

# Private Sector Housing Enforcement Policy



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SOUTH  
KESTEVEN  
DISTRICT  
COUNCIL

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## **1. Introduction**

- 1.1 The private rented sector is growing rapidly and although the majority of landlords provide well managed and safe homes, the Council recognises that there are some landlords who neglect their responsibilities and put their tenants at risk due to the poor condition of their homes.
- 1.2 This document is intended to provide guidance for officers, landlords, letting agents and residents in respect of our approach to improving standards in private sector housing and dealing with enforcement. It should be read in conjunction with the Council's Environmental Services and Corporate Enforcement Policies which set out our commitment to the Principles of Good Enforcement and the Regulators Code.
- 1.3 Throughout this document the term "landlord" also includes "property agents" and "letting agents" unless specified otherwise.

## **2. Approach to Enforcement**

- 2.1 The Council recognises that most landlords and individuals wish to comply with the law and will seek to assist them in doing so by providing assistance to enable them to comply with legal requirements. Reasonable efforts will be made to ensure compliance without the need for formal action and in most circumstances landlords will first be given the opportunity to investigate and resolve any issues at their properties. However, formal action will be considered where necessary, for example; where there is a serious or imminent risk to public health, a history of non-compliance or where landlords have failed to take action within informally agreed timescales.
- 2.2 The Council expects landlords to have a good understanding of the standards required in privately rented accommodation and refer to published guidance. The Council works closely with DASH Services (Decent and Safe Homes) to provide the Lincolnshire Landlord Accreditation Scheme to encourage and promote good property standards and management practices in the private rented sector.
- 2.3 The Private Sector Housing team will respond to complaints from tenants and other residents about the condition of private housing, prioritising them on the basis of an assessment of risk. Unless there appears to be an imminent risk, tenants are encouraged to contact their landlord initially to try to resolve the matter themselves in the first instance.
- 2.4 The Council may proactively target enforcement activity where intelligence suggests that this may be necessary, or to support the Council's wider priorities. This may include, but is not restricted to; houses in multiple occupation, properties with poor energy efficiency ratings, poorly built/converted properties and area based interventions.

### 3. Housing Health and Safety Rating System (HHSRS)

- 3.1 The assessment of housing condition will be carried out using the Housing Health and Safety Rating System as set out in the Housing Act 2004. This is a risk based evaluation tool used to identify and protect against risks and hazards to health and safety from deficiencies identified in dwellings. The HHSRS is based on statistical evidence relating to the likelihood and outcome of the occurrence of 29 different hazards. The assessment method results in a score for each relevant hazard which falls within one of two categories:
- **Category 1 hazards** – these represent a serious hazard to health and the Council has a duty to take appropriate action
  - **Category 2 hazards** – these represent a lesser hazard to health and the Council has a discretionary power to take action.
- 3.2 The Council will not normally take enforcement action to remedy (or reduce) minor or moderate Category 2 hazards. However, where any significant Category 2 hazards are identified, a number of Category 2 hazards exist which in combination present a greater cumulative risk, or where the vulnerability of the occupants is a particular factor, appropriate formal action to secure improvements will be considered.
- 3.3 The HHSRS can be used to assess hazards across all tenures. However, the Council will not normally require owner occupiers to undertake works to their own home unless there is an imminent risk to the occupier or deficiencies at the property are adversely affecting another property or person.

### 4. Overcrowding

- 4.1 The Housing Act 2004 introduced “crowding and space” as a hazard under the HHSRS, however, the Housing Act 1985 was not repealed and as such there are two provisions in force. The standards in the Housing Act 1985 are prescriptive based on the number and size of rooms in a property, often including living and dining rooms as being suitable sleeping rooms. It takes no account of remaining living space.
- 4.2 The Council will follow the Government’s HHSRS enforcement guidance which advises councils to use the HHSRS in respect of overcrowding. The Council will have regard to guidance in considering appropriate action on a case by case basis.
- 4.3 Where enforcement action may result in a family having to leave their home the Council will work with all parties to mitigate the impact.

