



EAST CAMBRIDGESHIRE  
DISTRICT COUNCIL

# Private Sector Housing Enforcement Policy

May 2022



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## 1. Purpose

This Policy details how the Council will regulate standards in all types and tenures of housing but with particular reference to the Private Rented Housing Sector in East Cambridgeshire. It also provides a background to the legislation and guidance on which it is based.

It is important for local authorities to have an enforcement policy to ensure consistency of approach among Council Officers and for members of the public to know what to expect from the service.

An enforcement policy also provides clarity if the Council takes legal proceedings or enforcement action is appealed against.

Our aim is to raise standards in Private Sector Housing throughout East Cambridgeshire, working with owners, landlords, letting agents and tenants to achieve this. However, it is recognised that if there is an offence, then enforcement action may be necessary to protect the public and the environment.

In developing this policy, the Council must remain impartial to both landlord and tenant to be fair to both sides and give help and advice to achieve our aim but we must also be firm in taking enforcement action, if appropriate.

## 2. Introduction

The Private Sector Housing Enforcement role sits within the Domestic Team of Environmental Services. It is important to develop strategies and procedures that address and improve housing standards, and to work with owner occupiers, private landlords, social housing providers and tenants to safeguard the health and wellbeing of all occupiers of residential properties within the district. However formal enforcement action will be taken to secure compliance with standards, when the requirements within this policy are met.

The **Private Sector Housing Enforcement Policy** outlines the Council's general approach to enforcement across a wide range of activities. This policy provides details of the Council's specific approach to regulating housing standards in East Cambridgeshire. The policy applies to all tenures including registered providers, private sector landlords, letting agents and owner occupiers. It sets out the main and most current regulatory legislation that the council can use but is not an exhaustive list and the council reserves the right to adopt the enforcement of other legislation or regulations that are not included but are relevant to housing health and safety, or if new regulations are introduced prior to the next policy update. Enforcement proceedings will take into account the Code of Practice for Crown Prosecutors.

The Private Sector Housing Enforcement Policy confirms that:

- The Council will provide awareness, advice and assistance whenever possible to the public, businesses and organisations to help them meet their legal obligations in relation to the relevant legislation before embarking on the

enforcement process

- The Council is committed to carrying out its duties in a fair and consistent manner, ensuring that enforcement action is proportional to the seriousness of failure to comply with statutory requirements
- The decision to use enforcement action will depend on the severity of the non-compliance

Effective and well targeted regulation is essential in promoting fairness and protection from harm. The Regulators' Compliance Code is a statutory code of practice for regulators hereafter referred to as 'The Code'.

[www.gov.uk/government/publications/regulators-code](http://www.gov.uk/government/publications/regulators-code)

From 6 April 2014, the Council has been required to comply with the Code when regulating private rented housing standards and its specific obligations have been included in this policy. The overriding principle of the Code is that regulation and its enforcement should be ***proportionate and flexible enough to allow or even encourage economic progress.***

### 3. What to expect from us

#### 3.1 Landlords

- 1) We will advise you of the legislation and help you understand how you can comply with it
- 2) We will advise you of any action you need to take to comply with the legislation and will ask you to respond with your proposal of how you intend to comply with any requirements of any Notice
- 3) If we are satisfied with your proposal, we will work with you to comply within agreed timescales
- 4) If we are not satisfied with your proposal or how the work is progressing, we will initiate formal action in a proportionate manner as appropriate to the circumstances.
- 5) In cases where there has been a clear and serious breach of health and safety and the council considers the culpability of the landlord is high then notices will be served or prosecution commenced without further timescales being offered for remedial action.
- 6) In making any decision to prosecute we will have regard to how serious the offence is, the benefit of enforcement action and whether some other action would be appropriate
- 7) A charge will be made for the service of the certain formal notices.
- 8) Fees and charges will be reviewed on an annual basis as part of the council's fee setting and charge review process.

#### 3.2 Tenants

- 1) Legislation covering landlord and tenant issues require that tenants notify their landlords of any problems with the property (preferably in writing) and the council will expect you to be able to demonstrate that you have raised any issues

directly with your landlord prior to requesting assistance from the Domestic Team.

- 2) There may be instances where tenants will not feel able to do this, for example there is a history of harassment or threatened illegal eviction, and in such instances, it may be appropriate for the council to liaise directly with the landlord in the first instance. Further information can be found through the following link:

<https://www.eastcambs.gov.uk/housing/private-housing-accreditation>

- 3) We will advise you as to what action we can take
- 4) We will expect you to cooperate with the landlord to get the works carried out and to advise us of any action taken by the landlord

### **3.3 Owners**

- 1) We will expect owners to maintain the properties they live in.

### **3.4 Letting Agents**

- 1) We expect agents to be aware of their responsibilities and to keep updated with legislation changes.
- 2) Where an agent has managing responsibilities and has a legal duty to comply with legislation and fails to do so, the council will take appropriate enforcement action in such cases and may serve notices on both the landlord and agent and prosecute when applicable.
- 3) In making any decision to prosecute we will have regard to how serious the offence is, the benefit of enforcement action and whether some other action would be appropriate
- 4) A charge will be made for the service of the certain formal notices.
- 5) Fees and charges will be reviewed on an annual basis as part of the council's fee setting and charge review process.

### **3.5 Owners of Empty Homes**

- 1) We will work proactively with owners of empty homes to encourage the bringing of their empty homes back into use
- 2) Where an empty property is having a detrimental impact on the neighbouring area enforcement action will be considered if appropriate
- 3) If owners fail to take responsibility for their properties, are not willing to engage or negotiations have failed, and where there is little prospect of a property being brought back into use voluntarily, enforcement action (Enforced Sale Compulsory Purchase Order, Empty Dwelling Management Order, and) may be considered although such action will only be used as a last resort for the most serious of cases of abandonment of a property.

## **4. Enforcement Policy and Principles**

### **4.1 Role of the Private Rented Sector**

The supply of good quality, affordable, privately rented accommodation is essential to meeting local housing need.

A key priority for this strategy is to provide professionally managed and well-maintained homes. We will work with landlords to improve and sustain good quality accommodation and will intervene when there is a risk to the health and safety of occupants, neighbours or visitors to a property.

### **4.2 Risk Assessment**

The Domestic Team use risk assessments to concentrate resources in the areas that need them most and on the properties in the worst condition. In doing so, we also take account of any safeguarding issues and vulnerability of the occupant referring to other appropriate agencies or services if appropriate.

Suitably trained Officers routinely use the Housing Health and Safety Rating System (HHSRS), which is a statutory, evidence-based, risk assessment method for assessing and dealing with poor housing conditions under the Housing Act 2004.

Following the receipt of a service request or complaint about poor housing conditions, an initial risk assessment will normally be carried out. Follow-up advice or action will be dependent on the outcome of the initial risk assessment and may not always involve a visit to the property.

Complaints about Social Housing properties will be referred to the Providers to investigate in the first instance. However, where it is necessary that intervention is required, we will do so.



### 4.3 Housing Health & Safety Rating System (HHSRS)

The Housing Act 2004 introduced the **Housing Health & Safety Rating System (HHSRS)**. It is a calculation of the effect of 29 possible hazards on the health of occupiers. The legislation provides a range of actions for addressing identified hazards. It is a two-stage calculation combining the likelihood of an occurrence taking place and then the range of probable harm outcomes that might arise from that occurrence which would result in a numerical rating. This is repeated for each of the hazards present. The assessment is not based upon the risk to the actual occupant but upon the group most vulnerable to that particular risk. Once scored, any action that is then considered will take into account the effect of that risk upon the actual occupant.

The scores for each hazard present are then banded from A to J. Bands A to C (ratings of 1,000 points and over) are the most severe, and are known as **Category 1 hazards** when considering action. Bands D to J, the less severe (rating less than 1,000 points) are known as **Category 2 hazards**.

HHSRS provides a combined score for each hazard identified and does not provide a single score for the dwelling as a whole. It is applied to all residential premises, whether owner-occupied or rented.

This Policy takes account of guidance provided by the Government and sets out how the Council will use its powers and reach its decisions in relation to the Housing Health & Safety Rating System (Part 1 of the Housing Act 2004).

The Council has a duty to take appropriate action in response to a **Category 1 hazard**. (When a Category 1 hazard is identified, the Council must decide which of the available enforcement options it is most appropriate to use. These are explained in more detail below.)

The Council will exercise its discretion and consider individual cases and circumstances when deciding whether to act in response to **Category 2 hazards**.

<https://www.gov.uk/government/publications/housing-health-and-safety-rating-system-enforcement-guidance-housing-conditions>

### 4.4 Advice and Guidance

The Domestic Team will provide authoritative, accessible advice around Private Sector Housing. The Council's website is used to provide general information, advice and guidance to make it easier for landlords, agents, home owners and others to understand their obligations, is provided in clear, concise and accessible language, using a range of appropriate formats and media. General information for Landlords and Tenants is available under the following links:-

General information

<http://www.eastcamb.s.gov.uk/search/site/housing%20information>

Damp and Mould

[http://www.eastcambs.gov.uk/sites/default/files/housing/condensation\\_information\\_1eafet\\_english\\_version\\_19190.pdf](http://www.eastcambs.gov.uk/sites/default/files/housing/condensation_information_1eafet_english_version_19190.pdf)

Caravan/Mobile Home Sites

<http://www.eastcambs.gov.uk/licensing/caravan-site-licence>

The service will consult with landlords' associations and other appropriate stakeholders when developing the content and style of this guidance.

When offering compliance advice, the Domestic Team will distinguish between statutory requirements and advice or guidance aimed at improvements above minimum standards. Advice will be confirmed in writing, if requested.

The Domestic Team welcomes enquiries from home owners and landlords about complying with minimum standards and ensuring homes are safe and warm. However, the Service will not act as a consultant for home owners or landlords and is not able to complete non-statutory, detailed assessments for specific properties (such as fire safety risk assessments; confirming in detail the work that would be required to let a property in multiple occupation; or detail the work required to reduce the risk from significant hazards in a property to an acceptable level).

#### **4.5 Inspections, Other Visits and Information Requirements**

No inspection will take place without reason. Inspections and other visits will take place in response to a reasonable complaint or request for service or where poor conditions have been brought to our attention;

- In accordance with statutory inspection requirements (such as for mandatory licensing of houses in multiple occupation, HMOs)
- Or on receipt of relevant intelligence

Unless the visit is intended for advice purposes only, the landlord or his or her agent will be contacted and given prior warning that an inspection will be carried out.

Following an inspection, positive feedback will be given wherever possible to encourage and reinforce good practices.

The Domestic Team will focus its resources on the highest risk properties, those in worst condition and properties owned by landlords who regularly fail to comply with regulations or frequently have properties with poor conditions.

#### **4.6 Compliance and Enforcement Actions**

The Domestic Team will seek to identify landlords, agents, property owners or businesses that persistently break regulations and ensure that they face proportionate and meaningful sanctions. By facilitating compliance through a positive and proactive approach, the Service aims to achieve higher compliance rates and reduce the need for reactive enforcement actions. However, those who

deliberately or persistently break the law will be targeted.

When considering formal enforcement action the Service will, where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. This will not apply where immediate action is required to prevent, or respond to a serious breach or to deal with an imminent risk to health or safety, or where to do so is likely to defeat the purpose of the proposed enforcement action.

The Service will ensure that clear reasons for any enforcement action are given and complaints and appeals procedures are explained at the same time.

#### **4.7 Accountability**

The Service will be accountable for the efficiency and effectiveness of its activities, while remaining independent in the decisions that it takes. Employees will provide a courteous and efficient service.

Complaints about our service will be handled in line with the Council's corporate complaints procedure which is outlined here:

<https://www.eastcambbs.gov.uk/customer-services/customer-feedback-complaints>

### **5. Tenure**

The Housing Health and Safety Rating System (HHSRS) outlined at Section 7 of this policy applies all tenures of housing. Furthermore, it does not specify that particular approaches or solutions should be used on the basis of ownership or the occupier's status. All enforcement options are available to the Council regardless of whether the premises in question are owner-occupied, privately rented or belong to a Social Housing Provider.

Generally, however, the Council considers that owner-occupiers are usually in a position to take informed decisions concerning maintenance and improvement issues that might affect their welfare and are then able to set their financial priorities accordingly; tenants however, are not usually able to do so.

For this reason, the Council proposes that it is appropriate for its powers to be used according to tenure, as follows:

#### **5.1 Owner-Occupiers**

The Council considers that as mentioned above, owner occupiers are usually in a position to take decisions regarding their own property and although advice may be sought from the service, Enforcement Action would not usually be appropriate.

