Policy on Private Sector Housing Enforcement

Appendix 1 – Acts and Regulations

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[1] 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.

[1] 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

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.

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.

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 Selective 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; and
- 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.

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. With that in mind the Council introduced a citywide Additional Licensing scheme in

May 2020 which will run for a period of five years to support the regulation of such HMOs. Enforcement of the HMO Management Regulations and the use of the HHSRS will support the licensing regime.

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;
- tll communal areas of the interior are regularly cleaned and redecorated as necessary;
- tll 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.

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 (Strategic Lead of 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; and
- investigating whether any offence has been committed under Parts 1-4 of the Housing Act 2004.

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

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.[2]

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 PRS.

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

[2] Civil Penalties - https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016

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. 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[3] to apply 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.

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[3] Rent Repayment Orders - https://www.gov.uk/government/publications/rent-repayment-orders-under-the-housing-and-planning-act-2016

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.

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.

Regulatory Services will have regard to the guidance[4] provided by Government when deciding whether or not to include a person on the Rogue Landlord Database.

Appendix 7 provides the Council's decision-making process when determining the length of time a person will remain on the Rogue Landlord Database.

Banning Orders

From the 6th 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.

[4]Rogue Landlord Database - https://www.gov.uk/government/publications/database-of-rogue-landlords-and-property-agents-under-the-housing-and-planning-act-2016

Protection From Eviction Act 1977

The Legislation defines unlawful eviction and harassment of residential occupiers, creates a criminal offence for breach of same for which any person subsequently convicted of an offence may receive an unlimited fine and/or a term of imprisonment.

Residential Occupiers [tenants] occupying a privately rented property under the provisions of an Assured Shorthold Tenancy are entitled exclusive possession of the property, to enjoy the property without interference to either their peace or comfort and not to be unlawfully evicted from it.

Any person with the intent to cause the residential occupier of any premises and any person who knows, or has reasonable cause to believe the conduct committed is likely to cause the residential occupier or members of his family:

(a) To give up the occupation of the premises or any part thereof; or

(b) To refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof; or

(c) Does acts calculated to interfere with the peace or comfort of the residential occupier or members of his household; or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, shall be guilty of an offence.

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

The Electrical Safety Standards Regulations came into force on 1 June 2020 and form part of the Government's work to improve safety in all residential premises - and particularly in the Private Rented Sector (PRS).

These Regulations put best practice on a statutory footing. All landlords in the PRS now must do what good landlords already do: make sure the electrical installations in their rented properties are safe.

The Regulations require landlords to have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at least every 5 years. Landlords must provide a copy of the electrical safety report to their tenants, and if requested to their local authority.

Local authorities have a vital role to play in ensuring a high-quality, safe and healthy PRS. Under these Regulations they can require landlords to carry out vital remedial works or even arrange for the repairs to be done and recover their cost from the landlord. They can decide the level of penalty for landlords who don't comply, up to £30,000 and can spend the proceeds on enforcement purposes, helping them to keep up the good work driving up standards in privately rented homes.

Environmental Protection Act 1990

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; and
- 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; and
- 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.

The Deregulation Act 2015

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.

The Smoke And Carbon Monoxide Alarm (Amendment) Regulations 2022

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.

On the 11th of May 2022 the Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022 were laid before Parliament and later approved, introducing amendments to the Regulations that will come into force on the 1st of October 2022.

The amendment regulations will mean:

- social landlords will be required to provide a smoke alarm on every storey of their properties where there is a room used wholly or partly as living accommodation; and
- both social and private landlords will be required to provide carbon monoxide alarms in any room of their properties used wholly or partly as living accommodation where a fixed combustion appliance is present (excluding gas cookers); and
- there will be a new obligation on all landlords to repair or replace any alarm which is found to be faulty during the period of a tenancy, and landlords will be required to repair or replace alarms as soon as reasonably practicable.

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.

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.

The Tenant Fees Act 2019

The Tenant Fees Act 2019 (Act) came into force on 1 June 2019.

The key provisions of the Act restrict the kinds of payments that landlords and letting agents can require and prohibit certain arrangements in connection with the letting of housing in England.

In addition, the Act sets out stringent regulations for the treatment of holding deposits (i.e. deposits paid to reserve a property prior to the signing of a tenancy agreement). The Act applies to tenancies of housing in England. For the purposes of the Act, "tenancy" means:

- assured shorthold tenancies (other than ones of social housing and certain long leases);
- student lettings falling within paragraph 8 of Schedule 1 of the Housing Act 1988; and
- licences to occupy (excluding holiday lets and licences to occupy social housing).

The inclusion of licences in the definition of "tenancy" is a clear anti-avoidance provision designed to stop those involved in the letting of housing exploiting the lease/licence distinction to avoid complying with the new provisions.

The Caravan and Control Of Development Act 1960

The Caravan and Control of Development Act 1960 prohibits the use of land as a caravan site unless the occupier holds a site licence issued by the local authority.

Before a licence can be granted, a caravan site must first be granted Planning Consent. Once a Planning Consent has been granted, a Caravan Site Licence must be applied for and will be issued.

A caravan site licence contains provisions relating to the maintenance and running of the park. The primary purposes of the licence being to ensure that the risk of spread of fire is minimised, that there is appropriate access to the site for emergency services and that the facilities provided are appropriate to the nature and size of the site.

To ensure that this is done the licence is issued subject to the conditions based on the adopted model standards for caravan sites and a copy of the licence is displayed on site. The Council will carry out site inspections to ensure that the conditions are being complied with.
In addition to the site licence, The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 ("the Regulations") introduces a fit and proper person test for mobile home site owners or the person appointed to manage the site.

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

These regulations introduced a Minimum Energy Efficiency Standard (MEES) of Energy Performance Certificate (EPC) E for the PRS. From 1 April 2018, private rented properties in scope of the MEES Regulations had to meet the minimum EPC E before they can be let on a new tenancy, unless a valid exemption has been registered. The MEES Regulations applied to all domestic properties in scope from 1 April 2020. Failure to comply with the Regulations is an offence which can result in the issuing of a financial penalty.

The Redress Schemes for Lettings Agency Work And Property Management Work (Requirement To Belong To A Scheme Etc) (England) Order 2014

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 made it a legal requirement for all lettings agents and property managers in England to join a government-approved redress scheme by 1 October 2014.

Tenants, prospective tenants, landlords dealing with lettings agents in the PRS; as well as leaseholders and freeholders dealing with property managers in the residential sector can complain to an independent person about the service received

The enforcement authority can impose a fine of up to £5,000 where it is satisfied, on the balance of probability that someone is engaged in letting or management work and is required to be a member of a redress scheme but has not joined.

The expectation is that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating 54 circumstances. It will be up to the enforcement authority to decide what such circumstances might be, taking into account any representations the lettings agent or property manager makes during the 28 day period following the authority's notice of intention to issue a fine.

Policy on Private Sector Housing Enforcement

Appendix 2 – 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); and
- 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.

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.

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.

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

a) **Severity of the offence**.
The more serious the offence, the higher the penalty should be.

b) **Culpability and track record of the offender**.
A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

c) **The harm (or potential harm) caused to the tenant**.
This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

d) **Punishment of the offender**.
A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

e) **Deter the offender from repeating the offence**.
The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

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

g) **Remove any financial benefit the offender may have obtained as a result of committing the offence**.
The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

The Council will consider the above factors when deciding where, within the relevant band of the Civil Penalties Matrix below, a particular offence and penalty fall. Further, the Council considers factors (d) to (g) above, inclusive, to be primary objectives of financial penalties and will attach particular weight to them when determining the appropriate level of penalty.

2. 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 the Council will have regard to the following:

- 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.

Harm or Potential for Harm

In determining the level of harm the Council 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 Council 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

The Council will 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
- 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.

3. DETERMINING THE AMOUNT OF CIVIL PENALTY

In determining the level of a civil penalty, officers will have regard to the matrix set out below, which has been developed taking into the factors set out in the statutory guidance provided by Government.

The matrix is intended to provide an indicative minimum ‘tariff’ under the various offence categories, with the final level of the civil penalty adjusted in each case, and generally within the relevant band, to take into account aggravating and mitigating factors.

The Council may, exceptionally, increase the penalty above the band maximum or, again exceptionally, decrease it below the minimum ‘tariff’. In order to meet the objectives of this policy and of financial penalties in particular, however, including the need for transparency and consistency in the use of such penalties, the Council will exercise its discretion to increase or decrease a penalty beyond band limits in exceptional circumstances only (excluding any Discounts as set out below). The Council will consider on a case-by-case basis, in light of the information with which it is provided, whether any such circumstances exist.

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

Band	Severity	Band Width (£)
1	Low Culpability/Low Harm	£0 to £4,999
2	Medium Culpability/Low Harm	£5,000 to £9,999
3	Low Culpability/ Medium Harm or High Culpability/ Low Harm	£10,000 to £14,999
4	Low Culpability/High Harm or Medium Culpability/ Medium Harm	£15,000 to £19,999
5	Medium Culpability/High Harm or High Culpability/Medium Harm	£20,000 to £24,999
6	High Culpability/High Harm	£25,000 to £30,000

Aggravating Factors

The starting point for the penalty may be increased by 3% for each aggravating factor up to a maximum of 15% of the initial penalty level.

In order to determine the final penalty the Council will consider all 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;
- Lack of co-operation/communication or obstruction of the investigation;
- Deliberate concealment of the activity/evidence;
- Offending over an extended period of time i.e. more than 6 months
- 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 starting point for the penalty may be decreased by 3% for each mitigating factor to a maximum 15% of the initial penalty level.

In order to determine the final penalty the Council will consider all 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 vulnerability is linked to the commission of the offence;
- Good character and/or exemplary conduct; and
- Early admission of guilt i.e. within 1 month.

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.

Illustrative Examples

Failure to comply with an Improvement Notice

Maximum Court fine that can be levied for failure to comply with an Improvement Notice - Unlimited

An Improvement Notice served under Part 1 Housing Act 2004 specifies repairs/improvements that the recipient should carry out in order to address one or more identified Category 1 and/or Category 2 hazards in a property. Category 1 hazards are the most serious hazards, judged to have the highest risk of harm to the occupiers; the Council has a duty to take appropriate action where a dwelling is found to have one or more Category 1 hazards present.

In most cases, the service of an Improvement Notice will have followed an informal stage, where the landlord had been given the opportunity to carry out improvements without the need for formal action. In such cases, an identified failure to comply with an Improvement Notice will represent a continued failure on the part of the landlord to deal appropriately with one or more significant hazards affecting the occupier[s] of the relevant dwelling.

The Council would view the offence of failing to comply with the requirements of an Improvement Notice as a significant issue, exposing the tenant[s] of a dwelling to one or more significant hazards. The civil penalty for a landlord controlling five or less dwellings, with no other relevant factors or aggravating features (see below) would be regarded as a serious matter, representing a band 3 offence, attracting a civil penalty of at least £10,000.

Where a landlord or agent is controlling/owning a significant property portfolio and/or has demonstrated experience in the letting/management of property the failure to

comply with the requirements of an Improvement Notice would be viewed as being a severe matter attracting a civil penalty of £20000 or above.

Aggravating features/factors specific to non-compliance with an Improvement Notice

- The nature and extent of hazards that are present. Multiple hazards and/or severe/extreme hazards that are considered to have a significant impact on the health and/or safety of the tenant(s) in the property would justify an increase in the level of the civil penalty

Generic aggravating features/factors

The Council will have regard to the following general factors in determining the final level of the civil penalty:

- A previous history of non-compliance would justify an increased civil penalty. Examples of previous non-compliance would include previous successful prosecutions [including recent convictions that were 'spent'], works in default of the landlord and breaches of regulations/obligations, irrespective of whether these breaches had been the subject of separate formal action
- Any available information regarding the financial means of the offender, not restricted to just rental income from the rented home[s]

Failure to License offences

Maximum Court fine that can be levied for failure to license an HMO or Part 3 House – Unlimited

Failure to license a Mandatory 'HMO'

Under Part 2 Housing Act 2004, most higher risk HMOs occupied by 5 or more persons forming 2 or more households are required to hold a property licence issued by the local authority. HMO licensing was introduced to allow local authorities to regulate standards and conditions in high risk, multiply occupied residential premises. Through the property licence regime, local authorities ensure that the HMO has sufficient kitchens, baths/showers and WCs and place a limit on the number of persons permitted to occupy it and the licence holder is required to comply with a set of licence conditions.

The Council would view the offence of failing to licence an HMO as a significant failing; Licensing was introduced by the Government in order to regulate management, conditions, standards and safety in the properties considered to represent the highest risk to tenants as regards such matters as fire safety and overcrowding.

Under the Council's policy the civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features (see below) would be regarded as a serious matter, representing a band 3 offence, attracting a civil penalty of at least £10000. Where a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of

property, the failure to license an HMO would be viewed as being a severe matter attracting a civil penalty of £20000 or above (a band 5 offence).

