report requires it.

For existing tenancies, an electrical safety test will need to be carried out by 1 April 2021, with regular tests following this as outlined above.

The Council can impose a financial penalty of up to £30,000 for a breach of the regulations. The existing financial penalties policy at **Appendix 3** will be used to determine the level of penalty.

Appendix 2

Housing Act 2004

The Housing Health and Safety Rating System (HHSRS)

Under the Housing Act 2004, local housing authorities are able to assess housing conditions for specific hazards. It looks at the effect that deficiencies in the home can have on the health and safety of occupants and visitors by using a risk assessment approach called the Housing Health and Safety Rating System (HHSRS). The aim of individual risk assessment is to reduce or eliminate hazards to health and safety in domestic accommodation. Potentially there are 29 hazards and each hazard is assessed separately and rated according to how serious the likelihood of harm.

The 29 Hazards:

Damp and mould growth	Crowding and space	Falling on stairs etc
Excess cold	Entry by intruders	Falling between levels
Excess heat	Lighting	Electrical hazards
Asbestos	Noise	Fire
Biocides	Domestic hygiene	Hot surfaces
Carbon monoxide	Food safety	Collision/Entrapment
Lead	Personal hygiene	Explosions
Radiation	Water supply	Ergonomics
Uncombusted fuel gas	Falls/baths	Structural collapse
Volatile compounds	Falls on level	

The assessment process is not just a question of examining defects to a property,

but it comprises risk assessment, probable outcomes and the resulting effects on the occupiers' health, safety and welfare.

Two key tests are applied:

- The likelihood of an occurrence (such as an accident or ill health) as a direct result of this deficiency in the house;
- The likely outcomes in terms of injury or ill health (physical and mental) arising from the deficiency.

The final score is divided into bands ranging from A – J. Councils have a duty to take action to remedy hazards which fall into bands A – C. These are termed Category 1 hazards.

Category 2 hazards are also subject to enforcement powers by Councils. Each case is individual and the appropriate enforcement action will be chosen which reflects the circumstances concerned.

The Act also provides a range of enforcement tools:-

Improvement Notices – section 11 is used for category 1 hazards, section 12 is used for category 2 hazards. An improvement notice should be used where reasonable remedial works can be carried out to reduce the hazard sufficiently.

Prohibition Orders – section 20 for category 1 hazards and section 21 for category 2 hazards. This order may prohibit the use of part or all of premises for some or all purposes or for occupation by a particular number or description of people. An order may be appropriate where conditions present a risk but remedial action is not possible because of cost or other reason. It may also be used to limit the number of persons occupying the dwelling, or prohibit the use of the dwelling by specific groups. In an HMO it can be used to prohibit the use of specified dwelling units.

Hazard Awareness Notices – section 28 for category 1 hazards and section 29 for category 2. This is used where a hazard has been identified but it is not necessarily serious enough to take formal action. It is a way of drawing attention to the need for remedial action. This notice should not be used if the situation is considered serious enough for follow up inspections to be made. This notice is not registered as a land charge and has no appeal procedure.

Emergency Remedial Action - section 40 – this is only acceptable for use where there is an **imminent** risk of serious harm and the hazard must rate as a category 1. The authority must undertake any necessary remedial works that are required to reduce the immediate risk. A warrant to enter the premises in order to carry out the work may be granted by a Justice of the Peace where he/she is satisfied that the authority would not be granted admission by the owner.

Emergency Prohibition Order – section 43 – this is only acceptable for use where there is an **imminent** risk of serious harm, the hazard rates as a category 1 and where it is not practical to carry out the remedial works as in section 40.

Demolition Order – this can only be used in response to category 1 hazards, but not if the building is listed. It must take into account availability of accommodation for re-housing, demand for accommodation, and the possible future use for the cleared site.

Clearance Area – All residential buildings in the proposed area must have at least one category 1 hazard. It must take into account availability of accommodation for re-housing, demand for accommodation, and the possible future use for the cleared site.

Suspend Improvement Notices or Prohibition Orders – these notices may be suspended where enforcement action can safely be postponed until a specified event or time. This can be a period of time or a change in occupancy. Current occupation and wishes must be taken into account. These may also be used where there is programmed maintenance. The suspensions must be reviewed at the very least every 12 months. The advantage of suspending a notice is that there is a record of the LHA's involvement and the situation must then be reviewed. It is also recorded as a local land charge.