In the rare circumstance that it is considered appropriate, Hazard Awareness Notices may be the appropriate course of action. However, the use of Improvement Notices, Prohibition Notices and their emergency equivalents will be considered in cases involving:

- Vulnerable elderly people who are judged incapable of making informed decisions about their own welfare
- Vulnerable individuals who require the intervention of the Council to ensure their welfare is best protected
- Hazards that might reasonably affect persons other than the occupants
- Serious risk of life-threatening harm such as electrocution or fire

Unless an identified hazard is judged to pose an imminent risk of serious harm, the Council will contact the owner to confirm its involvement, explain the nature of the hazard and confirm the action it is intending to take. The Council will take account of any proposals or representations made by, or on behalf of the owner. The Council will solicit and take account of the opinion of the relevant Welfare Authority in considering both the vulnerability and capability of such persons as well as in determining what action it will then take.

## **5.2 Social Landlords**

Housing Providers exist to provide suitable and properly maintained accommodation for their tenants. They are managed by Boards (which typically include tenant representatives) and their performance is scrutinised by the Homes and Communities Agency (HCA). Housing Providers normally employ staff to both manage and maintain their properties and will usually have written arrangements for reporting problems, setting out the response times they aim to achieve, and also for registering any complaints about service failure.

On this basis, the Council will not normally take formal action against Housing Provider unless:

- It is satisfied that the problem in question has been properly reported to the Housing Provider and
- The Housing Provider has then failed to take appropriate action

If the Council determines that it is appropriate to act, it will then normally notify the Housing Provider that a complaint has been received and/or a hazard identified and seek the Housing Provider's comments and proposals. Only in cases where it judges that an unsatisfactory response has been received will the Council take further action and will then determine which of the available enforcement options is the most appropriate, considering the facts of the case.

## **5.3 Private Landlords**

The Council will have regard to the principles of statutory guidance and relevant guidance from the First-tier Tribunal (Property Chamber) decisions and will initially seek to proceed informally.

Formal action may be initiated immediately if a hazard in question is judged by the Council:

- To pose an imminent risk of serious harm to any person (whether or not immediate action is required, and whether the hazard(s) in question is likely to

- affect a tenant, an employee or a member of the public), or
- The landlord in question is known to have failed, on a previous occasion, to take appropriate action in response to an informal approach.

When arranging an inspection, the Council will write/email or telephone the landlord (or his/her relevant agent) to confirm an inspection will be carried out. Following the inspection, the Council will explain the nature of any hazard(s) identified in writing and seek the landlord/agent's proposals for remedying the problem.

Where ownership is unclear, a Requisition for Information Notice (s16) may also be served.

Following the inspection, the Council will not normally need to take any further action to discharge its duties as long as:

- Satisfactory proposals and timescales for the work to be carried out are received and agreed and
- The work is carried out to a satisfactory conclusion within the agreed timescales

If Landlords do not manage a property themselves and employ the services of an agent they are expected to either:

- Provide any agent acting for them with sufficient authority to act on their behalf, in the event that they are contacted by the Council, or
- Ensure that they maintain appropriate communication with their agent in order that appropriate decisions and responses can be provided to the Council

The failure of an agent to respond to communication from the Council or any failure to take appropriate action may be treated as a failure by the landlord.

If the Council receives:

- No response from the landlord/agent or
- A response it judges inadequate or
- Proposals that were judged acceptable but which are not then followed through (for example if works fail to start when agreed, fail to make proper progress or are completed to an inadequate standard)

it will proceed with formal action by taking the most appropriate enforcement action in accordance with this Policy.

#### **5.4 What is expected of Tenants**

Before considering taking any action in respect of a tenanted property, the tenant(s) will normally be required to contact their landlord about the problems (preferably in writing), allowing a reasonable time period for the landlord to make representation.

Legislation covering landlord and tenant issues requires that tenants notify their landlords of any problems with the property. This is because it is more difficult for landlords to carry out their obligations under the legislation, unless they have been

made aware of the problem.

Where the matter appears to present an imminent risk to the health and safety of the occupants, it is expected that tenants will continue to try to contact their landlord, even if this is after they have contacted the Domestic Team. Copies of correspondence between the landlord and tenant may be required by Officers.

In certain situations, tenants, will not be required to write to their landlord first, for example:

- Where there is a history of harassment/threatened eviction/poor management practice
- Where the tenant appears to be vulnerable or where there are vulnerable members of the household
- Where the tenant could not for some other reason be expected to contact their landlord/managing agent
- Where the property is a House in Multiple Occupation which appears to fall within HMO licensing

Tenants are responsible for keeping Officers informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.) which may affect the action the Council is taking or considering taking. Tenants should also consider seeking independent legal advice about their own individual powers to resolve any dispute with their landlord.

Housing Provider tenants have standard procedures to follow if their landlord does not carry out repairs in a satisfactory manner and also a final right of appeal to the Housing Ombudsman Service. However, if the Housing Provider has not taken appropriate action to deal with problems with the property, then the Council will investigate and take appropriate action.

## **5.5 Retaliatory Evictions**

Retaliatory eviction is where a tenant makes a legitimate complaint to their landlord about the condition of their property and, in response, instead of making the repair, their landlord serves them with an eviction notice. On 1st October 2015, a number of provisions in the Deregulation Act 2015 came into force. These provisions are designed to protect tenants against unfair eviction.

Where a tenant makes a genuine complaint about the condition of their property that has not been addressed by their landlord, their complaint has been verified by a local authority inspection, and the local authority has served either an improvement notice or a notice of emergency remedial action, a landlord cannot evict that tenant for 6 months using the 'no fault' eviction procedure (a section 21 eviction). The landlord is also required to ensure that the repairs are completed.

In order to rely on the protection against retaliatory eviction that the Deregulation Act 2015 provides, a tenant must approach the landlord in writing in the first instance. If, after 14 days from the tenant making a complaint, the landlord does not reply, that reply is inadequate, or they respond by issuing a Section 21 eviction notice, the tenant should approach the Domestic Team and ask them to carry out an inspection

to verify the need for a repair. We will then undertake an HHSRS inspection. If the inspection verifies the tenant's complaint, the enforcement officer will take appropriate action.

If the council serves an Improvement Notice or Notice of Emergency Remedial Action, the landlord cannot evict the tenant for 6 months using the no-fault eviction procedure.

We will work with landlords to understand their obligations and the implications of this legislation, and will work alongside the Housing Options team to provide support, advice and guidance to the tenant in these circumstances.

## **6. Situations where a Service may not be Provided**

Where any of the following situations arise, consideration will be given to not provide or cease to provide a service:

- Where the tenant(s) unreasonably refuse access to the landlord, managing agent or landlord's builder, to arrange or carry out works
- Where the tenant(s) have, in the opinion of the Council, clearly caused the damage to the property they are complaining about, and there are no other items of disrepair
- Where there are claims by the tenant for compensation
- Where the tenant's only reason for contacting the Domestic Team, in the opinion of the Council, is in order to pursue a position on the housing register or by means of a contrived homeless application. The Council will aim to bring their present accommodation up to standard as a first priority
- Where the tenant(s) have requested a service and then failed to keep an appointment and not responded to a follow-up appointment
- Where the tenant(s) have been aggressive, threatening, verbally or physically abusive towards Officers
- Where there is found to be no justification for the complaint, on visiting the property
- Where the tenant unreasonably refuses to provide the Council with relevant documentation

## **7. Specific Enforcement Policies**

### **7.1 Authority to Investigate or Enforce**

The Housing Act 2004 and associated secondary legislation sets out the duties and powers that East Cambridgeshire District Council has in relation to regulating housing standards in its capacity as the Local Housing Authority. Powers are also contained in the Housing Act 1985, as amended, and other legislation, such as the Environmental Protection Act 1990, the Town and Country Planning Act 1990, the Public Health Acts 1936 and 1961, the Mobile Home Act 2013 and the Housing and Planning Act 2016. This is not a complete list of the powers available.

### **7.2 Authorisation of Officers**

Only Officers who are competent by training, qualification and/or experience will be authorised to undertake enforcement action. The Council's Scheme of Delegation sets out the delegated powers given to Officers.

Officers who undertake criminal investigations will be conversant with the provisions of all relevant criminal investigation law.

### **7.3 Powers of Entry and Power to Require Information**

The Council has the power of entry to properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004 provided that:

- The Officer has written authority from an appropriate Officer stating the particular purpose for which entry is authorised
- The Officer has given 24 hours' Notice to the owner (if known) and the occupier (if any) of the premises they intend to enter

No Notice is required where entry is to ascertain whether an offence has been committed under Sections 72 (offences in relation to licensing of HMOs), 95 (offences in relation to licensing of houses) or 234(3) (offences in relation to HMO Management Regulations).

If admission is refused, premises are unoccupied or prior warning of entry is likely to defeat the purpose of the entry, then a warrant may be granted by a Justice of the Peace on written application. A warrant under this section includes power to enter by force, if necessary.

The Council also has power under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with:

- Any purpose connected with the exercise of its functions under Parts 1-4 of the Housing Act 2004
- Investigating whether any offence has been committed under Parts 1-4 of the Housing Act 2004

The Council also has powers under Section 237 of the Housing Act 2004 to use the information obtained above and Housing Benefit and Council Tax information obtained by the authority to carry out its functions in relation to these parts of the Act.

### **7.4 Choice of Appropriate Enforcement Action**

Unless there is an imminent risk to the health and safety of the occupant or visitors to the property, the Council will attempt to secure the required improvements informally and within a reasonable amount of time.



Where this approach fails, the Council will determine which of the specific enforcement options it will use, taking into account the facts and circumstances in each individual case.

A statement of reasons will be provided with any Notice it serves, explaining why the Council has decided to take a particular course of action.

### 7.5 Enforcement Action

In accordance with the Enforcement Policy, the decision to use enforcement action will depend on the severity of the non-compliance. Factors that will be taken into consideration include:

- The risk that the non-compliance poses to the safety, health or economic welfare of the public at large or to individuals
- The culpability of the responsible party
- Evidence that suggests that there was premeditation in the commission of an offence
- Whether the alleged offence involves a failure to comply in full or in part with the requirements of a statutory Notice or order
- Whether there is a history of previous warnings or the commission of similar offences
- Aggravated circumstances such as aggressive or violent behaviour

The Service will adopt a coordinated approach with other Council services and other relevant agencies, in particular with preventing and dealing with homelessness.

### 7.6 Power to Charge for Enforcement Action

The Local Authority has the power under Section 49 of the Housing Act 2004 to make a reasonable charge as a means of recovering certain administrative and other expenses incurred in serving an Improvement Notice, Hazard Awareness Notice, making a Prohibition, Emergency Prohibition or Demolition Order or taking Emergency Remedial Action. The Council will consider charging under the following:

<b>Housing Act 2004</b>	
<b>Section</b>	<b>Type of Notice</b>
Section 11 and 12	Improvement Notices
Section 20 and 21	Prohibition Notice
Section 40	Emergency Remedial Action
Section 43	Emergency Prohibition Order
Section 64	Licence for House in Multiple Occupation
Section 265 HA 1985	Demolition Order

## **7.7 Charges for Notices & Orders**

Where a charge is made, the Council can recover a reasonable amount for expenses incurred in connection with officer time spent gaining entry, visiting and inspecting the premises to determine appropriate action and the administration costs for the production of a Notice, Order or Remedial Action. This will be calculated using an hourly rate charge and information will be included within the council's fees and charges statement at the next review period.

Costs incurred carrying out Work in Default or Remedial Action will be charged separately.

When the charge demand becomes operative, the sum recoverable will be a local land charge which will remain until the debt has been paid or the property sold.

## **7.8 Failure to Comply with Notices**

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

- Prosecution;
- Carrying out the works in default;
- Carrying out the works in default and prosecution;
- Whether a simple caution is appropriate;
- Civil Penalty

Failure to comply with an Improvement Notice or a Prohibition Order is an offence punishable by an unlimited fine. Following conviction, it is an offence to carry on using the premises in breach of the Prohibition Order, attracting a daily fine.

The Council will act to recover its costs in connection with works in default. The Council will also act to recover the costs incurred in carrying out works associated with Emergency Remedial Action.

As a charge on the property, the costs give the Authority the same powers and remedies as a Mortgagee under the Law of Property Act 1925 (Enforced Sale).

## **7.9 Revocation and Variation of Notices**

The Council must revoke an Improvement Notice once the Notice has been complied with.

If part of the work required within the Notice is carried out, then the Notice can be varied.

## **7.10 Review of Enforcement Action**

If there is a change in the occupation of a premises (leading to either an increase or decrease in the apparent risk to occupiers) the current state of any outstanding enforcement action should be reviewed by the investigating officer, in consultation

with his or her line manager, to ensure that it is still appropriate and proportionate to the risk posed from the identified hazard(s).

