



# Housing Standards Enforcement Policy

Version 2.1: August 2024

## **Document version control**

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**Version:** 2.0

**Date:** August 2024

**Notes:** Update of Enforcement Policy to ensure it is accessible.

Including list of all legislation that is relevant to Housing Standards and that we are able to take enforcement action on.

Including reference to the new Civil Penalty Notice policy which takes account of more recent tribunal decisions.

Including information about legislation for which Penalty Charge Notices for certain types of legislation where Civil Penalty Notices are not available.

Including reference to Illegal Evictions.

Changes to numbering system for consistent layout.

Removing reference to the Woking Landlord Accreditation Scheme

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## 1.0 Introduction

1.1 The Council is able to utilise a wide range of legislation to intervene in the Private Rented Sector where required, including, but not limited to:

- a) Housing Act 2004
- b) Housing Health and Safety Rating System (England) Regulations 2005
- c) The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018
- d) The Management of Houses in Multiple Occupation (England) Regulations 2006
- e) The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022
- f) The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015
- g) The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
- h) The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Regulations 2014
- i) Housing and Planning Act 2016
- j) Protection from Eviction Act 1977

1.2 This policy sets out the procedures that the Council will follow when considering potential enforcement following breaches of legislation and regulations within the Private Rented Sector.

1.3 When enforcing legislation, the Council is required to both meet the specific requirements of individual pieces of legislation as well as the wider principles of good regulation set out in the Regulators' Code, April 2014. The statutory principles of the code provide that good regulation should be carried out in a way which is transparent, accountable, proportionate and consistent.

1.4 The Regulators' Code does not apply in respect of the Council's actions taken under Part 1 of the Housing Act 2004 (enforcement of housing conditions).

1.5 The Council will also have regard to relevant enforcement guidance when taking enforcement action, including the Housing Health and Safety Rating System Enforcement Guidance.

1.6 The Council is mindful that each case must be considered on its individual merits and where the circumstances demand, the Council may depart from this policy.

## 2.0 Aims and Objectives

2.1 This policy deals with the practical application of enforcement procedures that will be used to achieve improvements to housing. It sets out what owners,

landlords, managing agents and tenants of private sector properties can expect from officers.

2.2 This policy aims to:

- a) improve the standard of privately rented housing within Woking and to provide a safer and healthier private housing sector;
- b) set out the principles and practices that will be followed when enforcing legislation;
- c) ensure that housing standards enforcement decisions are fair, transparent, consistent and proportionate;
- d) support all landlords to maintain appropriate standards of accommodation;
- e) incentivise responsible renting and increase public confidence in the quality and management of accommodation leading to a vibrant private rented sector in the Borough;
- f) hold persons responsible for their actions which are detrimental to the health, safety and welfare of their tenants and to local environmental quality.

2.3 Where new legislation is implemented, the Council aims to follow the same principles and processes regarding enforcement stated within this policy within the constraints of the specific legislation.

### **3.0 Scope of the Policy**

3.1 Enforcement action is taken by the Council in respect of its statutory powers and duties where legislation has been breached. This includes both formal and informal action along with visits and inspections and consequently includes:

- a) Providing advice and guidance to support compliance with the law;
- b) Undertaking investigations (either proactively or in response to a complaint) to establish whether intervention is appropriate;
- c) Taking informal action including where no action is taken;
- d) Requiring the provision of information;
- e) Serving enforcement notices and making enforcement orders;
- f) Taking emergency action
- g) Licensing private rented accommodation (including houses in multiple occupation);
- h) Carry out works in default where a person has failed to comply with the requirements of a notice or order;

- i) Issuing Civil Penalties;
- j) Instigating Rent Repayment Orders;
- k) Issuing simple cautions,
- l) Instigating prosecution proceedings;
- m)Applying for banning orders,
- n) Entering enforcement records on the Rogue Landlord Database,
- o) Penalty Charge Notices for certain pieces of legislation.

## **4.0 Providing Advice and Guidance**

4.1 Wherever practicable the Council aims to provide private landlords and their tenants with clear and accessible advice and guidance to support responsible renting and help landlords comply with their legal requirements. We will also endeavour to provide advice and guidance on related matters for which the Council may not be the enforcing authority, for example tenancy deposit protection.

