

Private sector housing enforcement policy



Document

Name of policy	Private Sector Housing Enforcement Policy
Document reference	HLSPOL14
Purpose of policy	<p>This Policy details how New Forest District Council (the Council) will regulate standards in Private Sector Housing and tackle empty homes in the New Forest. It also provides a background to the legislation and guidance on which it is based.</p> <p>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.</p> <p>Our aim is to raise standards in Private Sector Housing throughout the district, working with owners, landlords, letting agents and tenants to achieve this. However, it is recognised that if the law is broken, then enforcement action may be necessary to protect the public and the environment.</p> <p>In applying this policy, we 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.</p>
Policy applies to	This policy applies to all persons responsible for property within the private rented sector to include tenants, landlords, owners, leaseholders, freeholders, managing agents, letting agents, estate agents, property licence holders and any other person with a legal or financial interest in rented premises.
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1. Introduction

This policy sets out New Forest District Council's approach to enforcing standards in the private sector housing sector. This will be informed by the principles of proportionality in applying the law and securing compliance; consistency of approach; targeting of enforcement action towards those activities that pose the most serious risk or create the most danger to residents; transparency about how we operate and what those regulated may expect; and accountability for our actions. These principles will apply both to enforcement in particular cases and to our management of enforcement activities.

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.

Effective enforcement is important as a means of maintaining public confidence in the quality and safety of private sector housing within the district and supporting our residents right to live in a safe and healthy environment.

Enforcement powers are part of the statutory obligation placed on the Council to keep housing conditions within the district under review and take appropriate action where identified to ensure suitable standards are maintained.

Legislation, national guidance and local policies provide framework on which Private Sector Housing enforcement is undertaken.

Objectives

Private Sector Housing enforcement is principally aimed at tackling poor and unsuitable housing conditions.

The nature and intensity of any investigation will differ on each case dependant on the type of dwelling and issue(s) reported/ identified.

In normal circumstances enforcement action will be carried out with the objectives to ensure that:

- Tenants of private rented accommodation live in homes free of hazards that affect their health and safety.
- Houses in Multiple Occupation (HMOs) that are required to be licensed are licensed, and licence conditions are met.
- Empty Homes are tackled to bring them back into use and to ensure that the amenity of the area is not affect, the property is safe and secure and not causing a statutory nuisance.
- Private rented accommodation meets the minimum energy efficiency standards.
- Private rented sector tenants or residential occupiers are not subject to unlawful eviction or harassment under the Protection from Eviction Act 1977.
- Letting Agents meet the legal requirements that apply to their business.

2. What to expect from us

Landlords

- We will advise you of the legislation and help you understand how you can comply with it.
- 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.
- If we are satisfied with your proposal, we will work with you to comply within agreed timescales.
- 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.
- 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.
- A charge will be made for the service of the Notice.

Tenants

- We will expect you to advise your landlord of any issues within your property, preferably in writing (including email), before contacting us.
- We will advise you as to what action we can take and advise you of the expected timescales.
- We will expect you to cooperate with the landlord to get the works carried out and to advise/update us of any action taken by the landlord.

Owners

- We will expect owners to maintain the properties they live in and own.
- Enforcement action will be considered if there is an imminent risk to a person's life.

Owners of Empty Homes

- We will work proactively with owners of empty homes to encourage and assist in bringing their empty homes back into use.
- Where an empty property is having detrimental impact on the neighbouring area enforcement action will be considered as appropriate.
- 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 (Compulsory Purchase Order, Empty Dwelling Management Order, and Enforced Sale) will be considered.

3. Enforcement policy and principles

Role of the Private Rented Sector

The supply of good quality, affordable, privately rented accommodation is essential to meeting local housing need. To adequately meet that need, we must strive to provide professionally managed and well-maintained homes. We will work with landlords to improve and sustain good quality accommodation and will only intervene when there is a risk to the health and safety of occupants, neighbours, or visitors to a property.

Inspections and other visits

In most cases, officers will undertake an inspection of the property to establish whether any offences or breaches have been committed and/or to ascertain whether any other parts of the relevant legislation need be applied.

Inspections and other visits will take place in response to a request for service or where poor conditions have been brought to our attention. Following an inspection, the landlord or his or her agent will be contacted to discuss the findings and wherever possible to encourage and reinforce good practices.

Authority to investigate or enforce

The Housing Act 2004 and associated secondary legislation sets out the duties and powers that the 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 Housing and Planning Act 2016, Deregulation Act 2015, Anti-Social Behaviour Crime and Policing Act 2014, Tenant Fees Act 2019. This is not a complete list of the powers available.

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 in this regard.

Power of Entry

The Council's authorised officers have several powers of entry. The Housing Act 2004, section 239(3) or (7), is primarily used for this purpose. However, officers do also have powers of entry under the legislation listed below and these may be used instead of the Housing Act 2004 where appropriate to the investigation.

- Environmental Protection Act 1990 – Schedule 3, para. 2
- Prevention of Damage by Pests Act 1949 – Section 22
- Public Health Act 1936 – Section 287
- Building Act 1984 – Section 95
- Local Government and Housing Act 1989 – Section 97

The power of entry is to enter the land or premises at any reasonable hour for the purpose of carrying out an inspection and/or investigation either required by the legislation or to ascertain if any part of the relevant legislation should apply.

For most of the above powers of entry, a minimum of 24 hours' notice of the intended entry must be given to the owner/landlord or responsible party for the property. The exceptions to this being sections relating to licenced HMOs, houses required to be licensed under Part 3 and HMO management regulations respectively, which are:

- Under Local Government and Housing Act 1989, 7 days' notice must be provided.
- Section 239(7) of Housing Act 2004 does not require any notice to be given, if the purpose of the inspection is in relation to sections 72, 95 or 234.

