

The logo for Somerset West and Taunton, featuring the text "Somerset West and Taunton" in white on a teal background with a white curved shape at the bottom right.

**Somerset West  
and Taunton**

# **Private Sector Housing Enforcement Policy 2022-2023**

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# **Private Sector Housing Enforcement Policy**

## **1. Introduction**

### **1.1 Policy Statement**

- 1.1.1 This Policy sets out how Somerset West and Taunton Council (the Council) intends to secure effective compliance with the Housing Act 2004 and other relevant legislation while minimising the burden to the Council, individuals, organisations and businesses.
- 1.1.2 It sets out what owners, landlords, their agents and tenants of residential properties can expect from the Council's Private Sector Housing (PSH) Team when regulating standards.
- 1.1.3 The policy will ensure consistency of approach whilst allowing members of the public to know what to expect from the service.
- 1.1.4 This policy deals with housing enforcement in all residential dwellings including privately rented, socially rented, owner occupied properties and Houses in Multiple Occupation (HMOs).
- 1.1.5 This policy has regard to the Regulatory Services Enforcement Policy and the principles it sets out for enforcement and other activities.

## **2. Principles of good regulation**

- 2.1.1 We are committed to the principles of good enforcement as set out in the Legislative and Regulatory Reform Act 2006 and when carrying out our regulatory activities we will do so in a way that is transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. See Regulatory Services Enforcement Policy for further details.

### **2.2 Regulators' Code**

- 2.2.1 The Legislative and Regulatory Reform Act 2006 also requires that we have regard to the Regulators Code and we are committed to ensuring our enforcement activities comply with this Code. See Regulatory Services Enforcement Policy for further details.

## **3. Our approach**

- 3.1.1 We will work with other departments and service providers to ensure the full range of powers available to the Council are used in the most efficient way. We will also target our resources to ensure the most serious cases are tackled as a priority.

3.1.2 We will provide information in plain English and accessible formats where possible and publicise the availability of our services. We will be open about our priorities, policies and procedures and we will ensure that officers explain the options available to property owners, landlords and tenants, and their reasoning for pursuing any given course of action.

3.1.3 Enforcement action referred to in this policy includes the formal requirement to take action or carry out remedial work and penalties for offences under housing law (and associated legislation). Typically, enforcement options could be:

- The service of notices/orders.
- A simple caution.
- A financial penalty.
- Prosecution in the Magistrate's Court.
- Works in default with recovery of costs.

## **3.2 Factors which inform enforcement decisions**

3.2.1 The decision on which enforcement option to take will be a judgement based on the circumstances of the case and will take account of factors which include (but not exclusively):

- Any previous history of non-compliance or lack of co-operation with the Council.
- The length of time over which the offence has been committed.
- The condition of the property taking into account Part 1 of the Housing Act 2004 and relevant management regulations including the type and severity of the hazard.
- The likely exposure of vulnerable individuals to a hazard.
- The impact of the action on the occupier of the premises concerned.
- Financial or other gain by not complying with housing legislation, for example, failure to apply for a licence as soon as required to do so.
- Any adverse health and safety and environmental impact of the action.
- Relevant guidance and protocols that are in place; and
- The degree to which the property is being effectively managed.

### **3.3 Identifying the need for action**

3.3.1 Enforcement action will be proportionate to the seriousness of the offence. Where we have discretion, we will consider whether other measures could lead to effective resolution. We will apply the Housing Enforcement Policy in every case and make a decision about whether to proceed to formal enforcement action having considered the individual circumstances of the case. In making our decision we will consider relevant factors such as the harm caused or, potential for harm to be caused to individuals, the public and the environment.

### **3.4 Co-ordinated working**

3.4.1 Often a single housing matter may overlap the enforcement responsibilities of several services and agencies such as Devon and Somerset Fire and Rescue Service and The Environmental Protection Team. Where possible we will take a comprehensive approach to enforcement by:

- Co-ordinating action between Council departments and other agencies.
- Ensuring the most effective action is taken and led by the most appropriate agency.
- Sharing information with other agencies.

## **4. Conduct of investigations**

### **4.1 Powers of entry**

4.1.1 Entry to a property is usually required to enable the PSH Team to carry out its statutory functions. Officers' will normally make an appointment to visit in the first instance and will give at least 24 hours' notice to both the occupants and owners of our intention to enter properties to inspect them.

4.1.2 Officers will carry written authorisation when carrying out inspections.

4.1.3 Powers of entry will allow an officer, at any reasonable time, to enter a property to carry out an inspection and gather evidence, take other people with them, take appropriate equipment or materials and take any measurements, photographs, recordings and samples as necessary. In some cases, powers of entry will be used to carry out works.

4.1.4 The PSH Team will exercise its statutory powers to gain entry without giving prior notice to investigate suspected non-compliance with housing related law or to carry out a statutory duty where it is necessary to do so. Reasons for the use of these powers may include:

- To protect the health and safety of any person including where there is a category 1 hazard which involves an imminent risk of serious harm or to protect the environment without avoidable delay.

- To prevent the obstruction of officers where this is anticipated.
  - To determine if a property is an unlicensed HMO, if there is a breach of a licence condition or the maximum number of occupants on the licence is being exceeded or there is a suspected breach of the management regulations.
  - Joint working with other agencies such as the police, Immigration Enforcement or fire service.
- 4.1.5 The PSH Team may apply to the Magistrates Court/Justice of the Peace for a Warrant to Enter Premises if entry has been consistently denied, refusal is reasonably anticipated, giving notice would defeat the purpose of the visit or gaining entry has been problematic such as in the case of empty properties. Before applying for a warrant, we will consider all the circumstances of the case and ensure that a warrant is a proportionate and reasonable action. A warrant under this section includes the power to enter by force, if necessary.
- 4.1.6 Obstructing an authorised officer from entering a premise in accordance with their powers is an offence and could result in prosecution.

## **4.2 Requiring information**

### 4.2.1 Authorised officers have the power to require:

- Documents to be provided under s235 of the Housing Act 2004 to enable them to carry out their powers and duties.
- Electrical and gas safety certificates to be provided in relation to Houses in Multiple Occupation under s234 of the Housing Act 2004.
- Any person with an interest in a property to provide details about its ownership or occupation under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976.
- Specified information for the purpose of deciding whether to apply for a banning order against the person under Section 19 of the Housing and Planning Act 2016.
- Specified information for the purpose of deciding whether to make an entry in the database of rogue landlords and property agents or to complete an entry or keep it up to date under Section 35 of the Housing and Planning Act 2016.
- Information to be provided to enable the Council to monitor compliance with the minimum energy efficiency standards where there appears to have been a breach of The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 by serving a Compliance notice under regulation 37.

4.2.2 Officers will routinely use these powers and it is an offence not to produce the required information as requested or to provide false or misleading information. To address non-compliance, formal action will be considered such as a simple caution, financial penalty or prosecution.

4.2.3 For specific housing purposes the Authority also has the power to:

- Obtain and use Housing Benefit and Council Tax information under Section 237 of the Housing Act 2004.
- Request and use tenancy deposit information under Section 212A of the Housing Act 2004; and
- Access and use information contained within the database of rogue landlords and property agents under Section 39 of the Housing and Planning Act 2016,

### **4.3 Failure to comply**

4.3.1 Non-compliance with the Housing Act 2004 referred to in this policy is a criminal offence. Typical offences include:

- Direct breaches of regulations such as the HMO management regulations.
- A breach of a legal Notice or Order without reasonable excuse. For example, a Housing Act 2004 Improvement Notice.
- Failure to licence a property which is required to be licenced under Part 2 or 3 of the Housing Act 2004.
- Failure to comply with the conditions of a licence issued under Part 2 or 3 of the Housing Act 2004.

4.3.2 Several different enforcement options are available to the Council dependent upon the circumstances of the offence. The most suitable option will be decided on a case by case basis in line with this policy.

4.3.3 Other legislation enforced by the Council can also lead to criminal convictions. Other such legislation includes (as examples) the Environmental Protection Act 1990 and the Public Health Act 1936.

4.3.4 Some other housing related offences are civil, and non-compliance can be dealt with by way of a financial penalty. Some criminal offences can also be dealt with by way of a financial penalty which does not lead to a criminal conviction.

## 5 Enforcement options

5.1.1 Where there has been a breach of the law, options available to the Council include offering a issuing a financial penalty or prosecution. The most appropriate course of action will be considered on a case by case basis.

5.1.2 The Council may also conduct formal interviews under caution to assist in gathering evidence as part of an investigation into an alleged offence.