4.2 This will include, but is not limited to information provided through:

- a) the Council's website;
- b) the Housing Standards Licensing Policy
- c) the Private Sector Amenity Standards Guidance
- d) verbal advice;
- e) information freely available through relevant resources;
- f) landlord, letting agent and tenant forums;
- g) referral to other Council departments, and;
- h) referrals to partner agencies.

4.3 The provision of information and advice does not preclude the Council taking additional action, including enforcement action. Where enforcement action is taken it is likely that further information and advice will be provided to support responsible renting.

## **5.0 Undertaking Investigations**

5.1 The Council receives information regarding the private rented sector from a range of sources. Information received also varies in accuracy and credibility.

- 5.2 Where the Council receives information regarding alleged poor conditions or other breaches of appropriate legislation it will normally undertake initial investigations by making contact with the occupier/s of the property in question to establish whether there are any matters that require the Council's intervention.
- 5.3 In the event that the Council considers that there are matters that warrant further action, the Council may contact the landlord to require further information, or to give notice of an inspection to identify any relevant actions.
- 5.4 It may be necessary for the Council to visit the property without prior notice to investigate whether breaches of legislation are taking place.
- 5.5 Where the Council gathers evidence of alleged offences it may invite alleged offenders or other relevant persons to attend for an interview under caution as part of the Council's investigation.
- 5.6 Where the Council undertakes interviews under caution they will comply with the requirements of the Police and Criminal Evidence Act 1984 and will be recorded. Individuals will have the right to attend with their legal advisor and a copy of the interview will be provided on request.

## **6.0 Using Powers of Entry**

- 6.1 Where appropriate the Council will exercise its powers of entry as necessary to undertake appropriate investigations.
- 6.2 In some cases the Council may exercise its powers of entry by obtaining a warrant of entry from the Magistrates' Court for example where officers have been obstructed previously, or where notification would negate the purpose of the visit (e.g. an offence would not be discovered).
- 6.3 The Council work with other agencies including the Police, Surrey Fire and Rescue Service, Family Support, Immigration and Citizens Advice to ensure legal practices are being followed and tenants are being supported.

## **7.0 Provision of Information**

- 7.1 Where the Council conducts an investigation it will normally be appropriate to require those persons who have an interest in the property to provide ownership and other information so that the Council ensures that it is corresponding with the appropriate parties.
- 7.2 Requisition for Information

- a) The Council has powers to serve legal notices under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 that require individuals to provide ownership and other information within a given time frame.
- b) The use of this power is to assist the Council's investigations and does not necessarily lead to the instigation of further enforcement action.
- c) Where a Requisition for Information is not complied with prosecution proceedings may be the appropriate course of action due to the negative impact this may have on the Council's investigation.

### 7.3 Requirement to Provide Documents

- a) The Council has powers to serve legal notices under Section 235 of the Housing Act 2004 to require certain individuals to provide the Council with relevant documents on a given date and time.
- b) The use of this power is to assist the Council's investigations and does not necessarily lead to the instigation of further enforcement action.
- c) Where a legal notice served under Section 235 is not complied with proceedings may be the appropriate course of action due to the negative impact that failing to provide the information may have on the Council's investigation.

## 8.0 Taking Informal Action

8.1 The Council aims to resolve as many cases as possible through informal action. "Informal action" is to secure compliance with legislation, including offering advice, issuing verbal warnings and requesting action, the use of letters, and the issuing of informal schedules of works. The preferred approach is to work with people to help to prevent the need for official enforcement. However, where the circumstances justify it, the Council will take formal action in the first instance for example where the landlord has a history of non-compliance, or where the Council has obtained evidence of a criminal offence.

8.2 It should be noted that it is not always possible to adopt an informal approach, especially where the legislation requires formal action to be taken.

8.3 It will be made clear that formal action could follow if there is a failure to meet informal requests to carry out works to meet legal requirements.

8.4 In some cases, the Council may choose to take no action, for example where there are no matters in which the Council has the power to intervene, where the impact on health, safety or welfare is negligible, or where the impact on other members of the public is negligible.



8.5 The Council may also have regard to the views of occupiers when considering whether to take action, and the Council accepts that in some cases occupiers would prefer that the Council did not take action at that time.