### **7.11 Recovery of Debts**

Where charges for enforcement action are levied, they will be registered as a local land charge against the owner's property. This means that when the property is sold the debt has to be repaid including any interest accrued on the initial charge. The Council will vigorously pursue all debts owed to it as a result of enforcement charges or charges for carrying out works in default (as well as any other charges). This includes smaller debts where the cost of recovery is greater than the debt owed. To recover debts the Council will use some of the following means;

- The enforced sale procedure under the Law and Property Act 1925. This allows the Council to force the owner to sell their property in order to recover its costs
- Use tracing services to track down debtors and secure judgments to recover debts
- Demand rents are paid to the Council instead of the landlord to recover outstanding debts (where the legislation allows and it is appropriate to do so).

### **7.12 Improvement Notices**

It is anticipated that Improvement Notices are a practical remedy for Category 1 hazards.

Where the Council determines that it is appropriate for an Improvement Notice to be served in respect of a Category 1 Hazard, it will:

- Require works that will either remove the hazard entirely or
- Will reduce its effect so that it ceases to be a Category 1 hazard,

The Council will take whichever of these two options it considers appropriate, having considered the circumstances of the case.

If the Council determines that the hazard can only be reduced to a Category 2 hazard rather than removed, it will require works to be carried out as far as is reasonably practical to reduce the likelihood of harm.

### **7.13 Suspended Improvement Notice**

The Council has the power to suspend an Improvement Notice once served and will consider this course of action where it is reasonable in the circumstances, to do so.

The following are situations in which it may be appropriate to suspend an Improvement Notice:

- The need to obtain planning permission (or other appropriate consent) that is required before repairs and/or improvements can be undertaken

- Works which cannot properly be undertaken whilst the premises are occupied and which can be deferred until such time as the premises falls vacant or temporary alternative accommodation can be provided
- Personal circumstances of occupants; for example, temporary ill health, which suggests that works ought to be deferred

When deciding whether it is appropriate to suspend an Improvement Notice, the Council will have regard to:

- The level of risk presented by the hazard(s)
- The turnover of tenants at the property
- The response or otherwise of the landlord or owner
- Any other relevant circumstances (e.g. whether the vulnerable age group is present)

Suspended Improvement Notices will be reviewed on an ongoing basis, at least every 6 months.

#### **7.14 Prohibition Orders**

Prohibition Orders can be used in respect of both Category 1 and Category 2 hazards for all or part of a dwelling and are likely to be used if repair and/or improvement appear inappropriate on grounds of practicality or excessive cost (i.e. the cost is unrealistic in terms of the benefit to be derived). Examples include:

- A dwelling or part of a dwelling where adequate natural lighting or adequate fire escape cannot realistically be provided
- In an HMO, to prohibit the use of specified dwelling units or of common parts. This might, for example, be used if the means-of-escape is unsatisfactory
- To specify the maximum number of persons who can occupy a dwelling where it is too small for the household's needs, in particular in relation to the number of bedrooms
- In relation to premises lacking certain facilities but which are nonetheless suitable for a reduced number of occupants

In addition to prohibiting all uses in relation to the whole or part of the premises in question (other than uses specifically approved by the Council), Prohibition Orders can prohibit specific uses (Section 22 (4)(b) Housing Act 2004); this option may be employed to prevent occupation by particular descriptions of persons. Use of this power may be appropriate in situations such as the following:

- Premises with steep staircases or uneven floors which make them particularly hazardous to elderly occupants
- Premises with open staircase risers or widely spaced balustrades that make them particularly unsuitable for infants

#### **7.15 Suspended Prohibition Order**

The Council has the power to suspend a Prohibition Order once served and will consider this course of action where it is reasonable in the circumstances to do so.

Suspended Prohibition Orders will be reviewed on an ongoing basis, at least every 6 months.

The Council will consider any written requests made for alternative uses of premises or part-premises which are subject to a Prohibition Order, and will not withhold its consent unreasonably. Any such consent will be confirmed in writing.

### **7.16 Hazard Awareness Notice**

Hazard Awareness Notices may be served to notify owner-occupiers of the existence of hazards (for example where the risk from the hazard is mitigated by the long-standing nature of the occupancy). It might also be applicable where:

- It is judged appropriate to draw a landlord's attention to the desirability of remedial action
- To notify a landlord about a hazard as part of a measured enforcement response

### **7.17 Emergency Remedial & Prohibition Action**

The situations in which Emergency Remedial Action and Emergency Prohibition Orders may be used are specified by Sections 40 to 45 of the Housing Act 2004. Specifically, the Council must be satisfied that:

- A Category 1 hazard exists, and that
- The hazard poses an imminent risk of serious harm to health or safety, and that
- Immediate action is necessary

Situations in which emergency action may be appropriate include:

- Residential accommodation located above commercial premises which lack a safe means of escape in the event of fire because there is no independent access
- Risk of electrocution, fire, gassing, explosion or collapse

### **7.18 Demolition Orders**

The Housing Act 2004 provides the Council with the power to make Demolition Orders. Demolition Orders are a possible response to a Category 1 hazard (where they are judged the appropriate course of action). In determining whether to issue a Demolition Order, the Council will take account of Government guidance and will consider all the circumstances of the case.

### **7.19 Clearance Areas**

The Council can declare an area to be a Clearance Area if it is satisfied that each of the premises in the area is affected by one or more Category 1 hazards (or that they are dangerous or harmful to the health and safety of inhabitants as a result of a bad arrangement or narrowness of streets). In determining whether to declare a

Clearance Area, the Council will act only in accordance with Section 289 of the Housing Act 1985 (as amended) and having had regard to relevant Government guidance on Clearance Areas and all the circumstances of the case.

## **7.20 Simple Cautions**

Officers may use Simple Cautions where someone has committed a less serious offence. Simple Cautions warn people that their behaviour has been unacceptable and makes them aware of the legal consequences should they commit further offences. Simple cautions can only be issued where:

- There is evidence an offender is guilty
- The offender is eighteen years of age or over
- The offender admits they have committed the crime
- The offender agrees to be given a caution – if the offender does not agree to receive a caution then they are likely to be prosecuted instead

Simple cautions are normally not appropriate where there is history of offending within the last 2 years or where the same type of offence has been committed before. In these circumstances prosecution is more appropriate.

## **7.21 Works in Default**

Works in Default will be considered in certain cases. In determining if work in default is appropriate, Officers will consider the following information;

- The effects of not carrying out the work on the health and safety of the occupant of the property concerned
- The wishes of the tenant where the Notice has been served in respect of a rented property
- The reason for the work not being carried out in the first place
- Any other factors that are specific to individual properties
- The Council will normally seek to recover all of the costs associated with undertaking work in default (including time spent by its Officers, administrative costs, contractors costs, the cost of any specialist reports, supervisory costs etc.)

In the case of Officer time, the Council will calculate costs as follows:

- The actual time spent by Council Officers on the chargeable activities and recorded using file notes and database
- Time spent will be converted into a monetary figure using the appropriate hourly rate set for the Officer(s) concerned.

The expenses incurred are to be recovered from the person(s) on whom the Notice or Order is/are served (“the relevant person”). Where the relevant person receives the rent on behalf of another, the expenses are also to be recovered from that other person. The recoverable expenses, are a charge on the premises.

## 8. Civil Penalties

The Housing & Planning Act 2016 introduced a range of measures to crack down on rogue landlords including the power for Councils to issue Civil Penalties of up to £30,000 as an alternative to prosecution for certain specified offences. This power came in to force on 6 April 2017 and was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

The primary aims of any financial penalty will therefore be to:

- Change the behaviour of the landlord / agent concerned.
- Deter future non-compliance by landlords / agents.
- 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.
- Reimburse the cost incurred by the Council in undertaking work in default and fulfilling its enforcement duties.

Income received from a Civil Penalty can be retained by the local housing authority provided that it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector.

A civil penalty may be imposed as an alternative to prosecution for the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice (section 30)
- Offences in relation to licensing of Houses in Multiple Occupation (section 72)
- Offences in relation to licensing of houses under Part 3 of the Act (section 95)
- Offences of contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234)

The amount of penalty is to be determined by the Council in each case. In determining an appropriate level of penalty, the Domestic Team will have regard to statutory guidance given in the DCLG publication 'Civil Penalties under the Housing and Planning Act 2016'.

Only one penalty can be imposed in respect of the same offence and a civil penalty can only be imposed as an alternative to prosecution. However, a civil penalty can be issued as an alternative to prosecution for each separate breach of the House in Multiple Occupation management regulations. Section 234(3) of the Housing Act 2004 states that a person commits an offence if he fails to comply with a regulation. Therefore, each failure to comply with the regulations constitutes a separate offence for which a civil penalty can be imposed.

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, the Council must satisfy itself that if the

case were to be prosecuted in a magistrates' court, there would be a realistic prospect of conviction. In order to achieve a conviction in the magistrates' court, the Domestic Team must be able to demonstrate beyond reasonable doubt that the offence has been committed.

The decision to impose a civil penalty as opposed to prosecution for the offence will be determined on a case by case basis but in all cases there must be sufficient, reliable evidence to justify the action taken, the action must be in the public interest, it should be fair and consistent, be relevant to the seriousness of the offence and be an appropriate and effective sanction to a breach of the legislation that is in place to protect people in their own homes.

### 8.1 Determining the Sanction

The following principles will apply to each case to be considered in relation to a Civil Penalty;

- Each case will be considered on its own merits
- There must be sufficient, reliable evidence to justify the action taken
- The action taken must be in the public interest
- Any mitigating circumstances will be considered
- The decision to prosecute an individual is a serious step and has serious implications for all involved. Decisions to prosecute should always be fair and consistent.

### 8.2 Factors to be taken into consideration when Determining the Penalty

In accordance with the statutory guidance, the Council will consider the following factors to help ensure that the civil penalty is set at an appropriate level:

- **Severity of the offence.** The more serious the offence, the higher the penalty should be.
- **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.
- **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.
- **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 demonstrates the consequences of not complying with their responsibilities.

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

### 8.3 Penalties Structure

For the purpose of the offence, a fine will be calculated using the financial penalty notice matrix in Appendix 2. . The selection of the relevant fine range, and the position of the individual offence within that range, is determined by the seriousness of the offence. The following factors will be considered;

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

There can be an imbalance for example:

- Harm that results is greater than the harm intended by the offender
- Culpability may be at a higher level than the harm resulting from the offence

Culpability will be greater if;

- The offender deliberately causes more harm than necessary
- The offender targets a vulnerable victim (old age, youth, disability)
- The culpability of the offender should be the initial factor in determining the seriousness of the offence

## 8.4 Procedure

The Council will issue the person deemed to have committed a relevant offence a notice of its proposal ('notice of intent') to impose a financial penalty. This will set out;

- The amount of the proposed financial penalty;
- The reasons for proposing to impose the penalty;
- Information about the right of the landlord to make representations.

The notice of intent must be given no later than 6 months after the Council has sufficient evidence of the conduct to which the penalty relates, or at any time when the conduct is continuing.

A person who is given a notice of intent may make written representations to the Council about the intention to impose a financial penalty within 28 days from the when the notice was given.

The person may provide any information at this time, that they feel should be considered in the council's review. This may include information as to their ability to pay the level of the fine, to show they took all reasonable steps and exercise due diligence to avoid breaching the duty, or because of the circumstances of the landlord's case it was not appropriate for the penalty notice to be served. Further details of potential mitigating factors can be found in Appendix 5.

Where written representations are made, a senior officer not previously involved with the case will consider the appeal. This will usually be the Environmental Services Manager or another relevant officer at this level within the Council's structure. The decision of the senior officer will set out their reasons for making their decision clearly and the following options will be available to them;

- Withdraw a notice of intent or final notice; or
- Reduce the amount specified in a notice of intent or final notice
- Uphold the original decision to issue the notice of intent

At the end of the 28-day period, the Council will decide whether to impose a penalty and, if so, will set the amount of the penalty. If the decision is made to impose a financial penalty, we will give the person a final notice requiring that the penalty is paid within 28 days. The final notice will include the following information;

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

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

- The decision to impose a penalty; or
- The amount of the penalty.

In these circumstances, the final notice is suspended until the appeal is determined or withdrawn.

## **9. Rent Repayment Orders**

In addition to the powers provided by the Housing Act 2004 to apply Rent Repayment Orders (RROs) in regard to offences related to HMOs as outlined at section 73 and 74 of Housing Act 2004, the Housing and Planning Act 2016 extended the power to apply RROs in respect of the following offences committed after 6<sup>th</sup> April 2017;

- Failure to comply with an Improvement Notice under Section 30 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
- Illegal eviction or harassment of the occupiers of a property under Section 1 of the Protection from Eviction Act 1977

The maximum amount of rent that can be recovered is capped at 12 months.