### 5.2 Financial Penalty

5.2.1 The Housing and Planning Act 2016 introduced the option of a financial penalty (civil penalty) for some offences as an alternative to prosecution. The Financial Penalty Policy in Appendix 1 gives full details on how the Council will apply financial penalties under the Housing Act 2004 and the Housing and Planning Act 2016.

5.2.2 Specific offences where a financial penalty may be imposed as an alternative to prosecution include:

- Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004).
- Offences in relation to licensing of Houses in Multiple Occupation (section 72 of the Housing Act 2004).
- Offences in relation to licensing of houses under Part 3 of the Act (section 95 of the Housing Act 2004).
- Offences of contravention of an overcrowding notice (section 139 of the Housing Act 2004).
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234 of the Housing Act 2004).
- Breach of a banning order (section 21 of the Housing and Planning Act 2016).
- Failure to comply with the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (section 123 of the Housing and Planning Act 2016).

5.2.3 Circumstances where a financial penalty may be considered appropriate include:

- A direct offence where an informal approach has not been successful in achieving compliance, including where there is a history of non-compliance.

- Failure to comply with an improvement notice.
  - A flagrant or serious breach of the law.
- 5.2.4 In all the above cases, the same burden of proof is required as with a criminal prosecution, meaning the offence must be proved beyond reasonable doubt. The difference with this decision is that the judgement will be made by the Local Housing Authority rather than the Court.
- 5.2.5 To ensure our proposed action is objective, reasonable and proportionate to the individual case:
- we will follow the procedural requirements under the legislation and the guidance (refer to Appendix 1).
  - we will follow our internal procedures having regard to the Code for Crown Prosecutors; and
  - we will internally review our proposed action before making a final decision.

### **5.3 Other financial penalties**

- 5.3.1 The Council may also apply a financial penalty for other relevant offences. These include, but not limited to:
- Failure to comply with the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (Appendix 2).
  - Failure to comply with the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 (Appendix 2).
  - Failure to comply with The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended (Appendix 3).
- 5.3.2 In these cases, the Authority have to show on the balance of probability that an offence has been committed. We will follow the Statement of principles for determining a penalty charge in Appendix 2 and the Enforcement of minimum energy efficiency standards in Appendix 3 when applying a financial charge under these pieces of legislation.
- 5.3.3 Other financial penalties will be determined following the legislative requirements and available guidance for the particular offences.

### **5.4 Prosecution**

- 5.4.1 Offences will be considered for prosecution in accordance with the legal, evidential and public interest tests within the Code for Crown Prosecutors.

5.4.2 Prosecution will be considered in similar circumstances to financial penalties under the Housing Act 2004 and the Housing and Planning Act 2016 above, and are likely to be appropriate for repeat offenders or where the seriousness of the offence is such that it is necessary to draw attention to the need for compliance with the law.

## **5.5 Works in Default**

5.5.1 The Council will consider carrying out works in default or remedial action where the legislation allows. It will typically be appropriate for:

- Emergency Remedial action under the Housing Act 2004 either before or after a notice is served.
- Where actions have been required by a Notice under any legislation and have not been completed within the agreed timescale, or, reasonable progress has not been made towards their completion.

5.5.2 In these cases, the Council may organise and carry out the work itself or appoint an agent to complete the work on its behalf and recover the cost of works plus all additional costs including agency and administration fees. These costs will be charged to the property owner but can also be placed as a land charge on the property for payment when the property is sold or if money is raised against it.

5.5.3 The Council may also consider prosecution or a financial penalty in addition to carrying out works in default. Following the carrying out of works in default the Council may pursue enforced sale of a property where the legislation allows.

## **5.6 Banning orders and database of rogue landlords and property agents**

### **5.6.1 Banning orders**

5.6.2 In accordance with the Housing and Planning Act 2016, the Council may apply to the First-tier Tribunal for a banning order against a residential landlord or a property agent who has been convicted of a [banning order offence](#).

5.6.3 A banning order bans a landlord or property agent from letting houses or engaging in letting agency or property management work in England for a defined period of time (minimum 12 months).

5.6.4 Banning orders are reserved for the most serious offenders who flout their legal obligations and rent out substandard accommodation and will be decided on a case by case basis.

5.6.5 In deciding whether to apply for a banning order and how long to recommend the ban for, we will have regard to [Banning Order Offences under the](#)

[Housing and Planning Act 2016 – Guidance for Local Housing Authorities](#)  
and specifically we will consider:

- the seriousness of the offence and the sentence imposed by the Court; and
- the previous history of the offender especially in relation to other banning order offences.

5.6.6 We will also take into account the likely effect of the ban on the person and anyone else who may be affected, including:

- the harm or potential harm to the tenant, specifically in relation to vulnerable people (banning order offences more directly related to health and safety of tenants will be considered more harmful),
- punishment of the offender, ensuring any ban is proportionate and also reflects the severity of the offence; and
- deterring the offender and others from committing similar offences by recommending a sufficiency long enough ban.

5.6.7 If we decide to apply for a banning order, we will first write to the landlord/property agent giving notice of our proposal to apply. This is called a 'notice of intent' and must be served within 6 months of the date of conviction.

5.6.8 The notice of intent will inform the landlord:

- of our intention to apply for a banning order and the reasons for this;
- the length of each proposed ban; and
- the right of the landlord to make representations during the notice period (minimum 28 days).

5.6.9 At the end of the notice period we will consider any representation received and make a decision whether to apply to the First-tier Tribunal for a banning order. We may also require further information to help us decide (see section 5). Once a decision has been made we will advise the landlord whether we intend to apply for a banning order or not. Only the First-tier Tribunal can make, vary, or revoke a banning order. Once a decision is made then any appeals must go to the Upper Tribunal.

5.6.10 Breaching a banning order is an offence, subject to either prosecution in the magistrate's court or financial penalty (see section 6.1 and Appendix 1). Somerset West and Taunton Council will consider prosecuting or issuing a financial penalty to any landlord found to be breaching a banning order in its area.

### **5.6.11 Database of rogue landlords and property agents**

5.6.12 The database has been designed to help Local Housing Authorities keep track of rogue landlords and property agents operating across council boundaries.

5.6.13 The Council must place a person on the database if it has successfully made a banning order application. The landlord will remain on the database for the period that the banning order has effect.

5.6.14 We will consider if it is appropriate to make an entry on to the database of rogue landlords and property agents when a landlord has been convicted of a banning order offence or received 2 or more financial penalties over a 12-month period.

5.6.15 In deciding whether to make an entry on the database, and the period of time that a landlord or property agent should stay on the database, we will have regard to the [Database of rogue landlords and property agents under the Housing and Planning Act 2016 - Statutory guidance for Local Housing Authorities](#). We will consider the severity of the offence, any mitigating factors, any history of compliance or non-compliance and deterring the offender and others from committing similar offences.

5.6.16 Before being placed on the database a decision notice will be served on the landlord or property agent specifying the length of time they will be maintained on the database and right of appeal. The minimum period is 2 years.

### **5.7 Rent Repayment Orders (RRO)**

5.7.1 A RRO can require a landlord to repay up to 12 months' rent. The offences for which an application for an RRO can be made are:

- Using violence to secure entry contrary to section 6(1) of the Criminal Law Act 1977.
- Unlawful eviction or harassment of occupier's contrary to sections 1(2), 1(3) or 1(3A) of the Protection from Eviction Act 1977.
- Failure to comply with an Improvement Notice issued under the Housing Act 2004.
- Failure to comply with a Prohibition Order issued under the Housing Act 2004.
- Operating a licensable property under the Housing Act 2004 without a licence.
- Breaching a banning order issued under the Housing and Planning Act 2016.

- 5.7.2 The local authority or the tenant can apply to the First-tier Tribunal for an RRO. There does not have to be a conviction, but the Tribunal will need to be satisfied beyond reasonable doubt that one of the offences listed above has been committed.
- 5.7.3 When considering whether to apply for an RRO, the following factors will be taken into account:
- The conduct of the landlord.
  - The financial circumstances of the landlord.
  - Whether the landlord has been convicted of one of the offences stated above.
  - Whether the tenant is in receipt of Local Housing Allowance.
  - The Code for Crown Prosecutors.
  - Any other factors relevant to the case.
- 5.7.4 We will always consider applying for a RRO where a landlord has been convicted of one of the above offences in our area.
- 5.7.5 The Council will also consider assisting tenants in applying for an RRO. A decision on how and if to provide support will be made on a case by case basis in accordance with the above factors. The Council will also consider the vulnerability of the occupant, the likelihood of success and the financial implications to the Council.
- 5.7.6 We will have regard to [Rent repayment orders under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities](#) and we will inform a landlord if we intend to apply for a RRO and consider any representation received.
- 5.7.7 If the landlord has been convicted of an offence then the tribunal must order the maximum amount of rent to be repaid (up to 12 months). If the landlord has not been convicted of an offence, we will consider the following factors when deciding how much rent we will seek to recover:
- Punishment of the offender – having a real financial impact.
  - Deterring the offender and others from committing similar offences.
  - Removing financial benefit from committing the offence.