The Act requires enforcing authorities to produce a statement of reasons justifying the type of action they are taking. This must accompany all notices and orders served.

Appendix 3

Private Sector Housing Enforcement Policy

Civil penalties under the Housing and Planning Act 2016

The Housing & Planning Act 2016 introduced changes to the Housing Act 2004 to allow the Council to issue civil penalties of up to £30,000.

The Council will be able to impose such penalties 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)2;
- Offences in relation to licensing of Houses in Multiple Occupation (section 72 of the Housing Act 2004)3;
- Offences in relation to licensing of houses under Part 3 of the Act (section 95 of the Housing Act 2004)4;
- Offences of contravention of an overcrowding notice (section 139 of the Housing Act 2004)5;
- Failure to 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)

The council will determine, on a case-by-case basis, whether to instigate prosecution proceedings or to serve a civil penalty in respect of any offences listed above.

In addition to the above offences, section 23 of the Housing and Planning Act 2016 provides that a civil penalty may be imposed in respect of a breach of a Banning Order.

Banning orders prohibit landlords and agents from letting or managing residential properties. An order can prohibit a person from:

- Renting out a residential accommodation
- Engaging in letting agency work
- Engaging in property management work.

Guidance on Banning Orders document “Banning orders for landlords and property agents can be found under the Housing and Planning Act 2016” see link:

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

Where a letting/managing agent and landlord have committed the same offence the Council can impose a civil penalty on both of them as an alternative to prosecution. The level of the civil penalty imposed on each offender may differ, depending on the circumstances of the case. The Council cannot prosecute as well as impose a financial penalty, but must be satisfied, to the criminal standard of proof, i.e. beyond reasonable doubt, that an offence has been committed, which could justify a prosecution, before it imposes a financial penalty.

Determining whether to prosecute or issue a civil penalty.

Where the legislation allows a civil penalty to be issued this will normally be the first choice rather than prosecution unless the landlord has breached housing legislation in the past and continues to be considered such a poor landlord that a banning order is considered necessary. In this case a prosecution will be the first choice with an aim to proceed for a banning order.

When issuing a civil penalty the procedures set out between pages 4 & 6 of this policy in this appendix will be followed in determining the level of the fine.

When determining whether to prosecute for an offence, officers will follow the guidance in this enforcement policy.

The Council has the power to impose a civil penalty of up to £30,000, with a level of civil penalty imposed in each case in line with its policy. The financial penalty will be based on the seriousness of the offence and taking into account the circumstances of the case. This would include the financial circumstances of the offender..

Statutory Guidance

The Government has issued statutory guidance under Schedule 9 of the Housing & Planning Act 2016 Local authorities must have regard to this guidance (see link below) in the exercise of their functions in respect of civil penalties

Civil Penalties under the Housing and Planning Act 2016 Guidance- link: <https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>

Paragraph 3.5 of the statutory guidance states that ‘The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlord’s previous record of offending’. The same paragraph sets out several factors that should be taken into account to ensure that the civil penalty is set at an appropriate level in each case:

- a. **Severity of the offence.** The more serious the offence, the higher the penalty should be.
- b. **Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
- c. **The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.
- d. **Punishment of the offender.** A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.
- e. **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- f. **Deter others from committing similar offences.** While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.
- g. **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

Deciding on an appropriate level of penalty

STEP 1 – Determining the offence category

The Council will determine the offence category using only the **culpability** and **harm** factors in the tables below. The severity of the offence based on the culpability levels below, would be determined in conjunction with the statutory guidance on page two.

Culpability

Very high

- Where the offender intentionally breached, or flagrantly disregarded, the law or
- Who has a high public profile and knew their actions were unlawful

High

- Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken

Medium

- Offence committed through act or omission, which a person exercising reasonable care would not commit

Low

Offence committed with little fault, for example, because:

- significant efforts were made to address the risk although they were inadequate on this occasion
- there was no warning/circumstance indicating a risk
- failings were minor and occurred as an isolated incident

Harm

The table below contains factors relating to both actual harm and risk of harm. Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does.