8.6 When considering the most appropriate course of action to take in respect of hazards under the Housing Health and Safety Rating System (HHSRS) the Council may decide to issue a Hazard Awareness Notice that makes property owners and responsible parties aware of the hazard/s but does not constitute formal enforcement action.

## 9.0 Taking Formal Action

9.1 There are a wide range of circumstances where it is likely to be appropriate and proportionate for the Council to take formal action. These include (but are not limited to) where:

- a) the Council has a statutory duty to take formal action;
- b) there is evidence of a criminal offence being committed;
- c) there are one or more hazards which present a risk to the health, safety or welfare of occupiers;
- d) the individual or organisation has a record of non-compliance or criminal behaviour, and;
- e) an informal approach has not been successful in resolving an issue.

9.2 Each case will be considered on its individual merits. Where formal action is taken the Council aims to advise why it is appropriate for the formal action to be taken rather than informal action.

9.3 The Council has several types of formal action that it can take depending on the individual circumstances of each case, the relevant legislation and the risk to health and safety, including:

- a) serving a legal notice or making a legal order;
- b) taking emergency action;
- c) carrying out works in default of a legal notice;
- d) applying for a Rent Repayment Order;
- e) applying for a Management Order;
- f) making a Demolition Order;
- g) making a Clearance Area;
- h) issuing a Financial Penalty;

- i) issuing a caution, and;
- j) instigating prosecution proceedings.

9.4 The following sections set out the instances in which the Council intends to utilise these enforcement powers.

a) Serving a legal notice or making a legal order

9.4.a.i) Notices and orders will be served or made in accordance with the requirements of the relevant legislation.

9.4.a.ii) The recipient of the notice or order will be informed of the reason that the action is being taken and the notice or order will clearly state the required actions to be taken, the timescales in which they should be completed and the potential penalty for non-compliance with the requirement/s of the notice or order.

9.4.a.iii) Notices and orders will be accompanied by notes setting out details of rights of appeal (if applicable) including the details of any time limits for an appeal to be made.

9.4.a.iv) Where the Council becomes aware of circumstances that trigger a duty to take action it will be obliged to take action, for example where the Council identifies a Category 1 hazard under the Housing Health and Safety Rating System (HHSRS). This may result in the service of a legal notice, or the making of a legal order.

9.4.a.v) Where the Council has a power to take action the Council will have regard to a range of matters in deciding whether to serve the notice or make the order, including (but not limited to) the:

9.4.a.v.1 responsible party's compliance history;

9.4.a.v.2 severity of the matter/s to be remedied;

9.4.a.v.3 impact on the occupiers or other parties affected by the matter/sto be remedied;

9.4.a.v.4 impact on the occupier's or other party's legal rights;

9.4.a.v.5 responsible party's failure to respond to informal action, and;

9.4.a.v.6 responsible party's proposals to take remedial action.

## 9.5 Serving an Improvement Notice under the Housing Act 2004

- a) The reasons for making the decision to serve an Improvement Notice will be set out in the Council's statement of reasons attached to the notice.
- b) The Improvement Notice may relate to a single HHSRS hazard or multiple hazards. An Improvement Notice may relate to more than one HHSRS hazards where:
  - 9.5.b.i) More than one hazard requires works of a similar nature (for example remedial works to a heating system are likely to relate to the hazard of excess cold and damp and mould growth), or;
  - 9.5.b.ii) No works are required to be undertaken within the short-term, or;
  - 9.5.b.iii) It would be acceptable for all works to be suspended in the event of an appeal to the First-tier Tribunal.
- c) The Improvement Notice may require works to be completed at different times to reflect the:
  - 9.5.c.i) Urgency of certain works (for example remedial works in respect of excess cold hazards during periods of cold weather), and/or;
  - 9.5.c.ii) Level of complexity associated with some works, and/or;
  - 9.5.c.iii) Lead-in time for arranging some works (for example ordering replacement windows that are made to order) and/or;
  - 9.5.c.iv) Requirement for some works to be completed to facilitate other works (for example the provision of an electrical installation report to enable a full assessment of an electrical hazard).
- d) The operation of the Improvement Notice may be suspended in accordance with Section 14 of the Housing Act 2004 and any reasons for suspending the notice will be set out in the Council's statement of reasons attached to the notice.
- e) Where an Improvement Notice is suspended the Council may review the case at any time to determine whether the suspension of the notice remains appropriate.
- f) Should the notice not be complied with, the Council can carry out the works in default and recharge the person upon whom the notice was served. Not

complying with a notice is a criminal offence and the Council is able to prosecute the person who received the notice if it is not complied with.

