Report to Executive

Agenda Item:

A.8

Meeting Date: 14 September 2020

Portfolio: **ECONOMY, ENTERPRISE & HOUSING**

Key Decision: YES

Within Policy and Budget Framework NO

Public / Private Public

Title: Update of Private Sector Housing Enforcement Policy
Electrical Safety and Minimum Energy Efficiency Standards

Report of: Corporate Director of Governance and Regulatory Services

Report Number: GD 35/20

Purpose / Summary:

The purpose of this report is to put forward an updated Private Sector Housing Enforcement Policy which was previously approved by Executive. The update is required to reflect the legislative challenges introduced to further improve health and safety standards in the private rented sector and reflect the best practice guidance available to respond to our statutory duties.

The Policy also includes an update to accommodate changes in legislation in future and to enable small amendments to be made in conjunction with the Service Director and the Portfolio Holder which would be documented in an Officer Decision Notice.

Recommendations: To approve the updated enforcement policy including the new charges specified therein.

Tracking

Executive:	
Overview and Scrutiny:	
Council:	

1. BACKGROUND

1.1 In 2014, the Executive approved the adoption of the Private Sector Housing Enforcement Policy. The Policy acts as a backdrop to the work within the Private Sector Housing and provides clear direction for those Officers authorised to undertaken enforcement. It also sets out clearly to all stakeholders how the Council will deal with Housing Standards and its approach to enforcement.

1.2 The policy has seen several updated since it was first introduced as additional legislation has been brought in, the previous updates were in 2016 and 2018 and most recently in May 2020 to respond to the COVID-19 pandemic and relevant regulations.

1.3 The latest update is to reflect new powers enacted by Her Majesty's Government to improve electrical safety and, in separate legislation, energy efficiency standards in the private rented sector.

2. PROPOSED CHANGES TO THE POLICY

2.1 The **Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015** were introduced 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 for privately rented property, affecting new tenancies from 1 April 2018 and all tenancies from 1 April 2020.

The rationale behind this is that EPC F and G rated properties waste energy. They impose unnecessary cost on tenants and the wider economy, and they contribute to avoidable greenhouse gas emissions. Increasing the energy efficiency of our domestic rental stock can help:

- manage the energy costs of tenants, including some of the most vulnerable;
- improve the condition of properties and help reduce maintenance costs;
- smooth seasonal peaks in energy demand, and thereby increase our energy security;
- reduce greenhouse gas emissions at relatively low cost.

The regulations cite specific instances were landlords and agents might seek exemptions to letting properties below an EPC "E" rating but also require such exemptions to be registered on the national EPC Exemptions register.

The process for enforcing these regulations is found in Part 5 of the policy (Appendix A of this report)

2.2 The **Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020** came into force on the 1st June 2020 and aim to improve safety in all residential premises and particularly in the private rented sector.

The Regulations apply to new tenancies from 1st July 2020 and existing tenancies from 1st April 2020.

They 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 to their local authority if requested.

These regulations have been included in Part 4 of the policy document (Appendix A of this report).

2.3 The update to the Policy to allow amendments by the Portfolio Holder and Director is required due to the large amount of private sector housing legislation coming through in recent years and the need to keep updating the Policy.

3. RISKS

3.1 In order to enforce the legislation we need to have an adopted an enforcement policy, without this in place we risk a legal challenge should we choose to take enforcement.

4. CONSULTATION

4.1 As these are non-statutory changes not issued under the Housing Act 2004 Section 9 ,then there is no requirement to consult widely.

5. CONCLUSION AND REASONS FOR RECOMMENDATIONS

5.1 The revised enforcement policy will enable officers to apply enforcement in a fair and consistent manor in recognition of the Enforcement Concordat and the Regulators' Compliance Code. The Policy is also a foundation for the future of private sector housing enforcement at the Council.

6. CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES

It is considered the proposals will support the following priorities:-

- Address current and future housing needs to protect and improve residents' quality of life.

- **None**

CORPORATE IMPLICATIONS:

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Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:

- **None**

CORPORATE IMPLICATIONS/RISKS:

Finance – The costs of implementing and monitoring this Private Sector Housing Enforcement Policy can be met from within existing base budgets under the control of the Governance and Regulatory Services Directorate. Any changes to approved charges must be approved by the Executive (Financial Procedure Rule D31).

Equality: The service manager has considered the Public Sector Equality Duty when updating this policy. The rules for decision making and taking action will take account of the 'Vulnerability of current occupiers'.

LEGAL –

PROPERTY SERVICES - N/A

INFORMATION GOVERNANCE –

CARLISLE CITY COUNCIL

www.carlisle.gov.uk

Private Sector Housing Enforcement Policy

This document sets out the Councils policy framework for dealing with the enforcement of housing legislation

Executive Report, Appendix 1

Document Revision July 2020

1. Introduction

A key factor which has enabled the Council to achieve its aim of addressing current and future housing needs, is having the ability to protect and improve resident's quality of life, through the regulation of Housing conditions in Carlisle and district.

The Private Sector Housing function is to improve the standard of private sector properties through, education, advice and enforcement. The Council has a statutory duty to enforce the provisions of the Housing Act (and other) Acts and this is undertaken by Officers in the Environmental Health team. The team deals with a wide range of housing issues, from the licensing and inspection of Houses in Multiple Occupation (HMO) to complaints from tenants regarding housing standards.

The team receives over 70 service requests a year, concerning housing conditions in the private rented sector, with a total number of reactive and proactive inspections in total for the team around 700. The team offers advice and assistance to landlords, tenants, owner occupiers, empty property owners and stakeholders on wide range of housing issues, from overcrowding, cold in the home, damp and licensing matters.

2. Scope of the Policy

The Private Sector Housing function is responsible for ensuring all statutory powers and duties specific to private sector housing are implemented. The purpose of this policy is to set out clearly, the way in which the Council intends to secure effective compliance with legislation while minimising the burden to the Council, individuals, organisations and businesses. This policy is intended to provide guidance on the principles and processes that will apply when Officers consider the options available for dealing with a case.
It sets out what owners, landlords, lettings agents and tenants of private sector properties can expect from Officers.

The Council will in all cases work jointly with other departments were necessary and we will target our resources to ensure the most serious cases are tackled as a priority. In most cases the Council will direct the tenant to liaise with the landlord regarding the Housing Standards and only in the event of inaction or unreasonable delays will the Council, investigate a housing standards complaint.

Although the function is named the Private Sector Housing, the Private Sector covers a host of properties, including Registered Providers (RP) properties, owner occupied properties and the private rented sector. If enquiries are beyond the remit of the Team advice and signposting will be offered.

Any areas that are not included within the policy will be determined on a case-by-case basis having regard to relevant legislation and guidance available.

3. Enforcement Framework

Carlisle City Council must have regard to the government Enforcement Concordat and the Regulators Compliance Code, these documents set out what business and others being regulated can expect from enforcement Officers. This Policy compliments the principles laid

down in national policies to ensure the Officers are fair when exercising their enforcement duties.

3.1 Openness

We will provide information in plain English and publicise the availability of our Services. We will be open about our priorities, policies and procedures. We will ensure that Officers explain the options available to stakeholders, and their reasoning for pursuing any given course of action. Officers will clearly distinguish between legal requirements and good practice, both in terms of their own work, and what is expected of stakeholders.