Category 1 – High Likelihood of Harm

- Serious adverse effect(s) on individual(s) and/or having a widespread impact
- High risk of an adverse effect on individual(s) – including where persons are vulnerable

Category 2 – Medium Likelihood of Harm

- Adverse effect on individual(s) (not amounting to Category 1)

- Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect
- The Council and/or legitimate landlords or agents substantially undermined by offender's activities
- The Council's work as a regulator to address risks to health is inhibited
- Consumer/tenant misled

Category 3- Low Likelihood of Harm

- Low risk of an adverse effect on individual(s)
- Public misled but little or no risk of actual adverse effect on individual(s)

We will use the following definition of harm taken from the statutory guidance on hazard rating under the Housing Act 2004, 'Harm is an adverse physical or mental effect on the health of a person.

STEP TWO -Starting point and category range

Having determined the **category**, the council would refer to the following **starting points** to reach an appropriate level of civil penalty within the category range. The Council will then consider further adjustment within the category range for aggravating and mitigating features.

Starting points and ranges The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability

Table 1

Range			
Starting point		Min	Max
Low culpability			
Harm category 3	£50	£25	£175
Harm category 2	£125	£50	£350
Harm category 1	£300	£125	£750
Medium culpability			
Harm category 3	£350	£175	£750
Harm category 2	£1,000	£350	£2,000
Harm category 1	£2,500	£750	£4,500
High culpability			
Harm category 3	£1,000	£500	£2,250
Harm category 2	£3,000	£1,000	£5,500
Harm category 1	£6,250	£2,500	£12,500
Very high culpability			
Harm category 3	£2,500	£1,250	£4,500
Harm category 2	£6,250	£2,500	£12,500
Harm category 1	£15,000	£6,250	£30,000

Factors, which the Council will consider in reducing the penalty

The council will consider any factors, which indicate a reduction in the penalty and in so doing will have regard to the following factors relating to the wider impacts of the financial penalty on innocent third parties; such as (but not limited to):

- impact of the financial penalty on offender's ability to comply with the law or make restitution to victims;
- impact of the financial penalty on employment of staff, service users, customers and local economy.

Reduction for early admission of guilt

The Council will take into account a potential reduction in penalty for an admission of guilt.

The following factors will be considered in setting the level of reduction. When deciding on any reduction in a financial penalty, consideration will be given to:

- The stage in the investigation or thereafter when the offender admitted guilt
- The circumstances in which they admitted guilt
- The degree of co-operation with the investigation

The maximum level of reduction in a penalty for an admission of guilt will be one-third. In some circumstances, there will be a reduced or no level of discount. For example where the evidence of the offence is overwhelming or there is a pattern of criminal behaviour.

Any reduction should not result in a penalty, which is less than the amount of gain from the commission of the offence itself.

Obtaining financial information

The statutory guidance advises that local authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty.

In setting a financial penalty, the Council may conclude that the offender is able to pay any financial penalty imposed unless the Council has obtained or the offender has supplied any financial information to the contrary. An offender will be expected to disclose to the Council such data relevant to his financial position to enable the Council to assess what an offender can reasonably afford to pay. Where the Council is not satisfied that it has been given sufficient reliable information, the Council will be entitled to draw reasonable inferences as to the offender's means from evidence it has received and from all the circumstances of the case, which ***may include the inference that the offender can pay any financial penalty.***

Penalties for Failure to Comply with a Banning Order

The court can impose an unlimited maximum fine for failure to comply with a Banning Order. In addition, the court can also impose a prison sentence

The Housing and Planning Act 2016 includes provisions and processes for a person to be banned from being involved, for a specified period, in one or more of the following activities:

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

Banning Orders are reserved for what are recognised as being the most serious housing related offences. If the Council was satisfied that a breach of a Banning Order had occurred, the Council would normally start prosecution proceedings. In the event that the Council believed that a civil penalty would be appropriate for a breach of a Banning Order, the council would normally impose a penalty up to a maximum amount of £30,000 to reflect the severity of the offence.

Procedures

Financial Penalty Process and Right for Person to make Representations.

Before imposing a financial penalty on a person the Council will, within 6 months of the date of the offence, give the person notice of its proposal to do so (a “notice of intent”); setting out the Council’s reasons for doing so and the level of fine. A person in receipt of the notice of intent can make written representations to the following within 28 days:

**The Manager
Private Sector Housing
Ashford Borough Council
Civic Centre
Tannery Lane
Ashford
TN23 1PL**

Subsequently the Council will decide whether to issue a financial penalty and the amount. Before doing so the Council will issue a final notice requiring that the penalty be paid.

The final notice will set out:

- the amount of the financial penalty
- the reason for imposing the penalty
- information about how to pay the penalty
- the period for payment of the penalty (28 days)
- information about rights of appeal; and
- the consequences of failure to comply with the notice.