#### 9.6 Making a Prohibition Order under the Housing Act 2004

- a) The reasons for making the decision to make a Prohibition Order will be set out in the Council's statement of reasons attached to the order.
- b) The Prohibition Order will ordinarily relate to all HHSRS hazards identified unless:
  - 9.6.b.i) It is appropriate for emergency or other works to be undertaken pending the Prohibition Order becoming operative, or;
  - 9.6.b.ii) The Prohibition Order relates to part of the premises and other hazards exist within the premises.
- c) The operation of the Prohibition Order may be suspended in accordance with Section 23 of the Housing Act 2004 and any reasons for suspending the order will be set out in the Council's statement of reasons attached to the notice.
- d) Where a Prohibition Order is suspended the Council may review the case at any time to determine whether the suspension of the notice remains appropriate.
- e) Where a Prohibition Order is suspended for a period in excess of 12 months the Council is required to review the case at least once every year to determine whether the suspension of the notice remains appropriate.
- f) Using premises or permitting premises to be used, knowing that a prohibition order has become operative is a criminal offence and the Council is able to prosecute for non-compliance.
- g) Where a Prohibition Order is in place, the Council is required to review the Prohibition annually to consider whether the situation has changed which would enable the Prohibition Order to be revoked.
- h) Using premises or permitting premises to be used, knowing that a prohibition order has become operative is a criminal offence and the Council is able to prosecute for non-compliance.

#### 9.7 Taking emergency action

- a) The reasons for making the decision to take emergency action will be set out in the Council's statement of reasons attached to the Emergency Remedial Action notice or the Emergency Prohibition Order.

- b) Where the Council takes emergency action, the Council will seek to recover its full costs, including an administration charge in addition to the costs of works, officer costs and any charge for taking enforcement action. The Council's administration charge will be reviewed annually through the Council's Fees and Charges setting process and will be agreed formally by Council.
- c) The Council may take emergency action in addition to taking other enforcement action in respect of the property.

#### 9.8 Applying for a Rent Repayment Order

- a) The Council aims to seek to apply for a Rent Repayment Order in order to recover benefit payments used to pay rent in all cases where evidence of a relevant offence is found.
- b) Relevant offences for which Rent Repayment Order provisions apply include:
  - 9.8.b.i) Failure to comply with an Improvement Notice under Section 30 of the Housing Act 2004;
  - 9.8.b.ii) Failure to comply with a Prohibition Order under Section 32 of the Housing Act 2004;
  - 9.8.b.iii) Failure to licence a house in multiple occupation under Section 7 of the Housing Act 2004;
  - 9.8.b.iv) Failure to licence a private rented dwelling under Section 95 of the Housing Act 2004;
  - 9.8.b.v) Breach of a Banning Order made under Section 21 of the Housing and Planning Act 2016;
  - 9.8.b.vi) Using violence to secure entry to a property under Section 6 of the Criminal Law Act 1977, and;
  - 9.8.b.vii) Illegal eviction or harassment of occupiers of a property under Section 1 of the Protection from Eviction Act 1977.
- c) Where the Council does not have the power to apply for a Rent Repayment Order, it will assist other parties (for example occupiers) where they are able to apply for a Rent Repayment Order.

#### 9.9 Applying for a Management Order

- a) The decision to apply for a Management Order as set out in Part 4 of the Housing Act 2004, is a complex decision that may only be considered on a case by case basis.
- b) The decision to make a Management Order will usually only be made as a last resort where there are no prospects of improvements being secured through other enforcement options, unless the Council has a duty to make a Management Order.

#### 9.10 Applying for a Compulsory Purchase Order

- a) The decision to apply for a Compulsory Purchase Order is a complex decision that may only be considered on a case by case basis.
- b) The decision to apply for a Compulsory Purchase Order will only be made as a last resort where there are no prospects of necessary improvements being made through other enforcement routes.