3.2 Proportionality

Enforcement Action will be proportionate to the seriousness of the offence. Where we have discretion, we will consider whether other measures will lead to effective resolution of the matter. We will apply the enforcement policy in each and every case and make a decision about whether to proceed to formal enforcement having consideration of individual circumstances of the case and any other relevant factors, such as harm caused or potential for harm to be caused to individuals the public and the environment as appropriate.

3.3 Consistency

We will have clear procedures in place to ensure consistency throughout the team with the approach to enforcement, to ensure similar matters are dealt with in the same way, whilst taking into account individual circumstances.

3.4 Co-ordinated working

More often than not a single housing matter can trigger enforcement responsibility for several departments, both inside and outside the Council. We will therefore take a comprehensive approach to enforcement wherever possible by;

- Co-ordinating action between Council departments and with other agencies
- Ensuring that the Council takes the most effective action by deciding which department should lead enforcement action, depending upon the offence committed and the powers available.
- Sharing information.
- Working together on joint prevention strategies.
- Aiming to speak with a single voice.

PART 1: GENERAL ENFORCEMENT

The following range of enforcement options will be applied to private sector housing enforcement:

- No action
- Informal Action
- Statutory Notices
- Simple Caution
- Prosecution
- Civil Penalties
- Banning orders

- Rent Repayment Orders
- Works in Default
- Emergency Measures

No action

Before considering taking any action in respect of a tenanted property, the tenants will normally be required to contact their landlord about the issues they are experiencing first. This applies to all tenants. Legislation covering landlord and tenant relationships requires that tenants notify their landlord of any problems in the property, this is because the landlord can only undertake their obligations when notified of a problem.

In certain situations tenants will not be required to write to the landlord;

- If the issues represents an imminent risk to the health or safety of the occupier
- If there is a history of harassment or bad management practice
- If the tenants is defined as vulnerable and a referral is being made by a third party
- If the tenants written English if poor and they require assistance to communicate

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formal action

Authorised Officers may use informal procedures when they believe that such an approach will secure compliance with the requirements of the appropriate legislation within a reasonable timescale. Informal action will usually involve discussion with the stakeholders. Written details will be sent by the authorised Officer to the stakeholders confirming what has been agreed and any informal action will usually precede any formal or statutory action and will be appropriate where;

- There is no legislative requirement to serve a formal notice
- The circumstances are not serious enough to warrant formal action
- Past history suggests that informal action can reasonably be expected to achieve compliance
- There is confidence in the landlord/person responsible
- The consequences of non-compliance will not pose a significant risk to occupiers or other affected persons
- Remedial work within a suitable timescale can be agreed

All informal action will be based on the principles described in the Enforcement Framework.

The service standards for the Councils response to Housing Complaints is contained within **Appendix 1**

Statutory action

The Council will consider serving a statutory notice in any of the following circumstances;

- Attempts to resolve the situation informally have failed
- There are serious contraventions of legislation which pose significant risk to public health.

- There is a lack of confidence that there will be a suitable response to an informal approach
- There is a history of non-compliance with informal action
- Officers have been unable to contact the owner
- Where the legislation requires service of a notice to take further statutory action
- A situation exists which places a mandatory duty on the Council to serve a statutory notice
- Although it is intended to prosecute, effective action needs to be taken as quickly as possible to remedy the conditions, which pose an imminent risk to public health/safety or the environment
- A notice is required to formalise an agreed course of action.

Statutory notices will specify:

- The reasons for the enforcement action being taken including an explanation of what the defects are in the property or the specific area of legislative noncompliance, what is needed to put things right and what will happen if the notice is not complied with.
- A reasonable timescale for compliance having regard to the seriousness of the defects or contraventions
- Information regarding the right of appeal where necessary.

Simple Caution

A Simple Caution will be considered when the circumstances of the offence satisfy the following criteria:

- The offence is serious to warranty prosecution and it is a first offence.
- The Officer believes that a caution will prevent further offences.
- To divert less serious offences away from the Courts, and

A Simple Caution will only be offered where:

- There is evidence of the offenders guilt sufficient to give a realistic prospect of conviction
- The offender admits the offence
- The offender will accept the formal caution and understands its significance.
- clearly understands the significance of the Caution and gives informed consent to being cautioned, and
- It is considered to be in the public interest

Prosecution

Legal proceedings maybe instigated in the following circumstances;

- Where the offence involves a flagrant breach of the law such that health, safety or the environment has been placed at serious risk.
- Where the offence involves a failure to comply with a statutory notice
- Where there is a history of similar offences involving serious risk to the public.
- Where an individual is unwilling to prevent a reoccurrence or resolve the matter.
- Where an Officer has been obstructed in the course of their duties.

Civil Penalties

The Housing and Planning Act, s126 amends the Housing Act 2004 to allow civil penalties to be imposed as an alternative to prosecution for certain offences. The Council can impose a penalty of up to £30,000 per offence. The level of the financial penalty will be calculated with reference to the guidelines set out in **Appendix 5.**

These offences include,

Section 30 (failure to comply with Improvement Notice)
Section 72 (licensing of HMOs)
Section 95 (licensing of houses under Part 3)
Section 139(7) (failure to comply with overcrowding notice)
Section 234 (management regulations in respect of HMOs)

If the Council wishes to impose a civil penalty as an alternative to prosecution, it must first issue a notice of intent. This must set out the reasons for the proposed penalty and the amount of the proposed penalty**.** The person who has been given the notice then has 28 days to make representations. At the end of this 28 day period, the Council must decide if it wishes to impose a penalty, and if it does, it must issue a final notice. Any penalty must be paid within 28 days. The final notice must set out the amount of the penalty, the reasons for imposing the penalty, the period for paying the penalty, information on how to pay, information on rights of appeal, and the consequences of failure to comply. A person on whom a final notice is served has a right of appeal to the First Tier Tribunal. If an appeal is made, the notice is suspended until the outcome of the appeal is determined. The penalty may be recovered through the county court as if it were payable under an order of that court. The financial penalties may be retained by the local authority and may be used to meet the costs of enforcement action associated with the private rented sector.

Banning Orders

Part 2 of the Housing and Planning Act provides for the establishment of a database of rogue landlords and property agents. The Secretary of State must establish such a database and introduce banning order offences. If a landlord is convicted of a banning order offence, then the local authority may apply to the First Tier Tribunal for a banning order to be granted. If a banning order is granted, the person against whom the order is granted it prohibited from letting property or engaging in letting agency or property management work. The order must last for at least 12 months. Breach of a banning order is an imprisonable offence.

If the local authority pursue a banning order then they must make an entry on the database of rogue landlords when a person is subject to a banning order.

Enforcement of Private Sector Housing Standards

Part 1, Housing Standards

Part 1 of The Housing Act 2004 requires local authorities to base their enforcement decisions in respect of all types of residential property on assessments under the Housing Health and Safety Rating System (HHSRS). The system is based on twenty-nine possible hazards, and is structured around an evidence based risk assessment process. Local Authorities must inspect properties to determine whether there are Category 1 or Category 2 hazards present, using the method prescribed by regulations, having regard to Operating Guidance issued by the Secretary of State.

Assessment of hazards is a two stage process, addressing first the likelihood of an occurrence and then the range of probable harm outcomes. These two factors are combined using a standard method to give a score in respect of each hazard identified. The decision to take enforcement action is based on three considerations:

(a) the hazard rating score determined under HHSRS;

(b) whether the Council has a duty or power to act, determined by the presence of a hazard score above or below a threshold prescribed in the regulations, and

(c) the Councils, judgement as to 'the most appropriate course of action' to remove or reduce the hazard taking into account the most vulnerable potential occupant and the actual occupants.

