

Date 02 February 2024

Location PSH - Policies and Procedures -
Enforcement - Enforcement Policy

Regulating Housing Standards Policy

Scope

This policy sets out the guiding principles of the regulatory framework for the private sector housing service and the delivery of its statutory functions. It promotes clear, consistent and effective approaches to the practical application of enforcement to address health inequalities by improving housing conditions, wellbeing, and regulatory outcomes without imposing unnecessary burdens on compliant businesses.

This policy does not apply in isolation and should be considered together with other related documents to form a comprehensive approach to improving homes and health outcomes in Gloucester.

Supporting Strategies and Policies

Housing and Homelessness Strategy 2024

Gloucester City Council – Council Plan 2022-2024

Gloucester City Council Civil Penalties Policy - 2018

Gloucester City Council ABCD Policy - 2020

Gloucester City Council Community Engagement & Regulatory Policy - 2020

Gloucester City Council Community Protection Notices Policy and Procedure.

Responsibility of

[Housing Regulation, Resettlement and Projects Manager](#)

Summary

Housing is a key determinant of health and research shows that the condition of people's homes directly affects their health and wellbeing. Every year, injuries, illnesses, and mental health issues arise because of hazards in homes. Sometimes, people don't realise that the condition of their home can negatively impact their health and wellbeing. The poorest quality housing is often found in the private sector, but this is not exclusive and housing issues are found across all tenures and some homeowners may struggle to maintain their homes, leading to hazardous conditions.

Gloucester City Councils Private Sector Housing service (PSH) aims to reduce health inequalities and safeguard our residents, who are affected by poor housing conditions, poor property management and unprofessional landlords. The service aims to achieve this through promoting engagement and education in providing advice, information, assistance, and the signposting of support to our service users. Where this approach fails or there is a statutory function to meet its regulatory objectives, enforcement action will be taken.

This policy serves to inform investigating officers and decision-makers of the framework in which they operate, in addition to providing information to those individuals and businesses which are regulated and those protected by regulations.

The policy replaces the 2009 Enforcement Policy, compliments the Councils existing Enforcement Policies and is drawn up in line with the principles of good enforcement and better regulation. This policy and supporting appendices are specific to the enforcement action taken by the Private Sector Housing service supported by multi agency consultations and decisions (where applicable) and takes precedence.

The framework that empowers the Council to take enforcement action does so by enacting the powers and provisions of housing, environmental, and public health law, primarily the Housing Act 2004 ("the Act"), the Housing and Planning Act 2016 and other legislation (Appendix 2 - Delegated powers of Authorisation). The priorities for applying this tenure neutral regulatory and enforcement framework are:

- Promoting the provision of safe, decent and well managed accommodation in the City to improve health outcomes.
- Provide housing assistance services to support residents with disabilities to remain independent and make shape their own outcomes.
- Seeking behaviour change and pursuing regulatory action against those who flout the law and act unprofessionally in the housing sector.
- Making a fairer rented housing market by eliminating the financial gain or benefit from those who are non-compliant.
- Providing transparent and consistent regulation in the housing market.
- Promoting professionalism and resilience within the housing sector.
- Actively seek to reduce fuel poverty and carbon footprint impact through targeted assistance and intervention.
- Promoting economic growth and a thriving housing sector, whilst making best use of existing stock.
- Promote stronger communities to support people's feeling of safety, well-being and health.
- Empowering residents to make positive decisions about their housing options and shaping their own outcomes.

The Regulators' Code is a statutory code of practice introduced under section 23 of the Legislative and Regulatory Reform Act 2006 and came into force on 6 April 2014. Regulators covered by the code should have an adopted enforcement policy in place that incorporates the requirements of the code. Whilst this code is for guidance to support regulatory functions some legislation does not permit the full application of this code in that some offences are 'Strict liability offences' and as such informal options are not always available. Whenever a regulatory officer is carrying out an investigation they will be guided by the codes of practice of the Police and Criminal Evidence Act 1984 (PACE) and the Criminal Procedure and Investigations Act 1996.

While there is no explicit requirement to have a Housing focused enforcement policy, without one it would be difficult for the Council to effectively demonstrate compliance with the Regulators' Code (or its predecessors) and exposes us to legal challenges and appeals in the delivery of our statutory functions and duties. It also introduces a structure that protects individuals, businesses, and service users.

Gloucester City Council, along with our partnership agencies, will adopt the shared principals of Engagement, Education and Enforcement in a holistic multi-agency framework to ensure that resources are delivered through an effective and efficient model with supporting individuals, residents and businesses in Gloucester City at its core.

General Principles

Gloucester City Council aims to ensure all landlords, businesses and residents are compliant with their regulatory requirements. This includes, but is not exclusive to, the core functions of the licensing of houses in multiple occupation (HMOs), ensuring homes are safe and decent using the housing health and safety rating system (HHSRS), providing housing assistance, preventing homelessness and illegal evictions, reducing overcrowding, improving health outcomes resulting from poor quality homes, tackling damp and mould, hoarding care and support, bringing empty properties back into use and reducing anti-social behaviour associated with rented accommodation. It also includes a focus on improving the professionalism of residential landlords and managing agents.

To avoid unnecessary regulatory burdens, the Council expects landlords, agents, and businesses to comply with the law and proactively manage their properties and tenancies. This is to ensure that the health and welfare of tenants are protected, their properties, and activities at their properties, are not having a negative impact on the amenity of the neighbourhood and compliant businesses can operate fairly and grow economically. The person on whom a formal notice or order is served will be informed of the reason that this action is being taken, the timescale for completion of any works, the works that are legally required, representations that may be made, relevant appeal periods, details of any fees and charges and the consequences of noncompliance.

All enforcement action, whether informal or formal, will be carried out in accordance with the principles of good regulation set out in this Policy. Each case will be considered on its individual merits and in consultation with other agencies (where applicable). In deciding to take formal action and, if so, what type of action to take, Officers will use a risk and most appropriate course of action (MACA) impact-based approach.

Principles of Good Regulation	
Helpfulness, engagement and education Provision of advice and assistance on compliance in a courteous efficient and prompt manner.	
Standards Provide and publish clear standards setting out the level of service and performance provided by Gloucester City Council.	Openness Provision of information and advice in plain language about how we carry out our work, including consultation with stakeholders.
Transparency Access to information regarding regulatory procedures and decisions to be freely available.	Accountability Gloucester City Council will be accountable for the efficiency and effectiveness of its regulatory activities.
Consistency Duties to be carried out in a fair, equitable and consistent manner and with arrangements in place to promote consistency.	Confidentiality Gloucester City Council will ensure information provided in confidence is treated accordingly.
Proportionality When making a decision on appropriate enforcement action, Officers will, where discretion is allowed, consider both the circumstances of the case and history of the parties involved and will ensure that the remedial action required is proportionate to the risks and/or disadvantage created by the non-compliance, that it reflects any advice issued by Central Government or other co-ordinating bodies and takes into consideration relevant advice, Policy and the aims of Gloucester City Council.	Targeting Gloucester City Council accepts that its enforcement resources are limited and, where appropriate, they should be focused on those persons or companies whose activities give rise to the risks which are most serious. Enforcement is informed through intelligence arising from an investigation or complaints, planned projects, special surveys, enforcement initiatives or as a requirement from a Government Department.

Enforcement action and resources will be applied proportionally based on the seriousness of the offence/s and focused toward seeking the highest penalties for the worst offenders. The council will not hesitate to take legal action where we detect serious or systematic breaches of housing, environmental and public health legislation.

The PSH service will operate in a supportive 'light touch' manner for compliant landlords, owners, agents, and tenants. Where less significant breaches of the law are witnessed and/or the risk to health is lower, we will attempt to resolve cases informally through the signposting of support to service users, using lesser civil legal routes such as warnings and financial penalties and engagement and education to make it easier for recipients to understand and meet their regulatory obligations. This will enable economic growth for compliant businesses.

Regulatory activity is guided by three key principles:

Consistency: This means taking a similar approach in similar circumstances to achieve similar outcomes. It does not mean uniformity. Officers will consider many factors such as the level of risk, level of harm to individuals, the culpability of the offender, the history of compliance and the attitude and actions of those involved.

Openness: We will explain our actions clearly through engagement and education, in appropriate language and discuss compliance failures or problems. A clear distinction will be made between legal requirements and advice or guidance.

Proportionality: We will endeavour to balance the punishment of an offender against the direct risks to the persons effected, the effect on the wider community and severity of the breach of the law involved, to deter offenders from repeating the offence and discouraging others from committing similar offences.

In some cases, informal resolution cannot be achieved, or the matter being enforced is serious enough to warrant that the informal stage is not appropriate. Where property defects and evidence of poor management are likely to significantly impact on health, the PSH Team will take action. Certain breaches of legislation will require urgent and immediate regulatory responses, either because the time period for action is limited or because the effect of the activity causes significant harm to the public interest.

The Council has powers to make a requisition for information and documents. These powers will be used to assist with the Councils investigations and does not necessarily lead to the instigation of further enforcement action. Where a request for information or documents is not complied or misleading information is given or fraud is uncovered, this will be considered as aggravating factors in the investigation and further enforcement action may be appropriate.

A range of factors will be considered when considering enforcement action, including but not limited to:

- i) The severity of the offence.
- ii) The level of culpability of the offender.
- iii) The harm caused.
- iv) The costs of compliance and the financial benefit of failing to comply.
- v) The importance of deterring the offender from repeat offending and deterring others from committing similar offences, and;
- vi) The offender's assets and financial means.

Primary authority principles

The Council acknowledges that the primary authority principles as set out in the Regulatory and Sanctions Act 2008 and administered by the Better Regulation Delivery Officer (BRDO) apply to areas of housing standards enforcement. Where there is a primary authority in place the Council will comply with the appropriate primary authority requirements.

Scope and application of the policy

This policy is tenure neutral and is prioritised by the statutory functions of the PSH service. In the first instance service users are expected to take their own action to resolve the problem by contacting their landlord and allowing them adequate time to respond unless there is imminent risk to health where we will intervene immediately. If the landlord fails to take action in 14 days, the PSH service will investigate.

The majority of the PSH services' regulatory activity is generated by service users making a complaint (reactive). When a service request has been received, it will normally be triaged and responded to within 3 working days, no matter what the tenure or occupancy status, by an officer in the team unless the case requires immediate investigation. The case will be allocated a case officer and they will be responsible for keeping the complainant up to date with progress and contacting and engaging with all other interested parties (landlords, residential providers, etc). They will follow all reasonable lines of enquiry and investigation to obtain accurate and reliable information and evidence, to inform decision making and enable them to progress the case to conclusion.

The PSH service will usually serve a statutory Notice or Order where Category 1 and high Category 2 hazards are present and reasonable time will be given to complete the works. The reasons for taking a certain course of enforcement action to remedy Category 1 and 2 hazards will be set out in the statement of reasons included in the notice. The recipient(s) of a notice will be provided with opportunities to make representations regarding the deficiencies and hazards witnessed and the remedial works required to be taken.

Nuisances and other public health matters that are not abated before the Council witnesses the offence, will normally result in the relevant statutory notice being served.

Offences relating to HMO management regulations, failing to licence a HMO and/or breach of the conditions of a HMO licence will lead to enforcement action being taken as they are strict offences. Failure to comply with enforcement notices, will normally lead to further legal action being taken. Where legal action is necessary to address housing offences and crimes, financial penalties, where applicable, will normally be used as the primary enforcement tool (Appendix 1 and 3). The PSH service will use discretion in deciding whether to initiate a prosecution. Other approaches to enforcement can sometimes promote compliance with legislation

more effectively. However, a prosecution will be initiated where the circumstances warrant. (Appendix 4).