Aggravating features/factors specific to non-licensing offences

- The condition of the unlicensed property. The nature and extent of any significant hazards that are present would justify an increase in the level of the civil penalty. Equally, an HMO that was found to be poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded would also justify an increased civil penalty.
- Any demonstrated evidence that the landlord/agent was familiar with the need to obtain a property licence e.g. the fact that they were a named licence holder or manager in respect of an already licensed premises.

Generic aggravating features/factors

As set out under 'Improvement Notice' above

Failure to licence a property under the Council's Additional (HMO) Licensing Scheme

The Council has designated the whole of the borough as an additional licensing area. The scheme came into force on 4th May 2020 and expires on 5th May 2025. Under the scheme, all HMOs occupied by three or more persons forming two or more households sharing one or more basic amenities such as a WC or kitchen, but which fall outside the scope of mandatory HMO licensing, will be required to hold an additional licence in order to be legally let as well as those HMOs that fall within the definition of self-contained flats under Section 257 of the Housing Act 2004.

The Council would view the offence of failing to license an HMO under its additional licensing scheme as a significant failing. The Council has introduced additional HMO licensing, amongst other reasons, in order to regulate management, conditions, standards and safety in the properties considered to represent a higher risk to tenants as regards such matters as fire safety and overcrowding compared with properties occupied by a single-family household.

Under the Council's policy the civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features (see below) would be regarded as a moderate matter, representing a band 2 offence, attracting a civil penalty of at least £5000. Where a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property, the failure to license an HMO would be viewed as being a serious matter attracting a civil penalty of £15000 or above (a band 4 offence).

Aggravating features/factors specific to non-licensing offences

- The condition of the unlicensed property. The nature and extent of any significant hazards that are present would justify an increase in the level of the civil penalty. Equally, an HMO that was found to be poorly managed and/or lacking amenities/fire safety precautions and/or overcrowded would also justify an increased civil penalty

- Any demonstrated evidence that the landlord/agent was familiar with the need to obtain a property licence e.g. the fact that they were a named licence holder or manager in respect of an already licensed premises

Generic aggravating features/factors

As set out under 'Improvement Notice' above

Breach of licence conditions

Maximum Court fine that can be levied for failure to comply with a licence condition - unlimited

All granted property licences impose a set of conditions on the licence holder. These conditions impose a variety of obligations relating to the letting, management and condition of the rented property, including:

- Undertaking Gas Safe and electrical checks;
- Installing and maintaining smoke alarms;
- Obtaining tenant references, providing written tenancy agreements and protecting deposits;
- Notifying the Council in any specified changes in circumstances;
- Carrying out specified measures to prevent or address anti-social behaviour
- Maintaining the property in reasonable repair;
- Ensuring that the gardens are tidy and free from refuse; and
- For HMO, licences granted under part 2, carrying out works that were a condition of the granted licence or reducing occupation levels as necessary.

It is important that the manager of a licensed property complies with all imposed conditions, but the Council recognises that a failure to comply with certain licence conditions is likely to have a much bigger impact on the safety and comfort of residents than others.

In determining the level of a civil penalty, the Council will therefore initially consider:

a) The number and nature of the licence condition breaches; and
b) The nature and extent of deficiencies within each specified licence condition

Clearly, the circumstances of breach of licence condition offences have the potential to vary widely from case to case but, as a guide:

- The civil penalty for a landlord controlling five or less dwellings (or 1 or 2 HMOs), with no other relevant factors or aggravating features [see below], for a failure to provide tenants with their contact details or for failing to address relatively minor disrepair would each be regarded as a moderate band 1 offence, attracting a civil penalty of £1000. Where a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property, these same offences would be regarded as a moderate band 2 offence, attracting a civil penalty of £5000 for a 'professional' landlord or agent.

- The civil penalty for a landlord controlling five or less dwellings (or 1 or 2 HMOs), with no other relevant factors or aggravating features (see below), for a failure to provide or maintain smoke alarms in working order, to fail to address serious ASB issues such as the use of a licensed premises for illegal purposes or the failure to carry out works/improvements imposed as a condition of a granted HMO licence would each be regarded as a serious band 3 offence, attracting a civil penalty of at least £10000. Where a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property, these same offences would be regarded as a severe band 5 offence, attracting a civil penalty of £20000 or above for a 'professional' landlord or agent.

Aggravating features/factors specific to non-licensing offences

- None – the nature of the licence condition breaches and their impact upon the occupiers would be an integral part of the initial assessment process

Generic aggravating features/factors

As set out under 'Improvement Notice' above

Failure to Comply with The Management of Houses in Multiple Occupation (England) Regulations

Maximum Court fine that can be levied for failure to comply with each individual regulation - unlimited

The Management of Houses in Multiple Occupation (England) Regulations 2006 impose duties on the persons managing certain HMOs in respect of:

- Regulation 3 - Providing information to occupiers
- Regulation 4 - Taking safety measures, including fire safety measures
- Regulation 5 - Maintaining the water supply and drainage
- Regulation 6 - Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected
- Regulation 7 - Maintaining common parts
- Regulation 8 - Maintaining living accommodation
- Regulation 9 - Providing sufficient waste disposal facilities

Note - The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 place similar obligations on the managers of HMOs as defined by Section 257 Housing Act 2004.

It is important that the manager of an HMO complies with all regulations, but the Council recognises that a failure to comply with certain regulations is likely to have a much bigger impact on the safety and comfort of residents than others. Furthermore, and using Regulation 8 as an example, a breach of this regulation could relate to defects to an individual window in one HMO but multiple defects to the structure, fixtures & fittings in number of rooms in a second HMO.

In determining the level of a civil penalty, the Council will therefore initially consider;

a) The number and nature of the management regulation breaches; and
b) The nature and extent of deficiencies within each regulation

Clearly, the circumstances of HMO Management Regulation offences have the potential to vary widely from case to case but, as a guide:

- The civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features [see below], for a failure to display a notice containing their contact details or for failing to address relatively minor disrepair would each be regarded as a moderate band 1 offence, attracting a civil penalty of £1000. Where a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property these same offences would be regarded as a moderate band 2 offence, attracting a civil penalty of at least £5000 for a 'professional' landlord or agent.
- The civil penalty for a landlord controlling one or two HMO dwellings, with no other relevant factors or aggravating features (see below), for a failure to maintain fire alarms in working order, to maintain essential services to an HMO or to fail allow an HMO to fall into significant disrepair would each be regarded as a serious band 3 offence, attracting a civil penalty of at least £10000. Where a landlord or agent is controlling/owning a significant property portfolio, and/or has demonstrated experience in the letting/management of property these same offences would be regarded as a severe band 5 offence, attracting a civil penalty of £20000 or above for a 'professional' landlord or agent.

Aggravating features/factors specific to non-licensing offences

- None – the nature of the Management Regulation breaches and their impact upon the occupiers would be an integral part of the initial assessment process

Generic aggravating features/factors

As set out under 'Improvement Notice' above

4. 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.

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.

Discounts

The Council will automatically apply the following discounted rates to any imposed financial penalties in the following circumstances:

- **In the event that the offender complied with the identified breach (for example by making an application to license a previously unlicensed address) within the representation period at the 'Notice of Intent' stage, the Council would reduce the level of any imposed civil penalty by 20%;**

Illustrative example

The landlord of an HMO property fails to obtain a licence. They only operate one HMO and there are no other relevant factors or aggravating features. The offence is regarded as a serious matter, representing a band 3 offence, attracting a civil penalty of at least £10,000. Upon receipt of the 'Notice of Intent' to impose a £10,000 financial penalty, the landlord makes a complete application for the HMO licence within the period allowed for representations. No other representations [or representations that are upheld] are made to the Council.

The Council issues a 'Final Notice' imposing a financial penalty of £8,000 (£10,000 with a 20% discount having been deducted due to compliance during the representation period).

Totality of offences

When arriving at penalty levels the total is inevitably cumulative, however the Council will determine the fine for each offence based on the relevant criteria above so far as they are known, or appear, to the Council and add up the penalties for each offence and consider if they are just and proportionate. If the aggregate total is not just and proportionate the Council will consider how to reach a just and proportionate penalty level.

There are a number of ways in which this can be achieved, for example:

- where an offender is to be fined for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence.
- where an offender is to be fined for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate fine for each of the offences. The Council will add up the fines for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the Council will consider whether all of the fines can be proportionately reduced. Separate fines will then be considered. Where separate fines are passed, the Council will be careful to ensure that there is no double-counting.

Policy on Private Sector Housing Enforcement

Appendix 3 – Imposing Civil Penalties under the Tenant Fees Act 2019

Introduction

Section 8 of The Tenant Fees Act 2019 provides local authorities with the power to impose a civil penalty in situations where a breach of the Tenant Fees Act 2019 has been identified.

Under the Tenant Fees Act, landlords are prohibited from imposing charges or payments in connection with a tenancy or licence unless that payment is one of a specified number of 'permitted payments'. Each separate 'prohibited payment' represents a breach of the Tenant Fees Act 2019:

- The Tenant Fees Act 2019 enables the Council to serve notices imposing Civil Penalties of up to a maximum of £5,000 where a landlord or agent has required a tenant to make a 'prohibited payment';
- The Tenant Fees Act 2019 enables the Council to impose Civil Penalties of up to a maximum of £30,000 where a landlord or agent has required a tenant to make a 'prohibited payment' within 5 years of a previous conviction or the imposition of a Civil Penalty (as an alternative to instigating prosecution proceedings);
- The Tenant Fees Act 2019 enables the Council to serve notices imposing Civil Penalties of up to a maximum of £5,000 where a landlord or agent is in breach of the requirement to repay the holding deposit.

This guidance outlines the Council's policy in setting the level of a civil penalty in each case where it has been determined to issue a civil penalty, including cases where it has determined to impose a civil penalty as an alternative to prosecution proceedings.

Its primary objective, is to promote both transparency and consistency in the imposition of Civil Penalties so that, for example, those affected know how the Council will generally penalise relevant offences and are assured that, generally, like cases will be penalised similarly, and different cases penalised differently.

For these reasons in particular, the Council will depart from this policy and the guidance below in exceptional circumstances only. It will consider carefully, and on a case by-case basis, whether any such circumstances exist, in light of the information with which it is provided. The further objectives of using Civil Penalties in particular as a means of enforcement are explained below.

Coventry City Council has developed this policy on deciding financial penalties and the appropriateness of prosecution as an alternative to imposing financial penalties under the relevant letting agency legislation.

It applies in relation to any decision to any decision made by the Council in its capacity as Enforcement Authority and Lead Enforcement Authority under Section's 7 & 24 of the Tenants Fees Act 2019 respectively.

For clarity, "relevant letting agency legislation" means:-

1. The Tenant Fees Act 2019, "the TFA 2019";

2. Part 3, Chapter 3 of the Consumer Rights Act 2015;

3. Section 83(1) and 84(1) of the Enterprise and Regulatory Reform Act 2013 ; and

4. Sections 133 – 135 of the Housing and Planning Act 2016.

1. Legal Reference

The TFA 2019 prohibits the charging of fees in respect of an Assured Shorthold Tenancy ("a tenancy"), other than those which are specifically permitted by Schedule 1 of the TFA 2019, and amends other legislation as follows:

a. in respect of the duty of letting agents to publicise fees etc. under Section 87 of the Consumer Rights Act 2015.

b. in relation to the duty placed on enforcement authorities to have regard to any guidance issued by the Secretary of State ("the SoS") relating to the enforcement of an order under s83(1) of 84(1) as per Section 85 of the Enterprise & Regulatory Reform Act 2013.

c. in respect of the duty to enforce being subject to Section 26 of the TFA 2019 under Article 7 of the Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 2014.

d. in relation to the meaning of 'Lead Enforcement Authority', "the LEA", under Section 135 (enforcement of client money protection scheme regulations) of the Housing and Planning Act 2016.

e. in respect of the LEA as an alternative to the SoS where the SoS is not the LEA under Article 7 of the Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 2014.

2. TFA 2019 Sanctions

The TFA 2019 provides that enforcement authorities may impose financial penalties of up to £30,000 depending on the breach as follows:

a. In respect of Prohibited Payments under s1 & s2 of the TFA 2019 a financial penalty not exceeding £5,000 for a first breach.

b. Under s12 of the TFA 2019 a second or subsequent breach within 5 years of the previous breach provides for a financial penalty not exceeding

£30,000.00 and there is alternative power to prosecute in the Magistrates Court where an unlimited fine may be imposed.

The Council will determine what is the most appropriate and effective sanction and whether it is appropriate to impose a financial penalty or prosecute having due regard to the Coventry City Council Enforcement Policy and as the Enforcement Authority, the Private Sector Housing Enforcement Policy.

In appropriate circumstances consideration will be given to less formal action such as warning letters or advice, in an effort to secure compliance, and will be done so in accordance with the relevant Enforcement Policy.

