

# APPENDIX 1

## POLICY ON ENFORCING STANDARDS IN PRIVATE SECTOR HOUSING.



Coventry City Council

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## 1. PURPOSE

This policy is intended to provide guidance for officers, businesses and members of the public on the principles and processes, which will apply when enforcement action is considered or taken in cases being investigated in the Private Sector. It also provides a background to the legislation and guidance on which it is based.

It is important for local authorities to have an enforcement policy to ensure consistency of approach among Council officers and for members of the public to know what to expect from the service. An enforcement policy also provides clarity if the Council takes legal proceedings or enforcement action is appealed against.

Our aim is to raise standards in Private Sector Housing throughout Coventry, 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.

## 2. INTRODUCTION

The Council has a responsibility to deal with unsatisfactory housing in its area and nationally, conditions in the Private Rented Sector (PRS) tend to be less satisfactory than in owner-occupied homes.<sup>1</sup>

It is for this reason that enforcement forms the core function of the Council and whilst the teams work hard to develop a professional and constructive relationship with responsible landlords, the need to ensure that all properties meet minimum standards is paramount.

A firm but fair policy on enforcement in accordance with our published procedures is adopted with regular service of statutory notices in cases where informal action has proved ineffective or is inappropriate.

When conducting any investigations each case is judged on its own merits and in accordance with Coventry City Council's [Enforcement Policy](#), the [CPS evidential and public interest tests](#), and Coventry City Council's [Civil Penalties Protocol](#) (Appendix 1).

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<sup>1</sup> English Housing Survey 2016-17  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/705821/2016-17\\_EHS\\_Headline\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705821/2016-17_EHS_Headline_Report.pdf)



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### 3. THE HOUSING ACT 2004

The Housing Act 2004 (the Act) provides that, amongst other things, the statutory minimum standard for all homes in England and Wales, the Housing Health and Safety Rating System (HHSRS).

HHSRS is a calculation of the effect of 29 possible hazards on the health of occupiers and the legislation provides a range of actions for addressing identified hazards. This Policy takes account of guidance<sup>2</sup> 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 action to address Category 1 hazards as defined by the Act and must decide which of the available enforcement options is the most appropriate to use.

In the case of Category 2 hazards identified under HHSRS the Council has a **power** to take action and will exercise its discretion and consider individual cases and circumstances when deciding whether to take action in response to Category 2 hazards.

#### Housing Act 2004 Notices and Orders

**Improvement Notices** require the recipient to carry out certain works within a specified time period. It is anticipated that Improvement Notices will be an appropriate and practical remedy for most hazards.

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

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

Where the Council determines that an Improvement Notice should be served in respect of a Category 2 Hazard, it will:

- Require works it considers sufficient either to remove the hazard or reduce it to an appropriate degree.

**Suspended Improvement Notices** provide the Council with a power to suspend an Improvement Notice once served.

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<sup>2</sup> Housing health and safety rating system (HHSRS) enforcement guidance: housing conditions - <https://www.gov.uk/government/publications/housing-health-and-safety-rating-system-enforcement-guidance-housing-conditions>



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The Council will consider this course of action where it is reasonable in the circumstances, to do so, for example,

- The need to obtain planning permission (or other appropriate consent) that is required before repairs and/or improvements can be undertaken; and
- Personal circumstances of occupants, which suggests that works ought to be deferred.

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

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

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

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

Prohibition Orders can prohibit specific uses (Section 22 (4)(b) Housing Act 2004); this option may be employed to prevent occupation by particular descriptions of persons, for example premises with steep staircases or uneven floors which make them particularly hazardous to elderly occupants and premises with open staircase risers or widely spaced balustrades that make them particularly unsuitable for infants.

**Suspended Prohibition Orders** provide the Council with the power to suspend a Prohibition Order once served.

The Council will consider this course of action where it is reasonable in the circumstances to do so. Suspended Prohibition Orders will be reviewed on an ongoing basis, at least every 6 months. The Council will consider any written requests made for alternative uses of premises in accordance with our planning duties.

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

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



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**Emergency Remedial Action & Prohibition Orders** may be used specifically where the Council is satisfied that:

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

If these conditions are met, the Council will take appropriate emergency action. Situations in which emergency action may be appropriate include:

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

**Demolition Orders** provides the Council with the power to make an Order to demolish the building as a possible response to a Category 1 hazard (where they are judged the appropriate course of action). In determining whether to issue a Demolition Order, the Council will take account of Government guidance that is applicable at the time and will consider all the circumstances of the case.