Duties and Powers

The Council must take appropriate action in respect of a Category 1 hazard (bands A-C) and may do so in respect of a Category 2 hazard (bands D-J).

The courses of action available to the Council where it has either a duty or a power to act are to:

- Serve an Improvement Notice requiring remedial works.
- Make a Prohibition Order, which closes the whole or part of a dwelling or restricts the number or class of permitted occupants
- Serve a suspend the Improvement Notice or Prohibition Order for a maximum period of 12 months
- Serve a Hazard Awareness Notice
- Take Emergency Remedial Action (Category 1 hazards only)
- Serve an Emergency Prohibition Order (Category 1 hazards only)
- Make a Demolition Order (Category 1 hazards only)
- Declare a Clearance Area (Category 1 hazards only)

For the purposes of assessing the hazard, it is assumed that the dwelling is occupied by the most vulnerable household (irrespective of what household is actually in occupation or indeed if

it is empty). However, for the purposes of deciding the most appropriate course of action, regard is had to the actual household in occupation.

Where a Council takes action and the property owner does not comply, the Council has the powers available to Councils to act in default. Default action will only be undertaken where an imminent risk to the individual's health is and the consequences of not taking any action would be unacceptable.

The Council can reclaim the cost of the works in default including administration costs. In most cases costs can be registered as a charge on the property and can be recovered through the Courts.

Decision Rules

The Council will have regard to the statutory guidance document 'The Housing Health and Safety Rating System: Enforcement Guidance' when deciding the most appropriate course of action.

Whether the Council has a duty to act in respect of a Category 1 hazard, or the power to act in respect of a Category 2 hazard, in either case the Council is obliged to give a formal statement of reasons for the action it intends to take.

The Council will take account of factors such as:

- Extent, severity and location of hazard
- Proportionality - cost and practicability of remedial works
- Multiple hazards
- The extent of control an occupier has over works to the dwelling
- Vulnerability of current occupiers
- Likelihood of occupancy changing
- The views of the current occupiers

Consideration must also be given to whether consultation is required with other enforcing bodies. In particular where the hazard of fire is identified there is a duty to consult with the fire authority as prescribed under section 10 of the 2004 Act.

Category 1 Hazards

Where an assessment and rating of a property has resulted in a Category 1 hazard, the Council has a duty to take the most appropriate course of action. This will be determined by the authorised Officer following the inspection, taking into account all the available information, the landlord and the tenants views.

Category 2 Hazards

In addition to the Council's duty to take action where a Category 1 hazard exists, the Council will generally exercise its discretion to take the most appropriate course of action where a Category 2 hazard exists in the following situations:

(a) Band D and E Hazards
There will be a general presumption that where a Band D and E hazard exist, Officers will consider action under the Housing Act 2004 unless that would not be the most appropriate course of action.

(b) Multiple Hazards,
Where a number of hazards at Band D or below create a more serious situation, where a property appears to be in a dilapidated condition, or where the conditions are such as to be affecting the material comfort of an occupying tenant.

Reducing hazards to an acceptable level

The Housing Act 2004 requires only that the Council takes the most appropriate course of action to reduce a Category 1 hazard to Category 2 hazard. For example Band C and Band A hazards need only be reduced to Band D. The Council will generally seek to specify works which achieve a significant reduction in the hazard level and in particular will be to a standard that should ensure that no further intervention should be required for a minimum period of twelve months.

Tenure

In considering the most appropriate course of action, the Council will have regard to the extent of control that an occupier has over works required to the dwelling. In normal circumstances, this will mean taking the most appropriate course of action against a private landlord and in most cases this will involve requiring works to be carried out.

Registered Providers

Registered Providers (RPs) (Housing Associations) are also subject to enforcement, however the Council will liaise as appropriate with the landlord over any works necessary to deal with Category 1 and 2 hazards in advance of any planned improvements.

If an RP is planning works which would deal with the hazard, depending on the risk to the tenants, it may be appropriate to issue a Suspended Improvement Notice rather than an Improvement Notice, or to allow extra time on an Improvement Notice.

However, if the RP fails to respond to any such request for information, or if the proposed timescale is not considered acceptable based on the severity of the hazard, the Council will consider the need to pursue more urgent action.

Owner occupiers

With owner occupiers, in most cases they will not be required to carry out works to their own home and the requirement to take the most appropriate course of action will be satisfied by the service of a Hazard Awareness Notice.

However, the Council may in certain circumstances require works to be carried out, or to use Emergency Remedial Action or serve an Emergency Prohibition Order, in respect of an owner occupied dwelling. This is likely to be where there is an imminent risk of serious harm to the occupiers themselves or to others outside the household, or where the condition of the dwelling is such that it may adversely affect the health and safety of others outside the property. This may be because of a serious, dangerous deficiency at the property. Another example is a

requirement to carry out fire precaution works to a flat on long leasehold in a block in multiple occupation.

Vacated Properties with Statutory Notice

In cases where properties are subject to a statutory notice and the property is subsequently vacated, all notices or orders will be reviewed to consider whether the notices or orders may be varied, suspended or revoked. The Council will seek to deter landlords from undertaking retaliatory eviction and will not consider that removal of a tenant achieves compliance with any Notice served, except in overcrowding situations where it was a specific requirement of the notice.

Additional powers within the Housing Act

Action by Agreement

The Act also makes provision for remedial works to be carried out by agreement. This is where the local authority arranges for the works to be carried out at the request of the person responsible and they are then charged for the full cost. If the costs incurred cannot be paid they must be placed as a charge against the property. Interest will be charged on the monies owed and the arrangement will be reviewed annually. Action by agreement will normally be considered and will require to be authorisation by the Director of Economic Development.

Powers of Entry

Most of the legislation enforced by the Private Sector Housing Team includes the power for authorised officers of the Council to gain entry into a property for the purpose of carrying out the authorities duties under that legislation.

If an Officer is unsuccessful in gaining entry to a property by informal means, the Council will consider obtaining a warrant from the Justice of the Peace to provide for the power of entry by force is necessary. If prior warning of entry is likely to defeat the purpose of entry, then a warrant can be obtained.

The Council also has the power to require documents to be produced in connection with its enforcement by a notice. The notice will specify the consequences of not complying.

Power to Charge for Enforcement Action

In line with Sections 49 and 50 of the Housing Act 2004, the Council reserves the right to charge and recover the reasonable costs incurred in taking the most appropriate course of action.

The Council will charge where a formal notice or order is required to remove hazards, or when emergency remedial action is necessary, with charges levied on the basis of actual time spent by Officers on individual tasks. The hourly rate will be reviewed and be incorporated in the charges report.

This charge may be waived if the landlord makes representations and agrees the extent of the works and timescales prior to the service of the notice. If there is an appeal against the

Notice then the charge will not be applied until the appeal is resolved and if the notice is upheld.

A demand for payment of the charge must be served on the person from whom the Council seek to recover it. The demand becomes operative, if no appeal is brought against the underlying notice or order, at the end of the period of twenty-one days beginning with the date of service of the demand. A charge will be placed on the property until the sum is paid in full.

Costs incurred in carrying out emergency remedial action may be recovered separately in line with guidance prescribed by the Secretary of State.