3. Consequential Amendments brought about by the TFA 2019

The TFA 2019 amends the legislation referred to in paragraph 1 above which separately provides that penalties may be imposed as follows:

i In respect of a failure of Letting Agents to publicise their fees as required by s83(3) of the CRA 2015 a financial penalty not exceeding £5,000.

ii. In respect of a failure by any person engaged in Letting Agency or Property Management work who fails to hold membership of a Redress Scheme as required by Article 3 Redress Schemes for Lettings Agency Work and Property Management Work (requirement to belong to a Scheme etc.) England) Order 2014 (in respect of Lettings Agency work) or Article 5 (in respect of property management work) to a financial penalty not exceeding £5,000. Note that it is not sufficient to simply register for redress – the correct category of membership must be obtained depending on the work carried out.

iii. In respect of a failure by a property agent who holds client money to belong to an approved or designated Client Money Protection (“CMP”) Scheme as required by Regulation 3 of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019, a financial penalty not exceeding £30,000.

iv. In respect of a failure to obtain a certificate confirming membership or display that certificate as required or publish a copy of that certificate on the relevant website (where one exists) or produce a copy of the certificate free of charge to any person reasonably requiring it as required by Regulation 4(1) of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 a financial penalty not exceeding £5,000.

v. In respect of a failure by a property agent to notify any client within 14 days of a change in the details of an underwriter to the CMP scheme or that the membership of the CMP scheme has been revoked as required by Regulation 4(2) of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 a financial penalty not exceeding £5,000.

4. Statutory Guidance.

The Ministry of Housing, Communities & Local Government ("MHCLG") has published the following document; Tenant Fees Act 2019: Statutory Guidance for enforcement authorities.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/922896/Tenancy_Fees_Act_-_Statutory_guidance_for_enforcement_authorities.pdf

This is statutory guidance to which enforcement authorities must have regard to in relation to enforcing the TFA 2019. This statutory guidance recommends certain factors that an enforcement authority should take into account when deciding on the level of financial penalties under the TFA 2019 and further recommends that enforcement authorities develop and document their own Policy on determining the appropriate level of financial penalty in a particular case.

5. Determining the level of the financial penalty

In accordance with the provisions of the TFA 2019 the level of financial penalties is to be determined by the Council. Although the statutory guidance recommends factors which may be taken into account it does not go into any significant level of detail in this regard. Each of the following factors will be considered as a part of the Council's decision making process and they are:

a. The history of compliance/non-compliance;

b. The severity of the breach V4 4;

c. Deliberate concealment of the activity and/or evidence;

d. Knowingly or recklessly supplying false or misleading evidence;

e. The intent of the landlord/agent, individual and/or corporate body;

f. The attitude of the landlord/agent;

g. The deterrent effect of a prosecution on the landlord/agent and others; and

h. The extent of financial gain as a result of the breach

Although the Council has therefore a wide discretion in determining the appropriate level of financial penalty in any particular case, regard has been given to the statutory guidance when making this policy.

The Council has also decided to base this policy on the principles set out in Coventry City Council's policy entitled 'Civil Penalty as an alternative to prosecution under the Housing Act 2004' with the recognition that with the exception of the limited power to prosecute referred to in Section 2.b of this policy prosecution is not otherwise an option under the TFA 2019.

The civil penalty as an alternative to prosecution under the Housing Act 2004 policy was reviewed in 2018 and was informed by the principles contained in; Sentencing Council Health and Safety Offences, Corporate Manslaughter and Food Safety and

Hygiene Offences Definitive Guideline. The Council believes this to be a fair, relevant and reasonable model to follow.

Appendix 1 of this policy contains the processes that the Council will use in order to determine the level of financial penalty under the TFA 2019. All stages subsequent to the issue of a Notice of Intent are subject to statutory time limits and the suspension of the process should an appeal be made to the First Tier Tribunal. V4 5

Appendix 1 – The Council's process for determining the level of penalty to set:

STEP ONE – Determining the offence category

The Council will determine the breach category using only the culpability and category of harm factors below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment. Other discretionary factors may also be applied in order to reflect consistency and may consider decisions in other UK jurisdictions where they contain some relevant and persuasive content.

Culpability

Very high: Where the Landlord or Agent intentionally breached, or flagrantly disregarded, the law or has/had a high public profile and knew their actions were unlawful.

High: Actual foresight of, or wilful blindness to, risk of a breach but risk nevertheless taken.

Medium: Breach committed through act or omission which a person exercising reasonable care would not commit.

Low: Breach committed with little fault, for example, because:

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

Harm

The following factors relate to both actual harm and risk of harm. Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does.

Category 1 – High Likelihood of Harm

- Serious adverse effect(s) on individual(s) and/or having a widespread impact due to the nature and/or scale of the Landlord's or Agent's business.
- High risk of an adverse effect on individual(s) – including where persons are vulnerable.

Category 2 – Medium Likelihood of Harm

- Adverse effect on individual(s) (not amounting to Category 1)
- Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect.
- Tenants and/or legitimate landlords or agents substantially undermined by the conduct.
- The Council's work as a regulator is inhibited.
- Tenant or prospective tenant misled

Category 3 - Low Likelihood of Harm

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

We will define harm widely and victims may suffer financial loss, damage to health or psychological distress (especially vulnerable cases). There are gradations of harm within all of these categories.

The nature of harm will depend on personal characteristics and circumstances of the victim and the assessment of harm will be an effective and important way of taking into consideration the impact of a particular crime on the victim.

In some cases, no actual harm may have resulted and enforcement authority will be concerned with assessing the relative dangerousness of the offender's conduct; it will consider the likelihood of harm occurring and the gravity of the harm that could have resulted. To the community Some offences cause harm to the community at large (instead of or as well as to an individual victim) and may include economic loss, harm to public health, or interference with the administration of justice.

STEP TWO - Starting point and category range

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

Obtaining financial information

The statutory guidance advises that local authorities can use their powers under Schedule 5 of the Consumer Rights Act 2015 to, as far as possible, make an assessment of a Landlord or Agent's assets and any income (not just rental or fee income) they receive when determining an appropriate penalty. The Council will use such lawful means as are at its disposal to identify where assets might be found.

In setting a financial penalty, the Council may conclude that the Landlord or Agent is able to pay any financial penalty imposed unless the Council has obtained, or the Landlord or Agent has supplied, any financial information to the contrary. The subject of a Final Notice, or a Notice of Intent where the subject does not challenge it, will be expected to disclose to the Council such data relevant to his/her financial position to facilitate an assessment of what that person can reasonably afford to pay. Where the

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

Starting points and ranges

The tables in Appendices 4-10 below give the starting points, minimum and maximum financial penalties for each harm category and level of culpability for each type of breach.

- Appendix 4 First breach in respect of a Prohibited Payment
- Appendix 5 Second & subsequent breach in respect of a Prohibited Payment
- Appendix 6 Breach of Publication of Fees requirements
- Appendix 7 Breach in respect of membership of a Redress Scheme
- Appendix 8 Breach in respect of membership of a Client Money Protection Scheme
- Appendix 9 Breach in respect of certificates in respect of a Client Money Protection Scheme
- Appendix 10 Breach of transparency requirements in respect of a Client Money Protection Scheme

Context

Below is a list of some, but not all factual elements that provide the context of the breach and factors relating to the Landlord or Agent. The Council will identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In particular, relevant recent convictions are likely to result in a substantial upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range which will not exceed the statutory maximum permitted in any case.

Factors increasing seriousness

Aggravating factors:

- Previous breaches of the TFA 2019
- Previous convictions, having regard to:
    - the nature of the offence to which the conviction relates and its relevance to the current breach; and
    - the time that has elapsed since the conviction.

Other aggravating factors may include:

- Motivated by financial gain
- Deliberate concealment of illegal nature of activity
- Established evidence of wider/community impact
- Obstruction of the investigation
- Record of poor compliance

- Refusal of advice or training or to become a member of an Accreditation scheme

Factors reducing seriousness or reflecting personal mitigation

- No previous or no relevant/recent breaches
- No previous convictions or no relevant/recent convictions
- Steps voluntarily taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of relationship with tenants
- Self-reporting, co-operation and acceptance of responsibility
- Good character and/or exemplary conduct
- Mental disorder or learning disability, where linked to the commission of the breach
- Serious medical conditions requiring urgent, intensive or long-term treatment and supported by medical evidence

STEP THREE - General principles to consider in setting a penalty

The Council will finalise the appropriate level of penalty so that it reflects the seriousness of the offence and the Council must take into account the financial circumstances of the Landlord or Agent if representations are made by the Landlord or Agent following the issue of a Notice of Intent.

The level of financial penalty should reflect the extent to which the conduct fell below the required standard. The financial penalty should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the breach; it should not be cheaper to breach than to take the appropriate precautions and a fundamental principle involved is that there should be no financial gain to the perpetrator from the commission of the breaches.

If issuing a financial penalty for more than one breach, or where the offender has already been issued with a financial penalty, The Council will consider whether the total penalties are just and proportionate to the offending behaviour and will have regard to the factors in STEP EIGHT below.

STEP FOUR- Issue Notice of Intent

The Council will issue a Notice of Intent within 6 months of the enforcement authority having sufficient evidence that the Landlord or Agent has breached the TFA 2019. If the breach is ongoing the 6-month deadline continues until the breach ceases. A Notice of Intent can be served spontaneously.

While there are slight variations in the statutory requirements according to which breach is being addressed a Notice of Intent will typically contain the date of the Notice, the amount of the proposed penalty, the reason for imposing the penalty and how the recipient can make representations concerning the penalty.

STEP FIVE – Consideration of representations and review of financial penalty where appropriate

The Council should review the penalty and, if necessary adjust the initial amount reached at STEP FOUR, and represented in the Notice of Intent, to ensure that it fulfils the general principles set out below.

Any quantifiable economic benefit(s) derived from the breach, including through avoided costs or operating savings, should normally be added to the total financial penalty arrived at in step two. Where this is not readily available, the Council may draw on information available from enforcing authorities and others about the general costs of operating within the law. Whether the penalty will have the effect of putting the offender out of business will be relevant but in some serious cases this might be an acceptable outcome.

STEP SIX – Reductions

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

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

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

- The stage in the investigation or thereafter when the offender accepted liability;
- The circumstances in which they admitted liability; and
- The degree of co-operation with the investigation.

The maximum level of reduction in a penalty for an admission of liability will be one-third. In some circumstances there will be a reduced or no level of discount. This may occur for example where the evidence of the breach is overwhelming or there is a pattern of breaching conduct.

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

STEP SEVEN - Additional actions

In all cases the Council must consider whether to take additional action. These may include further enforcement action itself or reference to other organisations where appropriate.

STEP EIGHT – Totality of breaching conduct

Where the offender is issued with more than one financial penalty, the Council should consider the following guidance from the definitive guideline on Offences Taken into consideration and totality which appears to the Council to be an appropriate reference and guide.

As the total financial penalty is inevitably cumulative the Council should determine the financial penalty for each individual breach based on the seriousness of the breach and taking into account the circumstances of the case including the financial circumstances of the Landlord or Agent so far as they are known, or appear, to the Council.

The Council should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate total is not just and proportionate the Council should consider how to reach a just and proportionate total financial penalty. There are a number of ways in which this can be achieved.

For example:

Where a Landlord or Agent is to be penalised for two or more breaches or where there are multiple breaches of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious breach a financial penalty which reflects the totality of the conduct where this can be achieved within the maximum penalty for that breach. No separate penalty should be imposed for the other breaches. Where a Landlord or Agent is to be penalised for two or more breaches that arose out of different incidents, it will often be appropriate to impose separate financial penalties for each breach. The Council should add up the financial penalties for each breach and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the Council should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be imposed.

Where separate financial penalties are passed, the Council must take care to ensure that there is no double-counting.'

STEP NINE – Recording the decision

The officer making a decision about a financial penalty will record their decision giving reasons for coming to the amount of financial penalty that will be imposed.

Appendix 2 – Non exhaustive list of vulnerable people:

Young adults and children

Persons vulnerable by virtue of age

Persons vulnerable by virtue of disability or sensory impairment

People on a low income

Persons with a Drug or alcohol addiction

Victims of domestic abuse

Children in care or otherwise vulnerable by virtue of age

People with complex health conditions

People exploited where English is not their first language.

Victims of Trafficking or sexual exploitation

Refugees

Asylum seekers People at risk of harassment or eviction

People at risk of homelessness.