## **5.8 Interim and Final Management Orders**

- 5.8.1 These powers will only be used as a last resort where other attempts to ensure the health safety or welfare of occupiers has failed. Interim Management Orders (IMOs) can be made where there is no realistic prospect of a property licence being granted. By making an IMO the management and rental income from a property is taken away from the current landlord for up to a year. The money is used to carry out necessary

works to reduce any significant hazards in the property, to maintain the property and to pay any relevant management expenses. Following an IMO, the Council can apply for a Final Management Order (FMO) to be approved that can last for up to five years. The Council may allocate a private company to manage the property.

- 5.8.2 In exceptional circumstances and where the health, safety and welfare of occupants need to be protected, the Council may apply to the First-tier Tribunal (Property Chamber) for authority to make an IMO for privately rented accommodation that is not covered by a current licensing scheme. The Council may also make an IMO for properties where a banning order has been made.

## **6. Housing Act 2004**

- 6.1.1 The PSH Team enforce a number of different pieces of legislation associated with residential dwellings. When taking action using our regulatory powers, the officer will consider which course of action is the most appropriate to deal with the circumstances of the case.
- 6.1.2 The Housing Act 2004 is the main piece of legislation enforced by the PSH Team. The Housing Act 2004 and associated secondary legislation covers key areas of the teams work such as minimum housing conditions, HMOs and HMO Licensing.

### **6.2 Housing Health and Safety Rating System (HHSRS)**

- 6.2.1 Part 1 of The Housing Act 2004 is concerned with assessing housing conditions and reducing health and safety hazards using the HHSRS. The HHSRS covers 29 potential hazards in the home. It is a risk assessment approach which looks firstly at the likelihood of someone becoming ill or injured and secondly, how badly harmed a person could be as a result. It is always considered based on the people most vulnerable to the hazard.
- 6.2.2 The HHSRS applies to all residential premises regardless of tenure and the Council has a duty to inspect premises where there is a suspected hazard.
- 6.2.3 The Council is under a duty to take enforcement action in relation to the most dangerous health and safety hazards referred to as Category 1 Hazards (those which have a hazard rating within bands A, B or C). When a Category 1 hazard is identified, the Council will decide which of the available enforcement options is most appropriate to use.
- 6.2.4 The Council has the power to deal with less dangerous Category 2 Hazards (bands D to J). The Council may take enforcement action in relation to Category 2 hazards where it makes the judgement that it would be appropriate to the particular circumstances of the case.
- 6.2.5 Following the identification of a significant HHSRS hazard, the Council may, as far as practically possible and reasonable according to the circumstances

of the case, seek the views of occupiers, owners and interested parties on the hazard(s) identified and work required. These views will be taken into account when deciding the most appropriate course of enforcement action. Where the Council is confident that action will be taken to address the hazard within a reasonable time scale and it is appropriate to the circumstances of the case, an informal enforcement approach may be taken in the first instance. Where the Council wishes to ensure works are carried out in a timely manner or is concerned that an informal approach will lead to undue delay, then a formal approach may be taken straight away.

6.2.6 Interested parties will be informed of the appropriate course of enforcement action when this decision has been made. In determining the most appropriate action, regard will also be given to the Listed Building status and the impact any course of action would have on the local environment.

6.2.7 Urgent action without consultation can be taken where a health and safety hazard poses an imminent or serious risk of harm to occupants or members of the public.

6.2.8 The options for formal action to remedy a hazard under Part 1 of the Housing Act 2004 are:

- Improvement Notice (including Suspended Notice).
- Prohibition Order (including Suspended Order).
- Emergency Remedial Action.
- Emergency Prohibition Order.
- Hazard Awareness Notice.
- Demolition Order and slum clearance declaration.

6.2.9 There is a right of appeal to the First-tier Tribunal against formal Notices or Orders. Details on how to appeal will always be included when formal Notices or Orders are served.

### **6.3 Specific matters to be considered**

**6.3.1 Crowding and space:** Where a HHSRS hazard for crowding and space is assessed as a Category 1 hazard, the appropriate option for enforcement action will usually be a Hazard Awareness Notice in cases where the hazard is created by the actions of the occupier. The full range of options for enforcement action will be considered in cases where the hazard is the result of action by a landlord or where any of the current occupants are considered to be particularly vulnerable or at an increased risk of harm.

**6.3.2 Retaliatory evictions:** Where the Council becomes aware of the threat of a retaliatory eviction, then a more formal approach may be taken in the first

instance and a formal notice served, which may be a 'relevant notice' (improvement notice or emergency remedial action) described in the Deregulation Act 2015 section 33.

**6.3.3 The Homes Act:** Where appropriate, tenants will be advised of their rights under the Homes (Fitness for Human Habitation) Act 2018 where they can take their own private action against a landlord for poor living conditions. The Council will generally not get involved in these cases but may as appropriate, provide information in support of the case.

## **6.4 Houses in Multiple Occupation (HMOs)**

6.4.1 There is a suite of HMO regulations under the Housing Act 2004, including management regulations. The management regulations cover all HMOs and place specific requirements on property managers in relation to management and safety of HMOs. Enforcement action for non-compliance with HMO regulations, in particular the HMO Management regulations will be considered in each case in accordance with this policy.

## **6.5 Licensing of residential properties**

### **6.5.1 Licensing of Houses in Multiple Occupation (HMOs)**

6.5.2 Parts 2 of the Housing Act 2004 require certain HMOs to have a licence to operate.

6.5.3 The Council also has the power to designate additional licensing areas for up to five years and require certain HMOs in a specified area to apply for a licence in order to operate legally.

### **6.5.4 Selective licensing of other residential accommodation**

6.5.5 The Council also has the power to designate selective licensing areas for up to five years under Part 3 of the Housing Act 2004 and require certain rented residential properties in a specified area to apply for a licence in order to operate legally.

### **6.5.6 General**

6.5.7 All licences will come with conditions that have to be complied with during the period of the licence.

6.5.8 A fee will be charged for all licence applications as detailed in our published fees and charges.

6.5.9 Licences may be issued for up to a maximum of 5 years. It will usually be the case that licences will be issued for 5 years from the date of application or renewal date. However, licences may be issued for shorter periods appropriate to the circumstances of the case. For example, the duration of the licence may be shortened where the Council has reasonable evidence

that the property should have already been licensed or there is concern about the management of the property. No reduction in fee will apply.

6.5.10 All licence holders, managers and other persons involved in the management of the property must be deemed a fit and proper person in accordance with the Housing Act 2004. The Council will specify the information required as part of this process and may require additional checks such as a Disclosure and Barring Service (DBS) check where considered appropriate.

6.5.11 A person's fit and proper person status may be reviewed if they are prosecuted for an offence, if they consistently breach licensing conditions, if there is evidence of poor management or for any other factors deemed relevant by this Authority.

6.5.12 When issuing a licence, opportunity will be given for interested parties to make representation to The PSH Team regarding decisions made and the conditions applied. If agreement cannot be reached there is a right of appeal to the First-tier Tribunal. Details of how to appeal will always be provided.

6.5.13 Failure to comply with the licensing requirements is an offence. Where the Council become aware of a property that requires licensing under Parts 2 or 3 of the Housing Act 2004 but is not so licensed, or where there is non-compliance with licensing conditions, enforcement action will be considered in accordance with this policy.

## **7. Other legislation**

7.1.1 The PSH Team has a wide range of delegated powers covering multiple pieces of legislation. This allows the team to have a holistic and comprehensive approach to regulating the housing sector in Mendip to keep resident's safe and well. When enforcing the legislation below, whether it be informally or formally in serving notices, issuing penalties and sanctions and taking prosecutions, our approach will follow the principles as described in this policy.

7.1.2 Legislation enforced by the PSH Team in accordance with this policy includes, but is not limited to:

- Housing Act 2004 and associated regulations
- Housing and Planning Act 2016 and associated regulations
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, enacted under the Energy Act 2013
- The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014, enacted under the Enterprise and Regulatory Reform Act 2013

- Environmental Protection Act 1990
- Housing Act 1985
- Public Health Act 1936 and 1961
- Prevention of Damage by Pests Act 1949
- Building Act 1984
- Local Government (Miscellaneous Provisions) Act 1976
- Local Government (Miscellaneous Provisions) Act 1982
- Anti-Social Behaviour, Crime and Policing Act 2014
- Caravan Sites and Control of Development Act 1960
- Mobile Homes Act 2013 and associated regulations
- The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended) enacted under the Energy Act 2011.
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (section 123 of the Housing and Planning Act 2016).