#### 9.11 Making a Demolition Order

- a) The making of a Demolition Order in respect of a dwelling is a potential course of enforcement action where the Council is satisfied that a Category 1 hazard under the Housing Health and Safety Rating System is present.
- b) The reasons for taking the decision to make a Demolition Order will be set out in the Council's statement of reasons attached to the Emergency Remedial Action Demolition Order notice.
- c) A Demolition Order requires the property to be vacated within a specified time and subsequently demolished. It is a criminal offence to allow a premises to be occupied after a demolition order has come into effect. Should the building not be demolished the Council can demolish it and recharge the person upon whom the notice was served.

#### 9.12 Making a Clearance Area

- a) The making of a Clearance Area in respect of a group of dwellings is a potential course of enforcement action where the Council is satisfied that a Category 1 hazard under the Housing Health and Safety Rating System is present in each dwelling, or they are dangerous as a result of bad arrangement.
- b) The Council will undertake a consultation prior to taking the decision to make a Clearance Area, and in certain circumstances compensation is payable following the declaration of a Clearance Area.

### 9.13 Issuing a Caution

- a) Where the Council has gathered evidence of an offence and is considering instigating prosecution proceedings, the Council may decide to issue a caution to the offender as an alternative to instigating prosecution proceedings.
- b) Cautions will be considered on a case by case basis where the alleged offender acknowledges their guilt and expresses a clear and demonstrable desire to alter their offending behaviour.
- c) The decision to issue a simple caution will be taken in accordance with the Ministry of Justice's relevant guidance (Simple Cautions for Adult Offenders, Ministry of Justice, November 2013)
- d) A record of the caution is kept by the Council and it may subsequently influence a decision to instigate proceedings should the offender break the law in the future, it may also be cited if the Council takes legal action for a subsequent offence.

### 9.14 Instigating Prosecution Proceedings

- a) Where the Council has gathered evidence of an offence and it is not appropriate (or possible) to issue a civil penalty or issue a caution the Council may instigate prosecution proceedings against the alleged offender.
- b) The Council's decision to pursue prosecution proceedings will be taken by the Council officer with delegated authority to do so as set out in the Council's Scheme of Delegation.
- c) Any decision to instigate prosecution proceedings will be taken having regard to the Council's legal obligations, including the evidential and public interest tests set out in the Code for Crown Prosecutors.
- d) Where the Council takes prosecution proceedings it will seek to recover its full costs resulting from the proceedings. This is likely to include both the investigating officer's time in preparing the case as well as all legal costs associated with bringing the case. These costs will be sought on sentencing by the relevant Court.

## 10.0 Enforcement of Management in Houses in Multiple Occupation (HMO)

- 10.1 The Council has powers to ensure that the managers of houses in multiple occupation (HMOs) manage their properties appropriately to protect the health, safety, and welfare of their tenants.
- 10.2 The Council's powers are enforced through the Management of Houses in Multiple Occupation (England) Regulations 2006 along with the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2006 which place a duty on every manager of an HMO to manage their HMO appropriately. The regulations cover a wide range of issues, including safety matters and cleanliness. The regulations also place certain duties on the tenants living in HMOs.
- 10.3 It is a criminal offence if a person controlling or managing an HMO which is licensable under the Mandatory HMO Licensing Scheme does not have the required licence.
- 10.4 Breaching any condition of a licence is also an offence.
- 10.5 Where offences are committed the Council has a power to issue a civil penalty or instigate prosecution proceedings in respect of management offences.
- 10.6 Where the alleged offences do not present a severe risk of negative impact on the occupiers, the Council will inform the HMO manager of the alleged offences to seek compliance informally. Where informal action is not successful in securing compliance, the Council may issue a civil penalty or instigate prosecution proceedings.
- 10.7 Where informal action is not appropriate, the Council (in deciding whether to issue a civil penalty or instigate prosecution proceedings for HMO management offences) will have regard to a range of matters, including (but not limited to) the:
- a) responsible party's compliance history;
  - b) severity of the alleged offences;
  - c) impact on the occupiers affected by the alleged offences, and;
  - d) responsible party's failure to respond to informal action.
- 10.8 The Council may instigate formal enforcement action immediately without prior warning.