Appendix 3 – Non exhaustive list of relevant offences /breaches:

Housing law or landlord and tenant related

Offences under:

The Public Health Acts of 1936 and 1961

The Building Act 1984

The Environmental Protection Act 1990

The Town and Country Planning Act 1990

The Prevention of Damage by Pests Act 1949

The Protection from Eviction Act 1977

The Local Government (Miscellaneous Provisions) Acts of 1982 and 1976

The Housing Grants, Construction and Regeneration Act 1996

The Local Government and Housing Act 1989

The Housing Act 2004

The Consumer Protection from Unfair Trading Regulations 2008

Offences involving fraud

Offences in which the victim has been deprived of money, property or other benefit by misrepresentation/deception on the part of the offender including:

- Theft
- Burglary
- Fraud
- Benefit fraud (particularly where tenants are in receipt of Housing Benefit)
- Conspiracy to defraud
- Obtaining money or property by deception
- People trafficking
- Being struck off as a company director

Offences involving violence

A conviction for the offence of:

- Murder
- Manslaughter
- Arson
- Malicious wounding or grievous bodily harm
- Grievous bodily harm with intent
- Actual bodily harm
- Grievous bodily harm
- Robbery
- Criminal damage where the intent was to intimidate or was racially aggravated
- Common assault
- Common assault which is racially aggravated
- Assault occasioning actual bodily harm
- Possession of an offensive weapon
- Possession of a firearm

Offences involving drugs

Consideration should be given to the nature of the offence and what bearing it could have on the Landlord or Agents business activities. The nature, quantity, purity and class of drugs should be taken into account. In addition where an offence of possession with intent to supply is involved regard should be had to the role and importance of, the subject in the supply chain.

Offences involving sexual offences

An offence contained in schedule 3 of the Sexual Offences Act 2003.

Unlawful discrimination

Unlawful discrimination can include findings of an Industrial Tribunal on unlawful employment practice such as discrimination under the Disability Discrimination Act. Consideration should be given to the nature of the unlawful discrimination and what bearing it could have on the management of a licensable property.

Other offences

- Modern Slavery/ Human Trafficking
- Offences involving the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control of another person, for the purpose of exploitation is likely to attach a lower level of culpability.

Appendix 4 – Financial Penalty in the case of a first breach in respect of Prohibited Payments.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750
Medium culpability			
Harm category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500
High culpability			
Harm category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250
Very high culpability			
Harm category 3	3500	2500	4500
Harm Category 2	3750	2750	4750
Harm Category 1	4000	3000	5000

Appendix 5 – Financial Penalty in the case of a second or subsequent breach in respect of Prohibited Payments within 5 years of a previous breach.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £30000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	3500	2000	8000
Harm Category 2	6500	4000	10000
Harm Category 1	8500	4500	15000
Medium culpability			
Harm category 3	6500	4750	17000
Harm Category 2	10500	5000	20000
Harm Category 1	12500	5500	22000
High culpability			
Harm category 3	10500	5500	20000
Harm Category 2	15000	6250	24000
Harm Category 1	18000	7000	26000
Very high culpability			
Harm category 3	15000	7000	24000
Harm Category 2	17500	7250	28000
Harm Category 1	20000	7500	30000

Appendix 6 – Financial Penalty in the case of a breach in respect of Publication of Fees.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750
Medium culpability			
Harm category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500
High culpability			
Harm category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250
Very high culpability			
Harm category 3	3500	2500	4500
Harm Category 2	3750	2750	4750
Harm Category 1	4000	3000	5000

Appendix 7 – Financial Penalty in the case of a breach in respect of Membership of a Redress Scheme.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750
Medium culpability			
Harm category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500
High culpability			
Harm category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250
Very high culpability			
Harm category 3	3500	2500	4500
Harm Category 2	3750	2750	4750
Harm Category 1	4000	3000	5000

Appendix 8 – Financial Penalty in the case of a breach in respect of a failure to obtain membership of a Client Money Protection Scheme

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £30000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	3500	2000	8000
Harm Category 2	6500	4000	10000
Harm Category 1	8500	4500	15000
Medium culpability			
Harm category 3	6500	4750	17000
Harm Category 2	10500	5000	20000
Harm Category 1	12500	5500	22000
High culpability			
Harm category 3	10500	5500	20000
Harm Category 2	15000	6250	24000
Harm Category 1	18000	7000	26000
Very high culpability			
Harm category 3	15000	7000	24000
Harm Category 2	17500	7250	28000
Harm Category 1	20000	7500	30000

Appendix 9 – Financial Penalty in the case of a breach in respect of issues relating to certificates of evidence of Membership of a Client Money Protection Scheme.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750
Medium culpability			
Harm category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500
High culpability			
Harm category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250
Very high culpability			
Harm category 3	3500	2500	4500
Harm Category 2	3750	2750	4750
Harm Category 1	4000	3000	5000

Appendix 10 – Financial Penalty in the case of a breach in respect of transparency issues relating to Membership of a Client Money Protection Scheme.

The table below gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability. Where exceptional circumstances apply the Council may reduce the minimum penalties further but may not increase them above the maximum permitted of £5000.

		Range	
	Starting point (£)	Min (£)	Max (£)
Low culpability			
Harm category 3	1250	250	2250
Harm Category 2	1500	500	2500
Harm Category 1	1750	750	2750
Medium culpability			
Harm category 3	2000	1000	3000
Harm Category 2	2250	1250	3250
Harm Category 1	2500	1500	3500
High culpability			
Harm category 3	2750	1750	3750
Harm Category 2	3000	2000	4000
Harm Category 1	3250	2250	4250
Very high culpability			
Harm category 3	3500	2500	4500
Harm Category 2	3750	2750	4750
Harm Category 1	4000	3000	5000

Policy on Private Sector Housing Enforcement

Appendix 4 – Imposing Civil Penalties for Electrical Safety Standards Regulations offences

INTRODUCTION

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force on the 1st June 2020 and apply in England to:

a) All new specified tenancies from the 1st July 2020; and
b) All existing specified tenancies from 1st April 2021.

Landlords of privately rented accommodation must:

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

Landlords must obtain a report giving the results of the test and setting a date for the next inspection. Landlords must comply within 7 days with a written request from Coventry City Council for a copy of the report and must also supply the Council with confirmation of any remedial or further investigative works required by a report.

Coventry City Council may wish to request reports following inspections of properties to ascertain the condition of the electrical installation and confirm the landlord is complying with the Regulations.

Inspectors will use the following classification codes to indicate where a landlord must undertake remedial work. More information can be found in the relevant edition of the Wiring Regulations:

- **Code 1 (C1): Danger present. Risk of injury**
- **Code 2 (C2): Potentially dangerous**
- **Further Investigation (FI): Further investigation required without delay**
- **Code 3 (C3): Improvement recommended.** Further remedial work is **not** required for the report to be deemed satisfactory.

If the report contains a code C1, C2 or FI, then the landlord must ensure that further investigative or remedial work is carried out by a qualified person within 28 days, or less if specified in the report.

The C3 classification code does not indicate remedial work is required, only that improvement is recommended.

A remedial notice must be served where the local housing authority is satisfied on the balance of probabilities that a landlord has not complied with one or more of their duties under the Regulations. The notice must be served within 21 days of the decision that the landlord has not complied with their duties.

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

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

Landlords have rights to make written representation and appeal against remedial action. The Council can recover the costs of taking the action from the landlord.

Under regulation 11 of the Regulations where the Council is satisfied, beyond reasonable doubt, that a private landlord has breached a duty under regulation 3, the authority may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach.

Regulation 3 states that:

(1) a private landlord who grants or intends to grant a specified tenancy must-

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

(b) ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified person; and

(c) ensure the first inspection and testing is carried out:

(i) before the tenancy commences in relation to a new specified tenancy; or

(ii) by 1st April 2021 in relation to an existing specified tenancy.

(2) For the purposes of sub-paragraph (1)(b) “at regular intervals” means:

(a) at intervals of no more than 5 years; or

(b) where the most recent report under sub-paragraph (3)(a) requires such inspection and testing to be at intervals of less than 5 years, at the intervals specified in that report.

(3) Following the inspection and testing required under sub-paragraphs (1)(b) and (c) a private landlord must:

(a) obtain a report from the person conducting that inspection and test, which gives the results of the inspection and test and the date of the next inspection and test;

(b) supply a copy of that report to each existing tenant of the residential premises within 28 days of the inspection and test;

(c) supply a copy of that report to the local housing authority within 7 days of receiving a request in writing for it from that authority;

(d) retain a copy of that report until the next inspection and test is due and supply a copy to the person carrying out the next inspection and test; and

(e) supply a copy of the most recent report to—

(i) any new tenant of the specified tenancy to which the report relates before that tenant occupies those premises; and

(ii) any prospective tenant within 28 days of receiving a request in writing for it from that prospective tenant.

(4) Where a report under sub-paragraph (3)(a) indicates that a private landlord is or is potentially in breach of the duty under sub-paragraph (1)(a) and the report requires the private landlord to undertake further investigative or remedial work, the private landlord must ensure that further investigative or remedial work is carried out by a qualified person within:

(a) 28 days; or

(b) the period specified in the report if less than 28 days, starting with the date of the inspection and testing.

(5) Where paragraph (4) applies, a private landlord must:

(a) obtain written confirmation from a qualified person that the further investigative or remedial work has been carried out and that:

(i) the electrical safety standards are met; or

(ii) further investigative or remedial work is required;

(b) supply that written confirmation, together with a copy of the report under sub-paragraph (3)(a) which required the further investigative or remedial work to each existing tenant of the residential premises within 28 days of completion of the further investigative or remedial work; and

(c) supply that written confirmation, together with a copy of the report under sub-paragraph (3)(a) which required the further investigative or remedial work to the local housing authority within 28 days of completion of the further investigative or remedial work.

(6) Where further investigative work is carried out in accordance with paragraph (4) and the outcome of that further investigative work is that further investigative or remedial work is required, the private landlord must repeat the steps in paragraphs (4) and (5) in respect of that further investigative or remedial work.

(7) For the purposes of sub-paragraph (3)(e)(ii) a person is a prospective tenant in relation to residential premises if that person:

(a) requests any information about the premises from the prospective landlord for the purpose of deciding whether to rent those premises;

(b) makes a request to view the premises for the purpose of deciding whether to rent those premises; or

(c) makes an offer, whether oral or written, to rent those premises.

A financial penalty may be of such amount as the authority imposing it determines; but must not exceed £30,000.

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.

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.

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.

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

a) **Severity of the offence**.
   The more serious the offence, the higher the penalty should be.

b) **Culpability and track record of the offender**.
   A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

c) **The harm (or potential harm) caused to the tenant**.
   This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

d) **Punishment of the offender**.
   A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

e) **Deter the offender from repeating the offence**.
   The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

f) **Deter others from committing similar offences**.

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

g) **Remove any financial benefit the offender may have obtained as a result of committing the offence**.
The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

The Council will consider the above factors when deciding where, within the relevant band of the Civil Penalties Matrix below, a particular offence and penalty fall. Further, the Council considers factors (d) to (g) above, inclusive, to be primary objectives of financial penalties and will attach particular weight to them when determining the appropriate level of penalty.

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 the Council will have regard to the following:

- 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

The Council will determine the level of culpability by considering the relevant breaches of Regulation 3, for example, in the case of a breach of where a report indicates that a private landlord must undertake further investigative or remedial work, the private landlord fails to do such investigation or remedial work then the culpability will be assessed as high because the landlord was fully aware of the issues having received the report.

For lesser culpable acts the Council will consider an alternative level based on the examples shown in the table below.

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

Harm or Potential for Harm

In determining the level of harm the Council 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 Council 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:

- Presence of C1 classification issues;
- 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, C1 classification codes or multiple C2 classification codes
Medium	Defect(s) giving rise to the offence poses a serious risk of harm to the occupants and/or visitors; for example, isolated or minimal numbers of C2 classification codes.
Low	Defect(s) giving rise to the offence poses a risk of harm to the occupants and/or visitors; for example, isolated C2, C3 or FI classification codes.

Punishment of the Offender

The Council will 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
- 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.

DETERMINING THE AMOUNT OF CIVIL PENALTY

In determining the level of a civil penalty, officers will have regard to the matrix set out below, which has been developed taking into the factors set out in the statutory guidance provided by Government.

The matrix is intended to provide an indicative minimum 'tariff' under the various offence categories, with the final level of the civil penalty adjusted in each case, and generally within the relevant band, to take into account aggravating and mitigating factors.

The Council may, exceptionally, increase the penalty above the band maximum or, again exceptionally, decrease it below the minimum 'tariff'. In order to meet the objectives of this policy and of financial penalties in particular, however, including the need for transparency and consistency in the use of such penalties, the Council will exercise its discretion to increase or decrease a penalty beyond band limits in exceptional circumstances only (excluding any Discounts as set out below). The Council will consider on a case-by-case basis, in light of the information with which it is provided, whether any such circumstances exist.

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

Band	Severity	Band Width (£)
1	Low Culpability/Low Harm	£0 to £4,999
2	Medium Culpability/Low Harm	£5,000 to £9,999
3	Low Culpability/ Medium Harm or High Culpability/ Low Harm	£10,000 to £14,999
4	Low Culpability/High Harm or Medium Culpability/ Medium Harm	£15,000 to £19,999
5	Medium Culpability/High Harm or High Culpability/Medium Harm	£20,000 to £24,999
6	High Culpability/High Harm	£25,000 to £30,000

Aggravating Factors

The starting point for the penalty may be increased by 3.33% for each aggravating factor up to a maximum of 15% of the initial penalty level.