3. Enforcement policy and principles (Cont'd)

If officers are refused entry, the Council has the right to apply to the Magistrates Court for a warrant to enter the land/property. This course of action will only be taken in cases where it is considered both necessary and proportionate to the matter under investigation.

Any person who wilfully obstructs an authorised officer acting in exercise of a right of entry commits an offence and may be liable on summary conviction to a fine, the level of which is specified by the respective legislation:

- Level 4 – Housing Act 2004, Building Act 1984
- Level 3 – Environmental Protection Act 1990, Local Government & Housing Act 1989
- Level 1 – Public Health Act 1936, Prevention of Damage by Pests Act 1949

Information Gathering

There are two main legislative tools used for gathering information as part of private rented sector enforcement investigations:

- Section 16 Local Government (Miscellaneous Provisions) Act 1976 - (Requisition for Information Notice)
- Section 235 Housing Act 2004 - (Requisition for Documents Notice)

Failure to respond to either of the above notices within the specified time frame is a criminal offence and may lead to prosecution. These notices do not register as a Land Charge and are not included on the Council's Enforcement Register.

In addition to the above there is also the following tool available to the Council.

- Regulation 37 of The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 – (Compliance Notice)

Failure to respond to the above is a breach of the regulations and so may incur a financial penalty.

We may also, as part of gathering information during an investigation, refer to information held within other parts of the Council such as Council Tax records and Electoral Register, as well as some external databases such as Land Registry records or Ministry of Housing and Communities & Local Government's (MHCLG) Rogue Landlord Database.

Possible Outcomes

Some issues reported to the Private Sector Housing Team are of a minor nature and formal action cannot be justified, so it is important to be aware that the Council may not address all disrepair items and will only act when it is expedient to do so. Action will only be taken where the hazards identified are of sufficient severity. The outcome of each case will be based on the individual circumstances of each investigation.

The possible outcomes are:

- **No action taken** – either the reported issue is not within the control of the legislation, or the reported issue is considered to pose a minimal hazard and/or impact and that it is not expedient to pursue.
- **Informal action** – Landlords will be engaged informally initially, followed up by correspondence sent to the relevant party identifying the hazard(s) or issues of concern and inviting them to undertake work to address these, within an appropriate time. Many people do take the positive steps required to rectify the situation and formal action is only necessary in a small number of cases.
- **Formal action** – If we are unable to resolve the matter through informal action or the hazard(s), breach or circumstances is/are so serious, the Council has the power and, in some circumstances a duty, to take formal enforcement action. The nature of the hazard(s), breach or circumstances will determine the type of formal action chosen by the Council.

3. Enforcement policy and principles (Cont'd)

Enforcement action will be consistent with the Council's overall Housing Strategy, Private Sector Housing Strategy and the Empty Homes Strategy. The Private Sector Housing Team will adopt a co-ordinated approach with other Council services and other relevant agencies, in particular with preventing and dealing with homelessness.

New Forest District Council Officers with the Delegated Powers to approve or action the powers contained within this policy are:

- Strategic Director – Housing, Communities and Governance
- Assistant Director – Housing
- Private Sector Housing Manager
- Housing Standards Officer

4. Formal enforcement action

Enforcement Notice & Orders

A number of different enforcement notices & orders are available to the Council under various legislation, as detailed below.

Housing Act 2004

The Housing Act 2004 introduced the Housing Health & Safety Rating System (HHSRS)

The HHSRS is a calculation of the effect of 29 possible hazards on the health of occupiers.

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. 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 HHSRS (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.

Enforcement notices & orders under Part 1 of the Housing Act 2004 are briefly outline below:

Hazard Awareness Notice

This is available for both category 1 and 2 hazards and will state the nature of the hazard(s) and residential premises it relates to but does not impose any further requirements.

The notice is in effect from the date the notice was served and there is no legal right of appeal.

Improvement Notices

This is available for both category 1 and 2 hazards and will state the nature of the hazard(s) and residential premises it relates to.

It also imposes requirements to undertake works as specified to mitigate or minimise the hazard(s). The notice will stipulate the times by which works are required to commence and be completed.

The notice is in effect from the date the notice was served. There is a right of appeal which must be made to the First Tier Tribunal (FTT) within 21 days from the date the notice was served.

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.

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

4. Formal enforcement action (Cont'd)

Prohibition Orders

This is available for 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. It will state the nature of the hazard(s), residential premises it relates to and state the purpose for which a part or whole of the premises are prohibited to be used.

The notice is in effect from the date the notice was served. There is a right of appeal which must be made to the First Tier Tribunal (FTT) within 28 days from the date the notice was served.

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.

Emergency Remedial Action

This is only available for category 1 hazards and allows the Council to immediately undertake works at the premises to mitigate or minimise the hazard.

A notice will be served within 7 days of the action being taken and will state the nature of the hazard(s), residential premises it relates to and date on which the work was or is to be started.

The Council is permitted under the Act to recover any expenses in taking the emergency remedial action

The notice is in effect from the date served. There is a right of appeal which must be made to the FTT within 28 days from the date the notice was served.

Emergency Prohibition Order

This is only available for category 1 hazards and will state the nature of the hazard(s), residential premises it relates to and clearly stipulate the purposes (which may be for all purposes) for which a part or whole of the premises are prohibited to be used.

The order is in effect from the date served. There is a right of appeal which must be made to the FTT within 28 days from the date the order was served.

Demolition Order

This is only available for category 1 hazards and will state the nature of the hazard(s), residential premises it relates to and impose a requirement that the premises be vacated and demolished.

The order will specify the times on which the order becomes operative, and demolition must be completed by the Council following the order becoming operative or the date on which the property is vacated.

There is a right of appeal which must be made to the FTT within 28 days from the date the order was served.