## **8. Housing tenure**

### **8.1 Owner occupiers**

- 8.1.1 Enforcement action on owner occupiers and long leaseholders will be based on the health and safety risk to the occupants or other affected persons. The Council will generally not take action where a more appropriate contractual remedy exists.
- 8.1.2 Where a HHSRS inspection identifies a significant hazard, the Council anticipates that a Hazard Awareness Notice may be the most appropriate course of action. However, all Housing Act 2004 Part 1 enforcement options (see section 7) are available to the Council and will be considered.
- 8.1.3 Enforcement options requiring action to be taken such as an Improvement Notice or Prohibition Order will be considered in cases involving:
- Vulnerable people who are not capable of making informed decisions about their own welfare or who require the intervention of the Council to ensure their welfare is best protected.

- Hazards that might reasonably affect other people e.g. other occupants, visitors, neighbours.
  - Serious risk of life-threatening harm e.g. electrical hazards.
- 8.1.4 Where the condition of one property is affecting the occupant of another property or the general public, such as a health and safety hazard or statutory nuisance, appropriate enforcement action will be considered regardless of property tenure.
- 8.1.5 We will always consider the most appropriate option dependent on the circumstances of the case and will make the owner aware of any suitable financial assistance available from the Council.

## **8.2 Landlords and managing agents**

- 8.2.1 We will work with landlords and managing and letting agents to help them comply with their legal obligations and advise them of the legislation that applies and how to comply with it.
- 8.2.2 Where we are aware of other requirements outside of our remit or best practice in the sector, we will advise landlords where to seek further assistance.
- 8.2.3 If there are serious hazards identified in a rented property, we will undertake enforcement action requiring relevant defects to be repaired or improvements made.
- 8.2.4 If a landlord proposes reasonable alternative works or solutions, we will consider these along with the required outcome.
- 8.2.5 We will consider each case on its own merits and only take enforcement action when it is considered appropriate. If enforcement action is taken, we will explain why such action is necessary.
- 8.2.6 Where we need to take enforcement action we will usually charge for this action as the legislation allows.
- 8.2.7 Where a landlord has shown a history of non-compliance, is not fully cooperative or the risk is serious, we may go straight to formal action.
- 8.2.8 In making a decision to prosecute or issue a financial penalty, we will have regard to the seriousness of the offence, the benefit of the sanction and whether some other action would be appropriate. Where we prosecute, we will look to recover all our costs.

## **8.3 Tenants**

8.3.1 If tenants are unhappy about their housing conditions, they are expected to give their landlord the opportunity to resolve any problems before the Council become involved.

8.3.2 Unless there are exceptional circumstances, the PSH Team will generally not visit a property at the request of a tenant unless the tenant has first been in contact with their landlord or agent to try and resolve the matter.

8.3.3 Example of exceptional circumstances include, but not exclusively:

- an imminent risk to health and safety.
- a history of harassment/threatened eviction/poor management practice.
- where the tenant could not reasonably be expected to contact their landlord/managing agent due to the special circumstances of the case e.g. vulnerability.

8.3.4 This does not preclude the Council from making unannounced visits to properties where it feels it appropriate to do so.

8.3.5 Where the matter appears to present an imminent risk and the Council become involved to try and quickly resolve the matter, it is still expected that tenants will make every effort to contact their landlord.

8.3.6 Where landlords are taking action in a reasonable time frame then the Council will not seek to interfere with this process.

8.3.7 Tenants are expected to:

- allow reasonable access to their landlord, managing agent or contractor to arrange or carry out works;
- keep prearranged appointments or give sufficient notice of cancellation;
- be courteous and non-threatening to our officers;
- provide information in a timely manner when requested;
- keep officers informed of any contact they have had with their landlord (agent or builder etc.) which may affect the action the Council take.

8.3.8 The Council will consider withdrawing its service if the above conditions are not followed.

## **9. Empty homes**

9.1.1 The Housing Strategy sets out how the Council will work to bring empty properties back into use, including the use of enforcement action.

- 9.1.2 The PSH Team will work with owners of empty homes to help them bring them back into use and encourage access to financial assistance where it is available.
- 9.1.3 The Council will consider the full range of enforcement options including Compulsory Purchase Orders, Empty Dwelling Management Orders (EDMOs) and enforced sale where an owner does not co-operate and the empty property has not been brought back into use within a reasonable period.
- 9.1.4 Where an empty property presents a serious or imminent risk to health and safety or is causing a statutory nuisance, appropriate enforcement action will be considered depending on the circumstances of each case.

## **10. Mobile homes, caravan parks and camp sites**

- 10.1.1 The main involvement with mobile home (including caravan and park home) sites is the duty to licence applicable sites (holiday, touring and residential), under the Caravan Sites and Control of Development Act 1960.
- 10.1.2 We will also licence applicable camping sites under the Public Health Act 1936. If the land is to be used as a camping site by the public for more than 42 days consecutively - or 60 days in a year - a licence is required. There are exceptions for organisations that hold camping exemption certificates.
- 10.1.3 We will normally issue a licence unless the site does not have the correct planning permission, planning permission is to expire within 6 months or the applicant has had a site licence withdrawn in the previous three years.
- 10.1.4 It is an offence to operate certain types of sites without a licence and complaints of unlicensed sites will be investigated in conjunction with the Council's Planning Department.
- 10.1.5 Licences are issued with conditions which concern maintaining adequate health and safety on sites. They will also specify the number and type of pitches, the spacing between pitches, whether the pitches are residential, static holiday or touring, water supply and drainage, toilets and washing facilities, fire precautions and electrical installations.
- 10.1.6 Breaches of licence conditions will be investigated in line with current enforcement objectives and priorities. Appropriate enforcement action may be taken in relation to any breaches of the licence conditions, based on the risk of the breach in relation to occupiers' health, safety or welfare.
- 10.1.7 The Mobile Homes Act 2013 introduced the power to serve a compliance notice to ensure that conditions on relevant protected sites are complied with.
- 10.1.8 The Mobile Homes Act 2013 also introduced the power to require a fee to accompany licensing applications for protected sites as well as an annual

fee. Before applying any charges, we will publish and review a fees policy in accordance with the legislative requirements.

10.1.9 The Council will consider enforcement action against site owners who fail to meet their basic responsibilities. This includes the requirement for owners or managers of relevant protected sites to be fit and proper persons.

10.1.10 The Council will also licence campsites under the Public Health Act 1936 and apply appropriate conditions as required.

## **11. Cost recovery**

### **11.1 Proceeds of Crime Act 2002**

11.1.1 Where appropriate to the case, the Council, will consider taking proceedings under the Proceeds of Crime Act following a successful prosecution.

### **11.2 Charging for services**

11.2.1 The Council has the power under the Housing Act 2004 to recover costs for certain action such as serving notices or carrying out the licensing function. These charges will be made in line with our published fees and charges.

11.2.2 Where charges for enforcement action are lawfully incurred and levied they will be registered as a local land charge. This means that when the property is sold the debt has to be repaid including any interest accrued on the initial charge.

### **11.3 Unpaid debts and invoices**

11.3.1 We will pursue debts owed as a result of enforcement charges, charges for carrying out works (as well as any other charges), unpaid invoices or unpaid financial penalties.

11.3.2 The Council may consider enforcing the sale of the property to recover costs or recovering the money owed in the relevant Court, including the County Court.

## **12. Complimentary documents**

12.1.1 This policy does not stand alone and should be read as part of a wider approach to improving homes and enforcement.

- **Regulatory Services Enforcement Policy** – is the policy for enforcement across all the Regulatory Services function area which this policy sits under and supplements.
- **Safeguarding Policy** – this covers how to raise concerns about the welfare of a child, young person or vulnerable adult, and how we work

with our partner agencies to ensure that we protect children and vulnerable adults.

- **Housing Strategy** – outlines a comprehensive picture of local housing needs, issues and priorities for action.

