

Private Sector Housing Enforcement Policy

1. Introduction

- 1.1 The Council, through its Private Sector Housing team, aims to support the local economy and promote continuing growth whilst making sure that there is a balanced housing market that provides for a range of individual needs and income levels. The Council is committed to fair and effective enforcement, which protects both the economic interest and health and safety of the public, businesses and the environment.
- 1.2 The main objective of enforcement action is to ensure that non-compliance in the local housing market is addressed in the most effective way to ensure that compliance is achieved for the benefit of all.
- 1.3 This document sets out the Council's enforcement policy when dealing with non-compliance of relevant legislation related to private sector housing. Legislation will be outlined within the policy
- 1.4 The content of the Private Sector Housing Enforcement Policy has been written having regarded to;
 - A. The Regulators Compliance Code – which promotes proportionate, consistent and targeted regulatory activity through transparent and effective dialogue and understanding between regulators and those who regulate. Regulators must have regard for this code when developing policies and procedures that guide their regulatory activity. A copy of the code is available on request or may be downloaded from <https://www.gov.uk/government/publications/regulators-code>.
 - B. In certain situations the Council may decide that a provision in the Regulators Compliance Code is either not relevant or is outweighed by another provision. Officers will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.
 - C. The Enforcement Concordat – The concordat is a voluntary, non - statutory code of practice which the Council has signed up to. It sets out principles with regards to good enforcement practice which are:
 - Standards of Service and Performance,
 - Openness,
 - Helpfulness,

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- Proportionality,
- Consistency
- Complaints about Service.

2. Human Rights and Equality Issues

- 2.1 Investigations and any enforcement action will be conducted in a manner which does not conflict or undermine the fundamental principles of the Human Rights Act 1998.
- 2.2 Enforcement decisions will be fair, impartial and objective and will not be influenced by issues such as the ethnicity or national origin, gender, religious beliefs, political views or sexual orientation of the suspect, victim, witness or offender. The Council's full equalities policy is available at <https://www.portsmouth.gov.uk/ext/the-council/equalities/equality-law-and-its-significance-for-the-council.aspx>

3. Purpose and Methods of Enforcement

- 3.1 The Council expects full compliance with the law and we will not hesitate to use our enforcement powers where necessary. Formal action will be taken, including prosecution, against those who flaunt the law or act irresponsibly.
- 3.2 The Council will help property owners to meet their legal obligations by providing clear and concise information about what they need to do to comply with the relevant legislation. However whilst help can be provided, property owners should always seek out and rely upon their own independent advice to ensure legal compliance.
- 3.3 Enforcement includes any action aimed at ensuring compliance with the law. The ranges of action that may be considered include;

A. Informal Action – will be considered where one or more of the following circumstances apply;

- there is no legislative requirement to serve formal notice or order and the circumstances are not serious enough to warrant formal action;
- past history suggests informal action will achieve compliance;
- there is confidence in the management or the individual;

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- The consequences of non-compliance will not pose a significant risk to occupiers or others.

B. Serve a Statutory Notice / Order or a civil penalty – This will be considered where it is appropriate and where there is evidence to justify the issuing of a notice, order or penalty.

4. Housing Act 2004.

- 4.1 In relation to Part one offences, serviced under The Housing Act 2004, statutory notices/orders will be based on the hazards found and how serious they are deemed to be. This is assessed using the Housing Health Safety Rating System. <https://www.gov.uk/government/publications/hhsrs-operating-guidance-housing-act-2004-guidance-about-inspections-and-assessment-of-hazards-given-under-section-9>
- 4.2 The Council has a legal duty to take the most appropriate course of action available in relation to category 1 hazards.
- 4.3 There is a power for Council officers to deal with category 2 hazards. The type of Notice or Order served for category 1 or 2 hazards served will be based on the best course of action assessment undertaken as required by Housing Act 2004.
- 4.4 The Council will exercise enforcement action in the following circumstances;
 - Where there are category 1 hazard(s) present in the residential unit of accommodation
 - Where the category 2 hazard is progressive and will likely become a category 1 hazard unless preventative action is taken.
 - Where there are a number of category 2 hazards which would present a hazard to occupiers
 - In any other circumstances at the discretion of the Head of Private Sector Housing or a delegated Manager/ Officer in accordance with the councils Scheme of Delegation.
- 4.5 Part 1, Housing Act 2004 includes the types of Notice or Order that can be issued. These include;
 - Hazard Awareness Notice – notice advising the person on whom it is served of a category 1 and/or category 2 hazards at the property.