Power to Charge for Enforcement Action

The Housing Act 2004 (section 49) provides local housing authorities with the power 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.

4. Formal enforcement action (Cont'd)

Where a charge is made, the Council can recover a reasonable amount for expenses incurred in connection with 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.

Charges will be made on a cost recovery basis, using the current hourly rates of the officers involved, plus any associated costs including travelling costs, travel time, copying charges and any relevant 'on costs' for that officer.

Details of this calculation and the minimum charge can be found in Appendix C. Where the time reasonably incurred in carrying out the above actions means that this minimum charge is exceeded, then the Council may charge for the service of that particular notice at the higher calculated rate. This minimum charge will normally be reviewed annually to allow for inflation and other relevant cost increases.

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

Tenure

The HHSRS and the associated enforcement options apply to all tenures of housing.

It is generally considered that owner-occupiers are primarily responsible for the repair and maintenance of their own home. They are usually in a position to make informed decisions concerning their own safety and welfare and the necessary maintenance and improvement of their home.

Tenants and particularly those occupying private rented accommodation are less able to do so and the condition, repair and safety of such accommodation is the primary responsibility of some other person; namely the property owner, landlord or letting agent.

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

▪ **Owner Occupiers**

In the first instance owner-occupiers concerned about the condition of their home will normally be provided with relevant telephone advice or information via the Council's website.

Formal visits and inspections of owner-occupied properties will only normally be undertaken if there is a concern that the condition of the property gives rise to a high risk for the safety of the occupants, they are considered to be vulnerable, or the property possesses a high risk to persons other than the occupant's i.e. neighbouring properties or passers-by.

If there is a need to move beyond the provision of advice, it is anticipated that a Hazard Awareness Notice is likely to be the most 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.

▪ **Leaseholder/ Freeholder**

Circumstances can arise where a long leaseholder is experiencing ongoing poor housing conditions, where a higher landlord, such as a freeholder or management company, are not willing to take the necessary steps to remedy the housing defects for which they are legally responsible.

4. Formal enforcement action (Cont'd)

Formal visits, inspection and any appropriate enforcement action will only be considered where:

- the leaseholder has made reasonable efforts to remedy the matter with the higher landlord,
- that action has proved ineffective.
- the higher landlord is responsible for remedying the said defect(s) likely to give rise to a Category 1 or 2 hazard.

▪ **Registered Providers of Social Housing (RPs)**

Registered Providers of Social Housing (RPs) exist to provide suitable and properly maintained accommodation for their tenants. RPs 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 for registering any complaints about service failure.

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

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

If the Council determines that it is appropriate to take action, it will then normally notify the RP that a service request has been received and/or a hazard identified and seek the RP'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.

▪ **Private Landlords**

Most landlords provide decent quality, well managed properties to rent. Should a private tenant have concerns about the condition or safety of their rented home the Council will normally firstly advise them to contact their landlord or letting agent directly. This ensures that landlords can resolve any defects in the first instance.

If the Council needs to visit a property, the landlord or his or her agent will be contacted following the inspection to discuss the findings and seek the landlord/ agents' proposals for remedying the problem.

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 within 14 days of contact, and
- The work is carried out to a satisfactory conclusion within agreed timescales.

If the Council does not receive a satisfactory response or the works are not completed within the agreed timescales, then it will proceed with formal action by taking the most appropriate enforcement action in accordance with this policy.

▪ **New Forest District Council Housing Stock**

Council owned and managed properties are provided to tenants in keeping with the Decent Homes Standard and quality and safety guidance issued through the Social Housing regulatory regime and other compliance legislation. The Housing Maintenance service has written arrangements for reporting problems, clear response times and systems for registering any complaints about service failure. Their performance is also scrutinised by the through a corporate governance process and ultimately the Housing Ombudsman and Regulator for Social Housing. The Private Sector Housing team works with colleagues from the Council's Housing Maintenance team and, at their request, can provide advice on housing standards required in their stock. Formal enforcement action cannot be taken by New Forest District Council against itself.

4. Formal enforcement action (Cont'd)

Retaliatory Evictions

Retaliatory eviction refers to a situation 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 seeking possession.

The Deregulation Act 2015 introduced some protection for tenants against unfair eviction. In summary if the Council serves an Improvement Notice or takes Emergency Remedial Action in relation to a property, the landlord will be unable to rely on using the section 21 'no-fault' notice seeking possession procedure for 6 months from the date the action was taken by the Council.

The Private Sector Housing Team will work with landlords to understand their obligations and the implications of this legislation and will work alongside the Council's Housing Options team and other advice agencies to provide support, advice and guidance to the tenant in these circumstances.

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.
- Financial Penalty.

Failure to comply with an Improvement Notice or a Prohibition Order is an offence punishable by an unlimited fine.

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

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.

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 the private sector housing manager, to ensure that it is still appropriate and proportionate to the risk posed from the identified hazard(s).

Prosecution

Where the Council is satisfied that an offence has been committed, whether by failure to comply with the requirements of a notice served or a direct breach of the relevant legislation has occurred, the case may be considered for prosecution. Prosecutions will be sought where it is expedient to do so and there is a public benefit to taking the case to court.

Prosecutions cannot be undertaken on cases where a Civil Penalty Notice has already been issued for the same offence.

4. Formal enforcement action (Cont'd)

Works in Default

Works in default will be considered if all other methods to try to remedy the necessary works have been unsuccessful. In determining if work in default is appropriate, Officers will report to the Private Sector Housing Manager who will consider approval based on 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, contractor's 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 expenses will carry interest from the date of service until payment of all sums due under the demand at a rate of 1% over the Bank of England Base Rate. The recoverable expenses, together with interest accrued on them, are a charge on the premises.