A criminal standard of proof is required. The Council must apply to the First Tier Property Tribunal for an RRO.

East Cambridgeshire District Council will consider application for RROs in all cases where a successful prosecution has been achieved

## **10. Banning Order Offences**

The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017 introduced a list of banning order offences.

The local authority may apply to the First-tier Tribunal for a Banning Order against a landlord who it has prosecuted for a banning order offence and breach of a banning order is a criminal offence.

A banning order will last a minimum of 12 months. There is no statutory maximum period for a banning order. The most serious offences will be considered for a banning order in line with our Corporate and Private Sector Housing Enforcement Policies and Government guidance. When considering whether to apply for a banning order the local authority should consider the sentence imposed by the Court in respect of the banning order offence itself.

Rogue landlords who flout their legal obligations and continue to rent out accommodation which is substandard following a successful prosecution for a banning order offence, will be referred to the First-tier Tribunal for application of a banning order.

## **11. Houses in Multiple Occupation**

The Housing Act 2004 introduced a mandatory licensing system for certain types of Houses in Multiple Occupation (HMO). The aim of licensing is to ensure that every licensable HMO is safe for the occupants and visitors and is properly managed.

From April 2006 owners of certain types of HMOs must apply to the Council to have their properties licensed. The responsibility for applying for a licence rests with the person having control of or the person managing the property.

From October 1<sup>ST</sup> 2018 a new lower criteria was introduced for mandatory licensing, whereby a mandatory license is required where there are 2 or more households, with 5 or more residents, irrespective of the number of storeys. The room sizes for occupation were also changed. More information can be found at <http://www.eastcambs.gov.uk/licensing/houses-multiple-occupancy-hmo-licence>

The Housing Act 2004 also provides the Council with the power to apply Discretionary Licensing, either by way of Additional or Selective Licensing based on specific conditions being met. Should an area within East Cambridgeshire District Council ever become subject to discretionary licensing, a specific enforcement policy will be developed to accompany any designation.

When considering the Amenities required in a House in multiple occupation regard will be made to the East Cambridgeshire District Council Amenity Standards. These include minimum room sizes along with bathing facilities and cooking amenities. The Amenity Standards can be found at Appendix 1.

### **11.1 Licensing Offences**

The Housing Act 2004 sets out a number of licensing related offences all of which carry an unlimited fine, including:

- Operating an unlicensed HMO or allowing an HMO to be occupied by more persons than a licence allows
- Breach of licence condition
- Supplying incorrect information in a licence application

In addition to the above, a landlord who operates an unlicensed HMO can be subject to a Rent Repayment Order (RRO) by a First-tier Tribunal (Property Chamber) under sections 96 and 97 of the Housing Act 2004. The Council may also decide to apply a Civil Penalty for certain offences using the Housing and Planning Act 2016.

A RRO requires repayment of rent received by the landlord over a period of up to 12 months. The Council will usually consider applying for such a measure if the

landlord has received rent that has been paid by Housing Benefit.

Where an unlicensed HMO is identified, the Council will assess whether there are good reasons why an application has not been received. If there are no good reasons, the Council will look to take formal proceedings with a view to prosecution in the courts or by way of issuing a Civil Penalty.

If a landlord of an unlicensed HMO approaches the Council for licensing and the landlord fully cooperates with the Council, including addressing any management, safety or amenity issue within an agreed timescale, the Council would not normally take enforcement action.

Generally, initially, any breach of licence condition will be dealt with informally. However, if the breach is serious and affects the safety of the occupants or the responsible person does not carry out necessary works within an agreed timescale, the Council will pursue legal proceedings.

### **11.2 Interim and Final Management Orders**

An Interim Management Order (IMO) transfers the management of a residential property to the Council for a period of up to twelve months. The circumstances in which an order can be made are discussed below. In particular, the IMO allows the Council possession of the property against the immediate landlord, and subject to existing rights to occupy can;

- Do anything in relation to the property, which could have been done by the landlord, including repairs, collecting rents etc.
- Spend monies received through rents and other charges for carrying out its responsibility of management, including the administration of the property
- To create new tenancies (with the consent of the landlord).

Under an IMO the Council must pay to the relevant landlord (that is the person(s) who immediately before the order was made was entitled to the rent for the property) any surplus of income over expenditure (and any interest on such sum) accrued during the period in which the IMO is in force. It must also keep full accounts of income and expenditure in respect of the house and make such accounts available to the relevant person.

The Council must take enforcement action in respect of a licensable property (which means an HMO subject to Part 2, or other residential property subject to Part 3) by making an IMO if:

- The property ought to be licensed, but is not, and the Council considers there is no reasonable prospect of it granting a licence in the near future. An IMO may not, however, be made on these grounds if an effective application is outstanding with the authority for the grant of a licence or a temporary exemption notice or if such a notice is in force
- The Domestic Team is satisfied that the Health and Safety Condition isn't met and, therefore, it would not have granted an application for a licence
- The Domestic Team intends to revoke the licence on one or more of the grounds specified in Parts 2 or 3 of the Act, other than the property has

ceased to be licensable, and upon revocation there will be no reasonable prospect of the property being licensed in the near future (e.g. to another suitable person)

- The Domestic Team is satisfied that when the licence is revoked the Health and Safety Condition test will be met.

### **11.3 Final Management Orders**

In exceptional circumstances the Council can also apply for a Final Management Order (FMO) which can last for up to five years. Such powers will only be used in exceptional circumstances and will be agreed by the Manager of Environmental Services.

A FMO cannot be made unless an IMO or another FMO was already in force. An FMO transfers the management of the house to the Domestic Team for the duration of the order. In particular, the FMO allows the Council;

- Possession of the property against the immediate landlord, but subject to existing rights of occupation
- To do anything in relation to the property, which could have been done by the landlord, including repairs, collecting rents etc.
- To spend monies received through rents and other charges for carrying out its responsibility of management, including the administration of the property;
- To create new tenancies (without the consent of the landlord).

### **11.4 Management Order Management Schemes**

The Council must adopt a management scheme for a property subject to an FMO. The scheme must set out how the Council intends to manage the house. In particular, the management scheme must include:

- The amount of rent it will seek to obtain whilst the order is in force
- Details of any works which the Council intends to undertake in relation to the property
- The estimate of the costs of carrying out those works
- Provision as to the payment of any surpluses of income over expenditure to the relevant landlord, from time to time
- In general terms how the authority intends to address the matters that caused the Council to make the order. The Council must also keep full accounts of income and expenditure in respect of the house and make such accounts available to the relevant landlord.

### **11.5 Temporary Exemption Notices**

Where a landlord is, or shortly will be taking steps to make an HMO non-licensable, the Council may serve a Temporary Exemption Notice (TEN). A TEN can only be granted for a maximum period of three months. In exceptional circumstances a second TEN can be served for a further three-month period. A TEN will be served where the owner of the HMO states in writing that steps are being taken to make the

HMO non- licensable within 3 months.

### **11.6 Raising Standards in HMO's.**

Under current legislation many HMOs still do not currently require a licence. These include houses containing some self-contained flats and smaller HMOs. Many of these still pose a significant degree of risk to occupants and/or have a history of being poorly managed. The Council will continue to regulate such HMOs through using the Housing Health and Safety Rating system and other appropriate legislation e.g. the HMO Management Regulations when complaints are received.

### **11.7 Fire Safety in HMOs**

Statistically, HMOs have one of the highest incidents of deaths caused by fire in any type of housing. It is therefore essential that any HMO possesses an adequate means of escape in event of a fire and adequate fire precautions. The actual level of fire protection and detection required will be determined by a risk assessment.

The Domestic Team (Environmental Services) is generally the lead enforcing authority for fire safety in HMOs, however where an HMO contains communal areas, or is above a commercial property a Fire Risk Assessment is carried out in accordance with the Regulatory Reform Order which is administered by Cambridgeshire Fire Authority in line with the Memorandum of Understanding and Joint Enforcement Protocol 2015.

For clarification, and/or general fire safety guidance, contact the Domestic Team (Environmental Services) or visit <http://www.eastcambs.gov.uk/housing/hmo-licencing-information>

### **11.8 General Management of HMOs**

The Management of Houses in Multiple Occupation (England) Regulations 2006 require the person having control of the house to ensure that: -

- All services, furnishings, fixtures and fittings are maintained in good, sound, and clean condition
- The structure is kept in good order
- All communal areas of the interior are regularly cleaned and redecorated as necessary
- All yards, boundary walls, fences, gardens and outbuildings are maintained in a safe and tidy condition
- Satisfactory arrangements for the disposal of refuse and litter have been made
- At the commencement of all tenancies the lettings are clean, in a satisfactory state of repair and decoration, and comply in all respects with these standards
- All staircases and multiple steps should be provided with suitable handrails
- All Tenants should fulfil their tenancy obligations.

## 12. Empty Homes

Empty homes can be a blight on our community as well as a wasted housing resource. Our approach will be to work alongside owners of empty homes with a solution-based approach to support and encourage voluntary action. However, we are also committed to using appropriate enforcement action where owners fail to take responsibility for their properties, reasonable negotiations fail or there is little prospect of the property being bought back into use voluntarily.

A number of factors will be considered in deciding the best course of action for an empty home. For more information please see the East Cambridgeshire Empty Homes Strategy 2006 or contact the Domestic Team.

The Council will provide advice and assistance to the owners of empty properties to help bring the home back into use. It will however also consider using any of the following enforcement options:

- **Empty Dwelling Management Orders**  
Where a property has been left empty for over two years and is attracting anti-social behaviour, the Council may seek an EDMO, the provisions for which are contained in the Housing Act 2004. An EDMO allows the Council to take over full management of the property for up to seven years, reclaiming any management and refurbishment costs from the rental income.
- **Compulsory Purchase Orders**  
CPOs can be made under s17 of the Housing Act 1985 or s226 of the Town & Country Planning Act 1990. They allow local authorities to purchase properties in specific circumstances without the owner's consent. This is only carried out in extreme circumstances and if resources allow.
- **Statutory nuisance provisions**  
If a property is unsafe, causing or is likely to cause a nuisance to the locality, there are several legislative tools available to the Council to ensure that the condition of the property is improved. These include provisions to ensure the property is safe, secure and not adversely affecting the amenity of the area.
- **Enforced sale procedure**  
The Law of Property Act 1925 allows the recovery of debt secured by a registered charge by forcing the sale of a property. In situations where the Council has served notices requiring the owner to ensure that their property is not unsafe or having a negative impact, but they have failed to act, the Council may be forced to carry out the works in default. If the costs incurred are not paid, the Council will register any 'relevant' charges (charges that can be legally applied) against the property and should the owner still not pay this debt, the Council can commence legal proceedings to sell the property to recover the costs.



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

The regulations impose obligations upon landlords to ensure that tenanted properties are provided with smoke alarms and carbon monoxide alarms. This has been publicised in the Council's Statement of Principles.

*Reg 4(1) says; A relevant landlord in respect of a specified tenancy must ensure that*

- (b) during any period beginning on or after 1st October 2015 when the premises are occupied under the tenancy-*
  - (i) a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation;*
  - (ii) a carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and*
- (c) checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.*

Where the Council has reasonable grounds to believe that the requirements of these Regulations have not been met by a landlord, there is a duty on the Council to serve a 'remedial notice'.

A remedial notice must-

- specify the premises to which the notice relates;
- specify the duty or duties that the local housing authority considers the landlord is failing or has failed to comply with;
- specify the remedial action the local housing authority considers should be taken;
- require the landlord to take that action within 28 days beginning with the day on which the notice is served;
- explain that the landlord is entitled to make written representations against the notice within 28 days beginning with the day on which the notice is served;
- specify the person to whom, and the address (including if appropriate any email address) at which, any representations may be sent; and
- explain the effect of regulations 6, 7 and 8, including the maximum penalty charge which a local housing authority may impose.

A person given a remedial notice may make written representations to the council within 28 days from the date the notice was given. The person may provide any mitigating circumstances that they feel should be considered in the council's assessment as to validity of service of the notice.

A senior officer not previously involved with the case will consider the appeal. This will usually be the Environmental Services Manager or another relevant

officer at this level within the Council's structure. They will consider the information provided with the following options available to them:

- Withdraw the remedial notice, or
- Uphold the decision.

A person who receives a final notice may appeal within 28 days to the First-tier Tribunal (Property Chamber) and the remedial notice will not have effect until the appeal is heard.

Failure to comply with a remedial notice imposes a further duty on the Council to arrange remedial action and a power to require payment of a penalty charge. Penalty charges for non-compliance are currently as follows:

First offence	£500	Reduced to £400 if paid within 14 days
Second offence	£1,000	No reduction for early payment
Any additional offences	£5,000	No reduction for early payment

In determining the level of the fixed penalty notice the Council has considered the likely costs it will incur and the amount required sufficient to provide a deterrent to non-compliance. Increasing the fine for a second or third offence reflects the seriousness of the offence and is designed to deter repeat offending.