## 11.0 Rent Repayment Orders

11.1 Section 40 of the Housing and Planning Act 2016 confers a power on the First-Tier Tribunal to make a rent repayment order where a landlord has committed an offence. The council will have regard to the statutory guidance (DCLG April 2017) in the exercise of their functions in respect of rent repayment orders.

11.2 The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of houses in multiple occupation (section 72(1)).

11.3 Rent repayment orders have now been extended to cover the following offences:

- a) Failure to comply with an improvement notice under section 30 of the Housing Act 2004;
- b) Failure to comply with a prohibition order under section 32 of the Housing Act 2004;
- c) Breach of a banning order made under section 21 of the Housing and Planning Act 2016;
- d) Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
- e) Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.

11.4 There are two types of rent repayment order:

- a) Obtained by the council in respect of housing benefit and local housing allowance payments.
- b) Obtained by an occupier for the whole or for part of the property in respect of private rental payments.

11.5 A rent repayment order can be made for the period of up to 12 months between that of when the property should have been licenced, and when an application for a licence is made, or for the period that the Council has proven and offence has been committed, up to a maximum of 12 months.

11.6 Rent repayment orders can be granted either to the tenant or the local housing authority. If the tenant paid for their rent themselves, then the rent must be

repaid to the tenant. If rent was paid through housing benefit or through the housing element of universal credit, then the rent must be repaid to the local housing authority.

11.7 Where the council is satisfied that the landlord has committed one or more specific offences pertaining to the licensing of mandatory HMOs, the council aims to instigate action to recover housing benefit and local housing allowance payments. The council will usually apply for the full amount that can be recovered. The tribunal determines the amount of rent to be repaid, and this is detailed on the rent repayment order, if granted.

11.8 The council may offer advice, guidance and support to assist private sector tenants to apply for a rent repayment order.

## **12.0 Interim and Final Management Orders**

12.1 An interim management order is made for the purpose of securing any action that the council may deem to be necessary, in order to protect the health, safety and welfare of the occupants. An interim management order can also be served in circumstances which the council considers to be appropriate, with a view to ensure proper management of the house which is pending the grant of a licence.

12.2 The council has a duty to make an interim management order in respect of a property which has no reasonable prospect of being licensed in the near future, or where it is necessary to protect the health, safety and welfare of the occupants.

12.3 Where a licence has been revoked for any reason and the property remains licensable, an interim management order should be made if there is no reasonable prospect of the property regaining its licence.

12.4 An interim management order transfers the management of a residential property to the local housing authority for a period of up to 12 months. This includes carrying out any remedial works necessary in order to deal with the immediate risks to health and safety.

12.5 If there is still no prospect of a licence being granted after 12 months, then a final management order must be made which will remain in force for a maximum of five years. If after five years, there is still no prospect of the property becoming licensed a further management order must be made.

12.6 The council has a duty to make interim and final management orders where necessary. The council may instigate this action, if required, but as a last resort. All

practical steps will be taken to assist the owner of the property to satisfy the licensing requirements.

12.7 Management orders can be varied or revoked at any time as a result of a request from the owner or on the council's own initiative.

12.8 Once an interim management order is in force a relevant person may appeal to a residential property tribunal against the making of the order or its terms. An appeal must normally be made within 28 days of the order being made. In exceptional circumstances the tribunal has the discretion to extend this period.

12.9 Once a final management order is in force a relevant person may appeal to a residential property tribunal against the making of the order or its terms. An appeal must normally be made within 28 days of the order being made. In exceptional circumstances the tribunal has the discretion to extend this period.

### **13.0 Banning Orders**

13.1 In circumstances where a landlord has been successfully prosecuted for a banning order offence, the council may apply for the First-Tier Tribunal to impose a banning order. A banning order must be for a minimum of 12 months and has no statutory maximum period.

13.2 A landlord subject to a banning order is prevented from:

- a) Letting housing in England;
- b) Engaging in English letting agency work;
- c) Engaging in English property management work; or
- d) Doing two or more of the above.

13.3 The council may apply for a banning order when the landlord has been convicted of one or more of the following Housing Act 2004 offences:

- Failing to comply with an improvement notice
- Failing to comply with a prohibition order
- Offences in relation to licensing of HMOs
- Offences in relation to licensing of houses under Part 3 (selective licensing)
- Failure to comply with management regulations in respect of HMOs
- Providing false or misleading information.