The officer determining the level of the financial penalty will record his/her decision, giving reasons for the amount of the penalty.

The landlord has the right to make representations against the decision and the Council will consider any representation. The Council will provide a response within 21 days, with a decision notice stating whether the penalty will be withdrawn, varied or upheld.

A person who receives a final notice may appeal to the First-tier Tribunal against:

- the decision to impose a penalty: or
- the amount of the penalty

If a person appeals, the final notice is suspended until the appeal is determined or withdrawn.

Appendix 4

The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022

Statement of principles for determining financial penalties

Introduction

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

Purpose of the Statement of Principles

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

The Council may revise its statement of principles at any time, but where it does so, it must publish a revised statement

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.

The legal framework

The powers come from the Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022 (the Regulations), being a Statutory Instrument (2022 No 707) which came into force on 1 October 2022.

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

The duty requires that landlords ensure that:

- a smoke alarm is installed on each storey of premises where there is living accommodation
- a carbon monoxide alarm is installed in any room of premises used as living accommodation, which contained 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 has reasonable grounds to believe that a landlord is in breach of one or more of the above duties, the Council must serve a remedial notice on the landlord. The remedial notice is a notice served under Regulation 5 of these Regulations.

If the landlord, then fails to take the remedial action specified in the notice within specified timescale, 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 they can demonstrate they have taken all reasonable steps, other than legal proceedings to comply. This can be done by making written representations to the Council at the address given at the bottom of this document within 28 days of when the remedial notice is served.

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

The purpose of imposing a financial penalty

The primary purpose of the Council's exercise of its regulatory powers is to protect the occupants' safety within a dwelling in the event of a fire.

The primary aims of financial penalties will be to:

- ensure landlords take proper responsibility for their properties
- eliminate any financial gain or benefit from non-compliance with the regulations.
- be proportionate to the nature of the breach of the regulations and the potential harm outcomes.
- aim to deter future non-compliance.
- reimburse the costs incurred by the Council in undertaking work in default.
- Lower the risk to tenant's health and safety

Criteria for the imposition of a financial penalty

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

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

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

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

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

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

Principles for determining the amount of a financial penalty

Any penalty charge should be set at a level which is proportionate to the risk posed by non-compliance with the requirements of the legislation and which will deter non-compliance. It should also cover the costs incurred by the Council in administering and implementing the legislation.

Fire and Carbon Monoxide are two of the 29 hazards prescribed by the Housing Health and Safety Rating System and often result in death and serious injury.

In the case of fire, the absence of working smoke alarms in residential premises is a significant factor in producing worse outcomes.

This is particularly so at night, as without the early warning they provide, a small fire can develop unnoticed rapidly to the stage where smoke and fumes block escape routes or render a sleeping occupant unconscious. Working smoke alarms alert occupiers to a fire at an early stage before it prevents physical escape to safety.

The Department of Communities and Local Government estimate that 231 deaths and 5860 injuries could be prevented over ten years accruing a saving of almost £607.7 million by the provision of smoke alarms.

Carbon Monoxide is a colourless, odourless and extremely toxic gas. At high concentrations it can cause unconsciousness and death. At lower concentrations it causes a range of symptoms from headaches, dizziness, weakness, nausea, confusion, and disorientation, to fatigue, all symptoms which are sometimes confused with influenza and sometimes with depression. For all these reasons Carbon Monoxide is often dubbed “the silent killer”. Open fires and solid fuel appliances can be a significant source of Carbon Monoxide. Carbon Monoxide alarms alert occupiers to the presence of the gas at an early stage before its effects become serious.

The Department of Communities and Local Government estimate that six to nine deaths and 306 to 460 injuries could be prevented over ten years accruing a saving of almost £6.8 million by the provision of Carbon Monoxide alarms.

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

For these reasons, an effective incentive to comply with these Regulations is fully justified.

It is understood that the imposition of the maximum potential fixed penalty charge, being £5,000 under the regulations, can present an excessive financial burden but this is balanced against the risk, the low cost of compliance and the fact that all reasonable opportunity will have been given to comply prior to any penalty charge being levied. A recipient of a fixed penalty charge has a right of appeal.