#### **14. Electrical Safety Standards**

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 enables councils to serve financial penalties for breaches of up to £30,000 and came into force in April 2021.

These new regulations require landlords to have the electrical installations in their properties inspected and tested by a person qualified and competent to do so, at an interval of not less than 5 years. Landlords must provide a copy of the Electrical Installation Condition Report to their tenants and to the local authority if requested. Landlords must:

- Ensure national standards for electrical safety are met. These are set out in the latest edition of the 'Wiring Regulations'.
- Ensure the electrical installations in their rented property are inspected and tested by a qualified and competent person at an interval of at least every 5 years,
- Obtain a report from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test,
- Supply a copy of this report to the existing tenant within 28 days of the inspection and test,
- Supply a copy of the report to a new tenant before they occupy the premises,
- Supply a copy of the report to any prospective tenant within 28 days of receiving a request for the report,
- Supply the local authority with a copy of the report within 7 days of receiving a request for a copy,
- Retain a copy of the report to give to an inspector and tester who will

- undertake the next inspection and test,
- Where the report shows that remedial or further investigation are required, complete this work within 28 days or any shorter period if specified as necessary in the report, and
- Supply written confirmation of the completion of the remedial works from the electrician to the tenant and the local authority within 28 days of completion of the works.

The local authority may impose a financial penalty in respect of every breach. The level of any penalty is determined as laid down in the penalty fee structure in Appendix 3.

The same criminal standard of proof is required for a financial penalty as for prosecution.

If a breach of the Regulations is identified the council will issue the person considered to have committed the relevant offence a notice of its proposal (notice of intent) to impose a financial penalty. This will set out:

- The amount of the proposed financial penalty,
- The reasons for proposing to impose the penalty, and
- Information about the right of the person to make representations

The notice of intent must be given no later than 6 months after the conduct to which the penalty relates.

A person given notice of intent may make written representations to the council about the intention to impose a financial penalty within 28 days from the date the notice was given. The person may provide any financial information at this time, that they feel should be considered in the council's assessment as to their ability to pay the level of the fine.

A senior officer not previously involved with the case will consider the appeal. This will usually be the Environmental Services Manager or another relevant officer at this level within the Council's structure. They will consider the information provided with the following options available to them:

- Withdraw the notice of intent,
- Reduce the amount specified, or
- Uphold the original decision.

If the decision is made to impose a financial penalty the council will give the person a final notice requiring the penalty to be paid within 28 days.

A person who receives a final notice may appeal within 28 days to the First-tier Tribunal (Property Chamber) and the penalty notice will not have effect until the appeal is heard.

## **15. The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulation 2007**

Cambridgeshire County Council (CCC) has ratified its decision to delegate their enforcement powers under these Regulations to all district authorities within Cambridgeshire. On investigation if a local authority determines there is no Energy Performance Certificate (EPC) for a domestic dwelling and it is a relevant building then the council can serve a fixed penalty notice.

The regulations require the following with respect to rented properties:

- The relevant person shall make available free of charge a valid energy performance certificate to any prospective buyer or tenant at the earliest opportunity and in any event before entering a contract to sell or rent out the building.
- The relevant person must ensure that a valid EPC has been given free of charge to the person who ultimately becomes the buyer or tenant.
- The relevant person must ensure all particulars are provided as required by the regulations. Where a relevant person is under a duty to make available an EPC to any person the certificate must be accompanied by a recommendation report.
- A recommendation report is one that contains recommendations for the improvement of the energy performance of the building, issued by the energy assessor who issued the EPC.
- A person required to produce such documents shall do so seven days beginning with the day after the requirement was imposed.

Breaches of the regulations are liable to a Penalty Charge Notice of £200.

Landlords can request a review of a penalty charge and this shall be submitted to the council within 28 days of the Penalty Charge Notice. The person may provide any information at this time, that they feel should be considered in the council's review. This may include information as to their ability to pay the level of the fine, to show they took all reasonable steps and exercise due diligence to avoid breaching the duty, or because of the circumstances of the landlord's case it was not appropriate for the penalty notice to be served. Further details of potential mitigating factors can be found in Appendix 5.

A senior officer not previously involved with the case will consider the appeal. This will usually be the Environmental Services Manager or another relevant officer at this level within the Council's structure. They will consider the information provided with the following options available to them:

- Withdraw the Penalty Charge Notice, or
- Reduce the amount specified, or
- Uphold the original decision.

If the decision is made to either reduce the amount or require the full financial

penalty to be paid this shall be received by the council within 28 days.

A person who receives a final notice may appeal within 28 days to the County Court and the penalty notice will not have effect until the appeal is heard.

## **16. The Minimum Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015**

From 1<sup>st</sup> April 2020 a rental property let on a relevant tenancy with an EPC rating below E is in breach of the regulations, unless it is included on the Private Rented Sector (PRS) Exemptions Register.

Councils shall serve a Compliance Notice if it considers a property is being rented out, or has been at any time within the 12 months preceding requesting:

- The energy performance certificate which was valid at the time the property was let,
- Any other energy performance certificate for the property in the landlords possession,
- Any current tenancy agreement under which the property is let,
- Any qualifying assessment in relation to the property,
- Any other document that the authority considers necessary to enable it to carry out its functions under these regulations, and
- May request the landlord to register copies of any of them on the PRS exemptions register

The authority can serve a Penalty Notice where a landlord:

- Rents out a substandard relevant property, unless an exemption applies,
- Has registered false or misleading information when registering information on the PRS Exemptions Register, or
- Does not comply with a Compliance Notice.

The penalties available are as follows:

- £2000 for letting a substandard property for less than 3 months
- £4000 for letting a substandard property for 3 months or more
- £1000 for false or misleading information being provided
- £2000 for failure to comply with a Compliance Notice

If a landlord breaches more than one of the breaches the total of the penalty must not be greater than £5000.

Where a financial penalty has been imposed the local authority may publicise the following information on the PRS Exemptions Register for a minimum period of 12 months:

- Landlords name
- Details of the breach

- The address of the property in relation to the breach
- The amount of financial penalty imposed.

The level of penalty shall be as the maximum laid down in the Regulations.

Landlords can request a review of a penalty charge and this shall be submitted to the council within 28 days of the Penalty Notice. The person may provide any information at this time, that they feel should be considered in the council's review. This may include information as to their ability to pay the level of the fine, to show they took all reasonable steps and exercise due diligence to avoid breaching the duty, or because of the circumstances of the landlord's case it was not appropriate for the penalty notice to be served. Further details of potential mitigating factors can be found in Appendix 5.

A senior officer not previously involved with the case will consider the review. This will usually be the Environmental Services Manager or another relevant officer at this level within the Council's structure. They will consider the information provided with the following options available to them:

- Withdraw the Penalty Notice, or
- Reduce the amount specified, or
- Uphold the original decision.

The decision will be communicated to the landlord in writing at the earliest opportunity. If the decision is made to either reduce the amount or require the full financial penalty to be paid, this payment shall be received by the council within 28 days of the decision being communicated to the landlord.

A landlord may appeal the decision at the First-tier Tribunal (General Regulatory Chamber) and the penalty notice will not have effect until the appeal is heard. Appeals can be on the grounds that:

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

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

This order requires letting agents and property managers to be members of an approved or designated Redress Scheme so that members can be investigated when complaints are made against them in connection with their work.

Failure to be a member of a scheme can result in a monetary penalty up to a maximum of £5,000. The level of any penalty is determined as laid down in the penalty fee structure in Appendix 4

If a breach of the Regulations is identified the council will issue the person considered to have committed the relevant offence a notice of its proposal (notice of intent) to impose a financial penalty. This will set out:

- The amount of the proposed financial penalty,
- The reasons for proposing to impose the penalty, and
- Information about the right of the person to make representations

The notice of intent must be given no later than 6 months after the conduct to which the penalty relates.

A person given notice of intent may make written representations to the council about the intention to impose a financial penalty within 28 days from the date the notice was given. The person may provide any information at this time, that they feel should be considered in the council's review. This may include information as to their ability to pay the level of the fine, to show they took all reasonable steps and exercise due diligence to avoid breaching the duty, or because of the circumstances of the person's case it was not appropriate for the penalty notice to be served. Further details of potential mitigating factors can be found in Appendix 5..

A senior officer not previously involved with the case will consider the review. This will usually be the Environmental Services Manager or another relevant officer at this level within the Council's structure. They will consider the information provided with the following options available to them:

- Withdraw the Penalty Notice, or
- Reduce the amount specified, or
- Uphold the original decision.

The decision will be communicated to the person in writing at the earliest opportunity. If the decision is made to either reduce the amount or require the full financial penalty to be paid, this payment shall be received by the council within 28 days of the decision being communicated to the person.

A person may appeal the decision at the First-tier Tribunal (General Regulatory Chamber) and the penalty notice will not have effect until the appeal is heard. Appeals can be on the grounds that:

- The decision to impose a penalty was based on an error of fact or an error of law
- The amount of the monetary penalty is unreasonable
- The decision was unreasonable for any other reason.

## 18. Monitoring and Review

The Service will keep its regulatory activities and interventions under review, with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose, where the Council has direct control of these matters.

Changes will be introduced into this document where necessary to accommodate new legislation, guidance and local needs.

Fees will be reviewed annually.

## 19. Other legislation.

Where housing or other related legislation is introduced which is enforced by the Council and permits the imposition of any monetary penalty or penalty charge the Council will seek to fully implement any duty or power conferred upon it.

## 20. Application of the Policy

All Officers must have regard to this policy when making enforcement decisions.

The Environmental Services (Domestic Team) will use discretion to vary these standards in exceptional circumstances where appropriate, also considering Government Guidance and new and emerging legislation and best practice guidance. Enforcement will be carried out in line with this policy **and the East Cambridgeshire District Council Enforcement Concordat.**

If you have any comments or queries on this policy, please contact:

**Senior Environmental Health Officer Karen See Domestic Team**

By Email: [Karen.see@eastcambs.gov.uk](mailto:Karen.see@eastcambs.gov.uk)

By telephone: 01353 665555

Or at this address: Domestic Team, East Cambridgeshire District Council, Nutholt Lane, Ely CB7 4EE



## Related policies and documents

- Previous Housing Enforcement Policy 2019  
<https://www.eastcambs.gov.uk/sites/default/files/Housing%20Enforcement%20Policy%20FINAL%202019%20pdf.pdf>
  - East Cambridgeshire Private Sector Housing Renewal Policy 2015  
[https://www.eastcambs.gov.uk/sites/default/files/PSH%20jan%202015\\_1.pdf](https://www.eastcambs.gov.uk/sites/default/files/PSH%20jan%202015_1.pdf)
  - Carbon Monoxide Statement Of Principles  
<https://www.eastcambs.gov.uk/sites/default/files/Statement%20of%20Principles.pdf>
  - Housing Strategy  
[http://www.eastcambs.gov.uk/sites/default/files/housing/housing\\_strategy\\_24583.pdf](http://www.eastcambs.gov.uk/sites/default/files/housing/housing_strategy_24583.pdf)
- Cambridgeshire Housing Adaptations and Repairs Policy 2019  
<https://www.eastcambs.gov.uk/sites/default/files/Housing%20Adaptations%20Policy%202020.pdf>
- Homelessness Strategy  
<http://www.eastcambs.gov.uk/sites/default/files/ECDC%20Homelessness%20Strategy-%20Action%20Plan.pdf>

Printed copies or translated/braille/ copies of this policy can be made available.

Please contact us on [domesticteam@eastcambs.gov.uk](mailto:domesticteam@eastcambs.gov.uk)

### **DATA PROTECTION**

In line with the General Data Protection Regulation (GDPR) and the Data Protection Act 2018, East Cambridgeshire District Council is fully committed to protect the privacy of our constituents, staff and members. We ensure the safe processing of personal data through strict guidelines for collection, storage and retention of information. Where appropriate, data sharing protocols are entered into and robust security measures are in place. The council maintains its Public Services Network (PSN) compliance, demonstrating its on-going commitment to supporting best practice in the maintenance and handling of data.

For further information contact: The Data Protection Officer, The Grange, Nutholt Lane, Ely, Cambs., CB7 4EE (email: [dataprotection@eastcambs.gov.uk](mailto:dataprotection@eastcambs.gov.uk))

# East Cambridgeshire District Council

The Grange, Nutholt Lane, Ely, Cambridgeshire. Tel: 01353 665555

**Appendix 1  
(Revised Sept 2018)**

## **Adopted Standards for Houses in Multiple Occupation**

The following standards and guidance notes have been compiled to comply with the requirements contained in the Housing Act 1985 as amended by the Local Government and Housing Act 1989, and the Housing Act 2004 and all associated Regulations. These standards may be varied at the discretion of the Environmental Services Manager and relate to Licensable and other Categories of HMO.