**Clearance Areas** can be declared if the Council is satisfied that each of the premises in the area is affected by one or more Category 1 hazards (or that they are dangerous or harmful to the health and safety of inhabitants as a result of a bad arrangement or narrowness of streets). In determining whether to declare a Clearance Area, the Council will act only in accordance with Section 289 of the Housing Act 1985 (as amended) and having had regard to relevant Government guidance on Clearance Areas and all the circumstances of the case.

### Houses in Multiple Occupation (HMOs)

Part 2 of the Housing Act 2004 introduced a mandatory licensing system for certain types of Houses in Multiple Occupation (HMO).

The aim of licensing is to ensure that every licensable HMO is safe for the occupants and visitors and is properly managed.

Since 2006 all HMOs of three or more storeys with 5 or more occupants, sharing facilities required a licence.

The Government has introduced changes to the mandatory licensing system set out in the Housing Act 2004 that will remove the “three storey rule” and as such from October 2018 owners of HMOs with 5 or more occupants must apply to the Council to have their properties licensed.

The responsibility for applying for a licence rests with the person having control of or the person managing the property.



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

### HMO 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;
- Allowing an HMO to be occupied by more persons than a licence allows;
- Breach of licence condition; and
- Supplying incorrect information in a licence application.

### Rent Repayment Orders (RRO)

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.

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.

Any action in relation to a breach of licence conditions will be assessed on how serious the breach affects the safety of the occupants or whether the responsible person does not carry out necessary works within an agreed timescale or has been given a previous opportunity to comply. Where appropriate the Council will pursue legal proceedings if it is in the public interest to do so.

### 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





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- To create new tenancies (with the consent of the landlord).

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

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

- the property ought to be licensed, but is not, and the Council considers there is no reasonable prospect of it granting a licence in the near future; and/or
- the Health and Safety Condition isn't met and, therefore, it would not have granted an application for a licence.

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.

### Final Management Orders

In exceptional circumstances the Council can also apply to the First Tier Tribunal (Residential Property) 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 authorised through the appropriate method.

### 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; and
- 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.



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### 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 considered where the owner of the HMO states in writing that steps are being taken to make the HMO non-licensable within 3 months.

### Raising Standards in HMOs

Under current legislation many HMOs do not currently require a licence. These include houses containing self-contained flats and smaller HMOs. Many of these still pose a significant degree of risk to occupants and/or have a history of being poorly managed. The Council will continue to regulate such HMOs through enforcement of the HMO Management Regulations and by use of the HHSRS.

### General Management of HMOs

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

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

Where compliance with the Management Regulations has not been achieved then enforcement will be considered based on the affect the breaches are likely to have on the occupants thereby providing tenants and neighbours confidence that the Council are addressing any issues relating to all HMOs.

### Fire Safety in HMOs

Statistically, HMOs have one of the highest incidents of deaths caused by fire in any type of housing. It is therefore essential that any HMO possesses an adequate means of escape in event of a fire and adequate fire precautions. The actual level of fire protection and detection required will be determined by a risk assessment. The Planning and Regulatory Service is generally the lead enforcing authority for fire safety in HMOs, however where an HMO contains communal areas, a Fire Risk Assessment



must be carried out in accordance with the Regulatory Reform Order which is administered by West Midlands Fire & Rescue Service.

### Selective Licensing

Coventry City Council will enforce the provisions of the Housing Act 2004 in all areas which have been designated as Selective Licensing Schemes in accordance with this policy and its overarching enforcement policy.

Offences in relation to Licensing of Houses under Part 3 of the Act (Selective Licensing) include;

- Section 95 (1) being in control or managing a house which is required to be licensed but is not so licensed; and
- Section 95 (2) being a licence holder who fails to comply with any condition of a licence.

Rented properties that fall outside of designated areas will continue to be regulated through the use of the HHSRS.

### Powers of Entry and Power to Require Information

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

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

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

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

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

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



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

### 4. HOUSING AND PLANNING ACT 2016

This Act provides Coventry City Council with additional powers and amends existing powers within the Housing Act 2004. Planning and Regulatory Services will implement these where appropriate in accordance with statutory guidance provided by Government and its policies and procedures.