Works in Default

The Council may carry out works in default of a statutory notice. The cost of the works, plus the Councils reasonable administration charges based on an officer hourly rate, will be charged to the responsible party and recovered through the civil court.

Charges may be made for abortive costs in preparing to carry out work in default where an order has been placed and the owner then carries out the work required. Where there is no prospect of the money being recovered, the debt may be placed on the property as a land charge.

Emergency Measures

The Council may use emergency enforcement powers under housing legislation where there is an imminent risk of serious harm. In such circumstances the Council will take whatever remedial action it considers necessary to remove an imminent risk of serious harm. This could include taking remedial action in respect of a hazard and the subsequent recovery of reasonable expenses or prohibiting the use of all or part of a property.
Such emergency measures will only be taken where the use of emergency powers is the most appropriate course of action. Where emergency measures are taken, the owner of the property or other relevant person will be advised of the method of appeal against the action taken.

Part 2: Licensing of Houses in Multiple Occupation

Part 2 of the Housing Act 2004 introduces mandatory licensing of certain types of HMO. Mandatory licensing applies to houses occupier by five or more persons, over three or more storeys and compromising of two or more households.

Duty to Licence Houses in Multiple Occupation (HMO)

The Council must take all reasonable steps to ensure property owners make licence applications. A charge will be made for HMO licence applications, this charge will be published and reviewed annually.

Each licence application will be dealt with systematically and will require a degree of checking before a licence can be issued. Checks will carried out within agreed timescales and a Notice either granting or refusing a licence will be issued.

Amenity standards within HMOs

The Council will require the provision of amenities in all HMOs to be in accordance with House in Multiple Occupation Management Regulations and for licenced HMO properties, the Licensing and Management of Houses in Multiple Occupation and other houses (Miscellaneous Provisions) (England) Regulations 2006 as amended.

In order to provide some basic guidance to landlords for amenities in relation to the legislation. The Council has adopted an amenity standards document is referenced in **Appendix 2**. This document sets out the expected standards in licensed HMO's and should also be used as a reference for compliance for non-licensed HMO's where there are a higher number of letting units. If a landlord is not able to comply with the requirements and the property does not lend its self to adaptation or there is no evidence of the tenants being inconvenienced then a lesser standard maybe accepted, but this will be reviewed at each inspection.

HHSRS and its Link to HMO Licensing

The Council does not need to consider HHSRS before an HMO licence is issued. However, if during the licensing process the Council has reason to be concerned about the likelihood of Category 1 or 2 hazards, it may elected to carry out an inspection before the licence is issued.

The assessment of hazards in HMO's is made for each unit of accommodation, but will take into account the common parts and other areas connected to the unit of accommodation. If an enforcement notice is served on an HMO and it reverts to single occupation, the Council will consider whether the impact of the hazard is now relevant to the change of use. For example, the hazard of Fire in an HMO property.

Fit and Proper Person and Management

The purpose of HMO licensing is to ensure that the most high risk and poorly managed properties are appropriately managed. Part 2 of the Housing Act 2004, requires licence holders to be a fit and proper person. The Act stipulates criteria that the licence holder must meet to be regarded as fit and proper. Where the proposed manager or licence holder is not a fit and proper person, the applicant will be given the opportunity to develop proposals to meet the fit and proper person test. If this is not possible, it may be necessary to refuse the licence.

Provision of False or Misleading Information

It is an offence under the Act to provide false or misleading information. On conviction a fine of up to £5000 can in be incurred.

Where the HMO licence application form has been signed this is a declaration that information provided is correct. Should contradictory information come to light, prosecution will be considered.

Granting a Licence

Where an application for a licence has been received and the Council is satisfied that the proposed licence holder is fit and proper, that the house is suitable for multiple occupation and the application submitted is valid, the Council must grant a licence. Each licence must only relate to one HMO and can last for up to five years. In some cases in may be necessary to grant the licence for less than five years.

Refusing a Licence

A licence can be refused if the Council is not satisfied that the criteria stipulated in the Act have been met.

If a licence is to be refused, the Council will give serious consideration to the consequences of this decision. Depending on the reasons for the refusal it may be appropriate to consider the options available for dealing with the property.

Where a licence is refused the Council has a duty to take on the management of the property by serving an Interim Management Order. A management order will be the last resort and other avenues will be considered before instigating this action, including a Temporary Exemption Notice.

The Council will take all reasonable steps to assist the proposed licence holder or owner of the property to take action to enable the property to become licensed or to take the property out of use as an HMO.

Revoking a Licence

The Council may revoke a licence in line with circumstances stipulated under Part 2 of the Housing Act 2004. If the property is to remain a licensable HMO the Council must make an interim management order. If it is no longer an HMO no further action is required.

Varying a Licence

A licence may be varied where either the licence holder makes a request or the Council feels it is relevant to do so. It may be varied where there has been a change in circumstances, which also includes the discovery of new information.

Penalties

There are a number of possible offences relating to HMO licensing. The Council will consider taking action where there is evidence of an offence and it is appropriate to take such action. Offences include:

(a) Managing or having control of an unlicensed HMO that should have a licence. Prosecution can result in fines of up to £20,000.

(b) Allowing the HMO to become occupied by more than the agreed number of households or persons on the licence. Prosecution can result in fines of up to £20,000.

(c)Breaching licence conditions. A breach of licence conditions can lead to prosecution and can result in fines of up to £5,000 per breach.

Other penalties include:

Rent Repayment Orders - if a person does not have licence for an HMO that requires a licence, then the Council or tenants can apply for a rent repayment order to the First Tier Tribunal (Property Chamber).

Termination of Tenancies - Landlords will not be able to issue any section 21 notices under the Housing Act 1988 (recovery of possession on termination of a short hold tenancy), whilst the HMO is unlicensed.

Changes to HMO licensing under the Planning and Housing Act

The Housing and Planning Act will introduce changes to the definition of a House in Multiple Occupation from October 2017, it is proposed that the existing procedures will be adopted, including applications process, procedures and setting of licence fees annually for licensable activity under the Act or subsequent legislation, taking into account good practice.

Interim Management Orders and Final Management Orders

The Council has a duty to make an Interim Management Order in respect of an HMO where there is no reasonable prospect of it being licensed in the near future or it is necessary to protect the health, safety and welfare of the occupants. An order can also be served in circumstances that the Council thinks are appropriate with a view to ensuring the proper management of the house pending the licence being granted.

If a licence has been revoked for any reason and there is no reasonable prospect of the property regaining its licence. The Council must make an Interim Management Order. The order requires the Council has to take over the management of the property for up to 12 months. This includes carrying out any remedial works necessary to deal with the immediate risks to health and safety. If there is still no prospect of a licence being granted after twelve months then a final management order must be made which may be in force for up to five years. If after five years there is no prospect of the property being licensed a further management order must be made. Management order can be varied or revoked at any time as a result of a request from the owner or by the Council.

The Council will instigate this action as a last resort, where necessary.

The Council will take all practical steps to assist the owner of the property to satisfy the licensing requirements.

Temporary Exemption Notices

The Council will consider issuing Temporary Exemption Notice (TEN) in response to a request from the owner or managing agent to exempt the property from licensing on the grounds that is no longer going to be used as an HMO. A TEN remains in force for a period of three months, after which the property must have a license if it is still in such a condition as to require one. If further notification is received and the authority considers that there are exceptional circumstances a second TEN may be served which will remain in force for a further three months.