## 13. Feedback

13.1.1 We encourage comments on our service and we will use them to actively improve what we do.

13.1.2 You can contact the Private Sector Housing Team:

- by telephone on 0300 304 8000
- by email at [communityprotection@somersetwestandtaunton.gov.uk](mailto:communityprotection@somersetwestandtaunton.gov.uk)
- by writing to Private Sector Housing, Somerset West and Taunton Council, Deane House, Belvedere Road, Taunton. Somerset. TA1 1HE

### 13.2 Compliments, Comments and Complaints.

13.2.1 The Council has a formal procedure in place for dealing with Compliments, Comments and Complaints. For further information please contact customer services on 0300 304 8000 or visit <https://www.somersetwestandtaunton.gov.uk/contact-us/complaints-and-compliments/>

## 14. Appendices

Appendix 1: Financial Penalty Policy

Appendix 2: Statement of principles for determining a penalty charge

Appendix 3: Enforcement of minimum energy efficiency standards

**Appendix 1**



**Financial Penalty Policy**

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## 1. Introduction

- 1.1 This policy for determining the level of Financial Penalties under the Housing and Planning Act 2016 follows the Government Guidance [‘Civil Penalties under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities’](#). When reading this policy the term ‘financial penalty’ and ‘civil penalty’ should be read as one and the same.
- 1.2 This policy sets out the framework within which decisions will normally be made with regard to issuing financial penalties for certain specified offences under the Housing Act 2004 and the Housing and Planning Act 2016 as referred to in the Somerset West and Taunton Council, Housing Enforcement Policy. The legal basis for the power to impose a financial penalty is section 249A of the Housing Act 2004 (as inserted by Schedule 9 of the Housing and Planning Act 2016); Section 21 and Schedule 1 of the Housing and Planning Act 2016; Part 5 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 and Section 123 of the Housing and Planning Act 2016.
- 1.3 The same criminal standard of proof is required for a financial penalty as for prosecution. This means that before taking formal action, a local housing authority should satisfy itself that if the case were to be prosecuted in the magistrates’ court, there would be a realistic prospect of conviction having regard to the Crown Prosecution Service’s Code for Crown Prosecutors and the need for full assessment of the evidence. In carrying out such assessment, the Council may consider that the offences alleged are more suitable for prosecution rather than a financial penalty.
- 1.4 The maximum penalty is £30,000 but the amount is determined by the local authority in each case having regard to the above statutory guidance. It is expected that the maximum amount is reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence, as well as taking account of the landlord’s previous record of offending.
- 1.5 An offence which results in a high risk of harm will increase the severity of the offence. Likewise an offence which is the result of a failure to act following a formal requirement to do so, such as failure to comply with an improvement notice or breaching a banning order, will increase the severity of the offence.
- 1.6 A higher level of culpability or responsibility of the offender for the offence will also increase the severity of the offence.
- 1.7 The aim of this policy is that the level of financial penalty reflects the severity of the offence with a greater severity resulting in a higher penalty.
- 1.8 Aggravating factors, mitigating factors and the value of the assets of the offender are also taken into account to determine the value of the financial penalty.

1.9 An appeal against the issue of a financial penalty is heard by the First-tier Tribunal.

## 2. Statutory Guidance

2.1 The Government Guidance referred to previously states that Councils should consider the following factors to help ensure that the financial penalty is set at an appropriate level:

- a) **Severity of the offence.** The more serious the offence, the higher the penalty should be.
- b) **Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
- c) **The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a financial penalty.
- d) **Punishment of the offender.** A financial penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.
- e) **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.
- f) **Deter others from committing similar offences.** While the fact that someone has received a financial penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a financial penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying financial penalties where the need to do so exists and (b) that the level of financial penalty will be set at a high enough level to both punish the offender and deter repeat offending.
- g) **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an

offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

### 3. Assessment process

- 3.1 Once a decision has been made that the evidential test is met and the offences are suitable for financial penalty, a judgement is made on the level of culpability and harm and used to identify a range for the financial penalty. Aggravating and mitigating factors are then applied to calculate an initial value of financial penalty. The initial value is then adjusted in the light of the offender's assets following the statutory guidance to achieve the financial penalty.
- 3.2 In formulating this assessment process, the principles of the '[Sentencing Council: Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences - Definitive Guidelines](#)' have been used as a guide to help develop the culpability, harm and fine levels. Specific reference was made to the 'Breach of food safety and food hygiene regulations' for micro businesses as this provided the most comparative guidelines.
- 3.3 The process is divided into a number of steps and these are described in detail below.  
  
  - Step 1 – Decide the level of culpability**
  - Step 2 – Decide on level of harm/potential harm**
  - Step 3 – Consider aggravating and mitigating factors**
  - Step 4 – Assets check**
  - Step 5 – Review the penalty**
  - Step 6 – Totality principle for multiple offences**
  - Step 7 – Reduction for early payment**
- 3.4 Each step contains definitions and guidance (below) on what elements should be considered when making a judgment. These definitions are not limiting and other relevant information may be included as appropriate.

## Step 1 – Decide the level of culpability

Key factor	Definition
<b>Culpability</b>	<p><b>Very high</b> Deliberate breach of or flagrant disregard for the law</p> <p><b>High</b> Offender fell far short of the appropriate standard, for example, by:</p> <ul style="list-style-type: none"> <li>• failing to put in place measures that are recognised standards</li> <li>• ignoring concerns raised by officers, tenants, employees or others</li> <li>• allowing breaches to subsist over a long period of time</li> </ul> <p>Serious and/or systemic failure to address the risks</p> <p><b>Medium</b> Offender fell short of the appropriate standard in a manner that falls between descriptions in ‘high’ and ‘low’ culpability categories.</p> <p>Systems were in place but these were not sufficiently adhered to or implemented.</p> <p><b>Low</b> Offender did not fall far short of the appropriate standard, for example, because:</p> <ul style="list-style-type: none"> <li>• significant efforts were made to meet housing legislation although they were inadequate on this occasion</li> <li>• there was no warning/circumstance indicating a risk to safety and breach of legislation</li> </ul> <p>Failings were minor and occurred as an isolated incident</p>

## Step 2 – Decide on level of harm/potential harm

Key factor	Definition
<b>Harm</b>	<p><b>High</b></p> <ul style="list-style-type: none"> <li>• Serious adverse effect(s) on individual(s), other relevant parties and/or community</li> <li>• High risk of an adverse effect on individual(s) including vulnerable groups/ community</li> </ul> <p><b>Medium</b></p> <ul style="list-style-type: none"> <li>• Adverse effect on individual(s)/community</li> <li>• Risk of an adverse effect on individual(s)/community</li> <li>• Tenants misled regarding compliance</li> </ul> <p><b>Low</b></p> <ul style="list-style-type: none"> <li>• Low risk of an adverse effect on individual(s)/ community</li> <li>• Some actual but small adverse effect on individual(s)/community</li> </ul>

Having considered the culpability and harm, table 1 provides a starting point to reach an appropriate level of penalty for each combination.

**Table 1. Financial Penalty Levels**

Harm and culpability assessment	Starting point	Range	
		Low	High
<b>Very high culpability</b>			
High harm	£15,000	£6,250	£30,000
Medium harm	£6,250	£2,500	£12,500
Low harm	£2,500	£1,250	£4,500
<b>High culpability</b>			
High harm	£6,250	£2,500	£12,500
Medium harm	£3,000	£1,000	£5,500
Low harm	£1,000	£500	£2,250
<b>Medium culpability</b>			
High harm	£2,500	£750	£4,500
Medium harm	£1,000	£350	£2,000
Low harm	£350	£175	£750
<b>Low culpability</b>			
High harm	£300	£125	£750
Medium harm	£125	£50	£350
Low harm	£50	£25	£175

### Step 3 – Consider aggravating and mitigating factors

A further adjustment upward or downward within the stated range in table 1 should then be considered for any mitigating or aggravating factors as described below.

Key factor	Guidance
<b>Aggravating factors</b>	Include but not limited to: <ul style="list-style-type: none"> <li>• Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction</li> <li>• Motivated by financial gain</li> <li>• Deliberate concealment of illegal nature of activity</li> <li>• Evidence of wider/community impact</li> <li>• Breach of any court order</li> <li>• Obstruction of justice / obstruction of officers in their duties</li> <li>• Poor track record of compliance with legal obligations</li> <li>• Refusal of free advice or training</li> <li>• Poor condition of the property</li> <li>• More than one hazard/Multiple hazards (improvement notices)</li> <li>• Vulnerable people living at the property*</li> </ul>
<b>Mitigating factors</b>	Include but not limited to: <ul style="list-style-type: none"> <li>• No previous convictions or no relevant/recent convictions</li> <li>• Steps taken voluntarily to remedy problem</li> <li>• High level of co-operation with the investigation, beyond that which will always be expected</li> <li>• Good history of compliance / no history of non-compliance</li> <li>• Self-reporting, co-operation and acceptance of responsibility</li> <li>• Mental disorder, learning difficulty or serious medical condition linked to the commission of the offence.</li> </ul>

The Council will consider factors that it is reasonably aware of. The above list is not exclusive and does not limit the consideration of other relevant aggravating and mitigating factors. In exceptional cases, having considered all the aggravating and mitigating factors, it may be appropriate to move outside the identified category range in table 1.