#### Civil Penalties

In April 2017 powers to impose Civil Penalties of up to £30,000 as an alternative to prosecution for certain specified offences came in to force under Section 126 and Schedule 9 of the Housing and Planning Act 2016.<sup>3</sup>

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

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

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of Houses in Multiple Occupation (section 72);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95);
- Offences of contravention of an Overcrowding Notice (section 139); and
- Failure to comply with Management Regulations in respect of Houses in Multiple Occupation (section 234).

The amount of penalty is to be determined by the Council in each case by applying the matrix in this policy. In determining an appropriate level of penalty, the Planning and Regulatory Service will have regard to statutory guidance given in the Ministry of Housing Communities and Local Government publication 'Civil Penalties under the Housing and Planning Act 2016'.

Only one penalty can be imposed in respect of the same offence and a civil penalty can only be imposed as an alternative to prosecution. However, a civil penalty can be issued as an alternative to prosecution for each separate breach of the Houses 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.

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<sup>3</sup> Civil Penalties - <https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>



Therefore, each failure to comply with the regulations constitutes a separate offence for which a civil penalty can be imposed.

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, the Council must satisfy itself that if the case were to be prosecuted in a magistrates' court, there would be a realistic prospect of conviction. In order to achieve a conviction in the magistrates' court, the Planning and Regulatory Service must be able to demonstrate beyond reasonable doubt that the offence has been committed. Further details of how the Council determines penalty levels can be found at Appendix 1.

### Rent Repayment Orders

In addition to the powers provided by the Housing Act 2004<sup>4</sup> to apply Rent Repayment Orders (RROs) in regard to offences related to HMOs as outlined above, 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; and
- 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.

### Database of Rogue Landlords

The Rogue Landlord Database is a new tool for local authorities in England to keep track of rogue landlords and property agents and came into force on 6 April 2018.

A local housing authority must make an entry on the database where a landlord or property agent has received a banning order. They have the discretion to make entries where a landlord or property agent has been convicted of a banning order offence or has received 2 or more civil penalties within a 12 month period.

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<sup>4</sup> Rent Repayment Orders - <https://www.gov.uk/government/publications/rent-repayment-orders-under-the-housing-and-planning-act-2016>



Local authority officers will be able to view all entries on the database, including those made by other local housing authorities. The database can be searched to help keep track of known rogues, especially those operating across council boundaries and will help authorities target their enforcement activities.

Details held on the database will not be available to members of the public.

Planning and Regulatory Services will have regard to the guidance<sup>5</sup> provided by Government when deciding whether or not to include a person on the Rogue Landlord Database.

Further details can be found here:

### Banning Orders

From the 6<sup>th</sup> April 2018 a Local Authority has the power to apply to the First Tier Tribunal for a banning order.

A Banning Order is an order that bans a landlord or property agent from:

- Letting housing in England;
- Engaging in English letting agency work;
- Engaging in English property management work; and
- Doing two or more of those things. Breach of a banning order is a criminal offence.

A Banning Order must be for a minimum period of 12 months. There is no statutory maximum period for a Banning Order.

Planning and Regulatory Services will use banning for the most serious offenders who breach their legal obligations and rent out accommodation which is substandard and where previous sanctions, such as a prosecution has not resulted in positive improvements and it is necessary for the Council to proceed with further prosecutions/formal action.

Part 5 of the Housing and Planning Act 2016 covers a range of measures including changes to the 'fit and proper person' test applied to landlords who let out licensable properties and allowing arrangements to be put in place to give authorities in England access to information held by approved Tenancy Deposit Schemes with a view to assisting with their private sector enforcement work.

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<sup>5</sup>Rogue Landlord Database - <https://www.gov.uk/government/publications/database-of-rogue-landlords-and-property-agents-under-the-housing-and-planning-act-2016>

## 5. EMPTY HOMES

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. The Council will provide advice, assistance and has the discretion to provide financial assistance to the owners of empty properties to help bring the home back into use under the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002<sup>6</sup>, subject to appropriate funding being available.

It will however also consider using any of the following enforcement options:

### Empty Dwelling Management Orders

Where a property has been left empty for over two years and is attracting anti-social behaviour, the Council may seek an EDMO, the provisions for which are contained in the Housing Act 2004. An EDMO allows the Council to take over full management of the property for up to seven years, reclaiming any management and refurbishment costs from the rental income.