For these reasons a penalty charge of £5,000 is set for non-compliance with a Remedial Notice. A reduction of 50% will apply in respect of a person / company who has not previously received a penalty charge under this legislation and payment is received within 14 days of service of the penalty charge notice. There is no reduction for early payment offered to a person / company who has previously received a penalty charge under this legislation.

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

This discretion will not apply when:

1. The person / company served on has obstructed the Authority in the carrying out of its duties; and / or
2. The person / company has previously received a penalty charge under this legislation;

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

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

Procedural matters

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

When the Council is satisfied that the landlord has failed to comply with the requirements of the remedial notice, all penalty charge notices will be served within 6 weeks.

Where a review is requested within 29 days from when the penalty charge notice is served, the council will consider any representations made by the landlord. All representations are to be sent to the 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.

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

If the penalty charge notice is not paid, then recovery of the penalty charge will be by an order of the court and proceedings for recovery will commence after 30 days from the date when the penalty charge notice is served.

However, in cases where a landlord has requested a review of the penalty charge notice, recovery will not commence until after 29 days from the date of the notice served giving the Council's decision to vary or confirm the penalty charge notice. Where landlords do make an appeal to the First-tier Tribunal, recovery will commence after 29 days from when the appeal is finally determined or withdrawn.

Remedial Action taken in default of the landlord.

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

Smoke Alarms – In order to comply with these Regulations, smoke alarms will be installed at every storey of residential accommodation. This may provide only a temporary solution as the property may 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.

A full fire risk assessment will subsequently be undertaken, with regards to Leeds City Council Fire Safety Principles and LACORS Housing - fire safety guidance. This will consider the adequacy of the type and coverage of the smoke alarm system, fire escape routes including escape windows and fire separation measures such as fire doors and protected walls and ceilings. Any further works required to address serious fire safety hazards in residential property, that are not undertaken through informal agreement, will be enforced using the Housing Act 2004, in accordance with the Council's Enforcement Policy.

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

All communications for requests for review or representations made against the Remedial Notice (regulation 5) or the Penalty Charge Notice (regulation 8) are to be in writing and sent to:

Julian Watts
 Private Sector Housing Manager
 Private Sector Housing
 Ashford Borough Council
 Civic Centre
 Tannery Lane
 Ashford
 Kent
 TN23 1PL
 Or by email to: Julian.watts@ashford.gov.uk

Appendix 5

Framework of Penalties for non-compliance with the Minimum Energy Efficiency Standards.

Breaching the ban on letting a property with an F or G rating for less than 3 months (statutory maximum £2000)	
First offence - £1000 (or £750 if paid within 21 days)	All other offences - £2000 (or £1500 if paid within 21 days)

Breaching the ban on letting a property with an F or G rating for more than three months (Statutory maximum: £4,000)	
First offence: £2,000 (or £1,500 if paid within 21 days)	All other offences: £4,000 (or £3,000 if paid within 21 days)

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

First offence: £500 (or £375 if paid within 21 days)	All other offences: £1,000 (or £750 if paid within 21 days)
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Failing to provide information to the council demanded by a Compliance Notice (statutory maximum £2,000)	
First offence: £1,000 (or £750 if paid within 21 days)	All other offences: £2,000 (or £1,500 if paid within 21 days)

In accordance with Regulation 40(6), where a private landlord has committed multiple breaches in respect of a single tenancy and having regard to the above framework, the financial penalties would in total exceed £5,000, one or more of the financial penalties would be adjusted down to such that the statutory maximum of £5,000 is not exceeded.

If the council confirms that a property is (or has been) let in breach of the Regulations, they may serve a financial penalty up to 18 months after the breach and/or publish details of the breach for at least 12 months

Publication penalties

A publication penalty under Regulation 39 means publication on the PRS Exemptions Register, by the council, of the following information:

- The name of the private landlord, but only when the landlord is not an individual;
- Details of the breach;
- The address of the property at which the breach occurred;
- The amount of financial penalty imposed.

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

Publication penalty policy

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.

The council has also 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

Right of review and right of appeal

If you do not agree with a penalty notice, you may ask your local authority to review its decision. They can withdraw the penalty notice if:

- new evidence shows a breach has not occurred
- a breach has occurred, but evidence shows the landlord took all reasonable steps to avoid the breach
- they decide that because of the circumstances of the case, it was not appropriate to issue a penalty

If a local authority decides to uphold a penalty notice, a landlord may appeal to the First-tier Tribunal if they think 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
- it was inappropriate to serve a penalty notice on you in the particular circumstances