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- Improvement Notice – notice requiring the person on whom it is served to take the remedial action specified in the notice in relation to the hazards found.
 - Prohibition Order – an order imposing restrictions on the use of the whole or part of the property and/or who can use the property.
 - Emergency Prohibition Order – same as a Prohibition Order but the order will take effect immediately.
 - Emergency Remedial Action Notice - To undertake serious works within a short period of time.
 - Demolition Order – an order requiring the demolition of the property.
 - Declaring a Clearance Area – an area which is to be cleared of all buildings.
- 4.6 When any Notice or Order is served, Council officers will have full regard to the relevant areas within Part 1, Housing Act 2004 and the appropriate Schedules.
- 4.7 Other legislation is available to Council officers and the principles of this policy will be followed.
- 4.8 Should a person commit an offence under Section 234 Housing Act 2004, in respect of the any regulations imposed by Section 234 (1) or (2), then the authority will write to the person and allow the following timescales for compliance with each Regulation:

Regulation	Timescale
Duty of manager to provide information to occupier	7 days from the date of request
Duty of manager to take safety measures	Obstructions - 14 days from date of request All others to be determined by the inspection officer
Duty of manager to maintain water supply and drainage	Determined by the inspection officer
Duty of manager to supply and	7 days from the date of request

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maintain gas and electricity	
Duty of manager to maintain common parts, fixtures, fittings and appliances	3 days from the date of request concerning for Regulation 7 (4) All others to be determined by the inspection officer
Duty of manager to maintain living accommodation	Determined by the inspection officer
Duty of provide waste disposal facilities	3 days from the date of request
Duties of occupants of HMO's	Determined by the inspection officer

4.9 Should the person fail to comply, within the timescales set put in 4.8 of this policy, the authority would look to either impose a financial penalty as stated in Section 249A Housing Act 2004 or prosecute.

5. Houses in Multiple Occupation - Licensing.

5.1 Prospective applicants for a licence will be vetted to determine whether they are a 'Fit and Proper' person to hold a licence as required by section 66 Housing Act 2004. Where a person is found not to be a 'Fit and Proper' person to hold a licence, this information will be stored within the Council's records and shared as necessary with other Departments and other Local Housing Authorities.

5.2 A Public Register of

- licensed HMOs,
- dwellings with interim/final/empty dwelling management orders and
- HMOs with Temporary Exemption Notices in force

Will be available, upon request, for public inspection at the Civic Offices, Guildhall Square, Portsmouth, in line with the requirements of the legislation and guidance. A copy of the register can be provided by the Council, subject to a reasonable fee to cover administration costs. (Section 232 Housing Act 2004)

6. Suspend, revoke or refuse to renew or grant a licence or authorisation.

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- 6.1 This Council will consider suspending, revoking or refusing to renew a licence or authorisation, or to grant a new licence where licensing conditions are not being met and there are clear failings by the landlord in relation to Part 2, Housing Act 2004. The general principles set out within this policy will also apply to any action taken under this part.

7. Penalty Charge Notices.

- 7.1 Under The Smoke and Carbon Monoxide Alarm Regulations 2015, Lettings Agency Work and Property Management Work (Requirement to belong to a Scheme etc.) (England) Order 2014, Section 21 Housing and Planning Act 2016 and Housing Act 2004 there is the ability to issue penalty charge notices to address non-compliance. How these notices will be issued and the level of penalty imposed is detailed in the Statement of Principles at Schedule 1 of this policy. (Section 249A, Housing Act 2004).

8. Prosecution

- 8.1 Prosecution may be considered for more serious offences with the purpose of

- punishing serious wrongdoing,
- avoiding a reoccurrence of the offence and/or
- to act as a deterrent to others.

- 8.2 The Council will take account of the Code for Crown Prosecutors (https://www.cps.gov.uk/publications/code_for_crown_prosecutors/) and will only prosecute where; 8.2.1 There is sufficient admissible and reliable evidence that the offence has been committed and there is a realistic prospect of conviction, taking into account specific defences available within Housing Act 2004

AND

- 8.2.2 The Council believe that it is in the public interest to do so.