13.4 Where a landlord or agent breaches a banning order they may be prosecuted and if convicted may be imprisoned and/or receive a fine. The council may impose a civil penalty notice as an alternative to prosecution or apply for a management order.

## 14.0 Penalty Charge Notices

14.1 Under some legislation, the Council can serve a Penalty Charge Notice for non-compliance. Currently these are:

- a) The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- b) The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014
- c) The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015
- d) The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

14.2 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 introduced a requirement for all landlords to ensure that any rented accommodation has:

- a) a smoke alarm located on each storey of the accommodation where there is a room used wholly or partly as living accommodation;
- b) a carbon monoxide alarm in any room which is used wholly or partly as living accommodation and contains a solid fuel burning appliance, and;
- c) checks carried out by the landlord to ensure that prescribed alarms are in proper working order on the day a new tenancy begins.
- d) Where the Council is aware of an offence it is required to serve a Remedial Notice on the landlord or letting agent setting out the necessary remedial works. The notice allows 28 days for compliance.
- e) Where a Remedial Notice is not complied with, the Council may carry out works in default of the notice.
- f) Where a Remedial Notice is not complied with the Council may also issue a penalty charge of up to £5000 in accordance with the legislation.
- g) When deciding on an appropriate fine, the principles of the CPN Policy will be followed.

#### 14.3 Requirement for Letting Agents and Property Managers to belong to a Redress Scheme

- a) The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 introduced a requirement for letting agents and property managers to belong to an approved redress scheme.
- b) The redress scheme must be approved by Government or designated as a Government administered redress scheme.
- c) Where the Council is aware of an offence it is required to take enforcement action relating to activities undertaken within the Borough and may serve a Notice on the perpetrator requiring the payment of a monetary penalty of an amount determined by the Council.
- d) A fine for each breach of this regulation must not exceed £5,000.
- e) When deciding on an appropriate fine, the principles of the CPN Policy will be followed.

#### 14.4 Enforcement of the Minimum Energy Efficiency Standards

- a) The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 introduced a requirement for all landlords to ensure that any rented accommodation provides an Energy Performance Certificate indicating that the property is above the minimum level of energy efficiency to the tenant.
- b) If a landlord continues to rent a property in breach of this requirement, they are breaking the law and the Council may choose to take enforcement action against them which may result in a fine.
- c) A fine for each breach of this regulation may not exceed £5000.
- d) When deciding on an appropriate fine, the principles of the CPN Policy will be followed.

#### 14.5 Enforcement of Electrical Safety Standards

- a) The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 introduced a requirement for landlords to ensure the electrical installation in their property is safe.

14.5.a.i) ensure that the electrical safety standards are met during any period when the residential premises are occupied under a specified tenancy;

14.5.a.ii) ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified person.

b) If a landlord continues to rent a property in breach of this requirement, they are breaking the law and the Council may choose to take enforcement action against them which may result in a fine.

c) A fine for each breach of this regulation may not exceed £30000.

d) When deciding on an appropriate fine, the principles of the CPN Policy will be followed.

## **15.0 Charging for enforcement action**

15.1 Where the Council takes formal action and has a power to make a charge for the action (for example when taking certain action under the Housing Act 2004) a charge for enforcement will be made.

15.2 The charge for enforcement will be assessed taking into account the Council's costs incurred in taking the enforcement action. Enforcement charges will be reviewed annually through the Council's Fees and Charges setting process and will be agreed formally by Council.

15.3 Where the Council takes enforcement action under the Housing Act 2004 in respect of more than one HHSRS hazard and serves more than one notice or order, a separate charge for enforcement action will apply to each notice or order served.

15.4 Enforcement charges will be published on the Council's website.

## **16.0 Carrying out Works in Default of a Legal Notice**

16.1 Where the Council takes enforcement action and the requirements of the notice or order are not complied with within the required timescales, the Council has powers to carry out necessary works in default of the notice or order.

16.2 The matters that the Council will consider when determining whether to carry out works in default of the notice or order include, but are not limited to:

- a) The negative impact of the work not being undertaken;
- b) Any urgency for the works to be undertaken;
- c) Any evidence of obstruction or frustration by occupiers, or;
- d) An undertaking from the responsible party to carry out the works.