**\*Vulnerable people** (Non exhaustive list of vulnerable people):

- |                             |   |
|-----------------------------|---|
| • Young adults and children | • People exploited where English is not their first language. |
| • Disabled persons          | • Victims of Trafficking or sexual exploitation               |
| • People on a low income    | • People at risk of harassment or eviction                    |
| • Victims of domestic abuse | • People at risk of homelessness.                             |
| • Looked after children     | • People with complex health conditions                       |
| • Refugees                  | • Persons with a Drug or alcohol addiction                    |
| • Asylum seekers            |   |

#### **Step 4 – Assets check**

Use of existing powers to, as far as possible, make an assessment of a landlord's assets and any income they receive (not just rental income) to determine an appropriate penalty.

In setting a financial penalty, the Council may conclude that the offender is able to pay any financial penalty imposed unless the Council has obtained or the offender has supplied any financial information to the contrary. An offender will be expected to disclose to the Council such data relevant to his/her financial position to enable the Council to assess what an offender can reasonably afford to pay.

Representation on this may be made following a notice of intention to charge.

#### **Step 5 – Review the penalty**

A check should be made as to whether the level of financial penalty reached meets, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to take appropriate precautions.

Where appropriate, wider consideration should be given to a reduction in the penalty taking account of the impact on innocent third parties, such as (but not limited to): the offender's ability to comply with the law or make restitution to victims; employment of staff, service users, customers and the local economy.

#### **Step 6 – Totality principle for multiple offences**

When issuing financial penalties for more than one offence, it will be considered whether the total penalties are just and proportionate to the offending behaviour.

The Council will add up the penalties and consider if they are just and proportionate. If the total is not just and proportionate the Council will consider how to reach a just and proportionate financial penalty. This will be carried out in accordance with the [Offences Taken into Consideration and Totality – Definitive Guideline](#).

#### **Step 7 – Reduction for early payment**

Once a final notice is issued, if the penalty is accepted and payment is received in full within 28 days then a 20% reduction will be applied.

## 4. Procedural matters

4.1 The legislation and Government guidance imposes a number of procedural steps which must be taken before the council can impose a financial penalty. It also specifies a person's right to make representation to the Council and the right of appeal once the final notice has been issued.

4.2 The procedure for imposing a penalty is set out in Schedule 13A of the Housing Act 2004 and Schedule 1 of the Housing and Planning Act 2016.

4.3 In summary, a Council wishing to impose a financial penalty, must first give the person/organisation a notice of its proposal ('notice of intent') to do so.

4.4 The notice of intent must set out:

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

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

4.6 A person who is given a notice of intent may make written representations to the Council about the intention to impose a financial penalty. Any representations must be made within 28 days from the date the notice was given. Details on who to make representation to will be given in the notice.

4.7 After the end of the period for representations, the Council must decide whether to impose a penalty and, if so, the amount of the penalty. In making this decision the facts of the case will be reviewed along with any representations received which may include financial information or additional mitigation. If the authority decides to impose a financial penalty, it must give the person a notice ('final notice') requiring that the penalty is paid within 28 days.

4.8 The final notice must set out:

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

- the consequences of failure to comply with the notice.

4.9 The Council may at any time withdraw a notice of intent or final notice or reduce the amount specified in either notice. In consideration of this, the circumstances of the case will be reviewed along with any new information that may have come to light. Where a notice is to be withdrawn or the amount reduced, the person on whom a notice has been served will be advised in writing.

## **5. Appeals**

- 5.1 On receiving a notice of intent, a person has 28 days to make written representations to the Council about the intention to impose a financial penalty.
- 5.2 Following this, if a final notice is issued a person has 28 days to appeal to the First-tier Tribunal against the decision of the Council to impose a penalty and/or the amount of the penalty. The final notice is suspended until the appeal is determined or withdrawn.
- 5.3 An appeal with involve a re-hearing of the Council's decision and the First-tier Tribunal has the power to confirm, vary (increase or reduce) the size of the penalty or cancel the penalty. If the First-tier Tribunal decides to increase the penalty, it may only do so up to a maximum of £30,000.
- 5.4 The First-tier Tribunal can dismiss an appeal if it is satisfied that the appeal is frivolous, vexatious or an abuse of process, or has no reasonable prospect of success.

## Annex 1: Financial Penalty Assessment form

<b>Financial Penalty Assessment form</b>							
<i>To be read in conjunction with the Financial Penalty Policy and statutory guidance.</i>							
Date:							
Officer:							
Property address:							
Offender:							
Name:							
Address (registered address):							
Nature of offence / Date of offence:							
<p>Prior to completion of this form, the evidential and public interest tests must be satisfied and agreed by Manager – Private Sector Housing.</p> <p><b>Background and details of the alleged offence:</b></p>							
<p><b>Step 1: Culpability</b> Detailed explanation:</p>	<b>Low</b>						
	<b>Medium</b>						
	<b>High</b>						
	<b>Very high</b>						
<p><b>Step 2: Level of harm</b> (potential or actual) Detailed explanation:</p>	<b>Low</b>						
	<b>Medium</b>						
	<b>High</b>						
<p><b>Culpability/harm assessment:</b> (Refer to Table 1: Financial penalty levels)</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">Min</th> <th style="text-align: center;">Starting point</th> <th style="text-align: center;">Max</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">£</td> <td style="text-align: center;">£</td> <td style="text-align: center;">£</td> </tr> </tbody> </table>		Min	Starting point	Max	£	£	£
Min	Starting point	Max					
£	£	£					

**Step 3(a): Aggravating factors** (move up within band to increase charge)

Explanation of all aggravating factors:

Combination of factors considered to be: Substantial / Significant / Minor / N/A

**Step 3(b) Mitigating factors** (move down within band to reduce charge)

Explanation of mitigating factors:

Combination of factors considered to be: Substantial / Significant / Minor / N/A

**Proposed penalty**

Explanation of rationale:

**Step 4: Asset Check** (assume can pay the max unless evidence otherwise)

Factors to consider:

Explanation:

**Revised penalty** £ \_\_\_\_\_

**Step 5: Review the penalty**

Does the revised penalty level align with the statutory guidance (summarised above)?

Full explanation if further revision required.

**Step 6: Totality principle**

Where it is proposed to serve more than one financial penalty notice (FPN) – consider if **totality principle is just and proportionate** in accordance with the 'Offences Taken into Consideration and Totality - Definitive Guideline'. Full details to be given:

**Sign off**

Action and proposed penalty reviewed and agreed by:

XXX:

<b>Serve notice of intention to charge.</b>
<b>Date served:</b>
<b>Representation received</b>  Date: Details:
<b>Further revision of charge following representation</b>  Explanation:
<b>Final penalty charge amount</b>  £ _____
<b>Step 7: Reduction for early payment</b> 20% discount if payment received within 28 days.  Applied: Yes / No / Why:
<b>Serve final charge notice</b>
<b>Date served:</b>
<b>Record debt</b>

The logo for Somerset West and Taunton is a teal-colored rectangle with a white curved shape on the right side. The text "Somerset West and Taunton" is written in white, bold, sans-serif font across the teal background.

**Somerset West  
and Taunton**

# **Statement of Principles for determining a penalty charge**

**The Smoke & Carbon Monoxide Alarm (England) Regulations 2015**

**The Redress Schemes for Letting Agency Work and Property  
Management Work (Requirement to Belong to a Scheme etc.)  
(England) Order 2014**

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## 1. Introduction

- 1.1 Somerset West and Taunton Council (the Council) is required under [The Smoke & Carbon Monoxide Alarm \(England\) Regulations 2015](#) to prepare and publish a statement of principles which it proposes to follow when deciding on the penalty charge amount for failing to comply with a remedial notice served under these regulations.
- 1.2 The Council may revise its statement of principles at any time and where it does the revision will be published. The statement of principles will be published on the Council website and made available on request.
- 1.3 The Private Sector Housing Team will also have regard to this statement of principles when applying financial penalties under [The Redress Schemes for Letting Agency Work and Property Management Work \(Requirement to Belong to a Scheme etc.\) \(England\) Order 2014](#).
- 1.4 This statement sets out the principles that the Council will apply in exercising powers to impose a financial penalty for failing to meet certain legislative requirements.
- 1.5 The Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in a remedial notice within the required timescale.

## 2. Legal requirement

- 2.1 This statement is required under Regulation 13 of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations) and relates to matters that the Council must have regard to in determining the amount of any penalty charge issued under Regulation 8.
- 2.2 Under Regulation 4, a relevant landlord in respect of a specified tenancy must ensure that—
  - (a) during any period beginning on or after 1st October 2015 when the premises are occupied under the tenancy—
    - (i) a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation;
    - (ii) a carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
  - (b) checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

2.3 More details on the requirements, definitions and exemptions can be found in the Regulations and Government guidance (links at the end of this document).