Residential Providers (RP) (Housing Associations) complaints. The PSH team will deal with, and enforce, Residential Providers (Housing Associations) complaints in the same way as any normal private sector housing disrepair complaints. Where the complaint is concerning the RP act or conduct outside of our delegated powers we will try to assist wherever possible. However, in these circumstances outside of PSH powers we would advise the complainant to contact the Housing Ombudsman Service (HOS) after using the RPs own internal complaints process. The HOS details are (<https://www.housing-ombudsman.org.uk/>) on 0300 111 3000 or email [to info@housing-ombudsman.org.uk](mailto:info@housing-ombudsman.org.uk) written enquires to Housing Ombudsman Service, Exchange Tower, Harbour Exchange Square, London E14 9GE.

Leaseholder/Freeholder complaints: The PSH Team is generally not able to respond to complaints by leaseholders requesting assistance in taking action against other leaseholders or freeholders for breach of contract or civil disputes (this includes all tenure types). We will only offer assistance in cases where there is a statutory nuisance or there are exceptional circumstances; this may include cases where there is imminent risk to health and a freeholder or leaseholder is impacting on another property or the public.

Leaseholders are advised to contact; The Leasehold Advisory Service - Fleetbank House, 2-6 Salisbury Square, London, EC4Y 8JX. Telephone: 020 7832 2500.
<http://www.lease-advice.org>

Owner Occupiers: The PSH Team is generally not able to respond to all complaints made about properties that are owner occupied unless they are requests for housing assistance (DFG'Ss), request for hoarding care and support in cases where there are safeguarding needs or there is a statutory nuisance or there are exceptional circumstances. We will offer owner occupiers advice, guidance and signposting to support where appropriate.

Not all enforcement interventions are reactive. There is often a need for proactive targeted interventions. This is often project based and multi-agency led. These are some examples of how we may target action – this is not an exhaustive list:

Property type or occupation: Examples such as unlicensed properties, poorly managed rented properties or those with anti-social behaviour linked to them, Properties with a low energy efficiency rating on their Energy Performance Certificate (EPC), Empty properties, Supported housing improvement programme and temporary accommodation, Asylum and resettlement accommodation and Hoarding Care and Support initiatives.

Geographical Areas: Where data and intelligence identifies that there are particular problems in a specific locality (heat mapping and hot spots). Where an area is identified as having adverse health inequalities or socioeconomic indicators.

Individuals: Where a landlord, managing agent, lettings professional, individual or organisation persistently fails to manage accommodation in accordance with legal requirements or repeatedly fails to comply with informal or formal requests to meet minimum legal requirements.

Where data and intelligence identifies that individuals and their activities are having a negative impact on the amenity of a neighbourhood or are having adverse health inequalities or socioeconomic indicators.

Where the individual is on the government database of rogue landlords and agents or has been convicted of a housing or relevant legislative offence, has a rent repayment order against them; or is subject to a banning order or a management order.

Retaliatory & Illegal Evictions, Harassment and Tenancy Relations

The Deregulation Act 2015 provides tenants protection from eviction in retaliation for making a complaint in relation to health and safety issues in their home. The circumstances to afford protection from retaliatory eviction require that a relevant legal notice has been served under the Housing Act 2004. Private Sector Housing will only serve the relevant legal notices in line with this policy and where it is clearly demonstrated that the landlord has failed to address the issues that have been reported to them or where emergency action has to be taken to make a home safe. The Housing Needs and Homeless team alongside PSH will inform people who rent properties from landlords or agents of their legal rights and obligations in relation to their occupation of a property. We may also advise residential occupiers of the legal action which they can take to enforce their legal rights, such as making claims for Rent Repayment Orders and Deposit Protection claims.

We will investigate all allegations of illegal eviction and harassment or failure to provide required information about a tenancy, in accordance with this policy. Where the Council believes it is appropriate it may take enforcement action using powers under the Prevention from Eviction Act 1977, Housing Act 1988 and other relevant housing laws.

Fees and Charging for Enforcement Action

The Housing Act 2004 allows councils to make a reasonable charge to recover administrative and other expenses for taking certain enforcement action. Legislation also allows us to recover costs in the case of works in default or works with agreement for the costs of the works and all associated costs.

The PSH Service will seek to recover all costs and fees when formal action is taken. The full costs of all officers' time, including overheads and any relevant expenses, will be charged. In some cases, we may seek to enforce the sale of a property to recover our costs, charges, fines and other financial debts owed to the council. Where remedial action has been undertaken the Council will incur a 30% charge to

be added to the costs with a minimum of a £300 charge being recovered from the landlord in line with the Council's Fees and Charges Policy. Each case will be based on its merits and if it is reasonable and proportionate to do so.

The notice charges and the costs of works and administrative costs will be raised as a charge against the property whilst repayment opportunities and debt recovery methods are exhausted.

The levels of fines determined for civil and financial penalties are set out in the supporting appendices and statements of principles.

Gloucester City Council also has the power to prosecute a wide range of offences under section 223 of the Local Government Act 1972 and make compensation claims to recover works in default and reasonable costs. Where there is a successful conviction in court and criminal lifestyle or benefit can be demonstrated, Gloucester City Council may make an application to use Proceeds of Crime Act 2002 legislation to recover money.

Work in Default and Works with Agreement

Where the Council has legally required someone to carry out remedial works to make a property safe, but they have failed to do so, the legislation affords powers to the Council to carry out works in default. This will enable the council to take action against property owners who continue to be negligent so we can be satisfied that no resident is left in a dangerous unsafe home. This action will be taken along with other legal action.

In most circumstances a person will be given notification of the Council's intention to carry out works in default unless emergency action is taken (see appendix 1 – Summary of Enforcement Options). Once we have started works it is an offence for a person to obstruct us or any of the contractors that have been employed to carry out the works.

The Council may also carry out works with agreement to comply with the requirements of an enforcement notice when the recipient consents to this and agrees a repayment of the costs and charges.

Consultation and Partners

Gloucester City Council is a member of a number of County Partnerships to ensure that we can support and deliver positive outcomes in a holistic multi-agency framework. We value the partners we work with and will engage and consult with them in relation to regulatory activity and procedures where the subject area is relevant and appropriate to do so. Such partners include, but is not exclusive to:

Gloucestershire Fire and Rescue Services.	Gloucestershire County Council and Social Care Services.
The Police, Safer Neighbourhood Partnerships and Solace.	Severn Wye Warm and Well Service.
NHS Partnerships and Health Boards.	The Department for Work and Pensions.

All information and data shared and obtained will be treated in confidence and in accordance with the Data Protection Act 2018 and the General Data Protection Regulations (GDPR). Gloucester City Council has adopted and is a signatory of the Gloucestershire Information Sharing Partnership Agreement (GISPA) and where appropriate will implement Specific Information Sharing Agreements (SISA) to support and assist with housing projects and initiatives. More details can be found here [What is the GISPA/what is it for? | Gloucestershire County Council](#). There will be circumstances where shared or complimentary enforcement action may be taken with other agencies to help target effective resources and activities and minimize duplication.

Information of allegations outside the remit of this Council may be referred to the appropriate enforcement authority to enable that agency to investigate the allegation. Gloucester City Council may also provide data to or obtain data from other enforcing authorities. When data sharing and referrals between authorities/agencies occurs, this will be done in accordance with all data protection legislation and regulations.

Delegations

Officers have a range of statutory powers delegated to them, under the relevant schemes of delegation, to undertake duties relating to Gloucester City Council. (Appendix 2) Officers will carry an identity badge; delegation documentation can be supplied if requested. In the event of any doubt about an Officer's powers, confirmation can be obtained by contacting the Officer's Line Manager who can provide any evidence describing their powers. It is an offence to obstruct an Authorised Officer who is conducting an investigation in line with their job role and statutory obligations, which could lead to prosecution.

Communications and Publicity

We will work with the Councils communications team and various media organisations and social media platforms to promote and inform people about our enforcement interventions and to deter 'Housing Crimes' and prevent exploitation of our residents. We will publish prosecutions and civil penalty charge notices on the Department of Levelling Up Housing and Communities (DLUHC) statutory database.

Media coverage will normally be sought where the offence/s are serious or have significant aggravating factors such as the risk to health of residents, the exploitation of tenants, anti-social behaviour or an issue that impacts the wider area or housing

sector and to ensure the rented housing market operates in a fair, equal and open way.

We will seek media coverage to assist in securing compliance by others or when it is in the public interest to demonstrate the Councils actions and to help improve awareness and to inform issues in the wider housing sector.

Enforcement case details and publicity will also be sought to support other local authorities and regulatory partners in their enforcement efforts, especially where the perpetrator/s operate across borough boundaries.

Appeals, Representations and Complaints

Gloucester City Council aims to provide an efficient and fair enforcement service. The recipient(s) of a notice will be provided with opportunities to make representations during the engagement process. When enforcement action is taken the correspondence, notices and supporting documentation will provide the recipient with information and guidance on how to appeal the enforcement notice (where applicable).

If a customer wishes to complain about the course of action an officer has taken it is expected that in the first instance, most problems can be resolved with the Officer dealing with the matter or with their Line Manager. If a person or business is not satisfied with the response received, they will be directed to Gloucester City Councils formal complaints procedure. [Complaints, compliments and comments - Gloucester City Council](#)

Please note that a complaint regarding a decision to prosecute cannot be progressed through the formal complaints procedure as this is a matter for the Administrative Court by way of an application for judicial review. If a person is still dissatisfied having exhausted Gloucester City Council's complaints procedure, a complaint can be made to the Local Government Ombudsman Service.

This policy has been assessed in accordance with the requirements of the Equality Act 2010 to ensure that the policy complies with the Public Sector Equality Duty.

In exercising any statutory powers, the Council needs to be aware of the human rights implications. The European Convention on Human Rights and Fundamental Freedoms was incorporated into British law by way of the Human Rights Act 1998. The convention protects certain rights. In the context of housing standards these are the right to private property (article 1 of the first protocol) and the right to respect for private home, life and correspondence (article 8 of the Convention). These rights are not absolute. They can be interfered with if a clear public interest case can be demonstrated, the action is proportionate, and the correct statutory procedure is followed. In each case officers should take into account the rights of the owner, occupier and anyone impacted by enforcement action.

Reviewing the policy

The policy will be reviewed every 4 years or at a time when triggered by the enactment of new guidance or legislative demand.

Local Procedures

TBC

Further Guidance

Regulators' Code (BRDO, BIS, April 2014)

The Code for Crown Prosecutors (CPS, October 2018)

PACE Codes

[Administration / National Policy and Guidance / Information](#)

Human rights publications

Housing Health and Safety Rating System Enforcement Guidance

Appendices:

Appendix 1 - General Summary of Regulatory Options

Appendix 2 - Delegated powers of Authorisation

Appendix 3 - Gloucester City Council Civil Penalty Policy 2024 (a.a)

Appendix 4 – Statement of Principles for Prosecutions and Simple Cautions.

Appendix 5 - Statement of Principles for Fit and Proper Persons.

Appendix 6 - Statement of Principles for Minimum Energy Efficiency Standards.

Appendix 7 - Statement of Principles for Electrical Safety in the Private Rented Sector.

Appendix 8 - Statement of Principles for Smoke and Carbon Monoxide Regulations.

Appendix 1 - General Summary of Regulatory Options.