## 5. Summary of Enforcement Options

- 5.1 A range of enforcement powers are available under the Housing Act 2004. In determining the most appropriate course of action, the Council will have regard to relevant statutory guidance, approved codes of practice and relevant industry or good practice guides.
- 5.2 In cases where officers visit an address and only very minor deficiencies are identified verbal advice may be deemed sufficient. Where written advice is necessary a clear distinction will be made between what is required by law and what is recommended or good practice. Where there are legal requirements to be met, details of the necessary works and timescales for their completion will be detailed.
- 5.3 In the event that a landlord fails to resolve hazards informally within a reasonable timescale, the Council may take one or more of the following courses of action under the Housing Act 2004:
- serve a **Hazard Awareness Notice** in accordance with section 28 and/or section 29, drawing attention to a less serious hazard where remedial action is desired, but is advisory in nature
  - serve an **Improvement Notice** in accordance with section 11 and/or section 12, requiring remedial works to be undertaken within a specified timescale
  - make a **Prohibition Order** in accordance with section 20 and/or section 21, preventing the use of the whole or part of a dwelling or restricting the number or type of permitted occupants
  - take **Emergency Remedial Action** under section 40, in respect of Category 1 hazards only. A discretionary power for the Council to take remedial action to remove hazards which present an imminent risk of serious harm to occupiers
  - serve an **Emergency Prohibition Order** under section 43, in respect of Category 1 hazards only.
- 5.4 All or part of the actions required by Improvement Notices and Prohibition Orders may be suspended until a specified action or event triggers the end of the suspension, for example the current occupier is not identified as vulnerable to the particular hazard. Suspended notices will be reviewed at least every 12 months.
- 5.5 The following courses of action are also available under the Housing Act 1985:
- make a **Demolition Order** in accordance with section 265, in respect of Category 1 hazards only
  - declare a **Clearance Area** in accordance with section 289, in respect of Category 1 hazards only

## **6. Charging for Enforcement**

- 6.1 The Council will make a reasonable charge in accordance with section 49 of the Housing Act 2004 to recover expenses incurred in taking enforcement action.
- 6.2 Enforcement costs will be charged at an hourly rate or part of, based on the actual cost incurred by the Council to achieve full cost recovery. These charges will be reviewed annually and published in the Councils Fees and Charges. Additional costs may also be payable if specialist advice is sought, for example structural, electrical or gas safety reports.
- 6.3 From the time the “Demand for Payment” becomes operative, the sum recoverable by the Council will be registered as a local land charge against the premises concerned until it is recovered in full.
- 6.4 Where Suspended Notices are served a charge will be made for the annual review.

## **7. Non Compliance with Notices**

- 7.1 When a Notice is considered to be complied with the Council will inform the person named on the Notice. Where a Notice is not complied with by the expiry date, the following courses of action will be considered on a case by case basis and in accordance with the Council’s Environmental Services and Corporate Enforcement Policies:
- work in Default (where applicable)
  - civil penalty (available for certain housing offences)
  - simple caution
  - prosecution
- 7.2 In extenuating circumstances additional time for compliance with a Notice may be granted and must be formally agreed with the Team Leader or Head of Service.

## **8. Work in Default**

- 8.1 In some circumstances the Council will consider arranging for the necessary work to comply with an Improvement Notice to be carried out (work in default) and re-charge all costs to the person named on the Notice.
- 8.2 As permitted under Schedule 3(10) of the Housing Act 2004, expenses incurred by the Council in undertaking works in default of a Notice will carry interest at a rate of 4%. The interest rate will commence from the date the “Demand for Payment” becomes operative until the payment of all sums due. The Council will take steps to recover debts incurred through the civil debt recovery process.

8.3 Work in default may be undertaken in addition to other proceedings taken for non-compliance with a Notice.

## 9. Civil Penalties

9.1 The Housing and Planning Act 2016 amends the Housing Act 2004, allowing the Council to impose civil penalties of up to £30,000 as an alternative to prosecution in respect of certain Housing Act 2004 offences. These are:

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

9.2 The same criminal standard of proof is required for a civil penalty as for prosecution. Before a civil penalty is issued the Council must satisfy itself that if the case were to be prosecuted in the magistrates' court, there would be a realistic prospect of conviction and demonstrate beyond reasonable doubt that the offence has been committed. In determining this the Council will have regard to the South Kesteven District Council Corporate Enforcement Policy and the Crown Prosecution Service Code for Crown Prosecutors.

9.3 Statutory Guidance issued under Schedule 9 of the Housing and Planning Act 2016 indicates that the maximum amount (£30,000) should be reserved for the very worst offenders and recommends that the amount levied in a particular case should reflect the severity of the offence and take into account the landlord's previous record of offending.

9.4 The Council will have regard to statutory guidance in determining the appropriate level of penalty to be imposed in a particular case, taking account of the following factors detailed in the statutory guidance:

- **Severity of the offence.** *The more serious the offence, the higher the penalty*
- **Culpability and track record.** *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*
- **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*
- **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*

- ***Deter the offender from repeating the offence.*** *The ultimate goal is to prevent any further offending and help ensure the landlord fully complies with all of their legal responsibilities in the future. The level of penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence*
- ***Deter others from committing similar offences.*** *While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of the deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the civil penalty will be set at a high enough level to both punish the offender and deter repeat offending*
- ***Remove any financial benefit the offender may have obtained as a result of committing the offence.*** *The guiding principle here should be to ensure that the offender does not benefit as a result of committing the offence, i.e. it should not be cheaper to offend than to ensure the property is well maintained and properly managed.*

9.5 The Council will have regard to section 143 (1) of the Criminal Justice Act 2003, and Pre-sentencing guidelines which although aimed at Magistrates' Courts follow the same principles and state that "when considering the seriousness of any offence, the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause, or might foreseeably have caused".