In addition, as a means of recovering the costs, the Council may also serve Recovery Notices to recover, receive and give a discharge for any rent or sums in rent.

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.

5. Other housing related enforcement action

Civil Penalties/ Penalty Charges

The Housing & Planning Act 2016 introduces a range of measures to tackle rogue landlord practice including the power for Councils to issue Civil Penalties of up to £30,000 as an alternative to prosecution for certain prescribed offences under the Housing Act 2004 and other legislation.

Income received from financial penalties can be retained by the local housing authority if 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 Council will impose Civil Penalties where permitted, in accordance with its Statement of Principles, which can be found at Appendix A and having regard to relevant government guidance.

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 provides 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. To achieve a conviction in the magistrates' court, the Private Sector Housing Team must be able to demonstrate beyond reasonable doubt that the offence has been committed.

In deciding whether to prosecute an offender or whether to issue a financial penalty, the following factors may be considered:

- The seriousness of the offence - *Prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past.*
- Where a significant financial penalty is determined to be a greater sanction than prosecution - *A civil penalty of up to £30,000 can be imposed where a serious offence has been committed and a local housing authority may decide that a significant financial penalty (or penalties, if there have been several breaches), rather than prosecution, is the most appropriate and effective sanction in a particular case.*
- Where New Forest District Council considers that a banning order may be an appropriate sanction for a landlord, in addition to prosecution - *A banning order may only be applied for where a landlord has been convicted for committing certain prescribed offences and therefore if this is considered an appropriate sanction, may lead to a presumption in favour of prosecution in such cases.*

The reason for a particular course of action being pursued will be documented and provided to the Strategic Director for Housing, Communities and Governance and the Council's solicitor for approval. This will ensure that the proposed action meets the tests set out in the Code for Crown Prosecutors and that the preferred sanction is the most 'appropriate and effective' course of action.

5. Other housing related enforcement

Action (Cont'd)

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

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 require landlords to:

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

A remedial notice must be served where the local housing authority is satisfied on the balance of probabilities that a landlord has not complied with one or more of their duties under the Regulations. This provides the landlord with the opportunity to respond to the alleged failures.

If a local housing authority has reasonable grounds to believe a landlord is in breach of one or more of the duties in the Regulations and the report indicates urgent remedial action is required, the local housing authority may, with the consent of the tenant or tenants, arrange for a qualified person to take the urgent remedial action and recover their costs.

Otherwise, they must serve a remedial action notice requiring the landlord to take the necessary action within 28 days. Should a landlord not comply with the notice the local housing authority may, with the tenant's consent, arrange for any remedial action to be taken themselves.

Landlords have rights to make written representation and appeal against remedial action. The local housing authority can recover the costs of taking the action from the landlord and may also impose a financial penalty of up to £30,000 on landlords who are in breach of their duties.

The Council will impose Financial Penalties where permitted, in accordance with its Statement of Principles, which can be found at Appendix B and having regard to relevant government guidance.

Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 – Minimum Energy Efficiency Standards (MEES)

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 – Minimum Energy Efficiency Standards (MEES) are designed to tackle the least energy efficient properties, setting a minimum standard of Energy Performance Certificate (EPC) band 'E' for private rented accommodation.

A landlord with a property with an EPC rating below an E (F&G) are required to improve their properties with energy efficiency improvements to bring the property up to at least an E rating before the property is rented out, unless the landlord qualifies for an exemption and the exemption is registered on the Public Exemptions Register.

Non-compliance with these Regulations *may* result in the imposition of a financial penalty by the Council in accordance with a specific Statement of Principles which can be found at Appendix B.

5. Other housing related enforcement

Action (Cont'd)

The Smoke and Carbon Monoxide Alarms (England) Regulations 2015

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 require landlords to ensure that under certain circumstances tenanted properties are provided with smoke and carbon monoxide alarms.

Where a local housing authority has reasonable grounds to believe that a landlord is in breach of one or more of the duties under these regulations, the authority *must* serve a remedial notice on the landlord. A remedial notice will specify the premises it relates to and set out the duties the Council consider the landlord have failed to meet and the remedial action required to be taken by the landlord within 28 days of the notice.

There is a right to make representation in writing to the Council following the service of the notice which must be made within 28 days from the date of service.

Failure to comply with the remedial notice imposes a further duty on the Council to arrange remedial action.

Non-compliance with these Regulations *may* result in the imposition of a financial penalty in accordance with a specific Statement of Principles which can be found at Appendix B.

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

The Redress Scheme for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 requires that a person who engages in lettings agency or property management work must be a member of a redress scheme for dealing with complaints.

Non-compliance with these Regulations may result in the imposition of a financial penalty in accordance with the specific Statement of Principles, which can be found at Appendix B.

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 6th 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. New Forest District Council will consider application for RROs in all cases where a successful prosecution has been achieved.

Houses in Multiple Occupation

The Housing Act 2004 introduced a national mandatory licensing system for Houses in Multiple Occupation (HMO) occupied by 5 or more people who share basic facilities.

Due to the way they are occupied, HMOs often pose particular hazards in relation to fire, overcrowding and property management and maintenance. The aim of proactive licensing is to ensure that every licensable HMO is safe for the occupants and is properly managed.

5. Other housing related enforcement

Action (Cont'd)

The responsibility for applying for a licence rests with the person having control or the person managing the property, licences normally cover a period of three to five years and the licence is subject to an administration fee to cover the cost of the licensing issuing process.

Those applying for a licence must satisfy a self-certification 'fit and proper person' 'test' and the property must be suitable for the number of proposed occupants in relation to the provision of facilities, it shall be subject to appropriate management and also possess adequate fire precautions.

▪ **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, any breach of licence condition will be dealt with informally initially. 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.