Action	Circumstances
1. No action	<p>Complaints or allegations of housing legislation breaches or statutory nuisances are of minor or low risk to health and the landlord has not been informed by the complainant, or allegations are unsubstantiated and unwitnessed.</p> <p>Formal action is inappropriate in the circumstances.</p> <p>Referral to partner service/agency with more appropriate regulatory function.</p>
2. Advisory warnings, letters & Consultation	<p>Where conditions are evidenced to justify action and investigation and it is appropriate to give opportunity to landlords and tenants to make representations, provide information or effect change to meet compliance.</p> <p>No health impacts are present which poses a risk to health or nuisance.</p> <p>Landlords and individuals will be presented with an opportunity to engage with the case officer before and during and visits to inform what enforcement options are taken.</p>
3. Formal notices or orders	<p>The defect/conditions/behaviour presents a public health risk and/or a nuisance.</p> <p>Informal/advisory option not appropriate.</p> <p>The 'offence' is a strict offence.</p> <p>There are previous failures of statutory requirements.</p> <p>Previous advisory notices/letters ignored or action was not taken in a timely manner or to the correct standard.</p> <p>The landlord or agent has failed to take action following a complaint from their tenant.</p> <p>There is a lack of confidence in the individual, business or management i.e. the willingness to respond to an informal approach.</p> <p>The Council is legally required to serve a statutory notice.</p> <p>There is aggravating and contributory factors and culpability.</p> <p>Enforcement notices will be registered as a land charge.</p>
4. Financial Penalties	<p>For certain Housing Act 2004 breaches, amount of penalty decided by civil financial penalty Matrix (Appendix - 3).</p> <p>Used as alternative to a prosecution. Offences include:</p> <ul style="list-style-type: none"> • Non-compliance with an improvement or overcrowding notice. • Failure to obtain a property licence (Both parts 2 and 3 Housing Act 2004). • Breaches of HMO management regulations. • Breaches of the conditions of the property licence. • The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020: We will issue a penalty charges of up to £30,000. (Appendix - 7)

	<ul style="list-style-type: none"> • Smoke & Carbon Monoxide Regulations 2015: We will issue a penalty charges of up to £5,000. (Appendix - 8). • Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (MEES
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5. Emergency Action	<p>There is an imminent risk to health and safety to the occupant and/or public. Examples include but are not exclusive to: collapsing ceiling, sewerage and water leaks, dangerous electrics, no heating cases.</p> <p>Awaiting the service of a notice would not adequately protect the public interest.</p> <p>Emergency action may include the following statutory action:</p> <ul style="list-style-type: none"> • Emergency remedial action to remedy immediate risk hazards. • Emergency prohibition action restricting the use of a premises. <p>Emergency action will be registered as a land charge.</p>
6. Works in Default	<p>We may choose to carry out works in default required by a notice if they have not been completed within the permitted time or are not likely to be completed within the permitted time. Fees and charges will apply.</p> <p>We may choose to carry out works with agreement with the consent of the recipient of a Notice if they are unable to comply with the notice and want the Council to carry out the works on their behalf. Fees and charges will apply.</p> <p>Works in default will be registered as a land charge.</p>
7. Reduce Licence Duration	<p>When assessing a Licence application, where appropriate and in conjunction with the Council's Fit and Proper and Cause for Concern policy, we may reduce the duration of the licence. (Appendix - 5)</p>
8. Varying Licence Conditions	<p>When assessing a Licence application or varying an existing licence, where appropriate and in conjunction with the Council's Fit and Proper and Cause for Concern policy, we may add further conditions to a licence to remedy poor landlord behaviour or management standards. (Appendix - 5)</p>
9. Refusal to Grant a Licence	<p>When assessing a Licence application, where appropriate and in conjunction with the Council's Fit and Proper and Cause for Concern policy we may refuse to grant a licence. (Appendix - 5)</p>
10. Revoke a Licence	<p>When assessing a Licence, where appropriate and in conjunction with the Council's Fit and Proper and Cause for Concern policy we may revoke a licence. (Appendix - 5)</p>
11. Formal (Simple) Caution	<p>Where a prosecution or Financial Penalty is determined not to be in the public interest and it is the individuals first offence and admits guilt. (Appendix - 4)</p>
12. Prosecution	<p>Where the offence is serious enough to justify prosecution.</p> <p>Where it is a serious offence and or another consideration justifies prosecution.</p> <p>Where there is sufficient evidence to prove that an offence has been committed.</p> <p>Where there is a realistic prospect of conviction.</p> <p>Where the public Interest test is met.</p> <p>Where a landlord has committed the offence of illegal eviction or harassment.</p> <p>(Appendix - 4)</p>

13. Banning Order	Where the relevant offences, convictions and/or contraventions are serious enough to warrant the Council to seek a Banning Order following the breach of 'banning order offences' by landlords and agents. A banning order last for a minimum of 12 months and prevent landlords or agents from letting properties or being involved in the lettings and property management industry across England.
14. Proceeds of Crime	To be considered where, upon successful conviction, landlords or others have financially benefited from the proceeds of a criminal activity a Proceeds of Crime Order application may be made.
15. Warrant to Enter a Premises	Where there is a duty to inspect a property as part of an investigation and access has been previously refused by the owner or occupier. Seeking informal access to the property would negatively impact the evidence gathering for an offence, for example – inspecting a HMO, unlicensed HMO's, illegal conversion of a property. To carry out works in default to safeguard and protect the health and wellbeing of a resident and to remove any imminent risk hazards.
16. Rent Repayment Order	Rent Repayment Orders can be made in the First Tier Tribunal where landlords have committed certain offences. The landlord may be required to repay up to 12-months rent back to a tenant or local authority for housing benefit or universal credit. The offences are: Violence for securing entry into a property Illegal eviction or harassment of tenants Failure to comply with an Improvement Notice or Prohibition Order (HA04) Failure to licence a property that requires a licence. Breach of a Banning Order.
17. Management Orders	The decision to apply for a Management Order as set out in Part 4 of the Housing Act 2004. It is a complex decision that may only be considered on a case by case basis. They can be applied in circumstances to bring Empty Properties back into use (EDMO), take management control of HMO's that require to be licensed or properties
	where there are significant hazards and there is no likelihood of the HMO being licensed or repairs carried out.
17. Enforced Sale and debt recovery	Enforcement charges, broader Council debts (Council Tax), fines, costs of works and administrative costs will be raised as a charge against the property whilst repayment opportunities and debt recovery methods are exhausted. If there is no likelihood of a debt being recovered the Council will consider an enforced sale of the asset.

<p>18. Community Protection Notices (CPN)</p>	<p>A CPN can only be issued where the Council is satisfied on reasonable grounds that the conduct of an individual (aged 16 or over), a business or an organisation is:</p> <ul style="list-style-type: none"> • having a detrimental effect on the quality of life of those in the locality • persistent or continuing in nature, and • unreasonable. <p>For clarification, references to “conduct” include a failure to act. The Council will consider where the above threshold is met These on a case by case basis and is guided by the community trigger policy.</p> <p>A warning letter is issued as a first step.</p> <p>A community protection notice is issued as a final step.</p> <p>Failure to comply with a CPN is a criminal offence. There are a number of options available; however, consideration should be given to the victims’ wishes. A Fixed Penalty Notice may be appropriate, but it does not alleviate the impact on the community.</p> <p>Remedial action can also be taken.</p>
<p>19. Injunctions and Closure Orders</p>	<p>Injunctions and closure orders may be sought in consultation with wider multi agency partners when the behaviour/conduct of an individual is negatively impacting on the amenity of an area or resulting in ASB complaints from a premises.</p>

This list of options is a general summary and other regulatory options may be considered based on the facts and circumstances of the case.

Appendix 2 - Delegated Powers for Authorisation

GLOUCESTER CITY COUNCIL CONSTITUTION

STATUTORY PROVISIONS – RESPONSIBILITY FOR FUNCTIONS

OFFICER AUTHORISATION

I am writing to you to confirm your responsibility of functions including those statutory provisions you are authorised to enforce on behalf of the Council based on your authorisation justification form. These are attached for your information and records.

OFFICER AUTHORISATION – PRIVATE SECTOR HOUSING

DELEGATED AUTHORITY – CORPORATE DIRECTOR

- ~~1. Animal Boarding Establishments Act 1963~~
- ~~2. Animal Welfare Act 2006~~
- ~~3. Anti-Social Behaviour Act 2003~~
- ~~4. Anti-Social Behaviour Crime and Policing Act 2014~~
- ~~5. Breeding and Sale of Dogs (Welfare) Act 1999~~
- ~~6. Breeding of Dogs Act 1973, 1991~~
- ~~7. Building Act 1984~~
- ~~8. Caravan Sites Act 1968~~
- ~~9. Caravan Sites and Control of Development Act 1960~~
- ~~10. Clean Air Act 1993~~
- ~~11. Clean Neighbourhood and Environment Act 2005~~
- ~~12. Consumer Rights Act 2015 for the purposes of imposing financial penalties on letting agents in respect of their duties in section 83 of the Act~~
- ~~13. Contaminants in Food (England) Regulations 2013~~
- ~~14. Control of Pollution Act 1974, and (Amendment) Act 1989~~
- ~~15. Control of Waste (Dealing with Seized Property) England and Wales) Regulations 2015~~
- ~~16. Criminal Justice and Public Order Act 1994~~
- ~~17. Criminal Justice and Police Act 2001 (Sections 12-16 and 19-20)~~
- ~~18. Dangerous Wild Animals Act 1976~~

19. Defective Premises Act 1972
20. Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
21. Energy Act 1976
22. Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015
23. Environment Act 1995
- For the purposes of the DVLA the authorisation specifically includes Section 108 (4)
24. Environmental Damage (Prevention and Remediation) Regulations 2009
25. Environmental Permitting (England & Wales) Regulations 2010 (as amended)
26. Environmental Protection Act 1990 (as amended)
27. Environment Act 1995
- For the purposes of the DVLA the authorisation specifically includes Section 108 (4)
28. Environmental Damage (Prevention and Remediation) Regulations 2009
29. Environmental Permitting (England & Wales) Regulations 2010 (as amended)
30. Food and Environment Protection Act 1985 (Part I) (Part III)
31. Food Safety Act 1990 (Section 32 – powers of entry)
32. Gambling Act 2005
33. Hazardous Waste (England and Wales) Regulations 2005
34. Health Act 2006
35. Health and Safety at Work etc. Act 1974
36. Health Protection (Notification) Regulations 2010
37. Housing Act 1985
38. Housing Act 1996
39. Housing Act 2004
40. Housing and Planning Act 2016
41. Housing Grants Construction and Regeneration Act 1996
42. Licensing Act 2003
43. Local Government (Miscellaneous Provisions) Act 1976, and 1982
44. Local Government Act 1972 and 1985
45. Local Government Act 2003

46. The Mobile Homes Act 2013
47. Policing and Crime Act 2009 and 2017
48. ~~Pollution Prevention and Control (England and Wales) Regulations 2000 (as amended)~~
49. ~~Pollution Prevention and Control Act 1999~~
50. Prevention of Damage by Pests Act 1949
51. Private Water Industry Act 1991
52. Private Water Supplies Regulations 2016
53. Protection from Eviction Act 1977
54. Public Health (Control of Diseases) Act 1984
55. Public Health Acts 1936 and 1961
56. Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014
57. Refuse Disposal (Amenity) Act 1978
58. Regulatory Enforcement and Sanctions Act 2008
59. Regulation of Investigatory Powers Act 2000
60. Regulatory Reform (Housing Assistance) (England and Wales) 2002
61. ~~Scrap Metal Dealers Act 2013~~
62. Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (from 1 October 2015)
63. The Smoke-free (Premises and Enforcement) Regulations 2006
64. The Smoke-free (Penalties and Discounted Amounts) Regulations 2007
65. The Smoke-free (Exemptions and Vehicles) Regulations 2007
66. ~~The Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007~~
67. The Smoke-free (Signs) Regulations 2007
68. ~~Sunbeds (Regulation) Act 2010~~
69. ~~Town and Country Planning (Assessment of Environmental Effects) Regulations 1988, SI 1988, No. 1199~~
70. ~~Town and Country Planning (Environmental Impact Amendment) (England and Wales) Regulations 1999~~
71. Town and Country Planning Act 1990
72. Wildlife and Countryside Act 1981

73. Zoo Licensing Act 1981

Appendix 3 - Gloucester City Council Civil Penalties under the Housing and Planning Act 2016 Policy

Introduction

Gloucester City Council is required to prepare and publish a Civil Penalties policy and statement of principles and it must follow this guide when deciding on the amount of a penalty charge to issue for specified offences. This policy is to be read and implemented in conjunction with the Regulation of Housing Standards Policy. The power to impose a Civil Penalty as an alternative to prosecution for certain offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016. Other statutes also provide for the application of Civil / Financial penalties and they will consider the principles as set out below alongside specific considerations as set out in the supporting statements of principles.