9.6 Where the Council is satisfied that more than one offence has been committed concurrently in respect of the same property multiple civil penalty notices may be issued e.g. multiple breaches of HMO Regulations. Where an offender is issued with more than one civil penalty, the Council will consider the Sentencing Council definitive guideline on Offences Taken into Consideration and Totality.

9.7 The matrix and guidance in Appendix A have been developed to assist Officers in determining the appropriate level of penalty in each case and ensure that enforcement is carried out in a consistent and proportionate way.

## 10. Banning Orders

10.1 The Housing and Planning Act 2016 provides powers which permit local housing authorities to seek banning orders for offences committed on or after 6 April 2018, where landlords or property agents have been convicted of a banning order offence. These include relevant housing offences, immigration offences and serious criminal offences as specified in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017.

- 10.2 A banning order is made by a First-tier Tribunal and can ban a landlord or property agent from letting housing or engaging in property letting or management work for at least 12 months. They would also be unable to hold a licence for a House in Multiple Occupation (HMO) and their property may also be subject to a Management Order.
- 10.3 The Council will consider applying for a banning order for all relevant offences, taking account of the following factors:
- the seriousness of the offence
  - any previous convictions for other banning order offences
  - whether the person is or has been included on the database of rogue landlords
  - the likely effect of the banning order on the person and anyone else that might be affected by the order
- 10.4 A person who breaches a banning order commits an offence. Upon summary conviction the Court can impose an unlimited fine or imprisonment not exceeding 51 weeks or both. As an alternative the Council can impose a civil penalty.
- 10.5 As banning orders are used for what are recognised as the most serious offences, where the Council is satisfied beyond reasonable doubt that the person has breached the banning order and it is determined that a civil penalty would be appropriate in respect of the breach, this will be at the maximum level of £30,000, unless there are extenuating circumstances that deem the maximum penalty to be inappropriate.

## **11. Database of Rogue Landlords and Property Agents**

- 11.1 The national database of rogue landlords and property agents allows local housing authorities in England to make and view entries made by other local housing authorities.
- 11.2 The Council has a duty to make an entry on the register where a banning order has been made. The Council has discretion to make an entry in respect of a person who has, at least twice within a period of 12 months, received a financial penalty in respect of a banning order offence committed at a time when the person was a residential landlord or a property agent.
- 11.3 The Council will have regard to the statutory guidance made under Section 30(7) of the Housing and Planning Act 2016 in deciding whether to make an entry under section 30 (discretionary entries), and the specified period for which the entry will be maintained.

## **12. Rent Repayment Orders**

- 12.1 Where a person has committed, is convicted of or has been subject to a successful civil penalty for a relevant offence for the purposes of Chapter 4 of the Housing and

Planning Act 2016, the local housing authority must consider applying to the First-tier Tribunal for a rent repayment order.

12.2 The offences for which a rent repayment order may be applied are:

- failure to comply with an Improvement Notice
- failure to comply with a Prohibition Order
- operating an unlicensed House in Multiple Occupation
- being in breach of a Banning Order
- using violence to secure entry to a property
- illegal eviction or harassment of occupiers

12.3 If an order is granted and the tenant paid the rent themselves, the rent must be repaid to the tenant. If rent was paid through housing benefit or the housing element of universal credit, it must be repaid to the local housing authority. If there are elements of both it should be repaid on an equivalent basis. Where a person fails to pay a rent repayment order in respect of housing benefit or universal credit, the Council will seek to recover the debt.

12.4 While there is no statutory obligation on local housing authorities to support a claim by a tenant for a rent repayment order, the Council may provide guidance where a tenant has paid the rent themselves.

12.5 In considering whether to make an application in respect of individual cases the Council will have regard to the statutory guidance issued under Section 41 of the Housing and Planning Act 2016.

### **13. Energy Efficiency – Private Rented Property Minimum Standard**

13.1 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 set out the minimum level of energy efficiency for private rented property. The minimum is currently set at an Energy Performance Certificate (EPC) rating of band E.

13.2 The Council will have regard to the Guidance for landlords and local authorities on the minimum level of energy efficiency required to let domestic property issued by the Department for Business, Energy and Industrial Strategy in the application of this legislation.

13.3 The minimum standard applies to domestic privately rented properties which are let under certain types of tenancy and which are legally required to have an EPC as described in the Regulations.