Special Powers in Relation to Houses in Multiple Occupation (HMOs)

▪ **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.

5. Other housing related enforcement

Action (Cont'd)

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 31) 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 Private Sector Housing 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 Private Sector Housing 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 Private Sector Housing Team is satisfied that when the licence is revoked the Health and Safety Condition test will be met.

▪ **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 relevant senior manager as per the Council's scheme of delegation.

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 Private Sector Housing 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).

▪ **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.

▪ **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.

5. Other housing related enforcement

Action (Cont'd)

▪ **Management Regulations**

Management Regulations made under the Housing Act 2004 imposes duties on landlords and managers of HMOs (whether subject to licensing or not). There are no powers to service notice under the Management Regulations, but the Local Authority can prosecute or issue a financial penalty for breach of the regulations.

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 with due regard given to our Empty Homes Strategy.

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, if necessary:

▪ **Empty Dwelling Management Orders (EDMO)**

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 (CPO)**

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.

▪ **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 a charge 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. An enforced sale under a different procedure can also be used to recover Council Tax arrears.

Tenant Fees Act 2019

Landlords or agents are no longer able to require tenants in the private rented sector in England, or any persons acting on behalf of a tenant or guaranteeing the rent, to make certain payments in connection with a tenancy. In the legislation "in connection with a tenancy" is defined as requirements:

- in consideration of, or in consideration of arranging for, the grant, renewal, continuance, variation, assignment, novation or termination of a tenancy.
- on entry into a tenancy agreement containing relevant provisions.
- pursuant to a provision of a tenancy agreement, or pursuant to an agreement relating to such a tenancy with a letting agent, which requires or purports to require the person to do any of those things in the event of an act or default of the person or if the tenancy is varied, assigned, novated or terminated; and
- as a result of an act or default related to the tenancy unless pursuant to, or for breach of, a tenancy agreement or other agreement; and
- in consideration of providing a reference for a former tenant.

5. Other housing related enforcement

Action (Cont'd)

Permitted payments are defined in the Act as:

- the rent.
- refundable tenancy deposit capped at no more than five weeks rent, where the annual rental income is below £50,000 and six weeks rent where an annual rental income is above £50,000.
- refundable holding deposit (to reserve a property) capped at no more than one weeks rent.
- payment in the event of a default of the tenant.
- payments on assignment, novation or variation of a tenancy when requested by the tenant, capped at £50 or reasonable costs incurred if higher.
- payments associated with early termination of a tenancy, when requested by the tenant.
- payments in respect of utilities, communication services and council tax.

A breach of the legislation will usually be defined as a civil breach with a financial penalty of up to £5,000. However, if a further breach is committed within five years of the imposition of a financial penalty or conviction for a previous breach, this will be pursued as a criminal offence. Upon conviction, the penalty is an unlimited fine and is a banning order offence under the Housing and Planning Act 2016.

Where an offence is committed, the Council may impose a financial penalty of up to £30,000 as an alternative to prosecution. In such a case, the Council will have discretion over whether to prosecute or impose a financial penalty. Where a financial penalty is imposed, this does not amount to a criminal conviction.

A breach of the requirement to repay the holding deposit is a civil offence and will be subject to a financial penalty of up to £5,000.

The final determination of any financial penalty will be considered alongside the general principle that a penalty should be fair and proportionate but, in all instances, act as a deterrent and remove any gain as a result of the breach. Further information on Civil Penalties are found in Section 14 of this policy. The application of such civil penalties and decision matrix is attached at Appendix A.

Protection Against Eviction 1977

Under S1(2) Protection from Eviction Act 1977 it is an offence for any person to unlawfully deprive a residential occupier of the premises (or any part of it) that they occupy. In the main, an eviction Notice, followed by a Possession Summons, then a Possession Order is the usual procedure for landlords to regain possession of a premises. Even when the Possession Order expires, the tenants can remain in occupation until the landlord obtains a Bailiffs Warrant of Execution. Only the County Court Bailiff can carry out the eviction.

The Council can prosecute for breaches of the Protection Against Eviction Act 1977 and such prosecutions can amount to a criminal offence. Housing Standards Officers will work alongside the Housing Options team and support providers such as Citizens Advice and Shelter in order to gather evidence and undertake prosecution where required.

Environmental Protection Act 1990 Section 80 Abatement Notice

This shall be served where a Local Authority is satisfied that a statutory nuisance (as prescribed in section 79) exists or is likely to occur or recur.

A notice may impose requirements to; abatement of the nuisance or prohibition or restricting its occurrence or recurrence, execution of such works as may be necessary for that purpose, or both.

The notice will specify time or times within which the requirements are to be complied with. The notice is in effect from the date on which it was served. There is a right of appeal which must be made to the Magistrates court within 21 days from the date on which the notice was served.

5. Other housing related enforcement

Action (Cont'd)

Prevention of Damage by Pests Act Section 4

This may be served where it appears to a Local Authority that steps should be taken for the destruction of rats or mice on land or otherwise for keeping the land free from rats or mice.

A notice may impose requirements to undertake any form of treatment specified and / or carry out repairs or other works as specified. The notice will specify the times by which any treatment and/or works are to be carried out.

The notice is in effect from the date on which it was served. There is no right of appeal to this notice.

Building Act 1984 Section 59

This shall be served where it appears to the Local Authority that there is; insufficient provision for drainage, drainage infrastructure as specified in (1)(b) is defective to the point of admitting subsoil water, drainage infrastructure is in such a condition as to be prejudicial to health or a nuisance, or former drainage infrastructure no longer in use is prejudicial to health or a nuisance.

A notice may impose requirements to either; make satisfactory provision for drainage, undertake works as may be necessary for renewing, repairing or cleansing of the relevant part of the drainage infrastructure, or removal or otherwise rendering innocuous the disused parts. The notice will specify the times by which any works are to be executed.