In order to determine the final penalty the Council will consider all 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;
- Lack of co-operation/communication or obstruction of the investigation;
- Deliberate concealment of the activity/evidence;
- Offending over an extended period of time i.e. more than 6 months
- Negligence;

- 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 starting point for the penalty may be decreased by 3% for each mitigating factor to a maximum 15% of the initial penalty level.

In order to determine the final penalty the Council will consider all 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 vulnerability is linked to the commission of the offence;
- Good character and/or exemplary conduct; and
- Early admission of guilt i.e. within 1 month.

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.

PROCESS

The procedure for imposing a civil penalty is set out in Schedule 2 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 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 served before the end of the period of 6 months beginning with the first day on which the authority is satisfied, in accordance with regulation 11, that the private landlord is in breach ("the relevant day"), subject to sub-paragraph (3).

(3) If the breach continues beyond the end of the relevant day, the notice of intent may be served:

(a) at any time when the breach is continuing; or

(b)within the period of 6 months beginning with the last day on which the breach occurs.

The private landlord may, within the period of 28 days beginning with the day after that on which the notice of intent was served, make written representations to the local housing authority about the proposal to impose a financial penalty on the private landlord.

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.

If the private landlord does not pay the whole or any part of a financial penalty which, the private landlord is liable to pay the Council may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

Policy on Private Sector Housing Enforcement

Appendix 5 – Imposing Civil Penalties for Minimum Energy Efficiency Standards (MEES) and Energy Performance Certificate offences

Introduction

The Minimum Energy Efficiency Standards (MEES) came into force in April 2018 and have been amended twice since that time. This policy document reflects the most recent up to date amendments made on the 15th March 2019.

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, as amended are referred to in this document as "the Regulations".

The Regulations are designed to tackle the least energy-efficient properties in England and Wales – those rated F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum standard of EPC band E for both domestic and non-domestic private rented property, affecting new tenancies and renewals since 1 April 2018.

The amended Regulations introduced a new self-funding element for domestic landlords, which takes effect if landlords are unable to access third-party funding to improve any EPC F or G properties, they let to EPC E.

The Regulations set out the minimum level of energy efficiency for private rented property in England and Wales. In relation to the domestic private rented sector (PRS) the minimum level is EPC E.

Landlords who are installing relevant energy efficiency improvements may, of course, aim above and beyond this current requirement if they wish.

The minimum standard will apply to any domestic private rented property which is legally required to have an EPC, and which is let on certain tenancy types. Where these two conditions are met the landlord must ensure that the standard is met (or exceeded).

Landlords of domestic property for which an EPC is not a legal requirement are not bound by the prohibition on letting sub-standard property.

The minimum level of energy efficiency means that, subject to certain requirements and exemptions:

a) since 1 April 2018, landlords of relevant domestic private rented properties must not grant a tenancy to new or existing tenants if their property has an EPC rating of F or G (as shown on a valid EPC for the property); and
b) from 1 April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating F or G (as shown on a valid EPC for the property).

Where a property is sub-standard, landlords must normally make energy efficiency improvements which raise the EPC rate to minimum E before they let the property.

In certain circumstances, landlords may be able to claim an exemption from this prohibition on letting sub-standard property where a valid exemption applies, landlords must register the exemption on the PRS Exemptions Register.

The Regulations cross refer to other Regulations, including the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, the Building Regulations 2010 and the Energy Performance of Buildings (England and Wales) Regulations 2012. Readers wishing to consult these related Regulations should ensure they look at the most up to date versions at www.legislation.gov.uk

Enforcement of the Minimum Level of Energy Efficiency

Local authorities are responsible for enforcing compliance with the domestic minimum level of energy efficiency. They may check whether a property meets the minimum level of energy efficiency and may issue a compliance notice requesting information where it appears to them that a property has been let in breach of the Regulations (or an invalid exemption has been registered in respect of it).

Where a local authority is satisfied that a property has been let in breach of the Regulations it may serve a notice on the landlord imposing financial penalties.

The authority may also publish details of the breach on the PRS Exemptions Register.

The landlord may ask the local authority to review the penalty notice and, if the penalty is upheld on review, the landlord may then appeal the penalty notice to the First-tier Tribunal.

A local authority may also serve a penalty notice for the lodging of false information on the PRS Exemptions Register.

The Council may check for different forms of non-compliance with the Regulations including:

- since 1 April 2018 whether the property is sub-standard and let in breach of regulation 23 (which may include continuing to let the property after 1 April 2020); and
- where the landlord has registered any false or misleading information on the PRS Exemptions Register, or has failed to comply with a compliance notice.

Since 1 April 2018, where the Council believes that a landlord may be in breach of the prohibition on letting a sub-standard property, or a landlord has been in breach of the prohibition at any time in the past 12 months, the Council may serve a compliance notice that requests information from that landlord which will help them to decide whether that landlord has in fact breached the prohibition.

The fact that the Council may serve a compliance notice on a landlord up to 12 months after the suspected breach means that a person may be served with a compliance notice after they have ceased to be the landlord of the property.

It is good practice, therefore, for landlords to retain any records and documents relating to a let property that may be used to demonstrate compliance with the Regulations.

Any notice that is served under the Regulations must be in writing and may be sent in hard copy or electronically. Where a notice is served on a corporate body it may be given to the secretary or clerk of that body if a suitable named individual cannot be identified. Where a notice is served on a partnership, it may be addressed to any partner, or to a person who has control or management of the partnership business.

A compliance notice served by the Council may request either the original or copies of the following information:

- the EPC that was valid for the time when the property was let;
- any other EPC for the property in the landlord's possession;
- the current tenancy agreement used for letting the property;
- any Green Deal Advice Report in relation to the property; and
- any other relevant document that the Council requires in order to carry out its compliance and enforcement functions.

The compliance notice may also require the landlord to register copies of the requested information on the PRS Exemptions Register.

The compliance notice will specify:

- the name and address of the person that a landlord must send the requested information to; and
- the date by which the requested information must be supplied (the notice must give the landlord at least one calendar month to comply).

The landlord must comply with the compliance notice by sending the requested information to the Council and allow copies of any original documents to be taken.

Failure to provide documents or information requested by a compliance notice, or failure to register information on the PRS Exemptions Register as required by a compliance notice, may result in a penalty notice being served.

The Council may withdraw or amend the compliance notice at any time in writing, for example where new information comes to light.

The Council may also use the documents provided by the landlord or any other information it holds to decide whether the landlord is in breach of the Regulations.

Where the Council decides to impose a financial penalty, they have the discretion to decide on the amount of the penalty, up to maximum limits set by the Regulations.

The maximum penalties are as follows:

a) Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, the Local Authority may impose a financial penalty of **up to £2,000** and may impose the publication penalty;

b) Where the landlord has let a sub-standard property in breach of the Regulations for 3 months or more, the Local Authority may impose a financial penalty of **up to £4,000** and may impose the publication penalty;
c) Where the landlord has registered false or misleading information on the PRS Exemptions Register, the Local Authority may impose a financial penalty of **up to £1,000** and may impose the publication penalty; and
d) Where the landlord has failed to comply with the compliance notice, the Local Authority may impose a financial penalty of **up to £2,000** and may impose the publication penalty.

A local authority may not impose a financial penalty under both paragraphs (a) and (b) above in relation to the same breach of the Regulations. But they may impose a financial penalty under either paragraph (a) or paragraph (b), together with financial penalties under paragraphs (c) and (d), in relation to the same breach. Where penalties are imposed under more than one of these paragraphs, the total amount of the financial penalty may **not be more than £5,000**.

It is important to note that this maximum amount of £5,000 applies per property, and per breach of the Regulation. Given this, it means that, if after having been previously fined up to £5,000 for having failed to satisfy the requirements of the Regulations, a landlord proceeds to unlawfully let a sub-standard property on a new tenancy; the Council may again levy financial penalties up to £5,000 in relation to that new tenancy.

Table Two:

Infringement	**Penalty** **(less than three months in breach)**	**Penalty** **(three months or more in breach)**
Renting out a non-compliant property	Up to £2,000, and/or Publication penalty.	Up to £4,000, and/or Publication penalty.
Providing false or misleading information on the PRS Exemptions Register	Up to £1,000, and/or Publication penalty	
Failing to comply with a compliance notice	Up to £2,000, and/or Publication penalty	

It is important to note that the maximum penalty amounts apply per property, and per breach of the Regulations.

Publication penalty (regulation 39)

A publication penalty means that the Council will publish some details of the landlord's breach on a publicly accessible part of the PRS Exemptions Register.

The Council can decide how long to leave the information on the Register, but it will be available for view by the public for at least 12 months.

The information that the Council may publish is:

- the landlord's name (except where the landlord is an individual);
- details of the breach; and
- the address of the property in relation to which the breach occurred; and the amount of any financial penalty imposed.

The Council may decide how much of this information to publish. However, the authority may not place this information on the PRS Exemptions Register while the penalty notice could be, or is being reviewed by the Council, or while their decision to uphold the penalty notice could be, or is being, appealed

Circumstances in which a penalty notice may be served (regulation 38)

From 1 April 2018 onwards, the Council may serve a penalty notice (relating to a financial penalty, a publication penalty or both) on the landlord where they are satisfied that the landlord is, or has been in the last 18 months:

- in breach of the prohibition on letting sub-standard property (which may include continuing to let the property after 1 April 2020) (see section 1.2.1);
- in breach of the requirement to comply with a compliance notice; or
- has uploaded false or misleading information to the Exemptions Register.

The fact that an enforcement authority may serve a penalty notice on a landlord up to 18 months after the suspected breach means that a person may be served with a penalty notice after they have ceased to be the landlord of a property.

The penalty notice may include a financial penalty, a publication penalty or both. The penalty notice will:

- explain which of the provisions of the Regulations the Council believes the landlord has breached;
- give details of the breach;
- tell the landlord whether they must take any action to remedy the breach and, if so, the date within which this action must be taken (the date must be at least a month after the penalty notice is issued);
- explain whether a financial penalty is imposed and if so, how much and, where applicable, how it has been calculated;
- explain whether a publication penalty has been imposed;
- where a financial penalty is imposed, tell the landlord the date by which payment must be made, the name and address of the person to whom it must be paid and the method of payment (the date must be at least a month after the penalty notice is issued);

- explain the review and appeals processes, including the name and address of the person to whom a review request must be sent, and the date by which the request must be sent; and
- explain that if the landlord does not pay any financial penalty within the specified period, the Council may bring court proceedings to recover the money from the landlord.

A further penalty notice may be issued if the action required in the penalty notice is not taken in the time specified.

As noted above, when the Council issues a penalty notice which carries a right of appeal, they must tell the landlord about that right of appeal.

Circumstances in which a penalty notice may be reviewed or withdrawn (regulation 42)

The Council may decide to review its decision to serve a penalty notice, for example when new information comes to light.

A landlord also has the right to ask the Council to review its decision to serve a penalty notice. This request must be made in writing.

The penalty notice must tell the landlord how long they have to make this request, and who it must be sent to.

When the Council receives the request, it must consider everything the landlord has said in the request and decide whether or not to withdraw the penalty notice.

The Council must withdraw the penalty notice if:

- they are satisfied that the landlord has not committed the breach set out in the penalty notice;
- although they still believe the landlord committed the breach, they are satisfied that the landlord took all reasonable steps, and exercised all due diligence to avoid committing the breach; or
- they decide that because of the circumstances of the landlord's case, it was not appropriate for the penalty notice to be served.

If the Council does not decide to withdraw the penalty notice, it might decide to waive or reduce the penalty, allow the landlord additional time to pay, or modify the publication penalty, and must explain the appeals process and how financial penalties can be recovered.

Whatever they decide, the Council must inform the landlord of their decision in writing, and, should do so at the earliest opportunity.