13.4 Subject to certain exclusions and exemptions the prohibition on letting sub-standard property takes effect as follows:

- from 1 April 2018, landlords of relevant domestic private rented properties may not grant a tenancy to new or existing tenants if their property has an EPC rating of Band F or G (as shown on a valid Energy Performance Certificate for the property);
  - from 1 April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating of band F or G (as shown on a valid Energy Performance Certificate for the property)
- 13.5 Where a landlord wishes to continue letting property which is currently sub-standard, they will need to ensure that energy efficiency improvements are made which raise the EPC rating to a minimum of E.
- 13.6 In certain circumstances as defined in the Regulations, landlords may be able to claim an exemption from the prohibition on letting sub-standard property. Where a valid exemption applies, landlords must register the exemption on the national PRS Exemptions Register accessed via the gov.uk website. Most exemptions last for 5 years, but do not pass to a new owner or landlord on sale or transfer of the property. The new owner will need to either improve the property to the minimum standard, or register an exemption themselves, where one applies, if they wish to continue to let the property.
- 13.7 The Council will use the information contained in the PRS Exemptions Register to check compliance with the Regulations. Where it is suspected that a landlord may be in breach of the prohibition on letting sub-standard property, the Council may serve a Compliance Notice requesting information from the landlord to decide whether that landlord has in fact breached the prohibition.
- 13.8 The Council will impose a financial penalty at the maximum level permitted by the Regulations and will also impose the publication penalty, where 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 April 2020), or
  - in breach of the requirement to comply with a Compliance Notice, or
  - has uploaded false or misleading information to the Exemptions Register.
- 13.9 The maximum penalties are currently as follows:
- £2,000 for renting out a sub-standard property for less than 3 months
  - £4,000 for renting out a sub-standard property for 3 months or more
  - £1,000 for providing false or misleading information on the PRS Exemptions Register
  - £2,000 for failing to comply with a compliance notice.

Where penalties are imposed under more than one of the above, the total penalty may not exceed £5,000. This applies per property and per breach.

- 13.10 A publication penalty means that some details of the landlord's breach will be published on a publicly accessible part of the PRS Exemptions Register, where it will be available to view for 12 months.
- 13.11 As a penalty may be served up to 18 months after the suspected breach, a person may be served with a penalty notice after they have ceased to be the landlord of a property.

## **14. Smoke and Carbon Monoxide Alarms**

- 14.1 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 require private sector landlords to have at least one smoke alarm installed on every storey of their properties 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.
- 14.2 Carbon monoxide alarms are only required in rooms containing a solid fuel burning appliance (i.e. rooms containing an open fire, log burning stove, etc.). However, as gas appliances can emit carbon monoxide, the Council would expect and encourage reputable landlords to ensure that working carbon monoxide alarms are installed in rooms with these appliances.
- 14.3 Where a landlord has not installed the required alarms a remedial notice will be issued requiring a landlord to fit and/or test the alarms within 28 days. If the landlord fails to comply with the notice, the Council will, if the occupier consents, arrange for the alarms to be fitted and/or tested. A civil penalty charge will be levied against landlords who fail to comply.
- 14.4 The Regulations require the Council to prepare and publish a statement of principles which it proposes to follow in determining the amount of penalty charge. This is detailed in Appendix 2 of this policy.

## **15. Letting Agents and Property Managers Redress Scheme**

- 15.1 All letting agents and property managers are required to join one of two Government authorised consumer redress schemes. The purpose of this is to give tenants and landlords an escalated complaints procedure if they are unhappy with how their complaint has been dealt with by an agent. The schemes are:
- Property Redress Scheme
  - The Property Ombudsman
- 15.2 Where the Council is satisfied that on the balance of probability, someone is involved in letting or management work and is required to be a member of a scheme and is not, it will impose a financial penalty. The maximum penalty allowed by legislation is £5,000, this will be considered the norm with a lower penalty only being considered if

the Council is satisfied that there are extenuating circumstances on a case by case basis. Further penalties may be imposed if the agent or manager continues to fail to join a scheme. There is no limit on the number of penalties that may be imposed.

## **16. Houses in Multiple Occupation (HMOs)**

16.1 The basic definition of a house in multiple occupation (HMO) is a house or flat where both of the following apply:

- at least three tenants live there, forming more than 1 household
- facilities such as the toilet, bathroom or kitchen are shared with other tenants.

A 'household' is either a single person or members of the same family who live together.

16.2 Houses which have been converted into self-contained flats and do not meet the requirements of the 1991 Building Regulations and at least one third of the flats are occupied under short tenancies are also considered to be HMOs.

16.3 All HMOs are subject to Management Regulations and will be inspected periodically according to risk. Factors influencing the frequency of inspection include; the property size, condition, number of occupants, amenities, previous enforcement history and confidence in management. Some HMOs will require a mandatory licence and may be inspected at any time to ensure licence conditions are met.

16.4 From 1 October 2018, the scope of mandatory HMO licensing was extended to include all properties which are occupied by 5 or more persons in 2 or more households that share amenities such as bathrooms, toilets and kitchens, irrespective of the number of storeys in the property.