### Compulsory Purchase Orders

CPOs can be made under s17 of the Housing Act 1985 where it can be shown that there is housing need, rather than proving the property was causing blight or other problems. In cases such as this Coventry City Council will consider this course of action using up to date housing statistics, local policies etc and where voluntary negotiations has failed and, as a result there is little or no prospect of them bringing it back into use. In the case of s226 of the Town & Country Planning Act 1990 a local authority is permitted, when authorised by the Secretary of State, to compulsorily acquire any land in their administrative area which will facilitate the carrying out of development, re-development or improvement of the area (provided this will contribute to economic, social or environmental well-being), or which is necessary to achieve in the interests of the proper planning of an area in which the land to be acquired is situated. This power can be used for the acquisition of individual 'problem properties' that can be regenerated to provide much needed affordable housing, improve the appearance of the surrounding area and reduce anti-social behaviour. Coventry City Council will consider Compulsory purchase orders ("CPOs") under these powers where there is the opportunity to bring individual problematic properties back into use.

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<sup>6</sup> Regulatory Reform (Housing Assistance) (England and Wales) Order 2002  
<https://www.legislation.gov.uk/uksi/2002/1860/contents/made>



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Both powers allow the Council to purchase properties in specific circumstances without the owner's consent.

### Statutory Nuisance Provisions

If a property is unsafe, causing or is likely to cause a nuisance to the locality, there are several legislative tools available to the Council to ensure that the condition of the property is improved.

Issues that may be a statutory nuisance include:

- noise from premises or from vehicles, equipment or machinery in the street
- smoke from premises
- smells from industry, trade or business premises (for example, sewage treatment works, factories or restaurants)
- artificial light from premises
- insect infestations from industrial, trade or business premises
- accumulation or deposits on premises (for example, piles of rotting rubbish)

For the issue to count as a statutory nuisance it must do one of the following:

- unreasonably and substantially interfere with the use or enjoyment of a home or other premises
- injure health or be likely to injure health

### Abatement notices

Coventry City Council must serve an abatement notice on people responsible for statutory nuisances, or on a premises owner or occupier if this is not possible. This may require whoever's responsible to stop the activity or limit it to certain times to avoid causing a nuisance and can include specific actions to reduce the problem.

### 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 can also be used to recover Council Tax arrears.

## 6. THE DEREGULATION ACT 2015





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Introduced on the 1st October 2015, the effect of Section 33 of the Act is to provide six months' protection from eviction for a tenant occupying a dwelling under an assured short hold tenancy, where a relevant notice has been served by a local housing authority in relation to a dwelling. The purpose is to prevent retaliatory evictions in instances where a tenant has reported conditions of disrepair to the Local Authority. The Act initially covers new tenancies only, although from 1st October 2018 it will apply to all tenancies.

### 7. THE SMOKE AND CARBON MONOXIDE ALARM (ENGLAND) REGULATIONS 2015

With effect from the 1st October 2015, these regulations have for the first time made it an offence for landlords not to provide smoke and carbon monoxide alarms within their properties in prescribed locations. The requirement is to have at least one smoke alarm installed on every storey of a rented property and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire, wood burning stove). After that, the landlord must make sure the alarms are in working order at the start of each new tenancy. The penalty for non-compliance is to issue a remedial notice requiring a landlord to fit and/or test the alarms within 28 days. If the landlord fails to comply with the notice, the Council can arrange for the alarms to be fitted and/or tested with the occupiers consent. Failure to comply can also incur a civil penalty charge on the landlord of up to £5,000.

It is anticipated that powers under Part 1 of the Housing Act 2004 will continue to take precedence to ensure adequate fire safety on the basis that remedial works can be carried out with more expediency.

### 8. IMPACT OF THE IMMIGRATION ACT 2014

Right to Rent was introduced under Part 3 of the Immigration Act 2014 as part of the government's reforms to build a fairer and more effective immigration system. The first phase was trialled in parts of the West Midlands, and was applied nationally from February 1st 2016. UK Visas and Immigration are the enforcing authority. Under the new regulations, landlords will be required to check a potential tenant's 'Right to Rent' and those who fail to do so may face a penalty of up to £3,000 per tenant. The regulation will mean that private landlords, including those who sub-let or take in lodgers must check the right of prospective tenants to be in the country. The government has portrayed the issue of 'beds in sheds' as being about illegal immigration and tackling it has become part of wider government measure to clamp down on undocumented migrants as has the Housing and Planning Act.