The notice is in effect from the date the notice was served. There is a right of appeal which must be made to the Magistrates Court within 21 days from the date on which the notice was served.

Public Health Act 1936 Section 83 & 84

A notice shall be served where a local authority are satisfied that:

- Sect. 83 - any premises are in such a filthy or unwholesome condition as to be prejudicial to health and/or verminous.
- Sect. 84 – any article in any premises is in so filthy a condition as to render cleansing, purification or destruction necessary, or is verminous or having in contact with is likely to be verminous.

A notice may impose requirements to undertake work specified to remedy the condition of the premises and/or articles within the premises. The notice will specify the times by which any works are to be executed.

The notice is in effect from the date the notice was served. There is a right of appeal which must be made to the Magistrates Court within 21 days from the date on which the notice was served.

6. Monitor and review

This enforcement policy will be subject to regular review and amendment when necessary to accommodate new legislation, guidance, or local needs. The policy provides authority to the Strategic Director for Housing, Communities and Governance to make minor alterations in consultation with the Portfolio for Housing.

This enforcement policy will be available on the council's website at www.newforest.gov.uk

Appendix A

Statement of principles for determining Civil (financial) penalties for Housing Act and other offences

Introduction

This statement sets out the principles that the New Forest District Council (the Council) will apply in exercising powers to impose a Civil (financial) penalty for specified criminal offences under the Housing Act 2004.

The Council's power to impose financial penalties.

Legislation and guidance has been introduced which provides local housing authorities with a power to charge a financial penalty in prescribed circumstances.

The Ministry of Housing, Communities and Local Government (MHCLG) publication is statutory guidance to which local housing authorities must have regard. It recommends certain factors a local authority should take into account when deciding on the level of financial penalty and further recommends that local authorities develop and document their own policy on determining the appropriate level of financial penalty in a particular case.

The Council has a wide discretion in making this determination and this policy provides further guidance as to how a penalty will be calculated. In developing its policy the Council has had regard to principles set out in a number of publications including the Magistrates' Court Sentencing Guidelines. In anticipation of further legislative provisions being introduced enabling the imposition of a financial penalty, the principles detailed in this document will be applied in setting any charge.

Scope of the document

The Housing and Planning Act 2016 ('the 2016 Act') amends the Housing Act 2004 ('the 2004 Act') to allow financial penalties, up to a maximum of £30,000, to be imposed as an alternative to prosecution for certain relevant housing offences. The Housing Act 2004 Act prescribes the procedures that a local housing authority must follow before imposing a financial penalty, details of the appeal process and the procedure for recovery of the penalty.

Schedule 9 of the 2016 Act has introduced amendments to the 2004 Act that allow local housing authorities to impose financial penalties as an alternative to prosecution for the following relevant housing offences under the 2004 Act:

- The extent to which the non-compliance was the result of direct acts or omissions of the landlord / agent.
- Whether the non-compliance was deliberate or resulted from a matter of which the landlord / agent should reasonably be aware.
- Whether any other body has or is likely to apply sanctions associated with the non-compliance.
- The level of cooperation provided by the landlord / agent concerned.
- Any history of previous contraventions of Housing or Housing related legislation.
- The level of financial gain achieved by the non-compliance.
- The level of risk created by the non-compliance.
- The degree of responsibility held by the landlord / agent for the non-compliance.
- The cost incurred by the Council in enforcing the relevant provision.
- Any additional aggravating or mitigating factors that may warrant an increase or decrease in the financial penalty.

Where a financial penalty is charged the Council must have regard to a statement of principles published and in place at the time when the breach in question occurred. The Council may revise this statement of principles and where it does so, it will publish the revised statement.

Appendix A

General principles and factors to be applied to the imposition of a financial penalty.

The guidance on the imposition of financial penalties advises local authorities to take account of the following seven factors when calculating the amount of any penalty. The Council will take these seven factors into account when determining the amount of any financial penalty to be imposed:

1. Severity of the offence.
2. Culpability and track record of the offender.
3. The harm caused to the tenant.
4. Punishment of the offender.
5. Deter the offender from repeating the offence.
6. Deter others from committing similar offences.
7. Remove any financial benefit the offender may have obtained as a result of committing the offence.

Procedure for imposing a financial penalty

The procedure for imposing a financial penalty is set out in Schedule 13A of the Housing Act 2004. Where a penalty is considered the appropriate sanction, the level of penalty will be set by reference to the 'Financial Penalty Matrix' detailed below in Table 1.

The Financial Penalty Matrix accounts for the seven factors detailed in the guidance at fig 54 above and consolidates it into four headings. The resultant total 'score' in column 'A' of table 1 is then transferred to one of the eleven possible penalty bands detailed in Table 2.

Each band provides a range of possible penalties with the lowest band having a penalty of up to £250 and the highest band imposing a penalty up to the maximum of £30,000.

The maximum penalty for any band will be assumed to apply unless there are accepted mitigating circumstances associated with the case. These may include, but not limited to:

- No previous convictions or no relevant or recent convictions
- Steps voluntarily taken to remedy the problem
- A high level of cooperation with the investigation, beyond that which will always be expected
- Good previous record of maintaining the property
- Self-reporting of the issue, cooperation and acceptance of responsibility
- Good character or exemplary conduct
- Mental health issue or learning disability is linked to the commission of the offence
- Serious medical conditions requiring urgent, intensive or long-term treatment

In all cases a view will be taken on the level of the penalty calculated from the matrix, compared to the offence committed and if necessary, the penalty will be adjusted, subject to appropriate documented evidence. Prior to the final determination of a penalty the Council

will satisfy itself that the penalty is just and proportionate. Decisions to adjust a civil penalty will be taken and documented by the Private Sector Housing Manager.