16.5 The HMO licence holder will often be the owner, but could also be a managing agent or anyone else, provided that the licence holder has sufficient financial control over the property. For a licence application/renewal to be accepted, the following must be submitted:

- a fully completed application form
- the designated licence fee (as detailed in the Council's fees and charges)
- valid certificate issued by a Gas Safe Registered engineer within the last 12 months for all gas appliances/installations at the property (if relevant)
- valid electrical test certificate issued within the last 5 years by a competent person showing the electrical installation as safe
- valid inspection reports for the emergency lighting (if applicable) and fire alarm system
- Portable Appliance Test Certificate (PAT) for all electrical equipment supplied as part of the tenancy

- accurate floor plans of the property (including dimensions) showing locations of smoke alarms, emergency lighting and fire doors
  - copies of Planning Consents and Building Regulations Completion Certificates (if applicable)
- 16.6 Incomplete applications will not be accepted and will be returned outlining what is required and giving a further 14 days for resubmission. If a complete application is not received by the required date the Council will consider enforcement action.
- 16.7 The information provided in the application will be used in determining the application. An inspection of the property will usually be undertaken. Licences will have certain standard conditions relating to the management of the property and facilities to be provided, and may have other conditions requiring, for example, the installation of further amenities. The HHSRS does not have to be considered before a licence is determined and the granting of a licence does not imply that housing standards are acceptable. Where the Council becomes aware of potential hazards action will be taken to rectify those hazards as detailed in this policy.
- 16.8 In determining the application, the Council will consider whether:
- the property is suitable for the number of persons requested
  - the proposed licence holder and manager (if applicable) are 'fit and proper persons'
  - the arrangements for managing the property are satisfactory as per the HMO Management Regulations
- 16.9 Applicants will be required to declare that they have no unspent convictions or relevant offences. The Council may investigate suspected breaches of this declaration and where there is reasonable suspicion require further evidence from the applicant in support of their declaration. This may include a criminal record check from Disclosure Scotland or the Disclosure Barring Service basic disclosure certificate which must be obtained at the applicant's expense.
- 16.10 Licences will usually be granted for a period of 5 years. However, the Council may decide to issue a Licence for a shorter period, for example where there are concerns over the management of a property. The full licence fee is payable in all cases.
- 16.11 In the event that an application is withdrawn before the licence application is determined the fee will not be refunded in full. The Council will consider its processing and establishment costs in determining the level of refund. If a property ceases to be a licensable HMO before the expiry of the licence or there is a change in ownership no refund will be given. If a property is sold the new owner must apply for a licence as it cannot be transferred.
- 16.12 Where a HMO meeting the mandatory definition is found to be operating without a licence the owner/person having control will be invited to submit an application within 21 days. Where a complete application is not received the Council will take appropriate

action in accordance with the Council's Corporate Enforcement Policy and the principles of this policy.

- 16.13 Where a landlord fails to meet their legal responsibilities for example, failing to comply with licence conditions or breaching Management Regulations, the Council will take appropriate action in accordance with the Council's Corporate Enforcement Policy and the principles of this policy.
- 16.14 The Management Regulations also impose duties on occupiers of a HMO for the purpose of ensuring that the person managing it can effectively carry out the duties imposed on them by these Regulations. The Council will take appropriate action in accordance with the Council's Corporate Enforcement Policy and the principles of this policy where occupiers breach these duties.

## **17. Management Orders**

- 17.1 An Interim Management Order allows the Council to take over the management of a property in certain circumstances in place of the landlord for 12 months unless revoked. After this period the Council may make an application to the First-tier Tribunal for a Final Management Order which lasts up to 5 years.
- 17.2 Where a HMO is required to be licenced but is not, the Council will consider making an Interim Management Order (IMO) in the following circumstances:
- where the property is a licensable HMO but has not been licensed and the Council consider that there is no reasonable prospect of it being licensed in the near future, or
  - where the HMO was licensed but it has been revoked and the revocation is not yet in force and once it is in force there would be no prospect of it regaining a licence in the foreseeable future, or
  - where an IMO is necessary to protect the health, safety and well-being of the occupants or persons occupying or having an estate or interest in any premises in the vicinity.
- 17.3 Where a Management Order is in place, the Council will recover all relevant expenditure associated with the repair and management of the property, including administrative costs as prescribed in legislation.