Additional and Selective Licensing

Local Authorities may also introduce Additional and Selective licensing schemes within their area. These schemes are not currently operated in Carlisle and are discretionary. In 2015 amendments were made to the legislation which widens the criteria for licensing, to include areas with a high proportion of private rented properties with poor housing conditions.

The Councils adoption of any selective licensing scheme, would involve a lengthy period of consultation with local stakeholders, to inform decision making and implementation.

Part 3 Smoke Detection and CO Regulations

On the 1st October 2015 the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force which requires both smoke alarms and carbon monoxide alarms to be installed in rented residential accommodation. The Regulations apply both to houses and flats. Failure to comply can lead to a civil penalty being imposed of up to £5,000.

Requirement for Smoke alarms

During any period beginning on or after 1st October 2015 while the premises are occupied under a tenancy (or licence) the landlord must ensure that a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation.

The Regulations do not stipulate what kind of smoke alarm is required, both mains wired and battery detection is acceptable.

Cumbria Fire and Rescue Services have a limited supply of free smoke detectors and tenants can also request free Home Safety Checks from the Fire Service.

Requirement for Carbon monoxide alarms

During any period beginning on or after 1st October 2015 when the premises are occupied under a tenancy or a licence a carbon monoxide alarm must be provided by the landlord in any room in premises which is used wholly or partly as living accommodation which contains a solid fuel burning combustion appliance. This applies to any kind of wood burning stove or an open coal fire.

Mains wired and battery detection will be acceptable.

Checks

The landlord is specifically required to carry out a checks to ensure that smoke alarms or carbon monoxide alarms installed to comply with the Regulations are in proper working order on the day a tenancy begins with effect from 1st October 2015.

Although the need to undertake checks on detection only applies to new tenancies after the 1st October 2015, all landlords are required to install detectors and alarms in their tenanted properties.

Enforcement

The Council will serve a remedial notice within 21 days when they have reason to believe that the landlord is in breach of any of these duties relating to smoke alarms or carbon monoxide alarms. The remedial notice must specify the action to be taken within 28 days of the date of the service of the notice and It allows the landlord 28 days to make representations against the notice.

If the landlord fails to take action then the Council can fit the smoke alarms and CO detectors as works in default. This does however require the consent of the occupiers as there is no right of entry for compliance.

Penalties

If a landlord breaches the Notice, the Council will serve a penalty charge notice in line with its current charging policy for civil penalties. This has been set at £1000 and has been adopted by all the Cumbrian District Councils.

In line with other areas of penalty and fee charging within housing, Carlisle and the other five Cumbrian districts Councils have collectively opted to introduce a proposed minimum fee for fines at £1000 per offence. The level of fine is calculated on Officer time and a reflection of other fines issued for housing offences in the courts. **Appendix 3** details the fine structure which must be adopted by the authority under the regulations.

If the Council are satisfied a breach exists then a penalty charge notice will be served within six weeks from when it was made aware the breach had occurred. A right to make representations against the penalty notice is given and any representations for a reduction in fine levied, taking into account any extenuating circumstances are made to the Director and Portfolio Holder. The penalty fines received by the authority may be used by the authority for any of its functions.

Appeals

If the local authority upholds a penalty charge notice there is a right to appeal for the landlord to the First Tier Tribunal. The Grounds of Appeal are:-

- Local authority has made an error of fact or law
- The amount of penalty charge is unreasonable
- The decision to impose a penalty is unreasonable for any other reason

Payment of the penalty is suspended pending any appeal.

Part 4 Electrical Safety Standards

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force on the 1st June 202 and will apply to new tenancies from 1 July 2020 and existing tenancies from 1 April 2021.

If a private tenant has a right to occupy a property as their only or main residence and pays rent, then the Regulations apply. This includes assured shorthold tenancies and licenses to occupy. (Exceptions are set out in Schedule 1 of the Regulations.)

Requirements

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 the Council.

Landlords of privately rented accommodation must:

- Ensure national standards for electrical safety are met. These are set out in the 18th edition of the '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 Council 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.
- Supply written confirmation of the completion of the further investigative or remedial works from the electrician to the tenant and the Council within 28 days of completion of the works.

Results of the inspection and testing

As set out above, 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 the 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.

The Council may 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 18th 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.

Enforcement

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

If the 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 Council 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 the Council may, with the tenant's consent, arrange for any remedial action to be taken themselves.

Remedial notice

The remedial notice should:

- specify the premises to which the notice relates
- specify what the Council believes the landlord has failed to do
- specify what needs to be done
- require the landlord to take action within 28 days from the day the notice is served
- explain the landlord's entitlement to make written representations within 21 days
- specify the person and address, or email address, that representations can be sent to
- explain provisions about financial penalties and rights of appeal

Remedial action

The Council may, with the consent of the tenant, arrange to carry out remedial work in the following circumstances:

- If a landlord does not comply with a remedial notice.
- If the report indicates that urgent remedial action is required and the landlord has not carried this out within the period specified in the report.

The Council must authorise a qualified and competent person in writing to undertake the remedial action.

The Regulations require that the authorised person must give at least 48 hours' notice to the tenant. They may be asked by the tenant and the landlord to produce evidence of their identity and a letter from the Council confirming their authority to carry out the required works.

The Council can recover the costs incurred.

Remedial action following non-compliance with a remedial notice

Before arranging remedial action following non-compliance with a remedial notice, the Council must give the landlord notice that they are going to do work. This notice must specify:

- the address of the property where the work will be undertaken
- the power under which the remedial action is to be taken
- the date when the remedial action will be undertaken (at least 28 days from the date served)
- the right of appeal against this decision

The Council must arrange for an authorised person to take the remedial action within 28 days of the end of the notice period. Where there is an appeal, remedial action must be arranged within 28 days of the appeal decision confirming or varying the decision of the Council.

Urgent remedial action

Within 7 days of the authorised person starting to take the urgent remedial action the Council must either:

- serve a notice on the landlord and all occupiers of the premises in relation to which the authorised person is taking urgent remedial action; or
- fix a notice to the premises

The notice must specify:

- what action is going to be undertaken
- the address of the property where the action will be undertaken
- the legal power
- the date when that urgent remedial action was or will be started
- rights of appeal and the period of time within which an appeal may be made
- details of any financial penalty and the right of appeal against the financial penalty

Landlords who aren't able to comply with a remedial notice

A landlord is **not in breach** of the duty to comply with a remedial notice if the landlord can show they have taken all reasonable steps to comply.

A landlord could show reasonable steps by keeping copies of all communications they have had with their tenants and with electricians as they tried to arrange to carry out the work, including any replies they have had. Landlords may also want to provide other evidence they have that the electrical installation is in a good condition while they attempt to arrange works. This could include the servicing record and previous condition reports.

A landlord who has been prevented from accessing the premises will not be required to begin legal proceedings against their tenant in order to show that all reasonable steps have been taken to comply with their duties.

Penalties

The Council can impose a financial penalty of up to £30,000 on a landlord who fails to comply with the regulations. The Council will, in the first place, serve a penalty charge notice in line with its current charging policy for civil penalties. This has been set at £1000 and has been adopted by all the Cumbrian District Councils. In line with other areas of penalty and fee charging within housing, Carlisle and the other five Cumbrian districts Councils have collectively opted to introduce a proposed minimum fee for fines at £1000 per offence. The level of fine is calculated on Officer time and a reflection of other fines issued for housing offences in the courts. **Appendix 3** details the fine structure which must be adopted by the authority under the regulations.