Where the offender is issued with more than one financial penalty, the Council will have regard to guidance from the definitive guideline on Offences Taken into Consideration and Totality and consider the totality of the penalties.

If the aggregate total of the penalties is not considered just and proportionate, the Council will consider how to reach a just and proportionate financial penalty.

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

Appendix A

In setting a financial penalty, either singular or cumulative, the Council may conclude that the offender is able to pay any financial penalty imposed unless the Council has obtained, or the offender has supplied, any financial information to the contrary. An offender will be expected to disclose to the Council such data relevant to his financial position to enable the Council to assess what an offender can reasonably afford to pay.

Where the Council is not satisfied that it has been given sufficient reliable information, the Council will be entitled to draw reasonable inferences as to the offender's means from evidence it has received and from all the circumstances of the case, which may include the inference that the offender can pay any financial penalty.

Where it is determined that a financial penalty is appropriate the Council will serve a 'notice of intent' on the person responsible for the offence within 6 months of the offence being evidenced

The Council will invite representations which must be made within 28 days of receipt of the 'notice of intent'. Having considered any representations received the Council must then decide if it still wishes to impose a civil penalty and, if so, the amount. If a civil penalty continues to be considered appropriate a 'final notice' will be served.

A person who receives a final notice may appeal to the First-tier Tribunal against the decision to impose a penalty; or the amount of the penalty. If a person appeals, the final notice is suspended until the appeal is determined or withdrawn.

Appendix A

Civil Penalties Matrix – Housing Act 2004 and other offences (Table 1)

Financial Penalty Matrix						
	Score = 1	Score = 5	Score = 10	Score = 15	Score = 20	Total (A)
Factors						
1. Severity of offence and culpability	No previous enforcement history. Single low level offence.	Minor previous enforcement. Single offence.	Recent second time offender. Offence has moderate severity or small but frequent impact(s).	Multiple offender. Ongoing offence of moderate to large severity or a single instance of a very severe offence.	Serial offender. Multiple enforcement over recent times. Continuing serious offence.	
2. Deterrence of offender and others	High confidence that a financial penalty will deter repeat offending. Informal publicity not required as a deterrence.	Medium confidence that a financial penalty will deter repeat offending. Minor informal publicity required for mild deterrence in the landlord community.	Low confidence that a financial penalty will deter repeat offending (e.g. no contact from offender). Some informal publicity will be required to prevent similar offending in the landlord community.	Little confidence that a financial penalty will deter repeat offending. Likely informal publicity will be required to prevent similar offending in the landlord community.	Very little confidence that a financial penalty will deter repeat offending. Informal publicity will be required to prevent similar offending in the landlord community.	
3. Removal of financial benefit	No significant assets. No or very low financial profit made by offender.	Little asset value. Little profit made by offender.	Small portfolio landlord (between 2-3 properties). Low asset value. Low profit made by offender.	Medium portfolio landlord (between 4-5 properties) or a small Managing Agent. Medium asset value. Medium profit made by offender.	Large portfolio landlord (over 5 properties) or a medium to large Managing Agent. Large asset value. Large profit made by offender.	

Appendix A

<p>4. Harm to the tenants (x2 weighting)</p>	<p>Very little or no harm caused. No vulnerable occupants. Tenant provides no information on impact.</p>	<p>Likely some low-level health/harm risk(s) to occupant. No vulnerable occupants. Tenant provides poor quality information on impact</p>	<p>Likely moderate level health/harm risk(s) to occupant. Vulnerable occupants potentially exposed. Tenant provides some information on impact but with no primary or secondary evidence</p>	<p>High level of health/harm risk(s) to occupant. Tenant(s) will be affected frequently or by occasional high impact occurrences. Vulnerable occupants. more than likely exposed. Small HMO (3-4 occupants), multiple occupants exposed. Tenant provides good information on impact with primary evidence (e.g. prescription drugs present, clear signs of poor health witnessed) but no secondary evidence.</p>	<p>Obvious high level health/harm risk(s) and evidence that tenant(s) are badly and/or continually affected. Multiple vulnerable occupants. exposed. Large HMO (5+occupants), multiple occupants exposed. Tenant provides excellent information on impact with primary and secondary evidence provided (e.g. medical, social services reports).</p>	
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Appendix A

Score Range Total Score in Column A (Table 2)	Penalty
<6	£250
6<11	£500
11<21	£750
21<31	£1,000
31<41	£2,500
41<51	£5,000
51<61	£10,000
61<71	£15,000
71<81	£20,000
81<91	£25,000
91+	£30,000

Appendix B

Statement of principles for determining financial penalties for general housing legislation

Introduction

This statement sets out the principles that New Forest District Council will apply in exercising powers to impose a financial penalty for failing to meet certain legislative requirements for which they are the enforcing authority.

The Council's power to impose financial penalties

Legislation has been introduced which has provided the Council with a power to impose and charge a financial penalty in prescribed circumstances.

- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014
- Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

In anticipation of further legislative provisions being introduced which enable the imposition of a financial penalty, the principles detailed in this document will be applied in setting any charge.

Scope

Regulation 13 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, requires the council to prepare and publish a 'statement of principles' to which it will have regard in determining the amount of a penalty charge it will apply where a landlord is in breach of the duties under those Regulations.

The Council will also apply these principles when determining any other housing related legislation that permits the Council to impose a financial penalty. The Council may revise this statement of principles and in the event will publish the revised statement.

Where a financial penalty is charged the Council must have regard to the most current statement of principles that it has published.

General principles applied to the imposition of a financial penalty.