## **18. Other Enforcement Powers**

- 18.1 Where appropriate, the Council will consider the use of other statute to deal with housing related issues. This includes, but is not limited to:
- Environmental Protection Act 1990 – provisions relating to premises in such a state so as to be considered "prejudicial to health"
  - Building Act 1984 – provisions to deal with unsatisfactory and defective drainage

- Prevention of Damage by Pests Act 1949 – to require treatment for rats or mice or works to be undertaken to prevent their entry or remove accumulations
- Public Health Act 1936 - cleansing of filthy or verminous premises

## **19. Immigration Inspections and Accommodation Certificates**

- 19.1 People immigrating to the UK from outside the EEC must provide evidence to the UK Border Agency that the housing they propose to move to will be suitable.
- 19.2 The Council can undertake an assessment under the Housing Health and Safety Rating System (HHSRS) and where appropriate, provide a report or letter to show that the accommodation:
- does not pose a significant risk to the health or safety of those who will be living there
  - is in a reasonable state of repair and will not become overcrowded with the extra people living there
- 19.3 The applicant will be required to produce the following documents prior to the letter being issued:
- valid certificate issued by a Gas Safe Registered engineer within the last 12 months for all gas appliances/installations at the property (if relevant)
  - valid electrical test certificate issued within the last 5 years by a competent person showing the electrical installation as safe
  - a copy of the tenancy agreement (if renting the property)
  - the Energy Performance Certificate for the property (EPC)
- 19.4 Any deficiencies identified must be rectified prior to the Council issuing confirmation that the property meets all required standards.
- 19.5 As this is not a statutory function, the Council will charge a fee for this service which must be paid before the inspection takes place. The fee will be published in the Councils Fees and Charges. Where there is a change of circumstances since the inspection was undertaken or the letter 'expires' and a further inspection is necessary this will incur another full fee.

## **20. Empty Properties**

- 20.1 Owners of long term (6+ months) empty residential properties are encouraged to bring them back into use through a range of informal action including guidance and advice. The Council may offer financial assistance to owners to bring properties back into use in certain circumstances.
- 20.2 Where the condition of a property is having a severe impact on neighbours, the Council may use a range of appropriate enforcement powers. Where a property is unsecured

and unauthorised entry is being made, the Council may use powers to secure the property, including boarding of doors and windows.

- 20.3 Where statutory notices have been served and works in default carried out to the property which have been secured as a local land charge, the Council will consider using Enforced Sale powers to recoup the costs of the work. The minimum debt level to consider using this procedure is £1,000. Whilst this in itself does not directly bring the property back into use, if successful it is possible that a new owner may bring the property back into use.
- 20.4 Where a property has been vacant for 2 years, there is evidence that the property is having a negative impact on the community and where none of the exemptions apply, the Council may apply for an Interim Empty Dwelling Management Order which lasts for 1 year. If after this period the property has not been bought back into use with the cooperation of the owner, the Council may apply for a Final Empty Dwelling Management Order allowing the Council to take control of the property for up to 7 years, making necessary improvements and renting the property out.
- 20.5 Where other voluntary and statutory provisions have been exhausted the Council may consider using Compulsory Purchase powers. This process can take several years to complete, must be shown to be in the public interest and confirmed by the Secretary of State.

## APPENDIX 1

### Civil Penalties Matrix under the Housing and Planning Act 2016

Where a person has committed a relevant offence it will be necessary to determine the most appropriate course of action in accordance with this policy. Where a civil penalty is considered as an 'alternative' to prosecution the following matrix is to be used to ensure that enforcement is carried out in a consistent and proportionate way.

Relevant offences are:

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

Step 1 Determine the initial level of penalty based on the culpability of the offender, and the level of harm (including risk of harm) to the tenants. Where there is more than one offence at the same property this is to be repeated for each individual offence being considered e.g. multiple breaches of HMO Regulations.

Step 2 Make adjustments to the initial determination having regard to any aggravating and/or mitigating circumstances and the financial benefit gained as a result of committing the offence.

#### Step 1 – Determine the initial level of penalty

##### Factors in determining culpability

Examples of behaviours that could constitute a particular level of culpability are provided below. These are not exhaustive and other factors will be considered on a case by case basis. The behaviour of the offender should be compared to the table to determine the level of culpability. Where the behaviour could meet one or more of the categories the highest should be chosen.

<p><b>Very high culpability</b> (deliberate act) <i>Intentional breach or flagrant disregard for law</i></p>	<ul style="list-style-type: none"> <li>• Failure to comply with a correctly served improvement notice</li> <li>• Operating an unlicensed HMO having been made aware of need to apply</li> </ul>
<p><b>High culpability</b> (reckless act) <i>Actual foresight or wilful blindness to the risk of offending but risk nevertheless taken</i></p>	<ul style="list-style-type: none"> <li>• Error or omission that would be obvious to average person, yet made no attempt to address</li> <li>• Failing to make changes after being made aware of risks, breaches or offences</li> <li>• Allowing risks, breaches or offences to continue over a sustained period</li> <li>• Failure to comply with HMO Management Regulations</li> </ul>
<p><b>Medium culpability</b> (negligent act) <i>Failure to take reasonable care</i></p>	<ul style="list-style-type: none"> <li>• Did something or failed to do something that would have been reasonable</li> <li>• Part compliance with a schedule of works, but failure to fully comply within notice timescale</li> <li>• Systems were in place to manage risk but these were not sufficiently adhered to or implemented</li> </ul>
<p><b>Low culpability</b> <i>Offence committed with little or no fault</i></p>	<ul style="list-style-type: none"> <li>• Did not fall far short of legal duties</li> <li>• Unintentional or unforeseen failings</li> <li>• Significant efforts were made to address the risk although inadequate</li> <li>• Evidenced obstruction by tenant to allow contractor access</li> <li>• Failings were minor and occurred as an isolated incident</li> </ul>

### Factors in determining harm

The seriousness of the actual or potential harm suffered (worst possible outcome) that could reasonably occur as a result of the offence being committed is to be considered. If there is evidence that the occupier has already come to some harm, consideration should still be given to the potential for even greater harm to have occurred.