2.4 Where the Council has reasonable grounds to believe that there are no or an insufficient number of smoke or carbon monoxide alarms in the property or; the smoke or carbon monoxide alarms were not working at the start of a tenancy or licence, then the Authority shall serve a Remedial Notice under Regulation 5 requiring the landlord to take action to comply with the Regulations within 28 days.

2.5 If the Landlord has not complied with the Remedial Notice, the Authority must take remedial action and may require the landlord to pay a penalty charge by serving a penalty charge notice under Regulation 8.

### **3. Statement of principles**

#### **3.1 The purpose of imposing a financial penalty**

3.1.1 The Council's primary purpose is to protect the public, although in exercising its regulatory powers they may have a punitive effect.

3.1.2 The primary aims of financial penalties will be to:

- change the behaviour of the landlord;
- eliminate any financial gain or benefit from non-compliance with the regulations;
- be proportionate to the nature of the breach of the regulations and the potential harm outcomes;
- aim to deter future non-compliance;
- reimburse the costs incurred by the Council in undertaking remedial work and carrying out its functions.

#### **3.2 Criteria for issuing a financial penalty**

3.2.1 Failure to comply with the requirements of a remedial notice gives the Authority the power to require the landlord to pay a penalty charge. In considering the imposition of a penalty charge, the authority will have regard to the available evidence of a breach of the remedial notice.

3.2.2 In deciding whether it would be appropriate to impose a penalty charge, the authority will take full account of the particular facts and circumstances of the breach under consideration.

3.2.3 The authority must be satisfied that on the balance of probabilities, the landlord on whom it has served a remedial notice under regulation 5 has

failed to take the remedial action specified in that notice within the period specified.

- 3.2.4 A financial penalty allows the council, amongst other things, to eliminate financial gain or benefit from non-compliance. A financial penalty charge will be considered appropriate in circumstances where the landlord has failed to comply with the requirements of a remedial notice.

### **3.3 Criteria for determining the amount of a financial penalty charge**

- 3.3.1 Regulation 8(2) states the amount of the penalty charge must not exceed £5,000. The penalty charge comprises two parts: a punitive element for failure to comply with the absolute requirement to comply with a remedial notice (subject to any representation made by a landlord to the council) and a cost element relating to the works carried out by the Council.
- 3.3.2 The period within which the penalty charge is payable is 28 days beginning with the day on which the penalty charge notice is served. The Council has a discretion to specify that if a landlord pays the penalty charge within 14 days beginning with the day on which the penalty charge notice was served (early payment), a reduction in the penalty charge may be applied.

### **3.4 Proposed fine levels**

- £2,500 for a first offence of failing to comply with a remedial notice; early payment reduction of 50% making it £1,250.
  - £5,000 for subsequent offences of failing to comply with a remedial notice to deter continued non-compliance; early payment reduction of 50% making it £2,500.
- 3.4.1 Having been served with a penalty charge notice, the landlord may give written notice to the Council requesting a review. When reviewing the penalty charge notice, the Council will have regard to this Statement of Principles, including:
- The level of cooperation provided by the landlord,
  - any history of previous contraventions of Housing or Housing related legislation,
  - the level of risk created by the non-compliance,
  - the cost incurred by the Council in enforcing the relevant provision,
  - any other circumstances specific to the case.

### **3.5 Rationale for fine levels**

3.5.1 The cost of a battery-operated smoke detector is in the region of £10 while a Carbon monoxide detector typically costs less than £20. The cost of complying with the legislation in an average 2 storey property is likely to be less than £50. Therefore, compliance with a Remedial Notice within the required 28 days is not financially burdensome and there is seldom an excuse for a landlord not installing the alarms to comply with a notice.

3.5.2 Smoke and carbon monoxide detectors are a cheap and effective way of saving lives. The fine is therefore set to deter landlords from failing to install potentially lifesaving detection and to be punitive for rogue landlords who refuse to comply with the law.

## **4. Procedural matters**

4.1 The regulations impose a number of procedural steps which must be taken before the council can impose a financial penalty. Before imposing a requirement on a landlord to pay a penalty charge the council must, within a period of six weeks from the point at which it is satisfied that the landlord has failed to comply with the requirements of the Remedial Notice, serve a penalty charge notice setting-out:

- the reasons for imposing the penalty charge;
- the premises to which the penalty charge relates;
- the number and type of prescribed alarms (if any) installed at the premises;
- the amount of the penalty charge;
- the obligation to pay that penalty charge or to give written notice of a request to review the penalty charge;
- how payment of the charge must be made; and
- the name and address of the person to whom a notice requesting a review may be sent.

4.2 A landlord may request in writing, a review of the penalty charge imposed. In conducting the review, the council will consider any representations made by the landlord, and serve notice of its decision whether to confirm, vary or withdraw the penalty charge to the landlord. Reviews will usually be undertaken by a senior officer not involved in the original decision.

4.3 Having requested a review, the landlord can further appeal to the First-tier Tribunal against the Council's decision.

- 4.4 A landlord will not be considered to be in breach of their duty to comply with the remedial notice, if they can demonstrate they have taken all reasonable steps to comply.

## **5. Redress scheme for letting and managing agents**

- 5.1 Under [The Redress Schemes for Letting Agency Work and Property Management Work \(Requirement to Belong to a Scheme etc.\) \(England\) Order 2014](#), it is a legal requirement for all letting agents and property managers to join a Government-approved redress scheme. This gives tenants and landlords with property agents and managers in the private rented sector the facility to complain to an independent person about the service they have received.
- 5.2 Where the council is 'satisfied on the balance of probabilities' that a person has failed to belong to a redress scheme as required by article 3 or 5 of the above Order, it may by notice require that person to pay a 'monetary penalty'.
- 5.3 The amount of the monetary penalty must not exceed £5,000.
- 5.4 The Council will comply with the procedure for the imposition of a monetary penalty stipulated within the Order including provisions for the submission of representations and objections and the appeal procedures.
- 5.5 The Council will give written notice of its intention to impose a penalty, setting out the reasons and the amount of the penalty. The lettings agent or property manager will have 28 days to make written representations against the penalty. Any representation made must be in writing and will usually be reviewed by a senior officer not involved in the original decision.
- 5.6 At the end of the 28 days the Council will decide, having taken into account any representations received, whether to impose the fine. If a fine is imposed then a final notice will be issued giving a minimum of 28 days for payment to be made. An appeal against the penalty can then be made to the First-tier Tribunal.
- 5.7 A monetary penalty will be recoverable on the order of a court, as if payable under a court order.
- 5.8 The standard monetary penalty for breach of duty under article 3 or 5 will be set initially at £5,000. The monetary penalty will be reduced by 50% if paid within 14 calendar days of the date of issue of the monetary penalty.
- 5.9 While this monetary penalty is set as a standard the order makes provision for a Letting Agent to make representations or objections. The Council will refer to this statement of principles in considering representations or objections received.

## **6. Associated documents**

- [The Smoke & Carbon Monoxide Alarm \(England\) Regulations 2015](#)
  - [Explanatory Booklet for Local Authorities](#)
  - [Q&A booklet for the private rented sector – landlords and tenants](#)
- [The Redress Schemes for Letting Agency Work and Property Management Work \(Requirement to Belong to a Scheme etc.\) \(England\) Order 2014](#)
  - [Lettings agents and property managers: redress schemes Guidance](#)

The logo for Somerset West and Taunton is a teal-colored rectangle with a white curved shape on the right side. The text "Somerset West and Taunton" is written in white, bold, sans-serif font, centered within the teal area.

**Somerset West  
and Taunton**

# **Enforcement of minimum energy efficiency standards**

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## 1. Introduction

- 1.1.1 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended) have been designed to tackle the least energy efficient properties; presently those with an Energy Performance Certificate (EPC) rating of F or G.
- 1.1.2 This policy describes how the Council will enforce these Regulations, known as the Domestic Minimum Energy Efficiency Standard (MEES) Regulations.
- 1.1.3 The MEES Regulations establish a minimum standard and since the 1<sup>st</sup> April 2020, landlords can no longer let or continue to let properties covered by the MEES Regulations if they have an EPC rating below E, unless they have a valid exemption in place.
- 1.1.4 There are different areas of non-compliance associated with these Regulations:
- Where a property is let or continues to be let in breach of the Regulations;
  - Where the landlord has registered any false or misleading information on the government's "[National PRS Exemptions Register](#)", or
  - Where a landlord has failed to comply with a compliance notice.
- 1.1.5 These regulations do not cover the requirement to have an EPC, which come from legislation enforced by Trading Standards in Somerset. Somerset West and Taunton (the Council) do not enforce these regulations and where appropriate will notify Trading Standards of potential offences.
- 1.1.6 As resources allow, the Council will seek to identify landlords that are not meeting the minimum requirements.
- 1.1.7 We will advise landlords of the requirements and what action they need to take in order to be compliant. Where non-compliance is identified, we will determine if it is appropriate to take formal action and make a financial penalty in line with this policy.
- 1.1.8 There is an ambition to raise the minimum EPC rating beyond E and the Government has committed to look at a long-term trajectory to improve the energy performance standards of privately rented homes. The aim is for as many properties as possible to be upgraded to EPC Band C by 2030, where practical, cost-effective and affordable. This policy will be reviewed and updated as and when new legislative requirements are introduced.