The primary purpose of the Council's enforcement of its regulatory powers is to protect the interests and safety of the public. The primary aims of any financial penalty will therefore be to:

- Change the behaviour of the landlord / letting agent concerned.
- Deter future non-compliance by landlords / letting 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 any work in default and fulfilling its enforcement duties

In determining the amount of any financial penalty to be charged the Council may in general have regard to the following:

- The level of cooperation provided by the landlord/letting agent concerned. Any history of previous contraventions of Housing or Housing related legislation
- The level of risk created by the non-compliance
- The cost incurred by the Council in enforcing the relevant provision.
- Any other circumstances identified as specifically relevant to the individual matter
- The Council's current Housing Standards Enforcement Policy

Appendix B

Financial penalties applicable to specific legislation

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

Where the Council have reasonable grounds to believe that the requirements have not been met by a landlord there is a duty to serve a 'Remedial Notice' on the landlord. Failure to comply with a Remedial Notice imposes a further duty upon the Council to arrange remedial action and a power to require payment of a penalty charge. The amount of the penalty charge must not exceed £5,000.

The Council will comply with the requirements and guidance regarding the information to be contained within any penalty charge notice, including provisions for a review, and the appeal procedures. A penalty charge will be recoverable on the order of a court, as if payable under a court order.

The New Forest District Council Standard Penalty Charges are as follows and in determining the amount of any financial penalty to be charged the Council may have regard to the matters raised above.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (Table 1)

Penalty charges for non-compliance are currently as follows:

First Offence	£1,500	Reduced to £750 if paid within 14 days
Second Offence	£3,000	No reduction for early payment
Any additional offences	£5,000	No reduction for early payment

The Regulations make provision for a landlord to seek a review of a penalty charge notice. The Council will refer to this statement of principles in considering any request for a review, and the review will be conducted by an Officer not directly involved in the service of the original notice.

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

Whilst the majority of lettings agents and property managers provide a good service there are a minority who offer a poor service and engage in unacceptable practices. This Order requires that tenants and landlords with agents in the private rented sector will be able to complain to an independent person about the service they have received. The aim is that the requirement to belong to a redress scheme will help remove bad agents and property managers and drive-up standards.

Where the council is 'satisfied on the balance of probabilities' that a person has failed to belong to a redress scheme as required by article 3 or 5 of the above Order, it may by notice require that person to pay a 'monetary penalty'. The amount of the monetary penalty must not exceed £5,000.

The Council will comply with the procedure and guidance for the imposition of a monetary penalty stipulated within the Order including provisions for the submission of representations and objections and the appeal procedures. The Council will normally provide the landlord with a reasonable period of time to remedy any breach; normally 21 to 28 days, prior to considering imposing a penalty. A monetary penalty will be recoverable on the order of a court, as if payable under a court order.

Appendix B

Standard monetary penalty for breach of duty under article 3 or 5	£5,000	Reduced by 50% if paid within 14 calendar days of the date of issue of the monetary penalty.
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While this monetary penalty is set as a standard the order makes provision for a Letting Agent to make representations or objections. The Council will refer to this statement of principles in considering representations or objections received. Reviews will be conducted by an Officer not directly involved in the service of the original notice of intent.

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

The Council may serve a penalty on the landlord where they are satisfied that the landlord is, or has been in the last 18 months in breach of the:

- prohibition on letting sub-standard property (those rated F or G on the EPC scale) or
- requirement to comply with a compliance notice or
- has uploaded false or misleading information to the Exemptions Register.

The Council will normally provide the landlord with a reasonable period of time to remedy any breach; normally 21 to 28 days, prior to considering imposing a penalty. The Council has discretion to decide on the amount of financial penalties, up to maximum limits set by the Regulations and associated guidance. The maximum penalties are as follows:

		Financial penalty up to
A	Where the landlord has let a sub-standard property in breach of the regulations for a period of less than 3 months	£2,000 may be imposed in addition to a publication penalty
B	Where the landlord has let a sub-standard property in breach of the regulations for a period of more than 3 months	£4,000 may be imposed in addition to a publication penalty
C	Where the landlord has registered false or misleading information on the PRS Exemptions Register	£1,000 may be imposed in addition to a publication penalty
D	Where the landlord has failed to comply with compliance notice	£2,000 may be imposed in addition to a publication penalty

The Council may not impose a financial penalty under both a. and b. above in relation to the same breach of the Regulations, but they may impose a financial penalty under either A or B, together with financial penalties under C and D, in relation to the same breach.

Where penalties are imposed under more than one of these paragraphs, the total amount of the financial penalty may not be more than £5,000. The Council will initially impose the maximum penalty permitted. The Council will refer to this statement of principles in considering any request for a review and the review will be conducted by an officer not directly involved in the service of the original notice.

For all offences resulting in a financial penalty the Council will also consider a 'publication penalty'. A 'publication penalty' allows the Council to publish details of the landlord's breach on a publicly accessible part of the PRS Exemptions Register. The Council will generally keep the information on the Register for at least 12 months.

Appendix C

Charging for Enforcement Action

	Business Support		Housing Standards Officer		Private Sector Housing Manager		Service Manager		Total
Hourly Rates (2023/24)	£24.69		£38.89		£49.81		£64.44		
Activity for which charge maybe made	Hours	£	Hours	£	Hours	£	Hours	£	£
Inspection including travel			2.00	77.78					
HHSRS assessment			1.00	38.89	0.25	12.45			
Drafting schedules of work			1.00	38.89	0.25	12.45			
Sec 8 consideration (Statement of reasons)			1.00	38.89	0.50	24.91	0.25	16.11	
Service of notices/ orders			0.50	19.45	0.50	24.91	0.25	16.11	
Admin support	1.00	24.69							
Total		24.69		213.90		74.71		32.22	345.52

The minimum charge for the service of a housing enforcement notice is £345 (VAT not applicable)

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