Appeals

In the first instance, landlords can make written representations to a Council within:

- 21 days, against a remedial notice
- 28 days, against the intention to impose a financial penalty

The Council has 7 days to respond to the representations.

Landlords then have the following rights of appeal to the First-tier Tribunal. The Tribunal may confirm, quash or vary notices served by the Council.

Appeals against remedial action

An appeal must be made to the First-Tier Tribunal within 28 days from the day on which a remedial notice is served. The Tribunal may allow an appeal to be made after this date if it is satisfied there are good reasons for the failure to appeal on time.

Landlords can appeal on the grounds that all reasonable steps had been taken to comply or reasonable progress had been made towards compliance when the notice was served. If a landlord appeals, the remedial notice is suspended until the appeal is finally determined or withdrawn.

Appeals against urgent remedial action

An appeal to the First-Tier Tribunal must be made within 28 days from the date the urgent remedial action was, or was to be, started.

Landlords can appeal on the grounds that all reasonable steps had been taken to comply or reasonable progress had been made towards compliance when the urgent remedial action started.

Appeals against demands for the recovery of costs

An appeal must be made with 21 days from the day on which the demand is served.

Landlords can appeal on the grounds that all reasonable steps had been taken to comply or reasonable progress had been made towards compliance with the notice when the Council gave notice of their intention to enter and take the remedial action.

Appeals against a financial penalty

An appeal must be made within 28 days beginning with the day after that on which a final notice to impose a financial penalty was served.

Landlords can appeal the decision to impose the penalty or the amount of the penalty. On appeal the final notice is suspended until the appeal is determined or withdrawn.

Part 5 Minimum Energy Efficiency Standards

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015[1] were introduced in 2015 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 energy efficiency for privately rented property, affecting new tenancies from 1 April 2018 and all tenancies from April 2020. In accordance with Regulation 33 and 34 Local Authorities are responsible for enforcing the minimum level of energy provisions within their area.

In the first instance the Council will informally inform Landlords who rent properties with an EPC of F or G that they do not meet the minimum energy efficiency standard . The Council will offer advice how the standards can be met and request Landlords to register an exemption if appropriate.

Landlords will be given an appropriate time to make the necessary changes but will be warned that if they continue to be in breach after the time given, an investigation will follow and formal enforcement action will be considered

The Council may in circumstances where a landlord has a history of not complying with housing related regulatory requirements, decide to take formal action without giving an informal opportunity for the landlord to comply.

<u>Requirements: Prohibition on letting sub-standard property.</u>

a) from the 1st 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);

b) from the 1st 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).

<u>Exemptions</u>

In certain circumstances landlords *may* be able to claim an exemption from this prohibition on letting sub-standard property; this includes situations where the landlord is unable to obtain funding to cover the cost of making improvements, or where all improvements which can be made have been made, and the property remains below an EPC rating of Band E.

[1] This policy has regard to the guidance published by the Department for Business Energy and Industrial Strategy.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/882957/Domestic_Private_Rented_Property_Minimum_Standard_-_Landlord_Guidance_2020.pdf

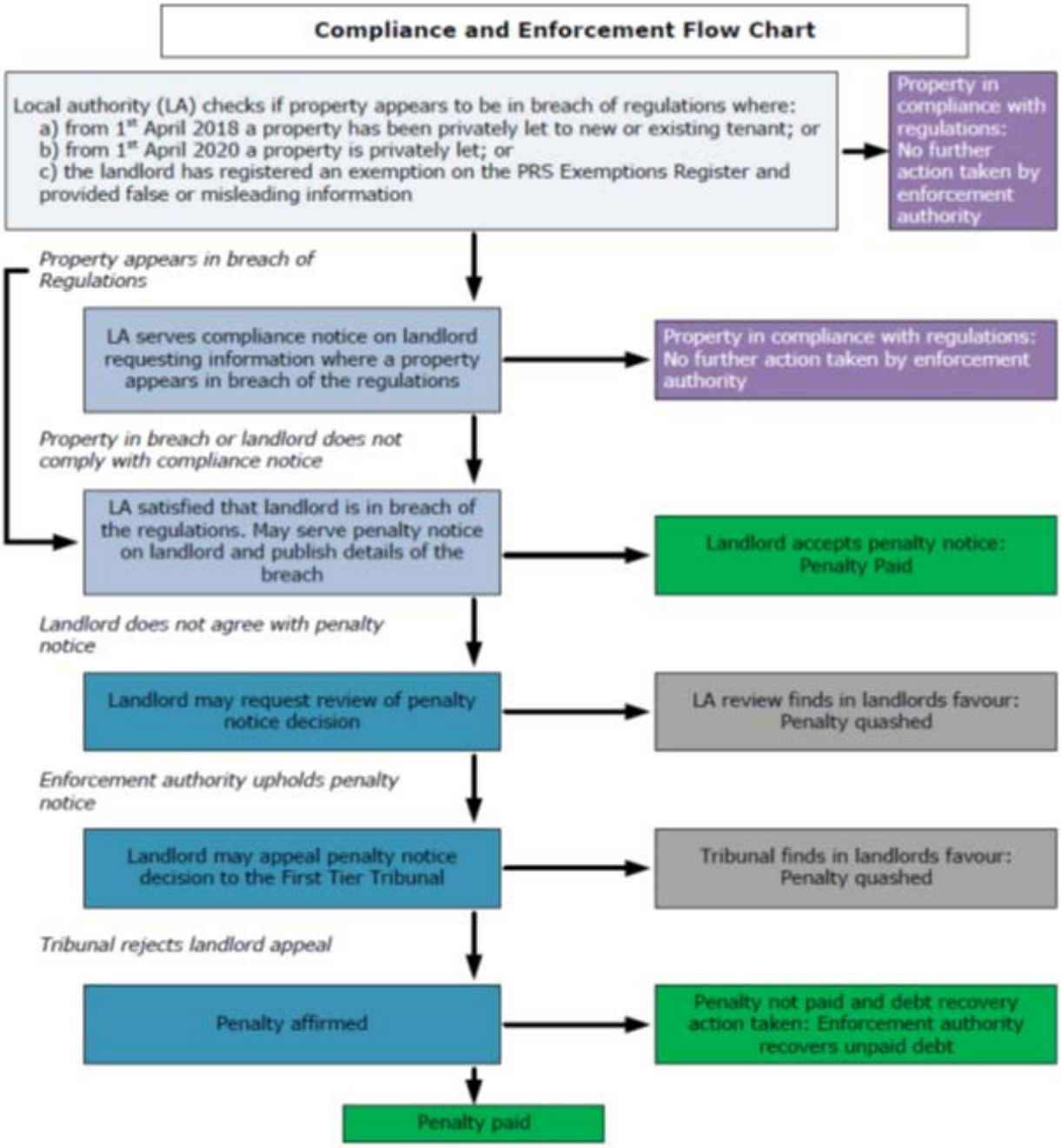
Where a valid exemption applies, landlords must register the exemption on the national PRS Exemptions Register.

Enforcement

The Council may check for different forms of non-compliance, including one or more of the following:

- a newly tenanted property was let in breach of the Regulations after 1 April 2018
- a tenanted property was let in breach of the regulations after 1 April 2020,
- false or misleading information was entered on the PRS Exemptions Register

The table below outlines the process of compliance and enforcement of these regulations.