Where legal action is necessary to address housing offences and crimes, financial penalties, where applicable, will normally be used as the primary enforcement tool. Financial penalties will be applied proportionally based on the seriousness of the offence/s and focused toward seeking the highest penalties for the worst offenders.

Statutory guidance has been issued by the Secretary of State under Schedule 9 (12) of the Housing and Planning Act 2016 and Local Authorities must have regard to this when exercising its functions in respect of civil penalties.

The maximum civil penalty that can be set is £30,000. A minimum penalty level has not been set and the appropriate amount of penalty is to be determined by the Local Housing Authority. Only one penalty can be imposed in respect of the same offence. In determining the Civil Penalty amount, the Local Housing Authority will have regard to the statutory guidance issued under schedule 9 of the Housing and Planning Act 2016 and also to the adopted Civil Penalty Matrix (Appendix A).

The legal framework

The Housing and Planning Act provides for powers that permit local authorities to impose a civil penalty (sanction) as an alternative to a prosecution. The approach to issuing a Civil Penalty is fundamentally made up of two stages, firstly determining the appropriate sanction and secondly (if appropriate) the level of Civil Penalty charged.

When determining the appropriate regulatory action, the Council should satisfy itself that if the case were to be prosecuted there would be a 'realistic prospect of a conviction'. This is currently determined by consulting the Crown Prosecution Service "Code for Crown Prosecutors" which provides two tests: (i) the evidential test and (ii) the public interest test (Refer to Gloucester City Councils Statement of Principles for Prosecutions and Simple Cautions).

Civil Penalties were introduced by the Housing and Planning Act 2016 under Section 126 and Schedule 9 of that Act. The powers enable Local Authorities to impose Civil Penalties of up to £30,000 in respect of the following offences:

- a) Failure to Comply with an Improvement Notice under Section 30 of the Housing Act 2004.

- b) Offences relating to Licensing of HMOs under Section 72 of the Housing Act 2004;
 - i Section 72 (1) being in control or managing an HMO which is required to be licensed but is not so licensed;
 - ii Section 72 (2) being in control or managing an HMO which is licensed but knowingly permitting occupation over and above the number authorised by the licence;
 - iii Section 72 (3) being a licence holder who fails to comply with any condition(s) of a licence.

- c) Offences relating to Licensing of Houses under Part 3 of the Housing Act 2004 (Selective Licensing);
 - i Section 95 (1) being in control or managing a house which is required to be licensed but is not so licensed;
 - ii Section 95 (2) being a licence holder who fails to comply with any condition of a licence.

- d) Contravention of an overcrowding notice under Section 139 of the Housing Act 2004.

- e) Failure to comply with management regulations in respect of HMOs under Section 234 of the Housing Act 2004.

- f) Where a landlord or agent has breached a Banning Order.

Decision making

Where legal action is necessary to address housing offences and crimes, financial penalties, where applicable, will normally be used as the primary enforcement tool. Ultimately, it is for the Local Authority to decide which regulatory option it wishes to pursue but as a general principle, Gloucester City Council will only normally prosecute in circumstances where an offence is particularly serious, where there is no other recourse to alternative sanction or where the offender has committed similar offences and is an individual or business that fails the fit and proper person and cause for concern tests (refer to Statement of Principles for Licensing and Fit and Proper Persons). Each case will be based on its merits and if it is reasonable and proportionate to do so.

Prosecution in serious cases demonstrates that the Local Authority will not hesitate to take formal action where needed and is likely to act as a strong deterrent both to the offender and other rogue landlords. A prosecution also enables the Local Authority to apply for a banning order following a successful conviction.

Factors in considering imposing penalty levels

Clearly, a single level penalty will not be appropriate in all cases and when assessing the level of penalty to be imposed it is expected that the maximum amount would be reserved for the worst offenders. The actual amount levied should reflect the severity of the case and local authorities should have regard to the following;

- a) The seriousness of the offence - The more serious the offence, the more likely it is that prosecution will be the more appropriate course of action.
- b) Culpability of the landlord - Factors to take into account when determining the culpability include where the offender;
 - i Has the **intention** to cause harm, the highest culpability where an offence is planned.
 - ii Is **reckless** as to whether harm is caused, i.e. the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences, even though the extent of the risk would be obvious to most people.
 - iii Has **knowledge** of the specific risks entailed by his actions even though he does not intend to cause the harm that results.
 - iv Is **negligent in their actions**.

Examples of Culpability

High (Deliberate Act)	Intentional breach by landlord or property agent or flagrant disregard for the law, i.e. failure to comply with an improvement notice; failure to licence a property that requires a licence.
High (Reckless Act)	Actual foresight of, or willful blindness to, risk of offending but risks nevertheless taken by the landlord or property agent; for example, failure to comply with HMO Management Regulations
Medium (Negligent Act)	Failure of the landlord or property agent to take reasonable care to put in place and enforce proper systems for avoiding commission of the offence; for example, part compliance with a schedule of works, but failure to fully complete all schedule items within
Low (Low or no culpability)	Offence committed with little or no fault on the part of the landlord or property agent; for example, obstruction by tenant to allow contractor access, damage caused by tenants

- b) Harm or potential for harm - In determining the level of harm the Local Housing Authority will have regard to;
 - i The person: i.e. physical injury, damage to health, psychological distress.
 - ii To the community; i.e. economic loss, harm to public health.
 - iii Other types of harm; i.e. public concern/feeling over the impact of poor housing condition on the local neighbourhood

The nature of the harm will depend on the personal characteristics and circumstances of the victim.

Where no actual harm has resulted from the offence, the council will consider the relative danger that persons have been exposed to as a result of the offender's conduct, the likelihood of harm occurring and the gravity of harm that could have resulted.

Factors that indicate a higher degree of harm include;

- i Multiple victims
- ii Especially serious or psychological effect on the victim
- iii Victim is particularly vulnerable

Examples of Harm Categories

High	Defect(s) giving rise to the offence poses a serious and substantial risk of harm to the occupants and/or visitors; for example, danger of electrocution, carbon monoxide poisoning or serious fire safety risk.
Medium	Defect(s) giving rise to the offence poses a serious risk of harm to the occupants and/or visitors; for example, falls between levels, excess cold, asbestos exposure.
Low	Defect(s) giving rise to the offence poses a risk of harm to the occupants and/or visitors; for example, localised damp and mould, entry by intruders.

The purpose of imposing a financial penalty

The purpose of the Council exercising its regulatory powers is to reduce health inequalities and safeguard our residents, who are affected by poor housing conditions, poor property management and unprofessional landlords.

The general aims of financial penalties are to:

- Lower the risk to tenants health and safety.
- Reimburse the costs incurred by the Council in taking enforcement action.
- Change the behaviour of the landlord and prevent future non-compliance.
- Eliminate financial gain or benefit from non-compliance with the regulations.
- Be proportionate to potential harm outcomes, the nature of the offence, and the cost benefit to comply with the legal requirements.

The prescribed aims of civil penalties set out in the guidance are:

- Punishment of the offender -
 - a) A Civil Penalty should not be regarded as an easy or lesser option compared to prosecution.
 - b) The penalty should be proportionate and reflect the severity of the offence.
 - c) The penalty should be set high enough to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.
- Deter the offender from repeating the offence -
 - a) The ultimate goal is to prevent further offending and help ensure the landlord fully complies with all their legal responsibilities in future.

- b) The level of penalty should be set at a high enough level to deter repeat offending.
- Deter others from committing similar offences -
 - a) Important part of deterrence is the realisation that the Council is proactive in levying Civil Penalties where the need exists and that the level of Civil Penalty will be set high enough to punish the offender and deter repeat offending.
- Remove any financial benefit to the offender for the offence -
 - a) Ensure that the offender does not benefit as a result of committing an offence i.e. it should not be cheaper to offend than to ensure a property is well maintained and managed.

Determining the amount of Civil Penalty

The maximum civil penalty that can be set is £30,000 per offence. The council has adopted an assessment tool called the Civil Penalty Matrix (Appendix A) for assessing the level of Civil Penalty that should be charged when offences have been committed. In determining the amount of a financial penalty, the authority will take full account of the particular facts and circumstances of the breach under consideration.

The application of the Civil Penalty Matrix ensures that the assessment of the level of Civil Penalty reflects the factors to be considered in the statutory guidance provided by the Secretary of State and takes into account all elements set out by the Gloucester City Council through its enforcement policy and procedures.

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

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

Aggravating Factors

The penalty may be increased by £1,000 for each aggravating factor up to a maximum of the top of the band level determined above.

Below is a list which will be considered as part of the determination along with considerations whether an individual or business fails the fit and proper person and cause for concern tests (refer to Statement of Principles for Licensing and Fit and Proper Persons). This is not an exhaustive list and other factors may be considered depending on the circumstances of each case.

- Previous convictions having regard to the offence to which applies and time elapsed since the offence
- Motivated by financial gain
- Obstruction of the investigation
- Deliberate concealment of the activity/evidence
- Number of items of non-compliance - greater the number the greater the potential aggravating factor
- Record of non-compliance
- Record of letting substandard accommodation
- Record of poor management/ inadequate management provision
- Lack of a tenancy agreement/rent paid in cash
- Already a member of an accreditation scheme or letting standard - so should know better

Mitigating Factors

The penalty may be reduced by £1,000 for each mitigating factor to a minimum of the bottom of the band level determined above apart from Band 1 where the minimum reduction will be to £500.

Below is a list which will be considered as part of the determination. This is not an exhaustive list and other factors may be considered depending on the circumstances of each case.

- Co-operation with the investigation
- Voluntary steps taken to address issues e.g. submits a licence application
- Willingness to undertake training
- Willingness to partake in the Gloucestershire Fit To Rent landlord accreditation scheme
- Evidence of health reasons preventing reasonable compliance - mental health, unforeseen health issues, emergency health concerns
- No previous convictions
- Vulnerable individual(s) where there vulnerability is linked to the commission of the offence.
- Good character and/or exemplary conduct.

When considering aggravating and mitigating factors the Civil Penalty imposed must remain proportionate to the offence.

Reference will be made to Magistrates Court Sentencing Council guidelines when considering relevant aggravating and mitigating factors.

An offender will be assumed to be able to pay a penalty up to the maximum amount unless they can demonstrate otherwise.

Civil Penalties - Multiple Offences

Where the Local Housing Authority are satisfied that more than one offence is being committed concurrently in respect of a single property, they may issue multiple Civil Penalty notices, (for example, where there are multiple breaches of the HMO Management Regulations and a failure to licence the property).

However, where satisfied on the merits of the case and/or where the authority considers that issuing multiple penalties at the same time would result in an excessive cumulative penalty, nothing in this policy shall require the authority to do that. The authority may take action in respect of one or more of the offences and warn the offender that future alternative action in respect of the remaining offences will be taken if they continue.

Where a landlord receives two or more civil penalties over a 12-month period, local housing authorities may include that person's details in the database of rogue landlords and property agents.

Procedural matters for Penalty Charge Notices

The legislation as amended sets out the procedural steps which must be taken before the Council can impose a requirement on a landlord to pay a civil penalty charge.