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## 9. HOARDING AND DILAPIDATED PROPERTIES

These are properties often occupied by vulnerable persons, sometimes with mental health issues or elderly people struggling to cope. There has been an increased awareness of the issue brought about by publicity and media exposure and a corresponding rise in the number of reports from neighbours and health visitors regarding issues of disrepair, lack of hygiene or accumulations within properties. While these properties are usually owner occupied, the Council has powers under legislation to take action where the situation is likely to cause harm or ill health to the occupier or where there is a wider health issue or where statutory nuisance may exist.

The cases that come to light are prioritised and referred to other agencies as necessary, particularly when there are safeguarding issues. Known cases are kept under review.

Enforcement action will be taken when necessary to protect public health, but the Council will primarily seek to provide signposting to assistance and engage with the relevant agencies to help them deal with any underlying issues.

## 10. ENFORCEMENT OPTIONS

Coventry City Council recognises and affirms the importance of achieving and maintaining consistency in approach to making decisions that concern regulatory enforcement action, including prosecution.

To achieve and maintain consistency, relevant guidance and policy is always considered and followed unless inappropriate in the circumstances.

In deciding upon enforcement options the Council will have due regard to its overarching enforcement policy - Public Safety and Housing Enforcement November 2017 as well as having due regard to statutory guidance, approved codes of practice and relevant industry or good practice guides.

### Statutory (Legal) Notices

In respect of breaches under the Housing and Public Health legislation Coventry City Council has powers to issue certain statutory notices. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/ or, where appropriate, the carrying out of work in default. As the Council relies heavily upon statutory notices to ensure compliance, it will view a breach of a notice as a serious matter.

The Council will normally charge where legislation permits the recovery of costs for serving statutory notices.



## Civil Penalties

Coventry City Council has powers to issue civil penalties as an alternative to prosecution in respect of the following breaches.

- Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004);
- Offences in relation to licensing of Houses in Multiple Occupation (section 72 of the Housing Act 2004);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95 of the Housing Act 2004);
- Offences of contravention of an overcrowding notice (section 139 of the Housing Act 2004);
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234 of the Housing Act 2004);
- Breach of a banning order (section 21 of the Housing and Planning Act 2016)

If a civil penalty is paid in respect of a breach Coventry City Council will not take any further enforcement action in respect of that breach. If a penalty is not paid, Coventry City Council may commence proceedings or take other enforcement action in respect of the breach.

Where there is a legislative option for the Council to choose the amount payable for a civil penalty, the Council's policy will be to charge the maximum permitted level. The charges will be available on the Council's website.

Where appropriate the Council will apply for RRO and support tenants who wish to apply for a RRO.

## Simple

## Caution

Coventry City Council has the power to issue simple cautions (previously known as 'formal cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the simple caution. Where a simple caution is offered and declined, Coventry City Council is likely to consider prosecution.

A simple caution will influence how Coventry City Council and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence.

Simple cautions will be used in accordance with Ministry of Justice Guidance and any other relevant guidance.

## Prosecution

When deciding whether to prosecute Coventry City Council has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.



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Prosecution will only be considered where Coventry City Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

Before deciding that prosecution is appropriate, Coventry City Council will have particular regard to the following public interest criteria:

- How serious is the offence committed?
- What is the level of culpability of the suspect?
- What are the circumstances of and the harm caused to the victim?
- Was the suspect under the age of 18 at the time of the offence?
- What is the impact on the community?
- Is prosecution a proportionate response?
- Do sources of information require protecting?

The Council expects that, in the public interest, enforcing authorities should normally prosecute, or recommend prosecution, where, following an investigation or other regulatory contact, one or more of the following circumstances apply. Where:

- a breach of the legislation resulted in a death
- the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
- there has been reckless disregard of legislative requirements;
- there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- the breach has been carried out without or in serious non-compliance with an appropriate licence or permission;
- a duty holder's standard of compliance is found to be far below what is required by law and to be giving rise to significant risk;
- there has been a failure to comply with a statutory notice; or there has been a repetition of a breach that was subject to a simple caution;
- false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- officers have been intentionally obstructed in the lawful course of their duties.