Compliance Notice

If the Council suspect a breach has taken place they may serve a compliance notice requesting information to help them decide whether a breach has occurred. They may serve a compliance notice up to 12 months after a suspected breach occurred.
A compliance notice may request information on:

- the EPC that was valid for the time when the property was let
- the tenancy agreement used for letting the property
- information on energy efficiency improvements made
- any Energy Advice Report in relation to the property
- any other relevant document

Penalties

If a property is (or has been) let in breach of the Regulations the Council may serve a notice on the landlord or agent letting the property and impose a financial penalty up to 18 months after the breach and/or publish details of the breach on the national PRS Exemptions Register for at least 12 months.

Local authorities can decide on the level of the penalty having regard to the guidance:

Guideline for financial penalties for breaches of the regulations	
Breach	**Penalty**
Letting a sub-standard property for less than 3 months	up to £2,000 plus a publication penalty
Letting a sub-standard property for 3 months or more,	up to £4,000 plus a publication penalty
Registering false or misleading information on the PRS Exemptions Register,	up to £1,000 plus a publication penalty
Failing to comply with compliance notice	up to £2,000 plus a publication penalty
Maximum penalty to be applied against an individual property (NB This penalty can be repeated if the property remains sub standard and is let on a new tenancy).	up to £5,000

Right of review and right of appeal

A landlord can ask the Council to review its decision. They can withdraw the penalty notice if:

- new evidence shows a breach has not occurred
- a breach has occurred, but evidence shows the landlord took all reasonable steps to avoid the breach
- they decide that because of the circumstances of the case, it was not appropriate to issue a penalty

If the Council decides to uphold a penalty notice, a landlord may appeal to the First-tier Tribunal 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
- it was inappropriate to serve a penalty notice in the particular circumstances

The First-tier Tribunal will review the decision may:

- finds in the landlord's favour and the penalty is quashed, or
- rejects the landlord's appeal, and the penalty is affirmed. The landlord will then have to pay the penalty, or the Council take debt recovery action

Part 6 Tenancy Redress Scheme

People involved in letting agency work or/and property management work in the private rented sector, are required to be registered with an approved redress scheme under **The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014**

The Council is the enforcing authority for this statutory requirement and we are required to take enforcement action where we are made aware a person is engaged in letting agency or property management work and they are not registered with an approved redress scheme.

Currently there are 3 schemes approved by the National Trading Standards (Estate Agency Team):

A financial penalty of up to £5,000 can be levied by the Council for non-compliance. The guidance on fines under the regulations stipulates that the fine level should be set at £5000 automatically and then the individual organizations will have 28 days in which to make representations to the Council. Factors that may have an impact on the decision will include; lack of awareness, if a £5,000 fine is disproportionate to the turnover/scale of the business or would lead to an organisation going out of business.

It is proposed that any representations for a reduction in fine taking into account any extenuating circumstances are made to the Director and Portfolio Holder, who will have the final say on any fine levied. The penalty fines received by the enforcement authority may be used by the authority for any of its functions.

The enforcement authority can impose further penalties if a lettings agent or property manager continues to fail to join a redress scheme despite having previously had a penalty imposed. There is no limit to the number of penalties that may be imposed on an individual lettings agent or property manager, so further penalties can be applied if they continue to be in breach of the legislation.

Guidance on the enforcement route that must be followed is referenced in **Appendix 4** of this document.

Part 7 Changes to Tenancies under the Deregulation Act 2015

The Deregulation Act 2015 was passed on 26 March 2015 and covers various points of law, which have an impact on the Private Sector Housing and Homeless Service, the regulations will affect how the teams deal with private sector complaints, advice offered to landlords and how the Council deals with evictions from the private sector.

Tenancy Deposit Protection Schemes

The Deregulation Act 2015, which received Royal Assent on 26th March 2015, contains important changes to Tenancy Deposit Protection Scheme legislation that attempts to clarify the issues created by the court cases of Superstrike vs Rodrigues and Charalambous vs Ng.

The main changes, relate to deposits taken under any assured short hold tenancy. There is now a requirement for all deposits to be protected even applying to those tenancies previous to April 2007.

Landlords who have not complied will not be able to serve a Section 21 notice and WILL be liable for penalties for non-compliance in the Civil Courts if deposits are not protected.

Retaliatory evictions

The Deregulation Act introduces new provisions which came into force on 1 October 2015, to protect tenants from eviction in England only.

These provisions restrict a landlord's ability to serve a Section 21 notice in circumstances where the tenant has complained about the condition of the premises or the common parts of a building of which the premises form part, and the landlord either did not respond within 14 day or they have not provided an inadequate response.

The tenant can complain to the Council if they are not satisfied and the Council may investigate the matter for breaches of legislation under the Housing Act. In the event that the Council serves an enforcement notice on the landlord, the landlord will not be able to serve a Section 21 notice within six months of the date of the notice.

Although the legislation infers that tenants should contact the Council to make complaints regarding housing standards and that this action will result in immediate enforcement action. This is not in the spirit of the Councils approach in dealing with complaints under the Housing Act 2004 and each case will be dealt with on an individual basis. The overall aim is to ensure a satisfactory outcome for all parties and secure the accommodation through a preventative approach, rather than enforcement.

The provisions will apply to all Assured Shorthold Tenancies (AST) granted on or after 1 October 2015. They will not apply to a fixed term AST granted prior to that date even if, after 1 October 2015, the fixed term AST becomes a statutory periodic tenancy. The position changes, however, after the end of the period of three years, at which point the provisions will apply to any AST in existence.

Section 21 Notices

On the 1 July 2015 the Secretary of State introduced regulations prescribing the form on which a Section 21 notice must be served, this makes the procedure for serving a Section 21 notice much simpler and clearer and landlords will be required to comply with these requirement before serving a notice.

From 1 October 2015 in England, there will be no requirement for the date specified in the Section 21 notice to be the last day of a period of the tenancy and a landlord will not be able to serve a Section 21 notice within the first four months of the tenancy. In addition there is now

statutory right for the tenant to claim back rent paid in advance (calculated on a daily basis) where a Section 21 notice brings the tenancy to an end before the end of a payment period.

The new rules will apply to ASTs granted on or after the 1st October 2015, they will not apply to all fixed term AST granted prior to this date even if, after the relevant date, the fixed term AST becomes a statutory periodic tenancy.

The position changes, however in respect of these provisions after a period of three years, at which point it will apply to all tenancies. In respect of the prescribed information about the rights and responsibilities of the landlord and tenant under the AST, this will apply from 1st October 2015.

The prescribed requirements are set out in the regulations and relate to the condition of dwelling houses and their common parts, the health and safety of occupiers of dwelling houses, and the energy performance of dwelling houses.

Part 8 Protection from Eviction

Offences Dealt With By the Homeless Service

The Homeless Service takes the lead responsibility for enforcing various offences to do with the behaviour of landlords towards tenants and the requirement for landlords to provide information to tenants relating to their tenancy.