- 16.3 Where the Council undertakes works in default, the Council will seek to recover its full costs for works carried out in default of legal notices, including an administration charge in addition to officer costs. Debts will also be subject to interest, and a late payment charge will also apply where invoices are not paid in accordance with the Council's payment terms.
- 16.4 The Council's charges will be reviewed annually through the Council's Fees and Charges setting process and will be agreed formally by Council.
- 16.5 There are various methods by which the Council can recover the costs incurred in carrying out work in default, dependent on the type of Notice that has been served. If the invoice is not paid within the requisite period it will be referred to the Council's Legal Department for possible County Court action. The Council can put a charge on a property. The charge remains in place until the Notice is complied with and, in the case of the Council carrying out and paying for works in default, until the debt is cleared. If the property comes up for sale a Local Authority search will show the outstanding Notice and trigger the repayment from the proceeds of the sale.
- 16.6 The ultimate method by which the Council can reclaim its costs is to bring about the sale of the property. The proceeds of the sale will be given to the owner less the amount owed for the work in default and less the amount incurred by the Council in selling the property.

## **17.0 Civil penalties**

- 17.1 The Council has the power to issue a civil penalty as an alternative course of action to instigating prosecution proceedings for a range of offences under the Housing Act 2004.
- 17.2 Wherever possible the Council will utilise its power to issue a civil penalty as an alternative course of action to issuing a simple caution or instigating prosecution proceedings.
- 17.3 The Council's use of civil penalties will be in line with statutory guidance issued under Schedule 9 of the Housing & Planning Act 2016.
- 17.4 The Council will follow the CPN Policy when considering the amount of penalty to issue.

## **18.0 Primary Authority Principles**

18.1 The Council acknowledges that the primary authority principles as set out in the Regulatory and Sanctions Act 2008 and administered by the Better Regulation Delivery Officer (BRDO) apply to areas of housing standards enforcement.

18.2 Where there is a primary authority in place the Council will comply with the appropriate primary authority requirements.

## **19.0 Publicising Enforcement Action**

19.1 Where the Council takes enforcement action it may publicise that action to highlight and dissuade unlawful activity and to promote best practice.

19.2 In cases where the responsible person is the subject of serious failures the Council will publicise the enforcement action taken. The types of enforcement action that would warrant publicity includes, but is not limited to, the following:

- a) Prosecution proceedings;
- b) Obtaining a management order;
- c) Obtaining a rent repayment order;
- d) Obtaining a banning order, and;
- e) Obtaining a compulsory purchase order.

19.3 Where the Council publicises enforcement action publicity material will only be amended in the event that the enforcement action publicised is subject to a successful appeal.

## **20.0 Consultations Prior to Taking Enforcement Action**

20.1 Where the Council takes enforcement action it may consult with partners and stakeholders regarding the proposed action. This may include internal stakeholders, for example the planning enforcement team.

20.2 Where the Council takes action under the Housing Act 2004 in respect of a Category 1 HHSRS hazard for Fire in Houses in Multiple Occupation, it is obliged to consult with Surrey Fire and Rescue Service on the scope of works required prior to taking enforcement action. This will usually take the form of a formal consultation; however this may not always be practicable: for example where emergency action is appropriate.



## 21.0 Illegal Evictions

- 21.1 Illegal eviction is an offence under the Protection from Eviction Act 1977 and the council has the discretion to prosecute a landlord for illegally evicting a tenant from a property. Legal proceedings will be a last resort and must pass the evidential and public interest test.
- 21.2 Where the Council becomes aware of a potential illegal eviction, it will contact the landlord to inform them of the correct legal procedure that they need to follow and provide advice to the tenant.
- 21.3 Where there are disrepair issues in the property and an HHSRS inspection concludes that there are Category 1 hazards, and Improvement Notice will be issued to the landlord, which may result in the court deeming the eviction notice invalid at a Possession Order hearing.
- 21.4 Tenants will be referred to the Housing Team where they may be in danger of becoming homeless.
- 21.5 Tenants are able to take their own civil action against the landlord and will be advised to speak with the Citizens Advice or a solicitor.