Recovery of financial penalties (regulation 45)

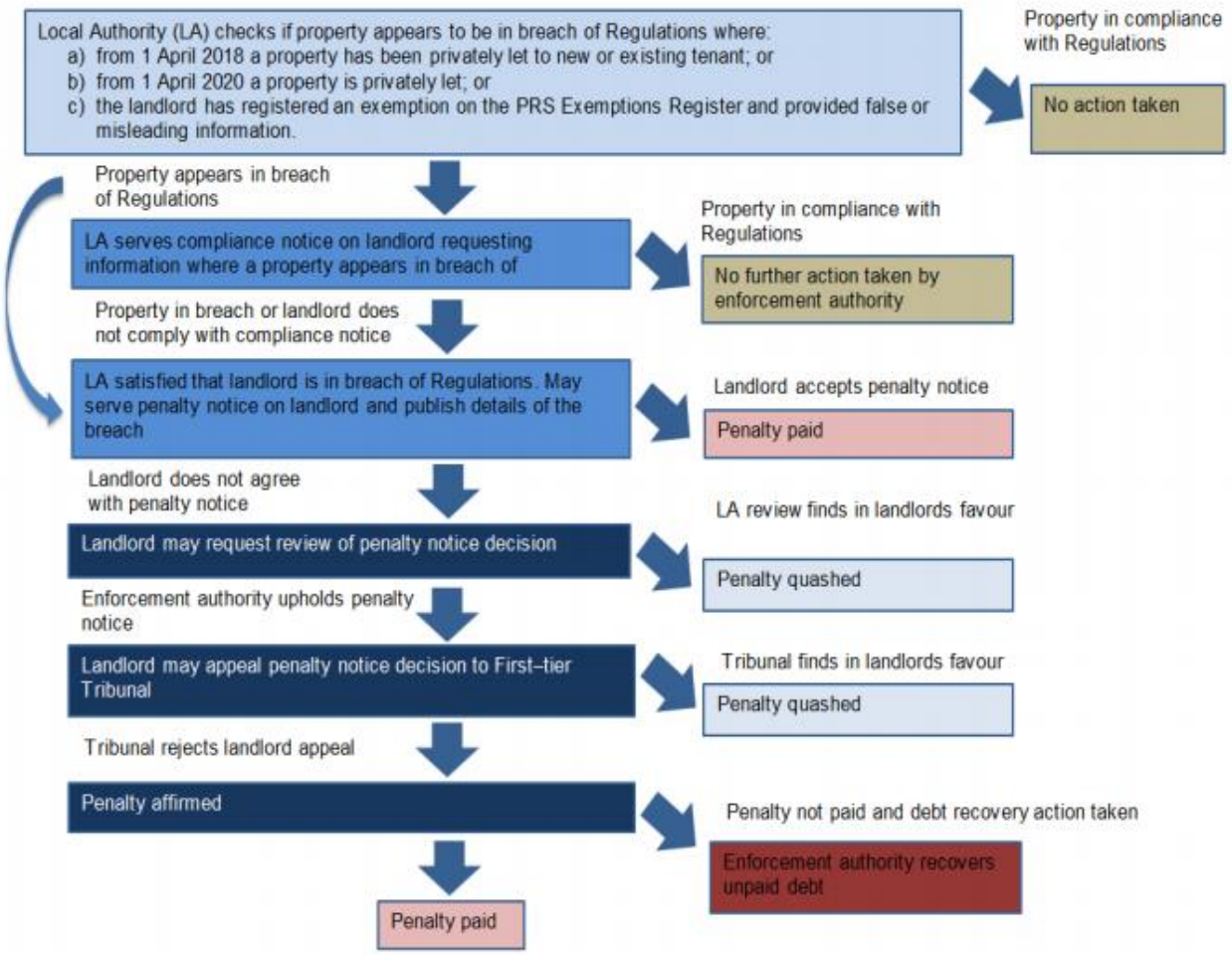
If a landlord does not pay a financial penalty imposed on them, the Council may take the landlord to court to recover the money. In proceedings for the recovery of a financial penalty a certificate signed by or on behalf of the person with responsibility for the financial affairs of the Council and stating that payment of the financial penalty

was or was not received by a given date, will be accepted as evidence of the landlord's non-compliance with the penalty notice.

The Council may not take the landlord to court to recover the money:

a) during the period in which the landlord could ask the Council to review their decision to serve the penalty notice, or while they are reviewing their decision to serve the penalty notice; or
b) during the period in which the landlord could appeal to the First-tier Tribunal, or while there is an ongoing appeal to the First-tier Tribunal, against the penalty notice.

The Domestic Private Rented Sector Minimum Standard



Appeals to the First-tier Tribunal (General Regulatory Chamber) (regulations 43 and 44)

The First-tier Tribunal (General Regulatory Chamber) is administered by Her Majesty's Courts and Tribunals Service and is the home for a range of rights of appeal.

Where a landlord asks the Council to review a decision to serve a penalty notice and, on review, they decide to uphold the penalty notice, the landlord may then appeal to the First-tier Tribunal against that decision if they think that:

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

If a landlord does appeal, the penalty notice will not have effect while the appeal is ongoing. A landlord may also wish to seek legal advice as part of considering or making an appeal, if they have not already done so.

Enforcement of the Energy Performance of Buildings Regulations 2012

Under the Energy Performance of Buildings (England and Wales) Regulations 2012 landlords and businesses are required to make energy efficiency of buildings transparent by using an energy performance certificate (EPC), to show the energy rating of a building, when sold or rented out and recommendations on how to improve energy efficiency.

Failure to provide an EPC when required means a person may be liable to a civil penalty charge notice and enforcement action may still be taken up to six months after any failure has been corrected.

The Council has the power to ask the seller or landlord to provide them with a copy of the EPC for inspection. If requested, a copy of the EPC must be provided within seven days or the person to whom the request was made may be liable to a penalty charge notice for failing to comply. A copy of an EPC can be requested at any time up to six months after the last day for compliance with the duty to make it available.

A fixed penalty charge of £200 may be issued for failure to comply in the following circumstances:

- on sale or rent the seller or landlord failed to make a valid EPC available free of charge to the prospective buyer or tenant at the earliest opportunity or to the person who ultimately becomes the buyer or tenant;
- on marketing the seller or landlord did not commission an EPC before the building was put on the market or the person acting on their behalf (i.e. estate or letting agent) did not ensure that an EPC was commissioned for the building;
- the seller or landlord or a person acting on their behalf did not secure an EPC using all reasonable efforts within seven days of the building being put on the market. An EPC must be obtained 21 days after the initial seven day period; and
- the seller or landlord or a person acting on their behalf did not include the energy performance indicator in any advertisement of the sale or rental in commercial media.

If a penalty charge notice is issued but you believe it should not have been issued you can request a review from the local authority. If, after review, you are not satisfied with the outcome of the review you may within 28 days, beginning on the day after the notice is received from the local authority confirming the penalty, appeal to the county court.

A person with an interest in, or in occupation of, a building, must cooperate with any seller or landlord to enable them to comply with requirement to make an EPC available. They must also allow access to the building to any energy assessor appointed by the seller or landlord. The penalty for obstructing an enforcement officer or for imitating an enforcement officer is a fine not exceeding level 5 on the standard scale, upon summary conviction.

FIT AND PROPER PERSON DETERMINATION POLICY FOR CARAVAN SITE LICENSING

DETERMINATION POLICY

Introduction

Following a Government review of the Mobile Homes Act, 2013, the Government introduced a new regime under the Caravan Sites and Control of Development Act 1960 called the Fit and Proper Person Test (F&PP test). The regime sits within The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations, 2020. All protected residential sites which are operated on a commercial basis must have demonstrated that they are operated/managed by a F&PP.

The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020, require the manager of a site to be a Fit and Proper Person ("the Regulations"). Local authorities are accordingly required to introduce a fit and proper person test for mobile home site owners, or the person appointed to manage the site, unless they are eligible for an exemption under the Regulations[1].

A local authority must be satisfied that the site owner "*is a fit and proper person to manage the site"* or, if the owner does not manage the site, *"that a person appointed"* to do so by the site owner *"is a fit and proper person to do so"* or has, with the site owner's consent*, "appointed a person to manage the site*."

Where a site owner or their manager fails the fit and proper person test, and they are unable to identify and appoint a suitable alternative manager, who must pass the fit and proper person assessment, the local authority can instead appoint a person to manage the site, but only with the consent of the site owner.

Principally, the fit and proper person test applies to a "relevant protected site". A relevant protected site is a site, which requires a licence and which is not solely for

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[1] *i.e. it is a non-commercial, family occupied site under Regulation 3

holiday purposes or is otherwise not capable of being used all year round. The fit and proper person requirement will ensure that site owners, or their managers, have integrity and follow best practice. Additionally, it provides the safeguard that such individuals will not pose a risk to the welfare or safety of persons occupying mobile homes on the site i.e. park home owners.

The Evidence

When conducting the fit and proper person assessment, Coventry City Council (the Council) must consider the following points relevant to the application:

1. **Is the individual able to conduct effective management of the site**. This includes, but is not limited to, securing compliance with the site licence and the long-term maintenance of the site. It follows that, the Council must have regard to:
    (a) whether the person has a sufficient level of competence to manage the site;
    (b) the management structure and funding arrangements for the site;
    or
    (c) the proposed management structure and funding arrangements.

    Competence to manage the site

    This includes reviewing the competency of the appointed individual. The individual must have sufficient experience in site management, or have received sufficient training, and be fully aware of the relevant law as well as health and safety requirements.

    The management structure and funding arrangements for the site

    The Council will consider whether relevant management structures are in place and whether they are adequate to ensure effective management of the site. The Council may want to ensure that the applicant has a robust management plan, this should also be reviewed to ensure it addresses the following issues: the pitch fee payment, proximity of the manager to the site, manager's contact details for residents (including out of office and emergency contact details), the complaints procedure, maintenance, staffing, and refuse removal.

    It is advisable that the site is managed by an applicant based in the UK and a management structure would be unlikely to be suitable if the applicant is an individual, or a company (including its directors), which does not reside or have a permanent UK address. This is because there may complex issues as a result of this, such as needing the court's permission to serve a claim in a foreign country. Should this happen, counsel would be able to assist. The applicant's interest in the land will also have an important impact, as would their financial standing, management structures and competence, all of which could contribute to the overall assessment of their suitability to manage the site effectively.

The proposed management structure and funding arrangements in place for managing the site

The Council must consider whether the applicant has sufficient funds (or has access to sufficient funds) to manage the site and comply with licence obligations. Evidence of these funds should be readily available.

Another consideration is if funding is through a third party (including an associated company), the local authority should be wary if this is not disclosed as this will impact on the Council's ability to deem whether the application is financially viable.

2. **Personal information relating to the applicant concerned.** This would include a criminal record check and should include evidence that the applicant:
   (a) has not committed any offence involving fraud or other dishonesty, violence, firearms or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting notification requirements);
   (b) has not contravened any provision of the law relating to housing, caravan sites, mobile homes, public health, planning or environmental health or of landlord and tenant law;
   (c) has not contravened any provision of the Equality Act 2010 in, or in connection with, the carrying on of any business;
   (d) has not harassed any person in, or in connection with, the carrying on of any business;
   (e) is not or has not been within the past 10 years, personally insolvent;
   (f) is not or has not been within the past 10 years, disqualified from acting as a company director;
   (g) has the right to work in the United Kingdom; and
   (h) is a member of any redress scheme enabling complaints to be dealt with in connection with the management of the site (when this is in place).

   The Council has a duty to investigate any conduct which could amount to harassment and any evidence obtained should be reviewed to determine whether it is sufficient to be used to prosecute a site owner. The Council may also rely on convictions by the courts as evidence of harassing behaviour which would reduce the risk of the local authority being successfully challenged on any refusal to approve an applicant on this basis.

   The Council may have records of previous harassment complaints made against a site owner or their manager. Even if no action was taken on these complaints these will be taken into consideration in the fit and proper person determination. These complaints may identify further potential risks and can also provide an indication of potential underlying problems with the management of the site or the site owner's lack of experience/skills in dealing with customers. The Council may also wish to address any underlying issues by attaching conditions to the individual's entry on the register.

3. Upon rejection of a person's application by any other local authority this should be centrally recorded and include the details of the person involved and the reasons for the rejection.

Items to take into consideration

4. “The applicant” is defined at paragraph 2 of the Regulations as “the person who makes an application under regulation 6”.

5. The “relevant person” is also defined at paragraph 2 of the Regulations to mean “the subject of the fit and proper person assessment under Regulation 7”.

6. The conduct of any person associated or formerly associated with the relevant person (whether on a personal, work or other basis) is also an important factor to be considered in the fit and proper person assessment.

7. Site owners may be required to provide details of any current or former associates of the relevant person in the application form. Those associates will not include other current joint owners as that information would have already needed to have been provided in their own application forms.

8. It is not routinely required to provide information of all current or past associates of the site owner. However, prior to making any final decisions, the Council may consider the conduct of past and current associates relevant to that individual’s application. The site owner can be asked to provide additional information during the application process.

9. The Council is required to establish whether an individual is considered to be an associate of the relevant person and then whether their conduct is relevant to the application. A relevant associate could be defined as any individual who may have played a part, directly or indirectly, in a decision or action, which has had an impact on residents’ rights, or the quiet enjoyment of their homes.

10. The Regulations are drafted widely giving the opportunity for the Council to take into consideration other relevant matters. However, the Council is cognisant that poor management practices do not affect a person’s conduct, unless they are also a breach of the criminal or civil law. A person cannot be deemed unfit due to conduct, simply because of poor management, although that factor is highly relevant to determining any question of suitability or competence. However, all conduct is relevant in relation to the person’s fitness to hold a licence and/or manage the particular mobile home site.

11. The Council is able to decide the specific matters they deem relevant to the fit and proper person application. These matters could be in relation to current or previous issues, or events, that have occurred in relation to the park site or any other park site owned or managed by the site owner or site manager in another local authority area. Additionally, the site owner’s conduct regarding other business, outside of the park homes sector, can also have implications on the financial and management arrangements of the site in question. Any matters which the Council believes to be of relevance to the application should primarily focus on the relevant person’s conduct, competence and their suitability to manage the site.