In deciding on the public interest the Council will make an overall assessment based on the circumstances of each case and will consider all relevant circumstances carefully, including local and corporate priorities.

### Charging for Enforcement

If there is a statutory charging mechanism the Council will seek to recover the full costs of providing its services wherever that is possible in accordance with guidance provided by Government and its policies.



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Charges are made for the serving of formal notices under the Housing Act 2004. If properties are rented in a condition that requires statutory intervention the City Council will endeavour to recover the costs incurred. Similarly the Council will adopt the highest penalties in the case of Civil Penalties in accordance with the guidance provided by Government and its policies.

### Proceeds of Crime

Where appropriate the Council will consider the use of the Proceeds of Crime Act 2002. The Proceeds of Crime Act allows Local Authorities to recover assets that have been accrued through criminal activity.

## 11. MONITORING AND REVIEW

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

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

The satisfaction of service users i.e. landlords, tenants and residents will be assessed through regular random sample customer questionnaires.

### Application of the Policy

All officers must have regard to this policy and make decisions in accordance with the Council procedures when making enforcement decisions.

## APPENDIX 1 – POLICY FOR IMPOSING CIVIL PENALTIES UNDER THE HOUSING AND PLANNING ACT 2016

### 1. INTRODUCTION

The power to impose a Civil Penalty as an alternative to prosecution for the following offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

- Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004);
- Offences in relation to licensing of Houses in Multiple Occupation (section 72 of the Housing Act 2004);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95 of the Housing Act 2004);
- Offences of contravention of an overcrowding notice (section 139 of the Housing Act 2004);
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234 of the Housing Act 2004);
- Breach of a banning order (section 21 of the Housing and Planning Act 2016)

In determining the Civil Penalty amount, Coventry City Council will have regard to the statutory guidance issued under schedule 9 of the Housing and Planning Act 2016 and also to the developed Civil Penalty Matrix.

The approach to issuing a Civil Penalty is fundamentally made up of two stages, firstly determining the appropriate sanction and secondly (if appropriate) the level of Civil Penalty charged.

When determining the appropriate sanction the Council should satisfy itself that if the case were to be prosecuted there would be a ‘realistic prospect of a conviction’. This is currently determined by consulting the Crown Prosecution Service “Code for Crown Prosecutors” which provides two tests: (i) the evidential test and (ii) the public interest test.

Coventry City Council currently consults this code when determining whether to seek a prosecution for offences committed and will continue to do so on a case by case basis in line with this procedure and its enforcement policy.

Statutory guidance has been issued by the Secretary of State under Schedule 9 (12) of the Housing and Planning Act 2016 and Local Authorities must have regard to this when exercising its functions in respect of civil penalties.



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The maximum penalty that can be set is £30,000. A minimum penalty level has not been set and the appropriate amount of penalty is to be determined by the Local Housing Authority. Only one penalty can be imposed in respect of the same offence.

## 2. DECISION MAKING

Ultimately, it is for Coventry City Council to decide which option it wishes to pursue but as a general principle, local authorities should normally prosecute where an offence is particularly serious or where the offender has committed similar offences in the past.

Prosecution in serious cases demonstrates that the Local Authority will not hesitate to take formal action where needed and is likely to act as a strong deterrent both to the offender and other rogue landlords. A prosecution also enables the Local Authority to apply for a banning order following a successful conviction.

Coventry City Council has an enforcement matrix which is used to determine the most appropriate course of action in enforcement cases. The principle of the enforcement matrix is to provide a score based on a number of factors, both negative and positive. Bands are provided to reflect the score produced and the appropriate courses of action for dealing with the identified situation.

Bands	Score	Recommend Action
1	Positive to minus 10	Informal action Advisory action Requirement to attend training Higher fees for licences
2	Minus 11 to minus 30	All of Band 1 actions Revoke accreditation Reduce licence periods Advisory notices
3	Minus 31 to minus 40	Formal investigation Notices Revocation of licence Revocation of accreditation Formal caution Prosecution/ civil penalty
4	Greater than minus 41	Prosecution or civil penalty

The enforcement matrix provides guidance to officers carrying out investigations and ensures that enforcement is being carried out in a fair, proportionate and consistent way.

### 3. PROCESS

The procedure for imposing a civil penalty is set out in Schedule 13A of the Housing Act 2004 and Schedule 113 of the Housing and Planning Act 2016 and summarised below.