A House in Multiple Occupation is defined by the Housing Act 2004 and means:

- a house, hostel or flat occupied by more than one household where sharing of amenities and rent or other amounts are payable, or
- a converted building where one or more of the units of living accommodation do not consist of a self-contained flats.

A HMO may be considered a house converted into self-contained flats, which does not meet 1991 Building Regulations and less than two thirds of the flats are long leases (i.e. more than a third are tenanted).

A HMO must be in good repair, safe and meet East Cambridgeshire District Council's Minimum Standards.

Licensable HMO's must meet the following space standards as laid down by Regulations, that is:

- To ensure that the floor area of any room in the HMO used as sleeping accommodation by one person aged over 10 years is not less than 6.51 m<sup>2</sup>
- To ensure that the floor area of any room in the HMO used as sleeping accommodation by two persons aged over 10 years is not less than 10.22 m<sup>2</sup>
- To ensure that the floor area of any room in the HMO used as sleeping accommodation by one person aged under 10 years is not less than 4.64 m<sup>2</sup>
- To ensure that any room with a floor area less than 4.64 m<sup>2</sup> is not used as sleeping accommodation.

What dwellings are not considered Houses in Multiple Occupation for the purposes of these adopted Minimum Standards?

Exclusions include:

- People living together as one household
- Purpose built self-contained accommodation that complies with Building Regulations 1991
- Homes registered under the Registered Homes Act 1984
- Properties registered under the Children's Act 1989

The Environmental Services Manager may amend this from time to time, as necessary.

## **1. Standards for Houses in Multiple Occupation in Categories A, B and G**

### **Category A**

Houses occupied as individual rooms where there is some exclusive occupation (usually bedroom/living room) and some sharing of amenities (bathroom and/or toilet and/or kitchen). Each occupant lives otherwise independently of all others.

### **Category B**

Houses occupied on a shared basis. These would normally be occupied by members of a defined social group e.g. students or a group of young single adults. The occupiers each enjoy exclusive use of a bedroom but would share other facilities.

N.B. Houses of more than 6 people are not likely to fall in this Category.

### **Category G**

Houses with some degree of shared facilities, occupied by people whose occupation is connected to their employment or education and is made available through their employer or in connection with a recognised educational establishment.

## **1.1 Personal Washing Facilities**

- a.** Every water closet compartment shall be provided with a wash hand basin together with its own supply of hot and cold water.
- b.** Where practicable each separate occupancy shall be provided with a wash hand basin together with its own supply of hot and cold water.
- c.** Each occupancy is to be provided with its own bath or shower in a proper room. Where this is impracticable a readily accessible and suitably located bathroom or shower room not more than one floor distance from any user to be provided in the following ratios:-  

1 - 5 persons	-	1 bathroom or shower room
6 - 10 persons	-	2 bathrooms or shower rooms
11 - 15 persons	-	3 bathrooms or shower rooms
- d.** Every bath, shower and wash hand basin shall be properly plumbed with adequate hot and cold water supplies and waste drainage. Immediately adjacent walls should be non-porous and easily cleanable.

## **1.2 Drainage and Sanitary Conveniences**

- a.** Each separate occupancy shall be provided with its own water closet compartment, but when not practicable, satisfactory and readily accessible water closet accommodation shall be provided in the following ratios:  

1 - 5 persons	-	1 water closet
6 - 10 persons	-	2 water closets

11 - 15 persons - 3 water closets

- b.** The nearest water closet shall not be more than one floor distant from a unit of accommodation. Each bath/shower or W.C. room should have easily cleansable surfaces.
- c.** All above and below ground drainage shall comply with current Building Regulations

### 1.3 **Facilities for Storage, Preparation and Cooking of Food and for the Disposal of Waste Water**

If all meals are not provided then;

Each occupancy shall have its own kitchen facilities within their letting, as below, except suitably located shared kitchens may be provided where cooker and sink and associated facilities are shared by not more than five persons.

The kitchen shall be not more than one floor distance from any user unless a communal dining room is provided.

Separate kitchens whether shared or used exclusively in connection with a particular single tenancy must be of sufficient size for their purpose. The following sizes are a guide.

Kitchen used by                      Area of floor

1 – 3 persons	5m <sup>2</sup>
4 persons	6m <sup>2</sup>
5 persons	7m <sup>2</sup>
9 persons	9m <sup>2</sup>

#### **a. Storage of Food**

Each separate occupancy shall be provided with a refrigerator for the storage of perishable food (minimum capacity 0.15m<sup>3</sup>) and dry goods storage space (minimum 0.15m<sup>3</sup>) which may be within the unit accommodation or within the kitchen where kitchens are shared.

In shared kitchens the scale of such provision must be a minimum of 0.08m<sup>3</sup> dry goods space and 0.075m<sup>3</sup> refrigerator space per occupant, either in the kitchen or in an adjacent readily accessible position.

#### **b. Preparation of Food**

A suitable fixed worktop shall be provided being of a minimum size of 500mm x 1000mm with a smooth, durable, impervious surface, capable of being easily cleaned. In the case of shared kitchens, worktops shall be provided in a ratio of one to every three persons sharing the kitchen. Immediately adjacent walls to be non-porous and easily cleanable.

#### **c. Kitchen Appliances**

Two power points shall be provided, positioned immediately adjacent to any

worktop. In the case of shared kitchens power points shall be provided in the ratio

of two power points for every three persons.

**d. Cooking of Food**

A suitable cooking appliance which includes an oven, grill and four cooking rings shall be provided in each occupancy. In the case of shared kitchens cooking appliances that include an oven, grill and four cooking rings shall be provided in a ratio of one set for every five persons. Where there are up to eight persons the second cooking appliance may be a combination microwave rather than a traditional cooker.

Where there is single person occupancy an oven grill and two cooking rings will be acceptable.

**1.4 Natural Lighting**

- a.** All habitable rooms shall be provided with an area of clear glazing equivalent in total area of not less than 1/10th of the floor area of the room. Please note that all glazing within the common escape route (in case of fire) must comply with fire protection standards.
- b.** Where practicable, all kitchens, bathrooms and W.C. compartments shall comply with 4(a) above, although in the case of bathrooms and W.C. compartments, glazing shall normally be obscure. Where this is not practicable, adequate artificial lighting shall be provided in accordance with the requirement of part (b).

**Artificial Lighting**

- c.** All habitable rooms, kitchens, bathrooms, W.C. compartments, staircases, landings and passages shall be adequately lit by electricity.

All artificial lighting on landings, stairs and passageways must be operated by sufficient switches. Any time switches must stay on for an adequate time to allow persons to travel the distance and have entered the next lighting area.

**1.5 Ventilation**

- a.** All habitable rooms shall be ventilated directly to the external air by a window with an opening area of at least 1/20th of the floor area of the room.

A door giving access directly to the external air will not be acceptable for the purpose of this requirement.

- b.** Where practicable, kitchens, bathrooms and W.C. compartments shall comply with 1.5(a) above. Where not practicable, mechanical ventilation shall be provided which is capable of providing 3 air changes per hour. The installation must be fitted with an over-run device for a minimum of 15 minutes and connected to the lighting circuit of the room.

**1.6 Space Heating**

The main living room of each occupancy shall be provided with a fixed heating appliance capable of heating the room to a temperature of 21 °C when the outside

[Type here]

temperature is -1°C. All appliances should be of a sufficient output so as to adequately heat the rooms they serve.

Bedrooms should be able to be maintained at 18 °C when the outside temperature is -1°C. This provision should be efficient, safely designed, sited and guarded as to minimise the risks to health and safety.

### 1.7 Prevention of Overcrowding Space Standards

a. For the purpose of setting space standards:-

a child under 1 year is excluded (*this also applies to the provision of amenities and facilities*)

a child over 1 year and under 10 years is classed as ½ a person,

a child over 10 years or an adult is classed as 1 person.

b. The number of persons permitted to occupy each habitable room will be calculated according to the requirements of the Housing Act 1985 as follows:-

<u>Floor Area of Room</u>	<u>Max Number</u>
19.5 m <sup>2</sup>	4 persons
15 m <sup>2</sup>	3 persons
10.22 m <sup>2</sup>	2 persons
6.51 m <sup>2</sup>	1 person

- A single bedroom with a separate living room = 6.51 m<sup>2</sup> for 1 person
- A single bedroom with **no** separate living room = 10.22 m<sup>2</sup> for 1 person
- A double bedroom with a separate living room = 10.22 m<sup>2</sup> for 2 persons
- A double bedroom with **no** separate living room = 15 m<sup>2</sup> for 2 persons
- For each additional person there should be an additional 4.5m<sup>2</sup> floor area.

c. Where a unit of accommodation includes kitchen facilities and a separate living room, then minimum room sizes need to be increased.

<u>Floor Area of Room</u>	<u>Max Number</u>
13.5 m <sup>2</sup>	2 persons
10.22 m <sup>2</sup>	1 person

For each additional person there should be an additional 4.5m<sup>2</sup> floor area.

## **1.8 Refuse Storage and Disposal**

Refuse storage containers shall be provided sufficient for the needs of the house of the type acceptable to the Local Authority. On average one bin should be provided for every three single persons.

All containers are to be located on a hard standing with suitable access for cleaning the area and the removal of containers. Bulk storage bins may be acceptable in certain circumstances.

## **1.9 Means of Escape in the Case of Fire**

There must be an adequate means of escape in case of fire and other fire precautions within the property. The type of precautions required is dependent on the type of Category and the number of stories. Detailed requirements can be found in the Fire Standards Document.

The following are general requirements that may be required:-

- A fire warning system. Heat detectors in the kitchen areas. Hard wired smoke alarms in each dwelling.
- Fire doors with 30 minutes fire resistance with self-closing devices, smoke seals and intumescent seals.
- Walls and ceiling with 30 minutes fire resistance.
- Basement ceilings to have 60 minute fire resistance.
- Electrical meters in the escape route to be in a cupboard.

All cupboards in the escape route to have 30 minutes fire resistance.

## **1.10 Fire Safety of Furniture**

All upholstered furniture in an HMO shall meet the current fire retardancy standard.

Upholstered furniture and furnishings includes chairs, three piece suites, beds, headboards, scatter cushions and pillows.

## **1.11 Gas Safety**

Gas appliances, boilers and flues must be safe at all times and inspected annually by a registered installer or competent person on the Gas Safe Register.

A certificate confirming that an annual gas safety check has been carried out must be available for inspection by authorised officers of the Council and the Health and Safety Executive at their request.

A copy of the Certificate must be handed to any incoming tenant before the tenant occupies the premises.

There is a duty to retain a copy of the record of inspection for a period of two years.

### **1.12 Electrical Wiring and Appliances**

Electrical wiring to lighting, power circuits and electrical appliances must be safe at all times. These should be checked and certified as being safe by a qualified electrician who is a member of an approved association and an Electrical Installation Condition Report, no more than 5 years old, shall be available for inspection. PAT testing of appliances must be undertaken.

### **1.13 Management**

Every HMO must have a Manager. The Manager is the owner or the lessee of the premises who receives the rents paid by tenants. The person who collects the rents on his/her behalf may also be responsible as a Manager. A notice giving the name and address of the Manager should be on display in the premises.

The Housing (Management of Houses in Multiple Occupation) Regulations 2006 cover aspects relating to good management of the premises.

The Manager is required by the Regulations to ensure the repair, maintenance, cleansing or good order of the property including making sure the property remains safe, the water supply is sufficient, common parts and fixtures and fittings are in good order, the gas and electric supply is safe and that waste disposal options are sufficient. The Manager is also required to provide relevant information to the occupiers. The Regulations also imposes duties on persons who live in the house for the purpose of ensuring that the Manager can effectively carry out the duties imposed on him by the Regulations.

## **2. Standards Required for Houses in Multiple Occupation in Category C**

Houses let in lodgings i.e. catering for lodgers on a small scale but not living as part of the main household normally with a resident/occupier. This is the traditional "house let in lodgings" where meals are provided in a dining room and would be typified by a family or household who might take in a small number of students or other individuals away from their primary residence.

### **2.1 Personal Washing Facilities**

- a** Each bedroom/study room not occupied by the owner and his/her family shall be provided with a wash hand basin.
- b** Shared facilities will be accepted where there are 2 or less occupiers in addition to the owner-occupier and his/her family except where the total number of occupants exceed 6, when separate facilities as in (a) above will be required.
- c** Each occupancy to be provided with its own bath or shower in a proper room, but where this is impracticable a readily accessible and suitably located bathroom or shower room not more than one floor distance from any user to be provided in the following ratios:-



- 1 - 5 persons - 1 bathroom or shower room
- 6 - 10 persons - 2 bathrooms or shower rooms
- 11 - 15 persons - 3 bathrooms or shower rooms

**d.** Every bath, shower and wash hand basin shall be properly plumbed with adequate hot and cold water supplies and waste drainage. Immediately adjacent walls to be non-porous and easily cleansable.