- 8.3 The following factors will be considered in deciding whether or not to prosecute:

- Social, physical, economic, environmental or personal health and safety effect of the offence in order to quantify the serious nature of the offence,
- Failure to comply with the requirements of an Improvement Notice or Prohibition Order,

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- Failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information,
- Excessive or persistent breaches of regulatory requirements,
- Foreseeability of the offence and the circumstances leading to it,
- Intent of the offender, individually and/or corporate body,
- History of offending,
- Attitude of offender,
- Deterrent effect of a prosecution on the offender and others,
- Culpability of the offender,
- A history of similar offences.
- Carrying out operations without a relevant licence,
- Failure to comply or to comply adequately with formal remedial requirements,
- Obstruction of an authorised officer.

8.4 The factors are not exhaustive and those that apply will depend on the particular circumstances of each case. The Head of Private Sector Housing or a delegated Manager/ Officer in accordance with the council's Scheme of Delegation will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

9. Rent Repayment Order.

9.1 If a landlord has been convicted of an offence under The Housing Act 2004 for

- failing to comply with an Improvement Notice, or
- failing to comply with a Prohibition Order, or
- being in control or managing an unlicensed HMO or dwelling,

The Council has a power to consider an application to the First Tier Tribunal for a rent repayment order. A notice of intended proceedings will be sent to the relevant party with the required information and details of the right to make representations.

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- 9.2 In all instances where formal proceedings have been taken and substantiated by the court, the Council will look to make an application for a rent repayment order.

10. Works in Default.

- 10.1 This may be considered as an alternative to, or in addition to, prosecution. The Council will carry out the works in default and seek to recover the full and associated costs, where necessary through legal redress. This will include, where applicable, administration costs and officer time.
- 10.2 Where appropriate the costs will be placed against the property as a local land charge. The Council may seek to use its powers to enforce the sale of the property in order to recover the costs.
- 10.3 Each case will be looked at individually and the Head of Private Sector Housing or a delegated Manager/ Officer, in accordance with the council's Scheme of Delegation, will make the decision to undertake works in default depending upon the type, extent and the protection of the health, safety and welfare of any occupant.

11. Proceeds of Crime.

- 11.1 The Proceeds of Crime Act 2002 allows the courts to deprive perpetrators of criminal offences of any proceeds they have accrued as a result of their criminal activity. Officers from across the council will work collaboratively to ensure the best outcome.

12. Delegation & Decision Making.

- 12.1 Decisions about the most appropriate enforcement action to be taken will be made in line with:
- this policy
 - professional judgement,
 - legal guidelines and advice,
 - Statutory codes of practice and priorities set by the Council and/or Central Government.
- 12.2 The Director for Housing, Neighbourhoods and Building Services has the delegated authority, in accordance with the Council's Scheme of Delegation to Officers to take action under a range of legislation, e.g. the service of enforcement notices.

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- 12.3 A decision to instigate any type of enforcement action will be taken by the Head of Private Sector Housing or a delegated Manager/ Officer in accordance with the councils Scheme of Delegation in consultation.

13. Costs of Enforcement.

- 13.1 The Council is able, in certain circumstances, to charge for enforcement action. What can be charged for will depend on the type on action taken. Examples include;

- costs associated with determining whether to serve a notice,
- costs involved in identifying any action required and
- Costs associated with serving a notice.

When costs are to be charged an invoice will be sent to the relevant party outlining the amount to be paid, what it covers and the payment terms. The charge levied will only cover the cost of the enforcement action to the authority.

- 13.2 The full breakdown of the charges applicable for each Notice or Order can be found on the council's website

14. Appeals.

- 14.1 Any person served with a notice/order has the right to appeal on any grounds set out in the legislation.
- 14.2 Appeals regarding enforcement action under The Housing Act 2004 are made to the relevant. First-tier Tribunal (Property Chamber) and full details of this process are contained in the relevant notice/order.
- 14.2 The Council will rigorously defend any appeals where the notice/order has been correctly served.

15. Review.

- 15.1 This Enforcement Policy shall be reviewed annually and amended to reflect any change in legislation, corporate policy or official guidance. Any amendment shall be in line with meeting the requirements of the legislation and the public interest.