Coventry City Council must give the person a notice of its proposal ('notice of intent') to impose a civil penalty. The notice of intent must set out:

- the amount of the proposed financial penalty;
- the reasons for proposing to impose the penalty; and
- information about the right of the landlord to make representations

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

A person who is given a notice of intent may make written representations to the local housing authority about the intention to impose a financial penalty. Any representations must be made within 28 days from the date the notice was given.

After the end of the period for representations, the local housing authority must decide whether to impose a penalty and, if so, the amount of the penalty. If the authority decides to impose a financial penalty, it must give the person a notice ('final notice') requiring that the penalty is paid within 28 days.

The final notice must set out:

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

The local housing authority may at any time:

- withdraw a notice of intent or final notice; or
- reduce the amount specified in a notice of intent or final notice.

On receipt of a final notice imposing a financial penalty a landlord can appeal to the First Tier Tribunal against the decision to impose a penalty and/or the amount of the penalty. The appeal must be made within 28 days of the date the final notice was issued. The final notice is suspended until the appeal is determined or withdrawn.





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### 4. FACTORS IN DETERMINING PENALTY LEVELS

Clearly, a single level penalty will not be appropriate in all cases and when assessing the level of penalty to be imposed it is expected that the maximum amount would be reserved for the worst offenders. The actual amount levied should reflect the severity of the case and local authorities should have regard to the following:

- The seriousness of the offence - the more serious the offence, the more likely it is that prosecution will be the more appropriate course of action; and
- Culpability of the landlord – Factors to take into account when determining the culpability include where the offender:
  - Has the intention to cause harm, the highest culpability where an offence is planned,
  - Is reckless as to whether harm is caused, i.e. the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences, even though the extent of the risk would be obvious to most people,
  - Has knowledge of the specific risks entailed by his actions even though he does not intend to cause the harm that results; and
  - Is negligent in their actions.

#### Examples of Culpability

High (Deliberate Act)	Intentional breach by landlord or property agent or flagrant disregard for the law, i.e. failure to comply with a correctly served improvement notice
High (Reckless Act)	Actual foresight of, or wilful blindness to, risk of offending but risks nevertheless taken by the landlord or property agent; for example, failure to comply with HMO Management Regulations
Medium (Negligent Act)	Failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding commission of the offence; for example, part compliance with a schedule of works, but failure to fully complete all schedule items within notice timescale.
Low (Low or no culpability)	Offence committed with little or no fault on the part of the landlord or property agent; for example, obstruction by tenant to allow contractor access, damage caused by tenants



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### Harm or Potential for Harm

In determining the level of harm the Local Housing Authority will have regard to:

- the person: i.e. physical injury, damage to health, psychological distress;
- the community; i.e. economic loss, harm to public health; and
- other types of harm; i.e. public concern/feeling over the impact of poor housing condition on the local neighbourhood.

The nature of the harm will depend on the personal characteristics and circumstances of the victim, e.g. tenant.

Where no actual harm has resulted from the offence, the Local Housing Authority will consider the relative danger that persons have been exposed to as a result of the offender's conduct, the likelihood of harm occurring and the gravity of harm that could have resulted.

Factors that indicate a higher degree of harm include:

- Multiple victims;
- Especially serious or psychological effect on the victim; and
- Victim is particularly vulnerable.

### Examples of Harm Categories

High	Defect(s) giving rise to the offence poses a serious and substantial risk of harm to the occupants and/or visitors; for example, danger of electrocution, carbon monoxide poisoning or serious fire safety risk.
Medium	Defect(s) giving rise to the offence poses a serious risk of harm to the occupants and/or visitors; for example, falls between levels, excess cold, asbestos exposure.
Low	Defect(s) giving rise to the offence poses a risk of harm to the occupants and/or visitors; for example, localised damp and mould, entry by intruders.

### Punishment of the Offender

Local Authorities should also have regard to the following:

- A Civil Penalty should not be regarded as an easy or lesser option compared to prosecution;
- The penalty should be proportionate and reflect the severity of the offence; and



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- The penalty should be set high enough to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

### Deter the offender from repeating the offence

- The ultimate goal is to prevent further offending and help ensure the landlord fully complies with all their legal responsibilities in future.
- The level of penalty should be set at a high enough level to deter repeat offending.