- The council must first be satisfied that an individual or business is guilty of an offence as set out above and if the case were to be prosecuted there would be a 'realistic prospect of a conviction'.
- The council will serve a Notice of Intention to issue a Financial Penalty which sets out the reasons for decision, the amount of the penalty and invites the recipient to make representations.
- Where a landlord makes a representation requesting a review of the decision within one month from when the notice of intention is served, the council will consider any representations made by the landlord and either confirm, vary or withdraw the penalty and serve a final notice of its decision.
- A landlord who has made a representation of a penalty charge notice and has been served with a notice confirming or varying the penalty charge notice, may appeal to the First-tier Tribunal against the Council's decision. Appeals should be made within 28 days from the notice served of the Council's decision on review. The penalty charge notice will be suspended until the case has been determined.

Details of how to make a representation and appeals will be included with the remedial notice and supporting documentation. The Council will notify the landlord of its decision by notice, which will be either to confirm, vary or withdraw the penalty charge notice.

To ensure fairness and transparency and following a review, every decision to confirm a Penalty Notice will be subject to approval by the Team Leader or Manager.

If the penalty charge remains unpaid then the charges and administrative costs will be raised as a charge against the property whilst repayment opportunities and debt recovery methods are exhausted. Where landlords do make an appeal to the First-tier Tribunal, recovery will commence after one month from when the appeal is determined or withdrawn.

The council also still reserves the right to carry out works in default where appropriate. Where works in default has been undertaken by the Council, the costs of the works are recoverable. The Council will incur a 30% charge to be added to the costs of any works undertaken as remedial action, with a minimum of a £300 charge being recovered from the landlord in line with the Council's Fees and Charges Policy.

Further Guidance

[Civil penalties under the Housing and Planning Act 2016 - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

[Civil penalties under the Housing and Planning Act 2016 \(publishing.service.gov.uk\)](http://publishing.service.gov.uk)

[Housing and Planning Act 2016 \(legislation.gov.uk\)](http://legislation.gov.uk)

Appendix 4 - Statement of Principles for Prosecutions and Simple Cautions

PROSECUTION

Gloucester City Council will use discretion in deciding whether to initiate a prosecution. Other approaches to enforcement can sometimes promote compliance with legislation more effectively. However, where the circumstances warrant it, prosecution without warning and recourse to alternative sanctions may be appropriate. Most of the offences investigated by the private sector housing service are summary only offences. This is where an offence is usually tried in the Magistrates' Court. Some offences are 'either way' which means they can be heard by either the Magistrates or Crown Court. Where the Council take proceedings under the Proceeds of Crime Act 2002, sentencing for a summary only offence may take place in the Crown Court.

Each case will be treated as unique and considered on its own facts and merits with due consideration to the Equalities Act 2010 and the Human Rights Act 1998. All the circumstances surrounding the case will be considered including the social benefits and costs associated with bringing the matter to the attention of the Courts.

The prosecution of offenders will be used judiciously but, without hesitation, against those businesses or individuals where the law is broken and the health, safety, well-being or amenity of the public, employees and consumers are subject to risk.

Legal advice will be taken to ensure that only those cases presenting a realistic prospect of conviction will be pursued. Gloucester City Council will have due regard to the availability of any defences and to any explanation, apology or other issue referred to by the suspect by way of mitigation.

The decision to prosecute will consider the criteria set down in the Code for Crown Prosecutors, issued by the Crown Prosecution Service and the points below.

The Evidential Test

There must be enough evidence to provide a realistic prospect of conviction and the evidence must be admissible and reliable.

In determining the sufficiency of evidence, consideration should be given to the following factors:

- Availability of Essential Evidence
- Credibility of witnesses - are they likely to be credible witnesses and whether they are likely to be consistent and fail under cross-examination? – are they willing to attend as witnesses? Could they be 'hostile' witnesses?

- Where the case depends in part on admissions or confessions, regard should be had to their admissibility;
- Where two or more defendants are summonsed together, the sufficiency and admissibility of evidence available against each defendant, if separate trials are ordered.

In determining the admissibility of evidence, regard should be given to the requirements of the Police and Criminal Evidence Act 1984 and the Criminal Procedure and Investigations Act 1996 and associated Codes of Practice.

The Public Interest Test

When satisfied that sufficient evidence is available, consideration must be given to whether the public interest requires a prosecution.

The following considerations should apply:

- Seriousness of the offence - the degree of detriment or potential detriment to consumers, employees or the environment. Current public attitudes to the particular breach of law should be considered.
- The age of the offence – less regard will be paid to this if the length of time could be attributable to the defendant themselves, the complexity of the case or the particular characteristics of the offence that have contributed to the delay in its coming to light.
- The age, circumstances or mental state of the offender – less regard to this is given if there is a real possibility of repetition or the offence is of a serious nature. Whether the defendant is likely to be fit enough to attend Court should also be considered.
- The willingness of the offender to prevent a recurrence of the problem. If the circumstances that give rise to the offence have subsequently been rectified and there is little likelihood of a recurrence, then the case may be dealt with more appropriately by other means.
- The ‘newness’ of the legislation transgressed may be a consideration, especially where the offence is of a technical nature, and future compliance may be obtained by less formal means.
- Important but uncertain legal points that may have to be tested by way of prosecution.

Simple Cautions

A Simple Caution may be used as an alternative to prosecution. The aim of a Simple Caution is to deal quickly and simply with offences, save Court time and reduce the likelihood of re-offending.

A decision to offer a Simple Caution must be made having regard to: Home Office circular 30/2005 Cautioning of Offenders.

Guidance to Police Officers and Crown Prosecutors issued by the Director of Public Prosecutions.

LACORS Guidance on Cautioning of Offenders.

Following the offer of a Simple Caution, the individual or company concerned will be required to confirm acceptance within 14 days.

When considering whether to offer a Simple Caution, the following will be considered:

- Whether a Simple Caution is appropriate to the offence and the offender.
- Whether a Simple Caution is likely to be effective.

Public Interest Considerations

- The views of the victim and the nature of any harm or loss;
- Whether the offender has made any form of reparation or paid any compensation;
- Any known records of previous convictions or Simple Cautions relating to the offender.

A Simple Caution cannot be given where the offence is indictable only or where the offender is under 18 years of age. It may only be offered where the offence has been fully admitted by the offender.

The person administering the Caution will be an appropriate Service Manager employed within Gloucester City Council.

If the offender fails to admit the offence or does not agree to the Simple Caution, the case will be considered for prosecution.

Appendix 5 - Statement of Principles -

Fit and Proper Person and Cause for Concern

The Housing Act 2004 Part 2 & 3, 'the Act', introduces property licensing of residential accommodation. One of the key functions of licensing is to tackle the negative consequences of poor tenancy and property management through regulatory powers that are introduced through mandatory and discretionary licence conditions and the wider enforcement provisions of the legislation. Licensed properties and landlords are also required to be on a public register.

Landlords who are found to be letting a property in breach of the licensing requirements commits an offence punishable by an unlimited fine upon successful conviction or a financial penalty fine of up to £30,000 per offence as an alternative to prosecution. The Act also prevents a landlord from using the s.21 possession notice procedure if he does not have a valid licence. This means tenants have additional safeguarding in protection from eviction. Furthermore, local housing authorities and tenants can claim up to 12 months' rent back from a landlord for the period in which the property was not licensed (see below).

Gloucester City Council only operates the mandatory HMO licensing scheme and does not currently operate any discretionary licensing schemes.

Mandatory HMO licensing

A Mandatory HMO licence is currently required for HMOs with five or more occupiers living in two or more households sharing some amenities or facilities such as a kitchen or bathroom.

Discretionary licensing

The Housing Act 2004 empowers Councils to have the discretion to bring into force licensing of other residential accommodation, as defined by parts 2 and 3 of the Act. There are two types of discretionary licensing. Additional licensing may be appropriate where a large number of HMOs in an area are not being managed effectively and causing particular problems for the people who live in these HMOs or members of the public. Selective licensing may be appropriate where that the area contains a high proportion of properties in the private rented sector and there are issues in relation to; housing condition, migration, deprivation, or crime.

Licence Conditions

The Act requires that every licence must include certain mandatory management conditions. Gloucester City Council also has the power to include other discretionary conditions which we consider appropriate for tackling the negative issues which affect the private rented sector (PRS) in the City. Once a licence has been issued

the licence holder is bound by the conditions. Where a breach of any one or more of the conditions is witnessed the licence holder commits an offence and upon summary conviction is liable for an unlimited fine per offence, or a financial penalty of up to £30,000 as an alternative to prosecution.

If a licence holder knowingly permits a licensed property to be occupied by more than the permitted maximum number of occupiers determined in the licence conditions, he/she commits an offence and upon conviction is liable for an unlimited fine or a financial penalty of up to £30,000 as an alternative to prosecution.

The licence conditions allow the use of early intervention both through education and enforcement to successfully manage and eradicate problems of nuisance, anti-social behaviour and poor property management. They will provide the framework to ensure that tenancy management is the clear and proper responsibility of the landlord and enables enforcement resources to be delivered efficiently in a prioritised risk-based approach.

Licence Duration

The Housing Act 2004 allows for licenses to be issued for a period of up to 5 years. Where the authority is not satisfied that suitable management arrangements are in place and that the proposed licence holder or manager is a 'person of concern' then a licence will only be granted for 1 year. During this period the property management standards will be monitored, and the property inspected to ensure it is compliant with the required standards and licence conditions.

If a landlord or agent has let a Licence expire and has failed to submit a valid renewal application and fee in time, then, upon receipt of a valid new application and fee, a new licence will only be granted for 3 years. During this period the property management standards will be monitored, and the property inspected to ensure it is compliant with the required standards and licence conditions.

Refusal/Revocation/Variation of a licence

The most important sanction available to authorities is the refusal or revocation of a licence. This prevents the landlord from letting the property unless the authority is satisfied that suitable management arrangements are in place and that the proposed licence holder/managing agent is a fit and proper person and 'not of concern' (has had no previous convictions and contraventions of relevant legislation).

Where a landlord is deemed not to be 'fit and proper' they have the option of putting alternative management arrangements in place, e.g. a professional and suitable local managing agent. A new licence will only be granted for 3 years. During this period the property management standards will be monitored, and the property inspected to ensure it is compliant with the required standards and licence conditions. Where no alternative management arrangements can be found and the property is occupied and there is no likelihood of it becoming licensed, the authority is required to consider making a Management Order (covered below).

Where a licence has been granted for a property but upon inspection the local authority has identified that misleading information has been provided to obtain the licence or that new evidence has identified that the licence holder is a person of concern or not fit and proper a number of enforcement options can be considered. The licence can be revoked (see above) or the licence can be varied reducing the licence duration to 1 year and impose additional discretionary licence conditions.

The supplying of misleading information to obtain a licence is an offence punishable by an unlimited fine upon successful conviction.

Rent Repayment Order

A rent repayment order (RRO) enables the local authority or tenant to recover up to 12 months Housing Benefit and rents paid in respect of an unlicensed property. The maximum a local authority may claim is up to twelve months of Housing Benefit, during any period that a dwelling was not licensed and this action can be taken with or without a successful prosecution.

Tenants can make an application to the First Tier Tribunal provided that the 'offence' relates to housing occupied by the tenant at the time of the offence and the application is made within 12 months of the date of the offence.

Interim Management Orders (IMO)

A local authority can take management control (not legal interest) of a property away from a rogue landlord by making an interim management order (IMO), lasting for a maximum of 12 months. An IMO is taken when either there is no reasonable prospect granting a licence for a licensable property or where there is no likelihood of a property becoming licensed. An IMO requires immediate steps to be taken to protect the health, safety and welfare of the persons occupying the property. An IMO may also specify any other steps that the authority thinks appropriate to secure the proper management of the property pending a license being granted, or the making of a final management order (FMO).

While an IMO is in force the authority can spend rent and other payments on 'relevant capital expenditure' in relation to the property but the remaining balance must be paid to the relevant landlord. The authority must account for any income and expenditure.