This is to be repeated for each individual offence being considered as the level of harm may vary between offences. The examples given in the classes of harm are for guidance. Some conditions may appear in more than one class depending on the severity of the condition.

<b>High</b> <i>Extreme or Serious adverse effect on individuals</i>	The seriousness of the harm would meet guidance for Class I* and Class II** harm outcomes in the Housing Health and Safety Rating System Operating Guidance 2006
<b>Medium</b> <i>Serious or moderate adverse effect on individuals</i>	The seriousness of the harm would meet guidance for Class III*** and Class IV**** harm outcomes in the Housing Health and Safety Rating System Operating Guidance 2006
<b>Low</b> <i>Little or low risk of an adverse effect on individuals</i>	Where the level of harm does not meet any of the criteria above

\*Class I - The most extreme outcomes including: death from any cause; lung cancer; mesothelioma and other malignant lung tumours; permanent paralysis below the neck; regular severe pneumonia; permanent loss of consciousness; 80% burn injuries.

\*\* Class II – Severe harm outcomes including: Cardio-respiratory disease; asthma; non-malignant respiratory diseases; lead poisoning; anaphylactic shock; cryptosporidiosis; legionnaires disease; myocardial infarction; mild stroke; chronic confusion; regular severe fever; loss of a hand or foot; serious fractures; serious burns; loss of consciousness days.

\*\*\* Class III – Serious harm outcomes including: Eye disorders; rhinitis; hypertension; sleep disturbance; neuro-psychological impairment; sick building syndrome; regular and persistent dermatitis, including contact dermatitis; allergy; gastro-enteritis; diarrhoea; vomiting; chronic severe stress; mild heart attack; malignant but treatable skin cancer; loss of a finger; fractured skull and severe concussion; serious puncture wounds to head or body; severe burns to hands; serious strain or sprain injuries; regular and severe migraine.

\*\*\*\* Class IV – moderate harm outcomes which are still significant enough to warrant medical attention: Pleural plaques; occasional severe discomfort; benign tumours; occasional mild pneumonia; broken finger; slight concussion; moderate cuts to body or face; severe bruising to body; regular serious coughs or colds.

Having determined the two categories the officer should refer to the tables below to reach a penalty band.

Level of culpability	Level of harm		
	High	Medium	Low
Very high	6	5	4
High	5	4	3
Medium	4	3	2
Low	3	2	1

Level	Band
1	£0 to £4,999 (starting point £2,500)
2	£5,000 to £9,999 (starting point £7,500)
3	£10,000 to £14,999 (starting point £12,500)
4	£15,000 to £19,999 (starting point £17,500)
5	£20,000 to £24,999 (starting point £22,500)
6	£25,000 to £30,000 (starting point £27,500)

## Step 2 – Make adjustments

To reflect the additional factors to be considered in the statutory guidance, further mitigating and/or aggravating factors will now be considered which adjust the level of penalty. The assumed starting point for each band is the mid-point.

### Aggravating factors

The penalty can be increased by £1000 for each factor up to the maximum of the top of the band determined. A list of example factors is given below, this is not exhaustive and other factors will be considered on a case by case basis.

- breached Housing Act 2004 notices in the last 2 years resulting in civil penalty, Simple Caution or conviction
- received a Simple Caution in the last 2 years for housing related offences
- been convicted in the last 2 years for housing related offences
- obstructed investigating officers

### Mitigating factors

The penalty can be decreased by £1000 for each factor to a minimum of the bottom of the band determined. A list of example factors is given below, this is not exhaustive and other factors will be considered on a case by case basis.

- no previous convictions for Housing Act 2004 or housing related offences
- medical evidence of health reasons preventing compliance e.g. unforeseen or emergency health issues
- offender is vulnerable and demonstrates this is linked to the commission of the offence
- offender has made a frank admission/genuine regret and fully co-operated, engaged throughout the investigation and taken steps to address issues

### Financial benefit

The civil penalty is to be fair and proportionate, but must also be set high enough to help ensure that the offender does not benefit as a result of committing the offence i.e. the level of penalty should not be less than it would have reasonably cost to comply. It should also act as a deterrent against repeating the offence.

When determining the level of gain as a result of the offence, officers will consider the estimated cost of any works that were necessary to comply with the legislation. If the estimated cost of the works is considered to be less than the calculated penalty the penalty may be increased by £2,000 or 10% whichever is the greater up to the maximum of £30,000.