### Deter others from committing similar offences

- An important part of deterrence is the realisation that the Council is proactive in levying Civil Penalties where the need exists and that the level of Civil Penalty will be set high enough to punish the offender and deter repeat offending.
- Remove any financial benefit the offender may have obtained as a result of committing the offence.
- Ensure that the offender does not benefit as a result of committing an offence i.e. it should not be cheaper to offend than to ensure a property is well maintained and managed.

## 5. DETERMINING THE AMOUNT OF CIVIL PENALTY

The Council has developed a spreadsheet for assessing the level of Civil Penalty that should be charged when offences have been committed and highlighted through the enforcement matrix as appropriate for a Civil Penalty.

The idea of the spreadsheet is that it takes into account all elements set out in guidance provided by MHCLG and the approach the Council adopts through its enforcement policy and procedures.

The table below sets out the interrelation between harm and culpability as a determinant of the Civil Penalty banding.

Low Culpability/High Harm Band 4	Medium Culpability/High Harm Band 5	High Culpability/High Harm Band 6
Low Culpability/Medium Harm Band 3	Medium Culpability/Medium Harm Band 4	High Culpability/Medium Harm Band 5
Low Culpability/Low Harm Band 1	Medium Culpability/Low Harm Band 2	High Culpability/Low Harm Band 3

The starting point (SP) in each band will be the mid-point, i.e. for Band 3 the mid-point will be £12,500.



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Band 1 = £0 to £4,999 Starting Point of £2,500	Low Culpability/Low Harm
Band 2 = £5,000 to £9,999 Starting Point of £7,500	Medium Culpability/Low Harm
Band 3 = £10,000 to £14,999 Starting Point of £12,500	Low Culpability/Medium Harm OR High Culpability/Low Harm
Band 4 = £15,000 to £19,999 Starting Point of £17,500	Low Culpability/High Harm OR Medium Culpability/Medium Harm
Band 5 = £20,000 to £24,999 Starting Point of £22,500	Medium Culpability/High Harm OR High Culpability/Medium Harm
Band 6 = £25,000 to £30,000 Starting Point of £27,500	High Culpability/High Harm

This approach ensures that the assessment of the level of Civil Penalty reflects the factors to be considered in the statutory guidance and takes into account the requirement to determine the appropriate sanction by using the score produced by the enforcement matrix as a guiding principle.

### Aggravating Factors

The penalty may be increased by £1,000 for each aggravating factor up to a maximum of the top of the band level determined above.

In order to determine the final penalty the Council will consider any aggravating factors relevant to the case.

Below is a list which will be considered as part of the determination. This is not an exhaustive list and other factors may be considered depending on the circumstances of each case.

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

### Mitigating Factors

The penalty may be decreased by £1,000 for each mitigating factor to a minimum of the bottom of the band level determined above.



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In order to determine the final penalty the Council will consider any mitigating factors relevant to the case.

Below is a list which will be considered as part of the determination. This is not an exhaustive list and other factors may be considered depending on the circumstances of each case.

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

When considering aggravating and mitigating factors the Civil Penalty imposed must remain proportionate to the offence.

Reference will be made to Magistrates Court Sentencing Council guidelines when considering relevant aggravating and mitigating factors.

An offender will be assumed to be able to pay a penalty up to the maximum amount unless they can demonstrate otherwise.

### Civil Penalties – Multiple Offences

Where the Local Housing Authority are satisfied that more than one offence is being committed concurrently in respect of a single property, they may issue multiple Civil Penalty Notices, (for example, where there are multiple breaches of the HMO Management Regulations).

However, where satisfied on the merits of the case and/or where the authority consider that issuing multiple penalties at the same time would result in an excessive cumulative penalty, nothing in this policy shall require the authority to do that. The authority may take action in respect of one or some of the offences and warn the offender that future action in respect of the remaining offences will be taken if they continue.

### Maximum Levels

Coventry City Council takes the enforcement of housing conditions in the Private Rented Sector extremely seriously and proactively pursues enforcement action where it is considered to be necessary and appropriate.



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There may be circumstances when the Council is dealing with offences that it considers will warrant a maximum penalty. This will be carried out in accordance with guidance provided by Government and the Council's policy.

### Recording of the decision

A record of each decision and the reasons for the financial penalty will be made together with how the amount of the penalty was set and the reasons for imposing it.