12. The Council may request evidence to support any additional matters that they require to be taken into consideration for the application. This is to mitigate any risks should they face being challenged at a tribunal because of their final decision. The evidence could include previous tribunal and court decisions, documents or records from Companies House, or other public bodies or financial institutions. Allegations which have not been investigated or documented may be difficult to use as evidence to support the authority's decision.

Applications

The Regulations use various terms in the application process and these are outlined below:

As mentioned earlier "relevant person" is defined in paragraph 2 of the Regulations and is "the subject of the fit and proper person assessment under Regulation 7". Please note that this could be the site owner or person appointed to manage the site by the site owner**.**

"Relevant officer" is defined in paragraph 1 of Schedule 2 of the Regulations, where the applicant is a company, a relevant officer will be a director or other officer of the company; or, where the applicant is a partnership, a partner; or, where the applicant is a body corporate, a member of the management committee of that body.

"**Required Information**" is defined in paragraph 14 of Schedule 2 of the Regulations (even though the Regulations incorrectly state that this information is contained in paragraph 13) as: the person's name and business contact details; details of the person's role or proposed role in relation to the management of the site; where the person has not yet been appointed, the address, telephone number and email address (if any) at which the person may be contacted in respect of the application; details of each relevant protected site (other than that to which the registration application relates) — for which the person holds a licence issued under section 3 of the Caravan Sites and Control of Development Act 1960, or in which the person has a legal estate or equitable interest, or which the person manages.

The application for inclusion in the fit and proper register, must therefore include the following:

<u>The applicant and site details required</u>

13. Details of the site and the applicant:
    (1) the applicant's name and business contact details;
    (2) where the applicant is not an individual, the following information in relation to the individual completing the application on behalf of the applicant and each relevant officer:
        (i) the person's name;
        (ii) details of the person's role (if any) in relation to the management of the site.
    (3) the name and address of the site;
    (4) evidence of the applicant's legal estate or equitable interest in the site;

(5) confirmation that the applicant is the occupier within the meaning of section 1 of the Caravan Sites and Control of Development Act 1960; and
(6) The name and business contact details of any other person that has a legal estate or equitable interest in the site.

14. The name and address of each other relevant protected sites:
    (1) for which the applicant holds a licence issued under section 3 of the Caravan Sites and Control of Development Act 1960;
    (2) in which the applicant has a legal estate or equitable interest; and
    (3) that the applicant manages.

15. The applicant must clearly specify whether their application is made in respect of either the applicant, or site owner, or the person that the applicant or site owner has appointed to manage the site.

Information relating to the site manager

16. In circumstances where a "site manager" has been appointed to manage a site more information is needed. The person who is applying for the site manager to be registered as a fit and proper person (the relevant person) must provide the following information: the site manager's name and details of that person's role (if any) in relation to the management of the site.

    If the site manager has appointed or intends to appoint a further individual ("A"), 'Required Information' would also be needed from A. And where A is not a relevant officer of the site manager, the relevant officer to whom A is accountable. for the day-to-day management of the site, should be the one to provide the Required Information.

Additional information when the applicant is the relevant person and an individual

17. When the applicant is the relevant person, and is an individual, and the applicant has appointed, or intends to appoint, someone else ("B") to be responsible for the day-to-day management of the site, 'Required Information' would be needed from B. If B is not an individual but is, instead, for example, a company, and B has appointed an individual ("C") to do the-day-to day management, 'Required Information' would be needed from C. Where C is not a relevant officer of a company, the relevant officer to whom C is accountable for the day-to-day management of the site would also need to provide the Required Information.

Additional information where applicant is relevant person and not an individual

18. When the applicant is the relevant person but is not an individual and the applicant has appointed or intends to appoint someone else ("B") to be responsible for the day-to-day management of the site, Required Information would be needed from this person. If B is not a relevant officer of the applicant, the person to whom B is accountable for the day-to-day management of the site ("C") would also need to provide the Required Information. Where B itself is not an individual, the individual ("D") that B has appointed or intends to appoint to be responsible for the day-to-day management of the site would also need to

provide the Required Information. Where D is not a relevant officer of B, the relevant officer to whom D is accountable for the day-to-day management of the site would also need to provide the Required Information.

19. It can be seen from the above that the Regulations prohibit the operation of a relevant protected site unless the site owner or its site manager (whatever the management structure might be) has been assessed by the local authority as a fit and proper person to do so. This has been included to ensure that consistent standards are applied to companies and other organisations that are not individuals.

Criminal record certificate/s

20. Criminal Records Certificates must be issued under section 113A (1) of the Police Act 1997 and will be required where: (a) the relevant person is an individual and (b) for each individual in relation to whom the applicant is required to provide information for example, a site manager or individuals A, B, C or D as outlined above.

21. With reference to the above law, the Criminal record may be either basic or enhanced, the Council has determined that the certificate can be basic.

22. The certificate must have been issued no more than six months before the date of the application. It is incumbent upon the site owner to ensure that any certificates provided meet this requirement.

Declaration

A declaration made and signed by the "appropriate person", which means:

(a) where the applicant is a company, a director or other officer of the company;
(b) where the applicant is a partnership, one of the partners;
(c) where the applicant is a body corporate and the conduct of the management of the body is vested in its members, a member;
(d) where the applicant is not a body falling within (a) to (c) above, a member of the management committee;
(e) where the applicant is an individual, that individual.

23. Where the applicant is not the relevant person, the declaration must confirm that the applicant has made all reasonable enquires into the matters mentioned in paragraph 9 of the Regulations and considerations relevant to the fit and proper person assessment as set out below.

24. The declaration should also state that the information provided in the application is correct and complete to the best of the applicant's knowledge and belief.

Considerations relevant to fit and proper person assessment

25. Proper management of the site includes, but is not limited to, securing compliance with the site licence and the long-term maintenance of the site.

26. To be able to secure the proper management of the site, the Council must (amongst other things) have regard to whether the relevant person has a sufficient level of competence to manage the site and the management structure or proposed management structure and funding arrangements.

Decisions, notification and rights of appeal

27. The Council must make a decision on the application in a timely and practicable manner and either:
    (a) where the decision is to grant the application unconditionally and include the relevant person on the register for 5 years, serve a final decision notice on the applicant; or
    (b) otherwise, serve a preliminary decision notice on the applicant.

28. On receipt of an application the Council may:
    (a) grant the application unconditionally;
    (b) grant the application subject to conditions; or
    (c) reject the application.

Granting the application unconditionally

29. Where the Council is satisfied that the applicant meets the fit and proper person test unconditionally, they must include the applicant on the register for 5 years. The authority must issue a final decision notice to the applicant to inform them of its decision.

30. The final decision notice must clearly state:
    (a) the date the final decision notice is served;
    (b) the final decision;
    (c) the reasons for the decision;
    (d) when the decision is to take effect;
    (e) information about:
        (i) The right of appeal to the First Tier Tribunal; and
        (ii) The period within which an appeal may be made.

To include the applicant on the register subject to certain condition(s)

31. In some circumstances, the Council can specify that the individual for the fit and proper person test will only be successful if certain conditions are met. If these conditions are satisfied, the Council can grant an application subject to those condition(s). An application can also be granted for less than 5 years.

32. It may be the case that the Council decides to include the person on a register subject to condition(s), if it would only be satisfied that the person would meet the fit and proper requirement if the condition(s) were complied with. An applicant will be able to appeal against the decision to attach (or vary) any condition to an entry on the register.

33. Conditions will be clearly stated for the applicant's understanding and this will also allow for the Council to ensure that they are enforceable.

An example of the requirements are included in the Table 1 below.

Table 1

Specific	The specific condition/s a site owner is being requested to address.
Measurable	The conditions required and the outcome(s) expected.
Achievable	The applicant should be reasonably expected to be able to achieve the condition. For example, it may not be reasonable to expect a site owner of one small site to have the same resources to introduce the same procedures as a medium sized company.
Realistic	The applicant should have a clear understanding of how the required outcome can be reached and that there are no circumstances or factors which would make the achievement of the outcome impossible or unlikely.
Timebound	A clear timescale in which the task/action must be completed.

What can a condition relate to?

34. The fit and proper person test is aimed at ensuring that the person managing the site is competent and the conditions should relate directly to the person's ability to secure the proper management of the site.

35. Where a person has contravened legislation, or committed offences set out in paragraph 2 above, it is not recommended that conditions are set in relation to those matters. This is because such a condition would be unlikely to meet the tests set out above in paragraph 33. For example, if a person has committed fraud or violence, that specific incident cannot be reversed by requiring the person to perform a specific task.

36. Where the person has committed those listed offences or contravened legislation, these breaches should be considered, together with all the other information available, when reaching a preliminary decision.

37. An example of a condition could relate to the payment of an annual fee. A condition can also be set with respect to ensuring the relevant person has the ability to secure the proper management of the site. In summary, conditions can relate to any factors which are relevant to the person's competence to manage the site, the management structure, or funding arrangements for the site, an associated person's influence, and any other relevant factors.

38. **Example 1** - A local authority has evidence of a site owner's failure over a certain period of time to address residents' complaints. This is an example of poor management which could be resolved by the site owner implementing an adequate complaints procedure. A condition could be attached requiring the site owner to "*implement an effective and accessible three stage complaints process for residents by xx date and provide the LA with quarterly reports of complaints and outcomes, from that date and for the first year*".

If the condition is met within the specified time frame, the local authority can record this in the register. If, at a future date, it is found that the site owner failed to implement a complaints procedure, a further opportunity to comply may be given and this could include a new condition of the site owner providing quarterly reports of complaints and outcomes for each year. The site owner could also be expected to complete a relevant "Continuous Professional development Customer Service/Dealing with complaints" course by a certain period. However, should the local authority consider the actions as unlikely to achieve the desired outcome, the site owner could be removed from the register.

39. **Example 2** – If, when considering an application, certain documents or information are unavailable to the applicant, because of delays from third parties, the local authority may wish to attach a condition to the entry on the register that the site owner "is to provide the authority by registered post, with the original xx document by xx date".

40. **Example 3** - An associated person has been visiting the park and, through their action 'X', has caused distress to the residents impacting their well-being and security. A condition could be attached to the register requiring the site owner to put measure(s) in place by xxx date preventing the associated person, or any other person, from carrying out action X on the site.

Decisions not to include the applicant on the register

41. Should the Council determine that the applicant does not meet the requirements, and attaching conditions would not be appropriate, it can refuse to grant the application.

42. Where the Council makes a decision to include the applicant on the register, subject to conditions, or not to include the applicant on the register, a preliminary decision notice to the applicant must be issued.

43. The preliminary decision notice must clearly state:
    (a) the date the preliminary decision notice is served;
    (b) the preliminary decision;
    (c) the reasons for it;
    (d) the date it is proposed that the final decision will have effect;
    (e) information about the right to make written representations
    (f) where the preliminary decision is to refuse the application, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of the regulations; and
    (g) where the preliminary decision is to grant the application subject to conditions, the consequences of failing to comply with any conditions.

Right to make a representation

44. An applicant who receives a preliminary decision notice will have 28 days in which to make representations to the local authority. The 28-day period begins with the day after the day on which the notice was served.

45. The Council is obliged to consider and take any representations it receives into account before making a final decision.

Final decision notice

46. The Council must, as soon as reasonably practicable, after the end of the period allowed for making representations, make a final decision and serve the decision notice on the applicant.

47. The final decision notice must set out:
    (a) the date the final decision notice is served;
    (b) the final decision;
    (c) the reasons for it;
    (d) when the decision is to take effect;
    (e) information about the right of appeal and the period within which an appeal may be made;
    (f) where the decision is to refuse the application, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of the regulations; and
    (g) where the decision is to grant the application subject to conditions, the consequences of failing to comply with any condition.

Appeals

48. The applicant can decide to appeal the decision by making an application to the First-tier Tribunal (Property Chamber) ("the tribunal") within specific timeframes set by the tribunal. The applicant is permitted to appeal against any decisions served by the Council. These could include:

    (a) including the relevant person on the register for an effective period of less than 5 years;
    (b) including the relevant person on the register subject to conditions; and
    (c) rejecting the application.

49. Where an applicant accepts the Council's decision not to include the person originally stated in the application on the register, they will be required to seek alternative management arrangements to comply with the fit and proper person requirement. If they fail to do so they will be committing an offence.

50. An appellant will not be able to claim compensation for losses incurred pending the outcome of an appeal.

Withdrawal or amendment of notice

51. There may be circumstances where the Council may decide not to continue or to withdraw a previously agreed action such as after serving:
    (a) a preliminary decision notice but before service of the final decision notice;
    (b) a final decision notice but before the decision to which it relates takes effect; or
    (c) a notice of proposed action but before the proposed action is taken.

52. To withdraw or amend a notice, the Council must serve notice to the person on whom the original notice was served.

53. There are no requirements for notices to contain specific information, however, it is recommended that a withdrawal or amendment notice should state:
    (a)that it is withdrawing/amending the original notice (a copy of the original notice should be attached for reference);
    (b) the reasons for withdrawing the notice;
    (c) the date it takes effect; and,
    (d) the implications of the decisions in relation to the person's entry on the register.