### Multiple offences

Where there are multiple offences that have taken place at the same time, each offence is to be considered separately to ensure no double counting, but the total financial penalty will be cumulative up to a maximum of £30,000 for each offence.

### Financial means

In setting the financial penalty the Council assumes that the offender is able to pay any penalty imposed unless they supply suitable and sufficient financial evidence to the contrary. It is for the offender to provide this information. If the Council is not satisfied that reliable or suitable information has been provided, reasonable inferences relating to their ability to pay will be drawn from the information available and any other evidence available to the Council.

The ability for an offender to raise finance against their rental portfolio may be taken into consideration where the offender claims they are unable to pay a financial penalty and shows they have only a low income.

### Imposing the penalty

The process for imposing the penalty is detailed in Schedule 13A of the Housing Act 2004. The amount of financial penalty and reasons for imposing it will be recorded and agreed with the Team Leader or Head of Service.

Following the Notice of Intent, an offender may make written representations (within 28 days of the notice) against the intention to impose a financial penalty. It is for the offender to provide any documentary evidence to support their representation. Any representations will be considered by the Team Leader or Head of Service

After considering any representations, should the Council still propose to issue a financial penalty (this may be a lower amount than was proposed but it cannot be greater) a final notice imposing the penalty will be served. The recipient may appeal to the First-tier tribunal within 28 days of the date of issue of the final notice. The First-tier tribunal has the power to confirm, vary (increase or reduce) the size of the penalty or cancel the penalty. It may also dismiss the appeal if it is satisfied that it is vexation, frivolous or an abuse of process, or has no reasonable prospect of success.

A civil penalty must be paid within 28 days beginning on the day after which the notice was given. If part or the whole of the penalty is unpaid, the Council will recover the penalty on the order of the county court.

## APPENDIX 2

### Statement of Principles under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015

This statement sets out the principles that South Kesteven District Council will apply in exercising its powers to require a relevant landlord to pay a financial penalty.

The Regulations require the Council to prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge.

In determining the amount of a penalty charge, the Council must have regard to the statement of principles which was most recently prepared and published at the time when the breach in question occurred.

#### Legislative background

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force on 1 October 2015 and introduced the following duties for “relevant landlords” when premises are occupied under a “specified tenancy”:

- a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation; and
- a carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
- checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

Where the Council has “reasonable grounds” to believe that a relevant landlord is in breach of one or more of the duties the authority must serve a remedial notice on the landlord.

Reasonable grounds include evidence from a Private Sector Housing Officer or other relevant professional such as an Officer of the Council, Fire service, Police etc.

In line with the Council’s Corporate Enforcement Policy a staged approach will be used, giving the landlord 7 days to comply where there is no history of non-compliance. If there is a history of noncompliance or compliance is not achieved within 7 days a remedial notice will be served.

Where a remedial notice has been served and the Council is satisfied on the balance of probabilities that the landlord on whom a remedial notice was served has failed to take the remedial action specified in the notice within the specified period the Council must (where the occupier consents) arrange for the remedial action to be taken and may require the landlord to pay a penalty charge.

## Principles followed in determining the amount of Penalty Charge

The purpose is to protect the safety of residents in rented accommodation. Where legislation is not complied with the financial penalty aims to;

- change the behaviour of the landlord and deter future non compliance
- eliminate any financial gain associated with non-compliance
- be proportionate; giving consideration to seriousness, past performance, risk and Government guidance
- reimburse the Council for costs incurred in enforcement

## Penalty Charge

The Regulations allow a civil penalty of up to £5,000 to be imposed on landlords who fail to comply with a remedial notice.

The level of penalty covers the cost of all works in default, officer costs, inspections and administration on a cost recovery basis. In addition to this an appropriate and proportionate penalty fine is levied.

The level of Penalty Charge is set on a scale with a minimum penalty of £700.

Where there is a history of noncompliance or unspent convictions relating to housing, or where there are increased risk factors such as; vulnerable occupiers, or the property presents a high risk, additional charges will apply to a maximum of £4,500.

## Level of Penalty Charge

A fee of £700 will be charged in all cases. This covers the cost of works in default, officer costs, inspections, administration and a penalty for non-compliance with the notice.

In addition to the £700 charge, additional penalties will be levied as follows:

- Previous spent or unspent conviction or works in default undertaken relating to the owners role as a landlord £1,000
- Previous remedial action taken under this legislation £1,000
- Per additional storey above or below ground level (e.g. 2 storey house is £100, 3 storey house is £200) £100
- No clear or direct means of escape £500
- Increased risk of ignition or spread of fire (e.g. poor electrics, open fires etc.) £500
- Vulnerable occupants (e.g. elderly or disabled persons, children or others considered vulnerable due to their circumstances) £500