Final Management Orders (FMO)

Final management orders (FMOs) take full control of an unlicensed property away from a landlord and can be made as soon after an IMO as necessary in order to secure the proper management of properties on a long-term basis. FMOs last for no longer than 5 years.

While an FMO is in force the authority can spend rent and other payments on 'relevant capital expenditure' in relation to the property but the remaining balance

must be paid to the relevant landlord. The authority must account for any income and expenditure.

Other Powers

Other powers to deal with criminal activities and housing conditions including hazards and disrepair remain available when required.

Fit and Proper Person and Person of Concern Policy

In deciding to grant a licence the Council must be satisfied that the proposed licence holder ‘...is a fit and proper person to be the licence holder...’ and that ‘the proposed manager of the house is a fit and proper person to be the manager of the house’.

The licence may be refused, varied or revoked where the Council no longer considers that the licence holder is a fit and proper person to be the licence holder or there is cause for concern with the management of the property.

This is to ensure that those responsible for the licence and managing the property are of sufficient integrity and good character to be involved in the management of the property and as such they do not pose a risk to the welfare or safety of persons occupying or visiting the property(s).

The application of the fit and proper person and cause for concern tests allows Gloucester City Council to reduce the regulatory impact of licensing on good compliant landlords and introduces a framework to increase the level of engagement and education and monitoring of properties managed by poor landlords and agents.

Under section 66(6) of the Housing Act 2004 (for HMO licensing) and section 89(6) (for selective licensing) the Council must consider whether:

- (a) A person involved in the management of the house has a sufficient level of competence,
- (b) any other person involved is fit and proper, and
- (c) management structures and funding arrangements are suitable.

This means the Council must consider licence holders, managers and others, including key-holders. The licence holder and the manager can be two different people. Where this is the case, a decision must be made for each individual about whether they are a fit and proper person. When making this decision, the Council will take into account their fitness to hold the licence or to manage the property.

When making the decision, the Council must ask the following:

- What are the management arrangements?
- Who is involved in the management?

- What precautions have been taken to ensure those involved in the management are fit and proper?

This statement of principles is not intended to be exhaustive and the Council is entitled to take into account other factors in so far as they are relevant to the fitness and propriety of the relevant person. In other words, the misconduct has to be relevant to the person's fitness to hold a licence and/or manage the particular residential building, and in regard to criminal offences the Council must only have regard to unspent convictions but will also consider simple cautions.

Fit and Proper Person(s) and Cause for Concern Tests

The fit and proper person and cause for concerns tests will be applied when a licence application is being considered and at any time while a licence is in force following a change in circumstance and new information being made known the council.

When considering whether a person is 'fit and proper' or there is a Cause for Concern with the management of a property the Council must have regard (among other things) to whether the applicant has:

- any previous convictions involving fraud or other dishonesty or violence or drugs and sexual offences,
- practised unlawful discrimination on the grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with the carrying out of any business,
- contravened any provision of housing or landlord and tenant law,
- acted otherwise than in accordance with an approved code of practice,

When deciding, the following should be considered:

- Nature of convictions – convictions relating to fraud, running unlicensed HMOs or part 3 houses or violence may well affect someone's status as fit and proper. A conviction based on the existence of a category 1 hazard would give some indication of an applicant's approach to health and safety in a property. The relevance of each conviction and number of convictions must be considered in relation to the management of the HMO or part 3 house.
- Weight of convictions - the number and type of convictions and time of occurrence will be considered.
- Nature of contraventions – specifically officers' views on these. An administrative or technical breach of the Management Regulations, for example, may not in an officer's opinion affect a person's status as fit and proper but may impact on the Cause for Concern test.
- What are the management arrangements for the property.
- Who is involved with the management of the property.
- History of complaints, contraventions and behaviour at the property or those involved with the management of the property.

A conviction is the verdict that results when a court of law finds a defendant guilty of a crime.

A contravention is to act contrary to a rule, order, regulation or law, or of not fulfilling an obligation, promise or agreement.

Under sections 64 (HMO licensing) and 88 (selective licensing) of the Act, both the proposed licence holder and the proposed manager must be fit and proper persons.

The Council would not normally consider a landlord with a criminal record for unlawful evictions and harassment of tenants to be fit and proper person. In contrast, evidence of contraventions of housing or landlord and tenant law need not result in an adverse fit and proper person decision but may result in the landlord being considered under the Cause for Concern test. Evidence of any specified misconduct does not necessarily lead to the conclusion that the person is not a fit and proper person.

Discretion may be appropriate if an offence is isolated and there are mitigating circumstances. Multiple offences or a series of offences and contraventions over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which should be taken into account. A particularly serious view may be taken where the victim of any offence is vulnerable.

The Council will adopt a common sense approach, exercising its discretion reasonably and proportionately, taking into account relevant considerations and disregarding irrelevant considerations.

Where a potential licence holder or a manager has a relevant unspent conviction or contravention, in deciding whether they are fit and proper the Council will take into account the following factors:

- the relevance of the conviction/contravention in relation to the person's character and integrity to manage an HMO or part 3 house.
- the severity of the conviction/contravention in terms of impact, upon residents and the wider community.
- whether the person is accredited or has been trained to manage an HMO or part 3 house.
- any other relevant matter.
- any mitigating circumstances.
- whether the proposed manager is fit and proper.
- whether the proposed licence holder fit and proper.
- whether there are satisfactory management and financial arrangements.
- who is involved in the management.
- what precautions have been taken to ensure those involved in the management are fit and proper.

These points should form the basis of the decision made to refuse to grant a licence, grant a licence for a reduced duration, or vary an existing licence. Any decision

statement should consider each point and each case must be considered on its own merits.

If there is evidence that a person associated, or formally associated, with the person proposed to be the licence holder or manager of the property, has committed any wrongdoings, that evidence may be taken into account in determining the proposed licence holder's or manager's fitness (even if that person has himself or herself an unblemished record). The purpose of this requirement is to ensure that only fit and proper persons hold licences or are in any way involved in the management of licensed properties. It would not be appropriate for a licence to be granted to someone, or for someone to be the manager of a property, if that person was merely acting as a 'front' for someone else who, if he or she were not unfit, would be entitled to be the manager or licence holder.

If someone is found not to be fit and proper the licence may be refused or issued for a 1-year duration and this will normally remain the case for 5 years. If a licence application is submitted within that period the Council will reconsider a person's fit and proper status on the merits of that application.

If someone is found to be Cause for Concern a licence will only be granted for a 1-year duration. During this time the licence holder, manager and property will undergo an increased level of scrutiny and monitoring.

Consideration of Convictions and/or Contraventions & evidence

The following examples afford a general guide to the action which might be taken where convictions/contraventions and cautions are disclosed or where offending behaviour is proved to the satisfaction of the Council. Where convictions or contraventions are not disclosed but are evidenced through further investigations the consideration of contraventions under s.238 of the Act will inform any decision.

Have they been convicted or contravened housing law or landlord and tenant law.

Careful consideration should be given to an application or existing licence where a person who has made a fit and proper person declaration has contravened housing law or landlord and tenant law, evidence of poor management, previous history, prosecutions, simple cautions. In particular, consideration should be given to contraventions under, but not exclusively to:

- The Public Health Acts of 1936 and 1961
- The Building Act 1984
- The Environmental Protection Act 1990
- The Town and Country Planning Act 1990
- The Prevention of Damage by Pests Act 1949

- The Protection from Eviction Act 1977
- The Local Government (Miscellaneous Provisions) Acts of 1982 and 1976
- The Housing Grants, Construction and Regeneration Act 1996
- The Local Government and Housing Act 1989
- The Housing Act 2004 and supplementary Regulations

Contraventions of one or more of the above Acts could result in informal action where a person is asked to complete works, formal action where a legal notice is served, remedial action or work in default, or a prosecution/financial penalty. The number and nature of the contravention(s), the relevance to the management of a rented house and the potential harm caused must all be considered. Each case will be considered on its own merit.

Have they committed any offences involving fraud.

In particular an application will normally be refused where the person has a conviction for an offence where the victim has been deprived of money, property or other benefit by misrepresentation/deception on the part of the offender including:

- Theft
- Burglary
- Fraud
- Benefit fraud (particularly where tenants are on Housing Benefit)
- Conspiracy to defraud
- Obtaining money or property by deception

Weight should be given to the circumstances of the offence and any evidence showing good character since the date of conviction. Each case will be considered on its own merit.

Have they committed any offences involving violence.

Fit and proper person status will normally be refused where the person making a fit and proper person declaration has a conviction for the offence of:

- Murder
- Manslaughter
- Arson
- Malicious wounding or grievous bodily harm
- Grievous bodily harm with intent
- Actual bodily harm
- Grievous bodily harm
- Robbery
- Racially aggravated criminal damage
- Common assault
- Common assault which is racially aggravated
- Assault occasioning actual bodily harm
- Possession of an offensive weapon

- Possession of a firearm

Weight will be given to the circumstances of the offence and any evidence showing good character since the date of conviction. Each case will be considered on its own merit.

Have they committed any offences involving drugs.

Careful consideration should be given to an application where a person making a fit and proper person declaration has committed a drug related offence. Consideration should be given to the nature of the offence and what bearing it could have on the management of a licensable HMO or part 3 house. Each case will be considered on its own merit.

Have they committed any offences involving sexual offences.

Fit and proper person status will normally be refused where a person making a fit and proper person declaration has a current conviction for an offence contained in schedule 3 of the Sexual Offences Act 2003. Each case will be considered on its own merit.

Have they practiced unlawful discrimination.

Careful consideration should be given to an application where a person making a fit and proper person declaration has practiced unlawful discrimination. Consideration should be given to the nature of the unlawful discrimination and what bearing it could have on the management of a licensable HMO or part 3 house. Each case will be considered on its own merit.

Other factors for consideration, but not exclusively, include:

- there being an adverse change in circumstances which would warrant variation or revocation of the licence or a licence being granted with additional conditions
- there being antisocial behaviour,
- there being significant Council tax arrears or debts owed to the Council,
- the premises no longer being effectively managed,
- there being breaches of the licence conditions,
- the management of the house no longer being carried on by persons who are all fit and proper persons,
- there being a contravention of housing, public health, environmental health or landlord and tenant law,
- there being evidence that the applicant and/or proposed licence holder have not disclosed previous contraventions/convictions or has knowingly provided misleading and/or fraudulent information to obtain a licence.

Where the evidence shows there is a significant increased likelihood of the events referred to above occurring/occurred or a licence application discrepancy, the premises involved, licence holder and Managing agent (where applicable) would require a raised level of monitoring and scrutiny on the part of the Council. Any such raised level of monitoring and scrutiny would require additional resources to the council. Costs which are part of the formalities of the licensing process may be recovered by means of licence fees. Costs which are not part of the formalities such as enforcement costs cannot (see the Provision of Services Regulations 2009 and accompanying government guidance).

The application of the cause for concern test allows Gloucester City Council to reduce the regulatory impact of licensing on good compliant landlords and introduces a framework to increase the level of engagement and education and monitoring of properties managed by poor landlords and agents that fail the fit and proper person or cause for concern tests.

Appendix 6 – Statement of Principles for The Energy Efficiency (Private Rented Properties) (England and Wales) Regulations 2015

Introduction

The regulations aim to ensure that private rented tenants have thermally efficient homes, especially those classified as being most vulnerable; to reduce fuel poverty and poor energy efficiency and to lower energy bills. The regulations are also part of the Government's wider approach to reduce the UK greenhouse gas emissions from existing housing stock.

Gloucester City Council has prepared and published a statement of principles and it must follow this guide when deciding on the amount of a penalty charge. The Council may revise its statement of principles at any time, but where it does so, it will publish a revised statement.

When deciding on the amount for the penalty charge, the Council will have regard to the statement of principles published at the time when the breach in question occurred.