The most serious of such offences dealt with by the Council are to do with the harassment and illegal eviction of tenants (Protection from Eviction Act 1977). The Council generally regards these offences as very serious because of its commitment to:

a. Protecting the interests of vulnerable people

b. Promoting respect for the individual's home.

c. Preventing homelessness

The law provides grounds for landlords to lawfully regain possession of their premises and these procedures must be followed when a landlord wants a tenant (or licensee) to leave. Where an allegation is made that an offence has been committed under the Protection from Eviction Act 1977, the Council will investigate with a view to:

- Informing the landlord and occupier of their rights and responsibilities where appropriate.
- Prosecuting offences where there is sufficient evidence and where it is in the public interest to do so.

Prosecution of offences dealt with by the Homeless team and the issue of Simple Cautions will be dealt with in accordance with this policy.

Part 9 Right to Rent Legislation

On 1st February 2016, legislation will be rolled out across England, requiring landlords and letting agents to conducts checks on prospective tenants to ensure they only let property to those with a right to rent in the UK. If they do not conduct checks and are found to be renting out to someone without that right, then they may face a civil penalty.

The Council will have a role to play in raising awareness of the scheme among landlord, letting agents and tenants.

Part 10, Other areas of legislation

Environmental Protection Act 1990

Private Sector Housing Officers can use sections 79 and 80 of the Act to tackle premises that are deemed to be a nuisance/prejudicial to health. Prejudicial to health is defined as injurious or likely to cause injury or health. This typically includes properties that are damp or have mould growth; these can have an effect on people's health. A nuisance is taken to be anything that interferes with the use and enjoyment of a neighbouring property or which materially affects the comfort and quality of life of the public at large. An examples of nuisances include defective guttering serving the roof of one property allowing rain to penetrate through and affect the neighbouring property.

Officers can serve a Notice under section 80 of the Act requiring the abatement of the statutory nuisance within certain time limits. Failure to comply with such as Notice is a criminal offence, with a maximum penalty of £5000.

Local Government (Miscellaneous Provisions) Acts 1976, 1982

Section 16 Local Government (Miscellaneous Provisions) Act 1976 gives the Council the power to issue ‘Requisition for Information Notices’. When the Council need to obtain information about a property in respect of which we are proposing to take enforcement action, we will serve a requisition for information Notice on the occupier and/or any person who has a legal interest in it, or who directly or indirectly receives rent, or is authorised to manage or to arrange for its letting.

Section 29 of the Local Government (Miscellaneous Provisions) Act 1982 gives the Council power to require the owner to board up a property to prevent unauthorised access, and to carry out the work in default of the owner if they fail to comply or cannot be found.

Part 11 Empty Properties

In conjunction with the Empty Property Strategy the following options will be available for consideration when dealing with long term empty properties;

Enforced sale

Where the Council have carried out works on an empty property, the owner of the property will normally be billed for the costs of the works. If the owner cannot or will not pay the

Council for the work it has done. The Council will seek to register the debt initially and then can look at selling the property to recover costs.

Empty Dwelling Management Orders

If a property has been empty for at least two years, and the owner has not responded to requests from the Council to repair and re-occupy the property, the Council can apply to the First Tier Property Chamber for an Interim Empty Dwelling Management Order and subsequently serve an Empty Dwelling Management Order. This Order allows the Council to take over the property, carry out any repair work that may be necessary, and then and rent it out to tenants. The owner of the property will only get any income that remains once the Council has recovered its costs in bringing the property up to a decent standard, and as well as its costs in managing the property.

The Council will only consider applying for an Empty Dwelling Managemtn Order as the last resort.

Boarding up of empty dwellings

See Local Government (Miscellaneous Provisions) Act in referenced in part 8.

Part 12 General Information

Planned enforcement activity

The Councils approach to the regulation of Housing Standards will be evidence based. Inspections will be undertaken to actively target those properties and areas were we believe we should be addressing priority risks. This approach will be documented annually in the directorate service plan.

Improving standards in property management through Landlord Accreditation

In May 2014, the Council adopted the Cumbria Landlord Accreditation Scheme, the scheme set up a joint Cumbrian approach to landlord accreditation in partnership with the National Landlord Association. The schemes approach is to drive improvement in the sector through education of landlords, to improve property standards and management.

Media coverage

Media coverage will normally be sought in the following cases:

- The offence is widespread in the area and coverage will assist in securing compliance by others
- To draw attention to particular serious hazards
- The offence is serious and/or was committed wilfully and the Council wishes to draw attention to its willingness to take a hard line in such cases
- Coverage is otherwise in the public interest

A press release will also be issued about convictions where it is considered that publicity will bring benefits by promoting compliance with those statutory requirements designed to protect the health, safety and welfare of customers, residents, workers and visitors as well at the environment.

Complaints

In the event that an individual or company is not satisfied with the Service or they do not agree with the action taken by the investigating officer, they should first contact the Principal Health and Housing Officer who will escalate the complaint to a Senior Manager if appropriate. If this does not resolve your complaint the Council also has a formal complaints system.

Review

We will monitor and consider the effectiveness of this policy and it will be subject to reviews as and when appropriate and also to accommodate changes in legislation and as local needs dictate.

Due to recent changes in the private rented sector, all future small amendments will be made in conjuction with the Service Director and the Portfolio Holder and documented in a Officer Decsiion Notice.

If you have any comments please contact the Environmental Health Team on 01228 817320 or e-mail environmetalhealth@carlisle.gov.uk

Additions to the Enforcement Policy March 2020 (response to COVID19)

In March 2020 the Government introduced a guide for Local Authorities on the enforcement around the private rented sector in light of the global coronavirus outbreak. This guidance will be incorporated in our existing risk assessments which have been put in place by the Local Authority to prevent the spread of the virus, protect our staff and our communities.

Although the information issued is non statutory guidance under section 9 of the Housing Act 2004, the Local Authority welcomes the guidance issued by Ministry of Housing, Communities and Local Government and will use the document to assist us in supporting landlords and tenants during the unprecedented challenges posed by the COVID-19 outbreak**. (Appendix 6)**

The main updates are below

Updates to Inspections and investigations

A decision at this time to inspect a rented property might be made because:

- There is a duty to act because there is an imminent risk to health due to a serious hazard.
- A serious hazard was previously identified and may still exist.
- The local authority has been made aware that a tenant is vulnerable and it is not clear if they are aware of the presence of hazardous conditions.

This list is not exhaustive and should not be treated as conclusive. Practically however it might not be possible to inspect a property due to tenants self-isolating or refusing to allow access to the property. Officers should therefore ensure that reasonable efforts are made to engage with all parties, including any third-party organisations who maybe able to offer assistance.

Officers may also assist in the process without the need to carry out a physical inspection, inspection will be dealt with on a case by case basis and a decision will be made to defer any complaints that are lower risk. Officers were possible should ask the complainant to provide photographs, video or even consider the use of live broadcasting, through Council enabled software.

In cases of extremely hazardous conditions, alternative accommodation might be considered as an alternative to emergency remedial action. Officers must liaise directly with Homeless Services around practically solutions in the climate.

Enforcement Action

Enforcement action which is non-urgent or not legally required may be delayed until restrictions ease.

- Legal notices served under the Housing Act 2004 may, if the notice provides for this, be suspended for a period due to difficulties in completing the works.
- Work in default may be deferred.
- Other forms of enforcement action may be considered for the most serious hazards, e.g. a Prohibition Order covering part of a property may be used instead of Emergency Remedial Action.
- Steps may be taken to isolate or contain rather than remedy hazardous conditions.

All decisions should be made on the merits of the individual case and based on an assessment of risk and the latest government advice around the outbreak.