## **2.2 Drainage and Sanitary Conveniences**

**a.** Each separate occupancy shall be provided with its own water closet compartment, but when not practicable, satisfactory and readily accessible water closet accommodation shall be provided in the following ratios:

- 1 - 5 persons - 1 water closet
- 6 - 10 persons - 2 water closets
- 11 - 15 persons - 3 water closets

**b.** The nearest water closet shall not be more than one floor distance from a unit of accommodation. Each bath/shower or W.C. room should have easily cleansable surfaces.

**c.** All above and belowground drainage shall comply with current Building Regulations.

## **2.3 Natural Lighting**

**a.** All habitable rooms shall be provided with an area of clear glazing equivalent in total area of not less than 1/10th of the floor area of the room. Please note that all glazing within the common escape route (in case of fire) must comply with fire protection standards.

**b.** Where practicable, all kitchens, bathrooms and W.C. compartments shall comply with above, although in the case of bathrooms and W.C. compartments, glazing shall normally be obscure. Where this is not practicable, adequate artificial lighting shall be provided.

### **Artificial Lighting**

**c.** All habitable rooms, kitchens, bathrooms, W.C. compartments, staircases, landings and passages shall be adequately lit by electricity.

All artificial lighting on landings, stairs and passageways must be operated by sufficient switches. Any time switches must stay on for an adequate time to allow persons to travel the distance and have entered the next lighting area.

## **2.4 Ventilation**

**b.** All habitable rooms shall be ventilated directly to the external air by a window with an opening area of at least 1/20th of the floor area of the room.

A door giving access directly to the external air will not be acceptable for the purpose of this requirement.

- c. Where practicable, kitchens, bathrooms and W.C. compartments shall comply with 5(a) above. Where not practicable, mechanical ventilation shall be provided which is capable of providing 3 air changes per hour. The installation must be fitted with an over-run device for a minimum of 15 minutes and connected to the lighting circuit of the room.

## 2.5 Space Heating

The main living room of each occupancy shall be provided with a fixed heating appliance capable of heating the room to a temperature of 21 °c when the outside temperature is -1°C. All appliances should be of a sufficient output so as to adequately heat the rooms they serve.

Bedrooms should be able to be maintained at 18 °C when the outside temperature is -1°C. This provision should be efficient, safely designed, sited and guarded as to minimise the risks to health and safety.

## 2.6 Prevention of Overcrowding Space Standards

- a. For the purpose of setting space standards:-

a child under 1 year is excluded (*this also applies to the provision of amenities and facilities*)

a child over 1 year and under 10 years is classed as ½ a person,

a child over 10 years or an adult is classed as 1 person.

- b. The number of persons permitted to occupy each habitable room will be calculated according to the requirements of the Housing Act 1985 as follows:-

<u>Floor Area of Room</u>	<u>Max Number</u>
19.5m <sup>2</sup>	4 persons
15m <sup>2</sup>	3 persons
10.22m <sup>2</sup>	2 persons
6.51m <sup>2</sup>	1 person

- A single bedroom with a separate living room = 6.51m<sup>2</sup> for 1 person
- A single bedroom with **no** separate living room = 10.22m<sup>2</sup> for 1 person
- A double bedroom with a separate living room = 10.22 m<sup>2</sup> for 2 persons
- A double bedroom with **no** separate living room = 15 m<sup>2</sup> for 2 persons
- For each additional person there should be an additional 4.5m<sup>2</sup> floor area.

- c. Where a unit of accommodation includes kitchen facilities and a separate living room, then minimum room sizes need to be increased.

<u>Floor Area of Room</u>	<u>Max Number</u>
13.5m <sup>2</sup>	2 persons
10.22m <sup>2</sup>	1 person

For each additional person there should be an additional 4.5m<sup>2</sup> floor area.

## **2.7 Refuse Storage and Disposal**

Refuse storage containers shall be provided sufficient for the needs of the house of the type acceptable to the Local Authority. On average one bin should be provided for every three single persons.

All containers are to be located on a hard standing with suitable access for cleaning the area and the removal of containers. Bulk storage bins may be acceptable in certain circumstances.

## **2.8 Means of Escape in the Case of Fire**

There must be an adequate means of escape in case of fire and other fire precautions within the property. The type of precautions required are dependent on the type of Category and the number of stories. Detailed requirements can be found in the Fire Standards Document.

The following are general requirements that may be required:-

- A fire warning system. Heat indicators in the kitchen areas. Hard wired smoke alarms in each dwelling.
- Fire doors with 30 minutes fire resistance with self-closing devices, smoke seals and intumescent seals.
- Walls and ceiling with 30 minutes fire resistance.
- Basement ceilings to have 60 minute fire resistance.
- Electrical metres in the escape route to be in a cupboard.

All cupboards in the escape route to have 30 minutes fire resistance.

## **Fire Safety of Furniture**

All upholstered furniture in an HMO shall meet the current fire retardancy standard.

Upholstered furniture and furnishings includes chairs, three piece suites, beds, headboards, scatter cushions and pillows.

## **Gas Safety**

Gas appliances, boilers and flues must be safe at all times and inspected annually by a Gas Safe registered installer.

A certificate confirming that an annual gas safety check has been carried out must

[Type here]

be available for inspection by authorised officers of the Council and the Health and Safety Executive at their request.

A copy of the Certificate must be handed to any incoming tenant before the tenant occupies the premises.

There is a duty to retain a copy of the record of inspection for a period of two years.

## **Electrical Wiring and Appliances**

Electrical wiring to both lighting, power circuits and electrical appliances must be safe at all times. These should be checked and certified as being safe by a qualified electrician who is a member of an approved association and an Electrical Installation Condition Report, no more than 5 years old, shall be available for inspection. PAT testing of appliances must be undertaken.

## **2.9 Management**

Every HMO must have a Manager. The Manager is the owner or the lessee of the premises who receives the rents paid by tenants. The person who collects the rents on his/her behalf may also be responsible as a manager. A notice giving the name and address of the Manager should be on display in the premises.

The Housing (Management of Houses in Multiple Occupation) Regulations 2006 cover aspects relating to good management of the premises.

The Manager is required by the Regulations to ensure the repair, maintenance, cleansing or good order of the property including making sure the property remains safe, the water supply is sufficient, common parts and fixtures and fittings are in good order, the gas and electric supply is safe and that waste disposal options are sufficient. The Manager is also required to provide relevant information to the occupiers. The Regulations also imposes duties on persons who live in the house for the purpose of ensuring that the Manager can effectively carry out the duties imposed on him by the Regulations.

### **3. Standards Required for Houses in Multiple Occupation in Category D**

(Hostels, guest houses, bed and breakfast)

Houses generally referred to as “hostels”, “guesthouses” and “bed-and-breakfast hotels” or the like. These will provide accommodation for people with no other permanent place of residence as distinct from hotels which provide accommodation for temporary visitors to an area. This category would include establishments used by Local Authorities to house homeless families pending permanent placement and similar establishments which provide accommodation for people who would otherwise be homeless. It would also include bona fide hotels used for such purposes, even on a casual basis and hotels housing. Foods must be prepared and served to tenants. The property will otherwise be classed as Category A or B.

#### **3.1 Personal Washing Facilities**

- a.** Every water closet compartment shall be provided with a wash hand basin together with its own supply of hot and cold water.
- b.** Each separate occupancy shall be provided with a wash hand basin together with its own supply of hot and cold water.
- c.** Each occupancy to be provided with its own bath or shower in a proper room, but where this is impracticable a readily accessible and suitably located bathroom or shower room not more than one floor distance from any user to be provided in the following ratios:-  

1 - 5 persons	-	1 bathroom or shower room
6 - 10 persons	-	2 bathrooms or shower rooms
11 - 15 persons	-	3 bathrooms or shower rooms
- d.** Every bath, shower and wash hand basin shall be properly plumbed with adequate hot and cold water supplies and waste drainage. Immediately adjacent walls to be non-porous and easily cleansable.

#### **3.2 Drainage and Sanitary Conveniences**

- a.** Each separate occupancy shall be provided with its own water closet compartment, but when not practicable, satisfactory and readily accessible water closet accommodation shall be provided in the following ratios:  

1 - 5 persons	-	1 water closet
6 - 10 persons	-	2 water closets
11 - 15 persons	-	3 water closets
- b.** The nearest water closet shall not be more than one floor distance from a unit of accommodation. Each bath/shower or W.C. room should have easily cleansable surfaces.
- c.** All above and belowground drainage shall comply with current Building Regulations.

## 5. Standards Required for Houses in Multiple Occupation in Category

### E

(Registered Homes)

Registered (care) homes have increased considerably in number since the advent of Community Care policies. Many thousands of such premises now exist in both the public and increasingly the private sector. They are diverse in size and nature and cater for a wide range of clients, their common characteristic being their need for personal care.

These premises are subject to inspection by Registration Authorities (i.e. Social Services Authorities) and to regulation according to the Registered Care Homes Regulations 1984. These specify standards which not only cover the physical environmental pertinent to the care of the client (including standards for amenities) but requirements too for management systems including provisions for record keeping, complaints procedures etc.

## 6. Standards Required for Houses in Multiple Occupation in Category

### F

Most houses or other buildings which by erection or conversion comprise of dwellings which are self-contained and which have access via a single "front door" from any common area. Such dwellings would normally contain all the standard amenities for the exclusive use of the occupants of that dwelling.

This category of HMO would under normal circumstances be created having regard to the provisions of the Building Regulations and therefore the following standards would be of use at design stage.

Each unit of accommodation should have exclusive amenities

The following space standards are recommended.

1 person, three roomed flat:

Bedroom	7m <sup>2</sup>
Living Room	11.5 m <sup>2</sup>
Kitchen	5.5 m <sup>2</sup>

Total habitable area 24m<sup>2</sup>

1 person flatlet with separate kitchen:

Bed/Living room	14m <sup>2</sup>
Kitchen	5m <sup>2</sup>

Total habitable area 21.5m<sup>2</sup>

2 person one bedroom flat:

Bedroom	10.5m
Living room	13m <sup>2</sup>

Kitchen 5.5m<sup>2</sup>

Total habitable area 31.5<sup>2</sup>

C Each occupancy shall be provided with its own bath or shower in a proper room, but where this is not practicable a readily accessible and suitably located bathroom or shower room not more than one floor distant from any user to be provided in the following ratios:-

1 - 5 persons	-	1 bathroom or shower room
6 - 10 persons	-	2 bathrooms or shower rooms

An owner-occupier and his/her family will be reckonable for this purpose.

D Every bath, shower and wash hand basin shall be properly plumbed with hot and cold water supplies and waste drainage.

### **5.1 Drainage and Sanitary Conveniences**

a Each separate occupancy shall be provided with its own water closet compartment, but when not practicable satisfactory and readily accessible water closet accommodation shall be provided in the following ratios:-

1 - 5 persons	-	1 water closet
6 - 10 persons	-	2 water closets
11 - 15 persons	-	3 water closets

b Such water closets shall be not more than 1 floor distant from the letting.

### **5.2 Natural Lighting**

a All habitable rooms shall be provided with an area of clear glazing equivalent in total area of not less than 1/10th of the floor area of the room.

b Where practicable, all kitchens, bathrooms and W.C. compartments shall comply with (a) above, although in the case of bathrooms and W.C. compartments, glazing shall normally be obscure.

### **Artificial Lighting**

c All habitable rooms, kitchens, bathrooms, W.C. compartments, staircases, landings and passages shall be adequately lit by electricity.

### **5.3 Ventilation**

a All habitable rooms shall be ventilated directly to the external air by a window with an opening area of at least 1/20th of the floor area of the room.

b Where practicable, kitchens, bathrooms and W.C. compartments shall comply with (a) above. Where not practicable, mechanical ventilation shall be

provided which is capable of providing 3 air changes per hour. The installation must be fitted with an over-run device and connected to the lighting circuit of the room.

#### **5.4 Space Heating**

The main living room of each occupancy shall be provided with a fixed heating appliance capable of heating the room to a temperature of 21 °C when the outside temperature is -1°C. This provision should be efficient, safely designed, sited and guarded as to minimise the risks to health and safety.