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Schedule 1**Statement of Principles – Determining the Amount of a Penalty Charge.**

1. The Private Sector Housing Enforcement Policy sets out the enforcement options available to Council officers when addressing non-compliance with respect to housing legislation.
 - 1.1 All notices will include information on the reason for the penalty charge, the amount, how it can be paid, and any information required by statute. Depending on the legislation being enforced there are different penalty charges applicable.
2. **Types of Penalty Charge:**
 - Penalty Charge Notice (The Smoke and Carbon Monoxide Alarm Regulations 2015)
 - Penalty Charge Notice (Section 249A) The Housing Act 2004 introduced by (The Housing and Planning Act 2016)
 - Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to belong to a Scheme etc.) (England) Order 2014
3. **Determining the Amount of a Penalty Charge.**
 - 3.1 Where the Council is satisfied it has evidence of regulatory non-compliance, and the breach allows for the Council to require the offender to pay a penalty charge, the amount will be determined using the following principles set in table 1..
 - 3.2 Consideration will first be given to the application of the maximum penalty charge allowable for the offence in question.
4. **Fine Level:**
 - 4.1 Maximum fine set by each area:

Legislation	Maximum civil penalty charge
The Smoke and Carbon Monoxide Alarm Regulations 2015	£5,000
The Housing Act 2004	£30,000 per

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	case
Lettings Agency Work and Property Management Work (Requirement to belong to a Scheme etc.) (England) Order 2014	£5,000

- 4.2 The specific circumstances of the offence(s) will then be considered to assess whether applying the maximum penalty is reasonable and proportionate. Whilst each situation will be viewed individually the following factors will be considered;
- The seriousness of the offence (within the context of issuing a penalty charge)
 - The level/amount of non-compliance found
 - Financial benefit gained by offender of the non-compliance
 - Financial loss to others as a result of offender's non compliance
 - Attitude of offender
 - Maximum criminal fine a magistrate's court could impose having consideration to any relevant sentencing guidelines
- 4.3 The factors are not exhaustive and those that apply will depend on the particular circumstances of each case. The Head of Private Sector Housing or a delegated Manager/ Officer in accordance with the councils Scheme of Delegation will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.
- 4.4 Any mitigating factors will then be considered (if applicable). Where present, each applicable mitigating factor is awarded a percentage reduction. Where a factor is not present as there is insufficient evidence, the score will be 0%.
- 4.5 These percentage scores are then added together and applied to the maximum penalty applicable for the offence. The normal maximum deduction that can be applied will be 90%.
- 4.6 This methodology will be used for all civil penalty notices issued in relation to private sector housing
- 4.7 The starting point for offences committed under Section 234 Housing Act 2004 will be £5,000.

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Mitigating Circumstances.	% reduction.
Internal failed preventative measures – in case of national agents / landlords / businesses, where a local office acted outside the corporately adopted procedures or the offence occurred locally	20% reduction.
Good cooperation with the Council – in cases where the offender has cooperated fully with the Council in investigating the offence	20% reduction.
Immediate and voluntary remediation – when the offence was brought to the attention of the offender they immediately rectified any breach(s).	20% reduction.
No previous history of non-compliance with the other housing legislation – if this is a first breach of any housing related legislation.	10% reduction.
Any relevant personal circumstances.	10% reduction.
Undue financial hardship – if fine would cause the offender undue financial hardship such that it might not be able to continue to operate.	10% reduction.

Table 1

- 4.7 In all cases it will be the responsibility of the recipient to provide sufficient evidence to support their presentations.

5. Rights to Make Representations.

- 5.1 The recipient of a penalty charge notice has the right to make written representation regarding the notice. Full details of this process and timescales are detailed on the notice. Any representations to the penalty charge will be considered by the Head of Private Sector Housing or a delegated Manager/ Officer in accordance with the councils Scheme of Delegation. The Head of Private Sector Housing or a delegated Manager/ Officer in accordance with the councils Scheme of Delegation will review the penalty charge in line with the mitigating factors. All representations will be considered on their own merit.

6. Non-Payment of Penalty Charge.

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- 6.1 If any notices are not paid within the specified period following issue, or where applicable following a review procedure, the Council will pursue non-payment of the penalty through a Court order process.