## 1.2 Government Guidance

- 1.2.1 Government guidance '[The domestic private rented property minimum standard](#)' is available on how to comply with the Minimum Energy Efficiency'

standard (currently EPC band E) and MDC has had regard to this guidance when preparing this policy.

## 2. Scope of the legislation

2.1.1 The MEES Regulations apply to all domestic private rented properties that are:

- Let on specific types of tenancy agreement
  - assured tenancy (including an assured shorthold tenancy) defined in the Housing Act 1988;
  - A regulated tenancy defined in the Rent Act 1977;
  - A domestic agricultural tenancy as set out in the Energy Efficiency (Domestic Private Rented Property) Order 20151
- Legally required to have an Energy Performance Certificate (EPC)
  - [Government guidance on EPCs when buying or selling your home](#)

2.1.2 Where both the above apply, owners of properties with an EPC rating of F or G must take appropriate steps to comply with the requirements of the MEES Regulations. If the Council believes a landlord has failed to fulfil their obligations under the MEES Regulations, they can serve the landlord with a compliance notice. If a breach is confirmed, the landlord may be served with a financial penalty.

2.1.3 There are various exemptions that apply to the prohibition on letting a property with an energy efficiency rating below E, listed below:

2.1.4 Exemptions:

- All relevant improvements have been made;
- High cost;
- Wall insulation;
- Third party consent;
- Property devaluation;
- Temporary exemption for 6 months.

2.1.5 Further information on the exemptions is contained within the [Government guidance](#) and MEES Regulations.

- 2.1.6 If the property meets the criteria for any of the exemptions, it may be let once the exemption has been registered on the PRS Exemptions Register.
- 2.1.7 Exemptions and registering an exemption are defined in the legislation. The Council does not define exemptions or register them, but may check their validity.
- 2.1.8 Exemptions from the prohibition on letting sub-standard property may not pass over to a new owner or landlord upon sale or other transfer of that property. If a let property is sold or otherwise transferred with an exemption in place, the exemption will cease to be effective and the new owner will need to either improve the property to the minimum standard or register an exemption themselves.

## 2.2 Penalty levels

2.2.1 The maximum level of penalty varies depending on the breach. Where a decision is taken to impose a financial penalty, the Council has discretion to decide the amount of the penalty, up to maximum limits set by the Regulations.

2.2.2 The maximum penalties set by Regulation are as follows:

<b>Offence</b>	<b>Maximum penalty</b>
Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months.	£2,000
Where the landlord has let a sub-standard property in breach of the regulations for 3 months or more.	£4,000
Where the landlord has registered false or misleading information on the PRS Exemptions Register.	£1,000
Where the landlord has failed to comply with compliance notice, the Local Authority may impose a financial penalty.	£2,000
Where two or more Penalty Notices apply, the combined Maximum per property per breach.	£5,000

## 3. Our approach

3.1.1 Where we become aware of a landlord renting a property with an EPC of F or G, we will advise them that they do not meet the minimum energy efficiency standard, offer advice and point them towards financial assistance and further support where it is available. They will also where appropriate, be advised to register an exemption or update their existing EPC.

- 3.1.2 Landlords will be given appropriate time to make any necessary changes and will be advised that continued non-compliance may result in an investigation and formal enforcement action.
- 3.1.3 Where a landlord has a history of non-compliance with housing legislation or is resistant to compliance, the Council may take formal action without giving an informal opportunity to comply.
- 3.1.4 The Council has discretion to serve Compliance Notices to request information from the landlord to help it decide if there has been a breach. As required, the Council will Serve Compliance Notices where additional information is required. The Council will consider serving a Penalty Notice where a landlord fails to comply with the Compliance Notice.
- 3.1.5 As part of the process, the Council will check the [National PRS Exemptions Register](#) and if it believes a landlord has registered false or misleading information it will consider serving a financial penalty.
- 3.1.6 If offences under these Regulations are committed the Council will, where appropriate, serve a Penalty Notice. Our approach to determining the appropriate level of penalty in line with the legislation is provided below.

#### 4. Criteria for determining the amount of a financial penalty charge

- 4.1.1 When determining the financial penalty, the level of culpability and the level of harm will be considered. The key factors to be considered when determining level of culpability and harm are indicated below.

Key factor	Definition
<b>Culpability</b>	<p><b>High</b></p> <p>Landlord has a previous history of non-compliance with housing related regulatory requirements;  Landlord has failed to comply with requests to comply with these regulations;  Deliberate breach of or flagrant disregard for the law;  Knowingly or recklessly providing incorrect information in relation to exemptions to these regulations.</p> <p><b>Low</b></p> <p>First offence under these regulations, no previous history of non-compliance with Housing related regulatory requirements;  Complex issues partially out of control of the landlord have led to non-compliance;  Failings were minor and occurred as an isolated incident.</p>
<b>Harm</b>	<p><b>High</b></p> <p>Very Low EPC score;  Vulnerable tenants occupying property for an extended period during and since non-compliance.</p>

	<b>Low</b> Higher EPC score close to minimum accepted EPC rating; No vulnerable tenants.
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4.1.2 As a guide to determine the appropriate level of penalty, SW&T will use the following matrix:

	Low culpability	High culpability
Low harm	25% of maximum	50% of maximum
High harm	50% of maximum	100% of maximum

4.1.3 Potential penalty levels for each offence are shown below:

<b>Breach is less than 3 months MAX £2,000</b>	Low Culpability	High Culpability
Low Harm	£500	£1000
High Harm	£1000	£2000

<b>Breach is more than 3 months MAX £4,000</b>	Low Culpability	High Culpability
Low Harm	£1,000	£2,000
High Harm	£2,000	£4,000

<b>Providing False and Misleading information MAX £1,000</b>	Low Culpability	High Culpability
Low Harm	£250	£500
High Harm	£500	£1000

<b>Failing to comply with a Compliance Notice MAX £2000</b>	Low Culpability	High Culpability
Low Harm	£500	£1000
High Harm	£1000	£2000

## 4.2 Aggravating and Mitigating Factors

4.2.1 The penalty levels may be adjusted from the matrix if there are aggravating or mitigating factors.

4.2.2 Where factors come to light during the investigation, adjustments may be made to the Financial Penalty. Details of these factors will be included in the Penalty Notice.

4.2.3 In addition, the landlord on whom the notice has been served may make representation against the level of fine or relevant to the offence. The Council will review the level of fine when representation is received and may adjust the penalty up or down as appropriate. The landlord will be served a Notice after the review with an explanation of any adjustment made.

### **4.3 Right of review and right of appeal**

4.3.1 The Landlord has the right to ask for a Penalty Notice to be reviewed. Any request for review must be submitted in writing to the Council within one calendar month of the Penalty Notice being served.

4.3.2 Reviews will usually be undertaken by a senior officer not involved in the original decision. The landlord will be informed of the outcome in writing, at the earliest opportunity.

4.3.3 If the Council uphold the penalty notice, the landlord may appeal to the First-tier Tribunal.

### **4.4 Recovery of financial penalties**

4.4.1 If a landlord does not pay a financial penalty imposed on them, the Council may take the landlord to court to recover the money.

### **4.5 Publication penalty**

4.5.1 In cases where there is a breach, the council may choose to impose a publication penalty. This will include publishing some details of the landlord's breach on a publicly accessible part of the PRS Exemptions Register. Where this step is taken as appropriate to the circumstances of the case, the information will be published for a period not exceeding 12 months.

## **5. Associated documents**

- [The Energy Efficiency \(Private Rented Property\) \(England and Wales\) Regulations 2015](#)
- [The Energy Efficiency \(Private Rented Property\) \(England and Wales\) \(Amendment\) Regulations 2019](#)
- [Domestic private rented property: minimum energy efficiency standard - landlord guidance](#)
- [The Domestic Private Rented Property Minimum Standard](#)