#### **5.5 Permitted Occupation**

In order to prevent overcrowding and over occupation the following shall apply:-

##### Bedrooms

1 person	6.51 m <sup>2</sup>
2 persons	10.22 m <sup>2</sup>
3 persons	16.5 m <sup>2</sup>
4 persons	21.0 m <sup>2</sup>



## CATEGORIES OF HMO

- Category A Houses occupied as individual rooms where there is some exclusive occupation (usually bedroom/living room) and some sharing of amenities (bathroom and/or toilet and/or kitchen). Each occupant lives otherwise independently of all others.
- Category B Houses occupied on a shared basis. These would normally be occupied by members of a defined social group e.g. students or a group of young single adults. The occupiers each enjoy exclusive use of a bedroom but would share facilities.
- Category C Houses let in lodgings, i.e. catering for lodgers on a small scale but not living as part of the main household normally with a resident owner/occupier. This is the traditional “house let in lodgings” where meals are provided in a dining room and would be typified by a family or household who might take in a small number of students or other individuals away from their primary place of residence.
- Category D Houses generally referred to as “hostels”, “guesthouses” and “bed-and-breakfast hotels” or the like. These will provide accommodation for people with no other permanent place of residence as distinct from hotels which provide accommodation for temporary visitors to an area. This category would include establishments used by local authorities to house homeless families pending permanent placement and similar establishments which provide accommodation for people who would otherwise be homeless. It would also include bona fide hotels used for such purposes, even on a casual basis and hotels housing a mixture of homeless households and visitors.
- Category E Houses which require registration under the Registered Homes Act 1984 as amended, providing board and personal care for persons in need by reason of old age, disability, past or present drug or alcohol dependence or past or present mental order.
- Category F Most houses or other buildings which by erection or conversion comprise dwellings which are self-contained, all such dwellings comprising accommodation to which access is had via a single “front door” from any common area. Such dwellings would normally contain all the standard amenities but where any might not and be in an “improved” state – there would nevertheless be no sharing amenities with the occupiers of neighbouring dwellings.
- Category G Houses with some degree of shared facilities, occupied by people whose occupation is ancillary to their employment or education and is made available through their employer or in connection with a recognised educational establishment.

## Appendix 2

### Civil Penalty Matrix for specified offences under the Housing Act 2004

#### Step 1 Consideration of culpability factors

LEVEL	DESCRIPTION	EXAMPLES (not exhaustive)
Maximum	Where the landlord or agent has intentionally and seriously breached and flagrantly disregarded the law and knew their actions were unlawful	Failure to demonstrate compliance or shows a wilful refusal to comply with an Improvement Notice where defects are clearly dangerous to the occupants  Breach of a Banning Order  Wilful refusal to comply with an overcrowding notice  Failure to comply with HMO management regulations where the conditions are clearly dangerous to the tenants or when a landlord or agent has not made appropriate inspections of the property.
Very High	Where the landlord or agent has seriously breached or flagrantly disregarded the law.	Failure to licence a HMO  Failure to demonstrate compliance or shows a wilful refusal to comply with an Improvement Notice  Failure to comply with an overcrowding notice within the date required  Failure to comply with HMO Management Regulations.
High	Actual foresight of, or wilful blindness to the risk of a breach but nevertheless taken	Taken limited actions to resolve the hazards identified in an Improvement Notice but the majority of the work has not been completed by the specified date.
Medium	Breach committed through	Taken actions to resolve

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	an act or omission which a person exercising reasonable care would not commit.	the hazards identified in an Improvement Notice but less than half of the work required has been completed by the date specified on the notice.
Low	Breach committed with little fault as significant efforts were made to address the risk although inadequate.	The majority of the work identified in an Improvement Notice has been completed the specified date but work remains outstanding.
Minimum	Breach was committed with little fault because there was no warning or circumstances indicating a risk or the failing were minor and occurred as an isolated incidence.	Failure to provide documentation to prove works on an Improvement Notice have been completed satisfactorily.

### Step 2 Consideration of harm factors

RATING	EXPLANATION	EXAMPLES
High	Serious adverse effect on individual or high risk of adverse effect	Category 1 Hazards identified (A-C)
Medium	Medium adverse effects, or medium risk of adverse effect.	High Category 2 Hazards (D-E)
Low	Low risk of an adverse effect	Low Category 2 Hazards (F-J)
Negligible	Harm not a consideration in the breach	Failure to Licence a HMO

### Step 3 Use of culpability and harm to provide a point scale for the civil penalty range

CULPABILITY	CLASS OF HARM			
	HIGH	MEDIUM	LOW	NEGLIGIBLE
MAXIMUM	9	8	7	6
VERY HIGH	8	7	6	5
HIGH	7	6	5	4
MEDIUM	6	5	4	3
LOW	5	4	3	2
MINIMUM	4	3	2	1

### Step 4 The scale point is then used to provide the penalty banding as below:

1. £1-£500
2. £501 - £1000
3. £1001- £3000
4. £3001 - £7000
5. £7001 - £11,000

[Type here]

6. £11,001 - £15,000
7. £15,001 - £20,000
8. £20,001 - £25,000
9. £25,001 - £30,000

Step 5 – Fines shall be set to the mid-point within each band but on receipt of representation details an upward or downward adjustment within the banding will be considered.

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### Appendix 3

#### Civil Penalty Matrix for specified offences under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

##### Step 1 Consideration of culpability factors

LEVEL	DESCRIPTION	EXAMPLES (not exhaustive)
Maximum	Where the landlord or agent has intentionally and seriously breached and flagrantly disregarded the law and knew their actions were unlawful	<p>Failure to ensure national standards for electrical safety are met. These are set out in the latest edition of the 'Wiring Regulations'</p> <p>Failure to carry out further investigative or remedial work or completing work within 28 days or any shorter period if specified as required in the EICR.</p>
Very High	Where the landlord or agent has seriously breached or flagrantly disregarded the law.	<p>Failure to ensure all electrical installations in their rented properties are inspected and tested by a qualified and competent at least every 5 years.</p> <p>Failure to supply the local authority with an EICR within 7 days of receiving a written request for a copy and where the report is unsatisfactory.</p> <p>Failure to supply the existing tenant with an EICR within 28 days of the inspection and test and where the report is unsatisfactory.</p>
High	Actual foresight of, or wilful blindness to the risk of a breach but nevertheless taken	<p>Failure to obtain an EICR from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test.</p> <p>Failure to supply a copy of an EICR to a new tenant before they occupy the</p>

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		premises.  Failure to supply a copy of the EICR to any prospective tenant within 28 days of receiving a request for the report
Medium	Breach committed through an act or omission which a person exercising reasonable care would not commit.	Failure to provide the local authority with a copy of the EICR within 7 days of receiving a written request for a copy when the report is satisfactory.  Failure to provide the tenant with a copy of the EICR within 28 days of receiving a written request for a copy when the report is satisfactory.
Low	Breach committed with little fault as significant efforts were made to address the risk although inadequate.	Failure to supply written confirmation of the completion of further investigative or remedial works from the electrician to the tenant and the local authority within 28 days of completion of the works.
Minimum	Breach was committed with little fault because there was no warning or circumstances indicating a risk or the failing were minor and occurred as an isolated incidence.	Failure to retain a copy of an EICR to give to the inspector and tester who will undertake the next inspection and test.

## Step 2 Consideration of harm factors

RATING	EXPLANATION	EXAMPLES
High	Serious adverse effect on individual or high risk of adverse effect	Multiple C1 ratings on the EICR
Medium	Medium adverse effects, or medium risk of adverse effect.	C1 rating on the EICR
Low	Low risk of an adverse effect	C2 ratings on the EICR
Negligible	Harm not a consideration in the breach	Absence of an EICR  FI rating on the EICR

[Type here]

Step 3 Use of culpability and harm to provide a point scale for the civil penalty range

<b>CULPABILITY</b>	<b>CLASS OF HARM</b>			
	HIGH	MEDIUM	LOW	NEGLIGIBLE
MAXIMUM	9	8	7	6
VERY HIGH	8	7	6	5
HIGH	7	6	5	4
MEDIUM	6	5	4	3
LOW	5	4	3	2
MINIMUM	4	3	2	1

Step 4 The scale point is then used to provide the penalty banding as below:

1. £1-£500
2. £501 - £1000
3. £1001- £3000
4. £3001 - £7000
5. £7001 - £11,000
6. £11,001 - £15,000
7. £15,001 - £20,000
8. £20,001 - £25,000
9. £25001 - £30,000

Step 5 – Fines shall be set to the mid-point within each band but on receipt of representation details an upward or downward adjustment within the banding will be considered.

## **Appendix 4**

### **Penalty Matrix for specified offences under The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014.**

#### **Step 1 Consideration of culpability factors**

<b>LEVEL</b>	<b>DESCRIPTION</b>
Maximum	Where the landlord or agent has intentionally and seriously breached, or seriously and flagrantly disregarded the law and knew their actions were unlawful
Very High	Where the landlord or agent has seriously breached, or seriously and flagrantly disregarded the law.
High	Actual foresight of, or wilful blindness to, risk of breach but nevertheless taken.
Medium	Breach committed through an act or omission which a person exercising reasonable care would not commit.
Low	Breach committed with little fault as significant efforts were made to address the risk although they were inadequate on the relevant occasion.
Minimum	Breach was committed with little fault because there was no warning or circumstances indicating a risk or the failing were minor and occurred as an isolated incidence.

#### **Step 2 Consideration of harm outcomes**

<b>LEVEL</b>	<b>EXPLANATION</b>
High	High likelihood of harm <ul style="list-style-type: none"><li>• Serious adverse effects on individual and/or having widespread impact due to the nature and/or scale of the landlord or agent's business, or</li><li>• High risk of an adverse effect on individuals – including where persons are vulnerable</li></ul>
Medium	Medium likelihood of harm <ul style="list-style-type: none"><li>• Adverse effect on individuals</li><li>• Medium risk of an adverse effect on individuals</li><li>• Tenants and/or legitimate landlords or agents substantially undermined by the conduct</li><li>• Tenant or prospective tenant misled</li></ul>
Low	Low likelihood of harm

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	<ul style="list-style-type: none"> <li>• Low risk of an adverse effect on actual or prospective tenants</li> <li>• Public misled but little or no risk of actual adverse effect on individuals</li> </ul>
Negligible	Negligible likelihood of harm <ul style="list-style-type: none"> <li>• Harm not a consideration in the breach</li> </ul>

Step 3 Use of culpability and harm to provide a point scale for the civil penalty range

CULPABILITY	CLASS OF HARM			
	HIGH	MEDIUM	LOW	NEGLIGIBLE
MAXIMUM	9	8	7	6
VERY HIGH	8	7	6	5
HIGH	7	6	5	4
MEDIUM	6	5	4	3
LOW	5	4	3	2
MINIMUM	4	3	2	1

Step 4 The scale point is then used to provide the penalty banding as below:

1. £1-£83
2. £84 - £166
3. £167- £500
4. £501 - £1,166
5. £1,167 - £1,833
6. £1,834 - £2,500
7. £2,501 - £3,333
8. £3,334 - £4,166
9. £4,167 - £5,000

Step 5 – Fines shall be set to the mid-point within each band but on receipt of representation details an upward or downward adjustment within the banding will be considered.

## **Appendix 5**

### **Aggravating and mitigating factors to consider when determining civil penalties**

#### Potential factors increasing the seriousness of an offence

The penalty may be increased within a band up to a maximum of the top of the band level. In order to determine the final penalty, the Council will consider any aggravating factors relevant to the case. Below is a list that will be considered as part of the determination. This is not an exhaustive list and other factors may be considered depending on the circumstances of each case.

- Previous convictions having regard to the offence to which applies and time elapsed since the offence;
- Motivated by financial gain;
- Obstruction of the investigation;
- Deliberate concealment of the activity/evidence;
- Number of items of non-compliance – greater the number the greater the potential aggravating factor;
- Record of non-compliance;
- Record of letting substandard accommodation;
- Record of poor management/ inadequate management provision;
- Lack of a tenancy agreement/rent paid in cash; and
- Already a member of an accreditation scheme or letting standard

#### Mitigating Factors

The penalty may be decreased within a band. In order to determine the final penalty, the Council will consider any mitigating factors relevant to the case. Below is a list that will be considered as part of the determination. This is not an exhaustive list and other factors may be considered depending on the circumstances of each case.

- Co-operation with the investigation;
- Voluntary steps taken to address issues e.g. submit a licence application;
- Willingness to undertake training;
- Evidence of health reasons preventing reasonable compliance – mental health, unforeseen health issues, emergency health concerns;
- No previous convictions;
- Vulnerable individual(s) where their vulnerability is linked to the commission of the offence; and
- Good character and/or exemplary conduct.

When considering aggravating and mitigating factors the Civil Penalty imposed must remain proportionate to the offence. Reference will be made to Magistrates Court Sentencing Council guidelines when considering relevant aggravating and mitigating factors. An offender will be assumed to be able to pay a penalty up to the maximum amount unless they can demonstrate otherwise.