The legal framework

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, also referred to as The Domestic Minimum Energy Efficiency Standard (MEES) Regulations came into force on the 1st October 2016 using powers conferred to the Secretary of State in the Energy Act 2011. The regulations set a minimum energy efficiency standard ("MEES") for domestic private rented properties. The MEES Energy performance indicators sets a minimum rating of a band E EPC rating and where a property is sub-standard, landlords must make energy efficiency improvements which would raise the EPC rating to at least a minimum of Band E before they let the property as a rented dwelling.

Part Two of the regulations allows the tenant of a private rented property to request permission from their landlord to make energy efficiency improvements in the property they rent.

Part Three of the regulations outlines the minimum level of energy efficiency and that a landlord must not grant a new tenancy of a property (including an extension or renewal to an existing tenancy), nor continue to let a property (on an existing tenancy) where the EPC rating is below the minimum band 'E' unless there is valid exemption registered. It further sets out the regulatory framework requiring landlords to deliver relevant energy efficiency improvements, for enforcing authorities to serve compliance notices and penalty notices, the appeals process and the recovery of financial penalties.

The Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2019 made changes to require landlords of domestic properties with an EPC rating below E to carry out up to £3,500 (Inc. VAT) worth of works improving their energy efficiency. The £3,500 cap is an upper ceiling, not a target or a spend

requirement and landlords may spend more if they wish. If a landlord can improve their property to E (or higher) for less than £3,500 then they will have met their obligation.

Where a House in Multiple Occupation (HMO) is legally required to have an EPC (Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 and if it is let on one of the qualifying tenancy types, it will be required to comply with the minimum level of energy efficiency. However, individual rooms within HMOs are not required to have their own EPCs. Therefore, a property which is an HMO will only have an EPC if one is required for the property as a whole.

Whilst it is expected that majority of tenants in properties let as rented dwellings and homes must be provided with an appropriate EPC certificate, there are some statutory exemptions on properties which are not legally required to have an EPC.

Duties of Landlords under the regulations

Under the regulations, private landlords who rent their property are to meet either of the criteria listed below:

- Ensure that their rented properties are subject to an energy efficiency rating of E or above on their EPC or
- Register a valid exemption on the PRS Exemption Register.

Exemptions and the PRS Exemption Register

There are valid exemptions which are available to private landlords. It is however recommended that private landlords have a clear understanding of the regulations as it relates to registering an exemption. It is also recommended that landlords refer to The Energy Act 2011 and the Government's guidance for the full details of the criteria required to register a valid exemption.

All registered exemptions are valid for a period of five years unless otherwise stated. All exemptions must be registered on the PRS Exemptions Register. The register can be found online here: <https://prsregister.beis.gov.uk/NdsBeisUi/used-service-before>. Please note, it is a breach of the Regulations to put false or misleading information on the register. Supporting evidence will need to be submitted when registering a valid exemption.

If a let property is sold, any exemption registered on the PRS Exemptions Register by the previous owner is not transferable to the new owner. The new owner will be required to improve the property or register their own valid exemption.

The purpose of a compliance notice

Under Regulation 34, local authorities are under a statutory duty as enforcement authorities, to enforce the regulations. Gloucester City Council is responsible for

enforcing the regulations in respect of domestic private rented properties and may serve a compliance notice on a landlord who appears to be, or to have been at any time within the 12 months preceding the date of service of the compliance notice, in breach of the regulations. The Council will engage with landlords of properties in breach of the regulations informally at the first instance by sending them reminder letters giving landlords an adequate time frame to respond to the requests for information. Where breach(es) of the regulations cannot be resolved informally through the warning letters, the Council will then issue a financial penalty process as set out below in this policy.

The compliance notice enables the enforcement authority to monitor compliance by requesting relevant information which can include copies or the original of:

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

The compliance notice may also require the landlord to register copies of the requested information on the PRS Exemptions Register. The compliance notice will specify both the name and address of the person that a landlord must send the requested information to and the date by which the requested information must be supplied.

The purpose of imposing a financial penalty

The purpose of the Council exercising its regulatory powers is to reduce health inequalities and safeguard our residents, who are affected by poor housing conditions, poor property management and unprofessional landlords.

The aims of financial penalties on landlords are to:

- Lower the risk to tenants health and safety.
- Reimburse the costs incurred by the Council in taking enforcement action and arranging remedial action in default of the landlord.
- Change the behaviour of the landlord and prevent future non-compliance.
- Eliminate financial gain or benefit from non-compliance with the regulations.
- Be proportionate to potential harm outcomes, the nature of the breach, and the cost benefit to comply with these legal requirements.

Determining the amount of a financial penalty

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

There are four breaches under the regulations for which a private landlord may be imposed with a financial penalty. Regulation 40 sets out the breaches and the statutory maximum amounts that may be imposed in respect of each type of breach. Gloucester City Council has determined to adopt the maximum penalty amounts under these regulations.

These are as follows:

- Breaching the prohibition on letting a property with a EPC band F or G, in contravention of Regulation 23, for less than three months: Statutory maximum financial penalty of £2,000.
- Breaching the prohibition on letting a property with a EPC band F or G, in contravention of Regulation 23, for three or more months: Statutory maximum financial penalty £4,000.
- Registering false or misleading information on the PRS Exemptions Register under Regulation 36(2): Statutory maximum financial penalty £1,000.
- Failing to provide information to the council demanded by a Compliance Notice, in contravention of Regulation 37(4)(a): Statutory maximum financial penalty £2,000.

In respect of any one tenancy, a private landlord cannot be subject to multiple financial penalties that exceeds a total of more than £5,000. However, where a landlord having been previously fined up to £5,000 then proceeds to unlawfully let a sub-standard property on a new tenancy, a further financial penalty of up to £5,000 can be issued.

Procedural matters for Penalty Charge Notices

The Regulations set out the procedural steps which must be taken before the Council can impose a requirement on a landlord to pay a penalty charge.

- The Council must be satisfied that the landlord has failed to comply with the requirements of a notice or has been at any time in the 18 months preceding the date of the service of the penalty notice, breached one or more of the regulations (listed above).
- Where a landlord serves a notice of representation requesting a review of the decision within one month from when the penalty charge notice is served, the council will consider any representations made by the landlord and either confirm or withdraw the penalty and serve a notice of its decision.
- A landlord who has made a representation of a penalty charge notice and has been served with a notice confirming or varying the penalty charge notice, may appeal to the First-tier Tribunal against the Council's decision. Appeals should be made within 28 days from the notice served of the Council's decision on review. The penalty charge notice will be suspended until the case has been determined.

Details of how to make a representations and appeals will be included with the notices and supporting documentation. The Council will notify the landlord of its decision by notice, which will be either to confirm, vary or withdraw the penalty charge notice.

To ensure fairness and transparency and following a review, every decision to confirm a Penalty Notice will be subject to approval by the Team Leader or Manager.

If the penalty charge remains unpaid then the charges and administrative costs will be raised as a charge against the property whilst repayment opportunities and debt recovery methods are exhausted. However, in cases where a landlord has requested a review of the penalty charge notice, recovery will not commence until after one month from the date of the notice served giving the Council's decision to vary or confirm the penalty charge notice. Where landlords do make an appeal to the First-tier Tribunal, recovery will commence after one month from when the appeal is determined or withdrawn.

Further Guidance

The Domestic Private Rented Property Minimum Standard - Guidance for landlords and Local Authorities on the minimum level of energy efficiency required to let domestic property under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, as amended, is available online at:

<https://www.gov.uk/guidance/domestic-private-rented-property-minimum-energy-efficiency-standard-landlord-guidance>

[The Energy Efficiency \(Private Rented Property\) \(England and Wales\) Regulations 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2015/1134/contents/matter)

[The Energy Efficiency \(Private Rented Property\) \(England and Wales\) \(Amendment\) Regulations 2019 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2019/1134/contents/matter)

All exemptions must be registered on the PRS Exemptions Register. The register can be found online here: <https://prsregister.beis.gov.uk/NdsBeisUi/used-service-before>

Appendix 7 - Statement of Principles for Electrical Safety in the Private Rented Sector.

Introduction

Gloucester City Councils Private Sector Housing service (PSH) aims to reduce health inequalities and safeguard our residents, who are affected by poor housing conditions, poor property management and unprofessional landlords. The Council is required under the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 to ensure individuals and businesses are compliant with their electrical safety requirements in the private rental sector. Officers must follow this guide when deciding whether or not to impose a financial penalty and on the amount of a penalty charge.

This statement of principles provides an effective deterrent against poor property management and maintenance, financial penalties assist in creating a better environment for future discourses in the private rented sector.

This statement of principles adheres to the Council's overarching Regulation of Housing Standards Policy and Civil Penalties Policy.

The Legal Framework

The Regulations came into force on 1st June 2020 and form part of the Councils wider work to improve safety in all residential premises and particularly in the private rented sector.

The purpose of these regulations is to give a framework for both landlords and regulators to adhere to in order that homes in the private rented sector are well maintained and safe.

To comply with the regulations landlords of privately rented residential properties 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 the electrical installations in their rented properties are inspected and tested by a qualified and competent person at an interval of at least every 5 years.
- Obtain a report from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test.
- Supply a copy of this report to the existing tenant within 28 days of the inspection and test.

- Supply a copy of this report to a new tenant before they occupy the premises.
- Supply a copy of this report to any prospective tenant within 28 days of receiving a request for the report.
- Supply the local authority with a copy of this report within 7 days of receiving a 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 remedial or further investigative 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 remedial works from the electrician to the tenant and the local authority within 28 days of completion of the works.

The Management of Houses in Multiple Occupation (England) Regulations 2006 previously put specific duties on landlords around electrical safety. This requirement has now been repealed, and HMOs are now covered by the new Electrical Safety Regulations.

The Regulations do not cover electrical appliances, only the fixed electrical installations. Tenants are responsible for making sure that any of their own electrical appliances are safe.

The Purpose of Imposing a Financial Penalty

The purposes of the Council exercising its powers to impose financial penalties are:

- To reduce health and safety risks to tenants.
- To act as a deterrent against poor property management and maintenance.
- To engender good practices in the private rental sector in Gloucester City.
- To offer a proportional response for the failure of landlords to adhere to the regulations.
- Reimburse the costs incurred by the Council in taking enforcement action and arranging remedial action in default of the landlord.
- Eliminate financial gain or benefit from non-compliance with the regulations.

Criteria for Imposing a Financial Penalty

The Council has a duty to impose the regulations to which this appendix relates and must determine the appropriate action to take when an offence has been committed.

The Council must have made contact with a landlord either following a complaint or upon a substantiated suspicion that there may be property management or

maintenance issues at a privately rented property. An authorised Council officer should request a copy of the most recent Electrical Installation Condition Report as well as notifying the landlord of the time and date of their inspection in line with Section 239 of the Housing Act 2004. An authorised officer should undertake an inspection of the rental property and undertake a full Housing Health and Safety Rating System assessment as part of their investigation.

An offence has been committed if it can be demonstrated that any of the following has occurred:

- The Landlord has failed to provide a copy of the EICR within 7 days upon request from the Council
- The landlord has failed to remediate Code 1 or Code 2 hazards within 28 days of the date of the EICR date
- If an EICR has indicated that urgent remedial action is required the landlord and they have failed to comply with the report

If a landlord can demonstrate that they have attempted to comply with the regulations and have been prevented from doing so by the tenant, they are not in breach of the regulations.

Also, where appropriate the Council should engage with other services and organisations to inform their decision making.

Criteria for Determining the Amount of a Financial Penalty

The Council may impose a financial penalty of up to £30,000 if a landlord has been found to be in breach of their duties as required by the regulations.