Removal from the register

54. If, after a person is included in the register, and new evidence relevant to the person's inclusion becomes available the Council may decide to:
    (a) remove the person from the register;
    (b) impose a condition on the inclusion of the person in the register (whether or not there are conditions already imposed;
    (c) vary a condition; or
    (d) remove a condition.

55. The Council uses its judgement when determining whether to review an entry and consider any subsequent actions are required. It is recommended that any such decision should be related to the person being a fit and proper person rather than, for example, site licensing issues which are governed separately. If the Council decides to take any of the actions listed in paragraph 51 (a) to (c) above, it must serve a notice of any proposed action on the occupier.

56. The notice of proposed action must clearly state:
    (a) the date the notice of proposed action is served;
    (b) the action the local authority proposes to take;
    (c) the reasons for it;
    (d) the date it is proposed that the local authority will take the action;
    (e) information about the right to make written representations;
    (f) where the proposed action requires the removal of a person from the register, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of the regulations; and
    (g) where the proposed action is to impose a condition on the inclusion of a person in the register or to vary a condition, the consequences of failing to comply with said conditions.

57. A notice of proposed action is not required if the Council decides to remove a condition attached to an entry. A removal of a condition is viewed widely as being a positive step, which is unlikely to be opposed. It is for that reason that a notice of proposed action is not required. As good practice though, it is recommended that local authorities make the site owner or their manager aware of the decision in writing and also ensure the register is updated.

Notice of action taken

58. Where a notice of proposed action is given, the occupier will have 28 days, starting from the day after the notice is served, in which to make representations.

59. The Council must, as soon as reasonably practicable after the end of the 28-day period, decide whether to carry out the proposed action.

60. Where the Council decides to take the action, it must serve a further notice on the occupier, indicating the action that has been taken, within the period of 5 working days beginning with the day after the day on which the action was taken.

61. The notice of action must set out—
    (a) the date the notice of action is served;
    (b) the fact that they have taken the action;
    (c) the reasons for doing so;
    (d) the date the action was taken;
    (e) information about the right of appeal and the period within which an appeal may be made;
    (f) where the action is to remove a person from the register, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of regulations; and
    (g) where the action is to impose a condition on the inclusion of a person in the register or to vary a condition, the consequences of failing to comply with any condition.

Offences

62. There are 3 offences which can occur within the Regulations. They are as follows:

- Operating a site in contravention of the fit and proper person regulations - The site owner will have certain defences under the Regulations in any proceedings brought against them.

- Withholding information or including false or misleading information in the registration application - The site owner will not have any defences under the Regulations in any proceedings brought against them for this offence.

- Failing to comply with a specified condition - The site owner will have certain defences under the Regulations in any proceedings brought against them.

63. The Council is responsible for enforcing the Regulations. A site owner found guilty of any of the above offences will be liable on summary conviction to a level 5 (unlimited) fine.

Defences

64. One defence is available to a site owner who has inherited a site and would be found to have a reasonable excuse for failing to make an application within the relevant periods as set out below.

Relevant periods in specific circumstances

65. The below table outlines limited circumstances where a site owner may have a defence.

Row	Circumstance	Relevant period for making an application in the circumstance
1	The occupier held a site licence immediately before the day on which regulation 4 (operating a site without being a fit and proper person) came into force on 1 October 2021.	From 1st July 2021 before 1 October 2021, the day on which regulation 4 came into force.
2	The period of a person's inclusion in the register in relation to the site has come to an end other than as a result of action by the local authority under regulation 8(1)(a)(removal from the fit and proper register after new relevant evidence becomes available).	Not less than two months before the end of the period of the person's inclusion in the register.
3	At the time that the occupier became entitled to within the period of 3 months possession of the land it was in use as a relevant protected site; and within the period of 28 days beginning with the day after the day on which the person became the occupier of the land the occupier notifies the relevant local authority of its intention to make an application under regulation 6 (application for inclusion in the register).	Beginning with the day after the day on which the person became the occupier of the land.
4	At the time that the occupier became entitled to possession of the land it was in use as a relevant protected site; and the occupier does not give the notification referred to in row 3 above.	Within the period of 28 days beginning with the day after the day on which the person became the occupier of the land.
5	A person appointed to manage the site no longer does so; and within the period of 28 days beginning with the day after the relevant day the occupier notifies the relevant local authority that the person no longer does so.	Within the period of 3 months beginning with the day after the relevant day.
6	A person appointed to manage the site no longer does so; and the occupier does not give the notification referred to in row 5 above.	within the period of 28 days beginning with the day after the relevant day
7	The breach of regulation 4(1) (operating a site without being a fit and proper person) arises because the local authority has removed a person from the register; and within the period of 28 days beginning with the relevant day in relation to the local authority's decision the occupier notifies the	Within the period of 3 months beginning with the relevant day.

	relevant local authority of its intention to make a new application under regulation 6 (application for inclusion in the register) in relation to the site	
8	The breach of regulation 4(1) arises because the local authority has removed a person from the register; and the occupier does not give the notification referred to in row 7 above.	Within the period of 28 days beginning with the relevant day.
9	The breach of regulation 4(1) (operating a site without being a fit and proper person) arises because the local authority has rejected an in-time application; and within the period of 28 days beginning with the relevant day in relation to the rejected application the occupier notifies the relevant local authority of its intention to make a new application under regulation 6.	Within the period of 3 months beginning with the relevant day.
10	The breach of regulation 4(1) (operating a site without being a fit and proper person) arises because the local authority has rejected an in-time application; and the occupier does not give the notification referred to in row 9 above.	Within the period of 28 days beginning with the relevant day.

The Fit and Proper Persons Register

66. The Council maintains a register of persons who they are satisfied are fit and proper persons to manage a site in their area. This register is open to inspection by the public during normal office hours. This register is also published online.

67. The register provides a record of the outcome (as discussed above) of the fit and proper person tests the Council has carried out for sites. The register includes the following:

(a) the name and business contact details of the person;
(b) the name and address of the relevant protected site to which the application relates;
(c) the status of the person (site owner or manager of the site);
(d) the dates of the first and last day of the period for which the person's inclusion in the register has effect;
(e) whether any condition is attached to the person's inclusion in the register; and
(f) where any condition is attached to the person's inclusion in the register—
(i) the number of any such conditions;
(ii) the dates of the first and last day of the period for which any such condition applies (if applicable); and
(iii) the date any condition is varied or satisfied (if applicable).

68. Where a person has met the fit and proper person test, the register will give details of that person and of the site, including decisions made on how long a person's inclusion is for, up to a maximum of 5 years.

69. In order to comply with the fit and proper person requirement a site owner must at least two months before the period (e.g. 5 years) comes to an end submit a new application for the person (or alternative) to be included in the register.

70. Where there are rejected applications, the following information must be included in the register:

(a) the name and address of the site to which the application relates;
(b) that an application in respect of the site has been rejected; and
(c) the date on which the application was rejected.

Details of the rejected application will remain on the register until a successful fit and proper person application is made in respect of the owner or manager of the site.

It must be noted that the name of the rejected applicant will not be included on the register. Local authorities will however be able to consider requests for further information about the entry on the register, for example, the details of the specific conditions attached and any additional information, on a case by case basis and in accordance with data protection legislation.

71. Where the local authority has, with the site owner's consent, appointed a person to manage the site, the local authority must include the following information:

(a) the name and business contact details of the person;
(b) the name and address of the site which the person has been appointed to manage;
(c) the status of the person;
(d) the dates of the first and last day of the period for which the person's inclusion in the register has effect;
(e) whether any condition is attached to the person's inclusion in the register; and
(f) where any condition is attached to the person's inclusion in the register—
(i) the number of any such conditions;
(ii) the dates of the first and last day of the period for which any such condition applies (if applicable); and
(iii) the date any condition is varied or satisfied (if applicable).

Policy on Private Sector Housing Enforcement

Appendix 7 – Database of Rogue Landlord

In deciding the period of time for which the entry will be maintained i.e. remain on the rogue landlord database, the Local Housing Authority will have regard to the following factors:

(a) Severity of the offence
The severity of the offence and related factors, such as whether there have been several offences committed over a period of time, should be considered. Where an offence is particularly serious and/or where there have been several previous offences; and/or the offence(s) have been committed over a period of time, then the decision notice should specify a longer period of time. Where one or more of these factors are absent, it may be appropriate to specify a shorter period. The local housing authority will have due regard to the guidance on civil penalties as an alternative to prosecution when assessing the level of harm caused by such offending.

(b) Culpability and serial offending
The local housing authority will consider whether the offender has any previous convictions and/or financial penalties which have been issued. If an offender has previous convictions for Banning Order offences and/or financial penalties issued against them, it is likely that the period specified in the decision notice will be increased to reflect a pattern of offending. The local housing authority will have due regard to the guidance on civil penalties as an alternative to prosecution when assessing the level of culpability to be applied to such offending.

(c) Deter the offender from repeating the offence
The local housing authority will consider whether the period calculated is sufficient to deter the offender from committing further offences. If the local housing authority does not think the period is sufficient, the period may be increased to ensure deterrence is met.

(d) Mitigating Factors
The local housing authority may reduce the time if mitigating factors are prevalent Examples of mitigating factors may include genuine mistake, health issues or a recent bereavement that has contributed to the commission of the offence.

(e) Aggravating Factors
The local housing authority will give due consideration to the Sentencing Council guidelines and may increase the time if it is felt appropriate to do so given the circumstances of the offending.

When the Council has made the decision to exercise its powers under the Act to make an entry on the database, it will use the following steps and considerations to determine the length of time that the subject should be added to the database:

1. Assess the effect of a) above – the severity of the offence and b) above - the culpability and serial offending using the matrix below.

		Severity of offence.		
		Low	Medium	High
Culpability and serial offending	Very High	10yrs	10yrs	15yrs or more
	High	5yrs	10yrs	10yrs
	Medium	2yrs	5yrs	10yrs
	Low	2yrs	2yrs	5yrs

2. Apply any mitigation (reduction) presented in relation to the initial calculation and recalculate as necessary.

The Council may reduce the time if mitigating factors are prevalent.
Examples of mitigating factors may include genuine mistake, health issues or a recent bereavement that has contributed to the commission of the offence:

- Very strong mitigating factors, e.g. unavoidable, personal health, bereavement
- Reasonable mitigating factors, however little done to overcome these to prevent offence from
  Occurring
- No mitigating factors

3. Apply any aggravating factors - the Council may increase the time if falsified and/or brazen mitigating factors exist, for example, lack of cooperation with the Council, persistent offending or a clear disregard for the legal responsibilities.

The calculated timescale of an entry on the database cannot be less than 2 years as the minimum timescale for an entry on the database for a person convicted of a banning order offence is two years beginning on the day that the entry is made. The calculated timescale for the duration of a Banning Order cannot be less than 12 months.

The matrix allows for a banning of 15 years or more to be considered. In the very worst cases Coventry City Council may apply for an indefinite ban.

This Council must remove an entry it made if all the convictions on which the entry was based have been overturned on appeal or if or ordered to do so by the First Tier Tribunal.

In some circumstances the Council has the power to remove or vary an entry on the database including reducing the period for which the entry it made must be maintained. In those circumstances, the Council will consider the same factors set out in this policy to be used, when making the decision whether or not to make an entry on the database and the same factors of how long an entry shall remain on the database.

The procedures the Council must follow are set out in the Act. There are legal rights of appeal set out to the First Tier Tribunal in relation to decisions the Council makes to use its powers in relation to the database.

Statute	Provision	Offence
Protection of Eviction Act 1977	Section 1(2), (3) and (3A)	Unlawful eviction and harassment of occupier
Criminal Law Act 1977	Section 6(1)	Violence for securing entry
Housing Act 2004	Section 30(1)	Failing to comply with an improvement notice
	Section 32(1)	Failing to comply with a prohibition order
	Section 72(1), (2) and (3)	Offences in relation to licensing of Houses in Multiple Occupation
	Section 95(1) and (2)	Offences in relation to licensing of houses under Part 3
	Section 139(7)	Contravention of an overcrowding notice
	Section 234(3)	Failure to comply with management regulations in respect of Houses in Multiple Occupation
	Section 238(1)	False or misleading information
Regulatory Reform (Fire Safety) Act 2005	Article 32(1) and (2)	Fire safety offences
Health and Safety Act 1974	Section 33(1)(c) where a person contravenes any requirement specified in regulation 36 of the Gas Safety (Installation and Use) Regulations 1998 (6)	Gas safety offences - duties on landlords
Immigration Act 2014	Section 33A (1) and (10)	Residential tenancies – landlord offences
	Section 33B (2) and (4)	Residential tenancies – agent offences
Fraud Act 2006	Section 1(1)	Fraud
	Section 6(1)	Possession etc. of articles for use in frauds
	Section 7(1)	Making or supplying articles for use in frauds
	Section 9(1)	Participating in fraudulent business carried on by sole trader etc.
	Section 11(1)	Obtaining services dishonestly
	Section 12(2)	Liability of company officers for offences by company