If an offence has been committed and the criteria for imposing a financial penalty has been met, the value of the penalty to be imposed is calculated using the Financial Penalty Matrix as appended to the Councils Civil Penalty Policy and the criteria given in Tables 1 and 2 below:

Table 1:

Level of Culpability	Criteria
Low	Landlord is in possession of a satisfactory EICR but fails to provide it upon request from the Council.
Medium	Landlord is in possession of an unsatisfactory EICR and has failed to undertake non-urgent remedial action.
High	Landlord is in possession of an unsatisfactory EICR and has failed to undertake urgent remedial action or the landlord has failed to undertake an EICR.

Table 2:

Level of Harm	Criteria
Low	No evidence of electrical hazards
Medium	Evidence of minor electrical hazards that effect the electrical installation but do not represent an imminent risk to the health and safety of the tenant (i.e. sockets not working, water damage to light fittings etc.)
High	Evidence of serious electrical hazards that could represent an imminent risk to the health and safety of the tenant (i.e. broken electrical points or incomplete installations with exposed live mains wires)

Aggravating factors for consideration:

- Previous relevant enforcement action
- Negligence, deliberately concealing an unsatisfactory EICR
- Lack of cooperation and/or communication
- Obstructing an officer's investigation

Mitigating factors for consideration:

- No previous relevant enforcement action
- Good level of cooperation and/or communication
- Medical conditions or disability
- Able to demonstrate good property management and maintenance

Procedural Matters for Issuing a Financial Penalty

As well as following the procedures set out in the Council's overarching enforcement policy the authorised officer should adhere to the following procedure as required by the regulations.

Before imposing a financial penalty on a private landlord for a breach of the Regulations, a notice of intention to do so must be served on the private landlord (a "notice of intent").

The notice of intent must be served before the end of the period of 6 months beginning with the first day on which the Council is satisfied, that the private landlord is in breach of the Regulations:

If the breach continues beyond the end of the first day that the Council are satisfied that a breach has been committed, the notice of intent may be served at any time when the breach is continuing; or within the period of 6 months beginning with the last day on which the breach occurs.

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 under paragraph 2

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

Within 28 days after the end of the period within which the private landlord can make representations, the Council must determine whether or not to impose a financial penalty and the amount of the financial penalty.

If the Council decides to proceed with imposing a financial penalty the authorised officer must issue a final notice and the financial penalty in that notice must be paid by the landlord with 28 days of its issue.

The final notice must include:

- 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
- Information about rights of appeal
- The consequences of failure to comply with the notice.

The Council may at any time withdraw a notice of intent or final notice or reduce the value of a penalty in a notice of intent or final notice by giving written notice to the landlord on whom it was served.

If the landlord fails to pay the financial penalty the Council may recover the money owed by a County Court order.

A landlord who has received a financial penalty has 28 days in which they can submit an appeal to the First-tier Tribunal. If the Council is made aware that the Landlord has appealed the financial penalty, debt recovery should be halted until the outcome of that appeal process is known.

Undertaking Remedial Action as Works in Default

If the Council has reasonable grounds to believe that a private landlord is in breach of one or more of their duties under the regulations (with the exception of urgent remedial action), the authority must serve a remedial notice (within 21 days of determining there are reasonable grounds) on the private landlord.

A landlord is given the opportunity to make representations within 21 days of being served the notice. Where a private landlord makes written representations, the remedial notice is suspended while the Council considers these representations. The Council must have responded to these representations within 7 days and the Council is able to withdraw the notice at any time.

The landlord has 28 days of the notice being active within which to comply.

If a landlord fails to comply with a remedial notice the Council has the power to undertake remedial action as works in default. Prior to undertaking remedial action, the Council must serve a notice in line with the regulations on the landlord and undertake the remedial action within 28 days of serving that notice. Prior to undertaking the remedial action, a minimum of 48 hours' notice must be given to the tenant(s). The landlord has a right to appeal the Council's decision to undertake remedial action.

Where the Council determines that urgent remedial action is required, this may be done with the consent of the tenants and not within 48 hours' notice of the Council giving serving notice on the landlord and occupants of the property of concern. The landlord has a right to appeal the Council's decision to undertake urgent remedial action.

Where remedial action has been undertaken by the Council, the costs of the works are recoverable from the landlord. The Council will incur a 30% charge to be added to the costs of any works undertaken as remedial action, with a minimum of a £300 charge being recovered from the landlord in line with the Council's Fees and Charges Policy.

Further Guidance

[Electrical safety standards in the private rented sector: guidance for landlords, tenants and local authorities - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/electrical-safety-standards-in-the-private-rented-sector)

[The Electrical Safety Standards in the Private Rented Sector \(England\) Regulations 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2020/1114/contents/matter)

[BS 7671 - 18th Edition \(theiet.org\)](https://www.theiet.org/publications/bs-7671-18th-edition)

Appendix 8 - Statement of Principles for Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Introduction

Gloucester City Council is required under these Regulations to prepare and publish a statement of principles and it must follow this guide when deciding on the amount of a penalty charge.

The Council may revise its statement of principles at any time, but where it does so, it must publish a revised statement.

When deciding on the amount for the penalty charge, the Council will have regard to the statement of principles published at the time when the breach in question occurred.

The legal framework

The powers come from the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations), which came into force on 1 October 2015.

The Regulations place a duty on landlords (private and social housing), which include freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence.

The duty requires that landlords ensure that:

- a smoke alarm is installed on each storey of a property where there is living accommodation
- a carbon monoxide alarm is installed in any room of premises used as living accommodation, which contains a fixed combustion appliance other than a gas cooker.
- Where landlords are notified or an alarm is found not to be in proper working order, the alarm is repaired or replaced.

AND for tenancies starting from 1 October 2015

- that checks are made by the landlord, or someone acting on his behalf, that the alarm (s) is/are in proper working order on the day the tenancy starts.

Where the Council believe that a landlord is in breach of one or more of the above duties, the Council must serve a remedial notice on the landlord. The remedial notice is a notice served under Regulation 5 of the Regulations. The landlord can make a representation to the local authority with regards to the serving of the remedial notice. The remedial notice will be suspended upon receipt and consideration of a representation. A notice will be issued in 7 days of a decision being made.

If the landlord, then fails to take the remedial action specified in the notice within specified timescale, the Council can require a landlord to pay a penalty charge. The power to charge a penalty arises from Regulation 8 of the Regulations

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. This can be done by making written representations to the Council within 28 days of when the remedial notice is served. Details of how to make a representation will be included with the remedial notice and supporting documentation.

Gloucester City 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 the remedial notice within the required timescale.

The purpose of imposing a financial penalty

The purpose of the Council exercising its regulatory powers is to reduce health inequalities and safeguard our residents, who are affected by poor housing conditions, poor property management and unprofessional landlords.

The aims of financial penalties on landlords are to:

- Lower the risk to tenants health and safety.
- Reimburse the costs incurred by the Council in taking enforcement action and arranging remedial action in default of the landlord.
- Change the behaviour of the landlord and prevent future non-compliance.
- Penalise the landlord for not installing alarms after being required to so.
- Eliminate financial gain or benefit from non-compliance with the regulations.
- Be proportionate to potential harm outcomes, the nature of the breach, and the cost benefit to comply with these legal requirements.

Criteria for the imposition of a financial penalty

Failure to comply with the requirements of a remedial notice allows the Council to require payment of a penalty charge of up to £5000 per offence.

In considering the imposition of a penalty, the authority will look at the evidence concerning the breach of the requirement of the notice. This could be obtained from a property inspection, or from information provided by the tenant or agent that no remedial action had been undertaken.

For example, landlords can demonstrate compliance with the Regulations by supplying dated photographs of alarms, together with installation and testing records or confirmation by the tenant that a system is in proper working order.

Landlords need to take steps to demonstrate that they have met the testing at the start of the tenancy. Examples of how this can be achieved are by tenants signing an inventory form and that they were tested and were in working order at the start of the tenancy. Tenancy agreements can specify the frequency that a tenant should test the alarm to ensure it is in proper working order. Once installed the landlord now has a duty to maintain the alarms in proper working order.

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

A financial penalty charge will be considered appropriate if the Council is satisfied, on the balance of probabilities, that the landlord who had been served with remedial notice under Regulation 5 had failed to take the remedial action specified in the notice within the time period specified.

Determining the amount of a financial penalty

The Regulations state the amount of the penalty charge must not exceed £5,000 per offence.

The penalty charge comprises two parts, a punitive element for failure to comply with the requirement to comply with a remedial notice and a cost element relating to the investigative costs, officer time, administration and any remedial works arranged and carried out by the Council's contractors.

The penalty charge is payable within 28 days beginning with the day on which the penalty charge notice is served.

As these regulations have now been in force for some time and Landlords should therefore be aware of their obligations, the fines Gloucester City Council will apply are as follows:

- £5000 for the first offence and each subsequent offence of failing to comply with a remedial notice and the requirements of the Regulations.

Procedural matters for Penalty Charge Notices

The Regulations set out the procedural steps which must be taken before the Council can impose a requirement on a landlord to pay a penalty charge.

- When the Council is satisfied that the landlord has failed to comply with the requirements of the remedial notice, all penalty charge notices must be served within 6 weeks.
- Where a landlord serves a notice of representation requesting a review of the decision within one month from when the penalty charge notice is served, the council will consider any representations made by the landlord and either confirm or withdraw the penalty and serve a notice of its decision.
- A landlord who has made a representation of a penalty charge notice and has been served with a notice confirming or varying the penalty charge notice, may appeal to the First-tier Tribunal against the Council's decision. Appeals should be made within 28 days from the notice served of the Council's decision on review. The penalty charge notice will be suspended until the case has been determined.

Details of how to make a representation and appeals will be included with the remedial notice and supporting documentation. The Council will notify the landlord of its decision by notice, which will be either to confirm, vary or withdraw the penalty charge notice.

To ensure fairness and transparency and following a review, every decision to confirm a Penalty Notice will be subject to approval by the Team Leader or Manager.

If the penalty charge remains unpaid then the charges and administrative costs will be raised as a charge against the property whilst repayment opportunities and debt recovery methods are exhausted. However, in cases where a landlord has requested a review of the penalty charge notice, recovery will not commence until after 29 days from the date of the notice served giving the Council's decision to vary or confirm the penalty charge notice. Where landlords do make an appeal to the First-tier Tribunal, recovery will commence after 29 days from when the appeal is determined or withdrawn.

Remedial Action taken in default of the landlord

Where the Council is satisfied that a landlord has not complied with a specification described in the remedial notice in the required timescale and consent is given by the occupier, the Council will arrange for remedial works to be undertaken in default of the landlord. In these circumstances, battery operated alarms will be installed as a quick and immediate response. Wherever possible consultation will also be sought with the GFRS.

Smoke Alarms

In order to comply with these Regulations, smoke alarms will be installed at every storey of residential accommodation. This may provide only a temporary solution as the property may be high risk because of:

- its mode of occupancy such as a house in multiple occupation or building converted into one or more flats,
- having an unsafe internal layout where fire escape routes pass through a living rooms or kitchens, or
- is 3 or more storeys high.

A full fire risk assessment will subsequently be undertaken, with regards to LACORS Housing - fire safety guidance and the HHSRS profile for Fire hazard. This will consider the adequacy of the type and coverage of the smoke alarm system, fire escape routes including escape windows and fire separation measures such as fire doors and protected walls and ceilings. Any further works required to address serious fire safety hazards in residential property, that are not undertaken through informal agreement, will be enforced using the Housing Act 2004, in accordance with each Council's Regulating Housing Standards Policy.

Carbon Monoxide Alarms

In order to comply with these Regulations, a carbon monoxide alarm will be installed in every room containing a gas appliance and solid fuel combusting appliance.

Further Guidance

[Smoke and Carbon Monoxide Alarm \(Amendment\) Regulations 2022: guidance for landlords and tenants - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/smoke-and-carbon-monoxide-alarm-amendment-regulations-2022)

[The Smoke and Carbon Monoxide Alarm \(England\) Regulations 2015
\(legislation.gov.uk\)](#)

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