APPENIDX A **APPENIDX A**

Private Sector Housing Enforcement Policy

January 2022

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Appendices:

1. Purpose

This Policy details how the Council will regulate standards in Private Sector Housing in Tandridge. It provides an overview of the legislation and guidance under which the Council operates and the enforcement powers available to the Council to ensure the private sector housing is well maintained.

It is important for local authorities to have an enforcement policy to ensure consistency of approach among council officers and for members of the public to know what to expect from the service. An enforcement policy also provides clarity if the Council takes legal proceedings or if an appeal is made against enforcement action.

Our aim is to raise standards in private sector housing throughout Tandridge, working with owners, landlords, letting agents and tenants to achieve this. However, it is recognised that if the law is broken, then enforcement action may be necessary to protect the public and the environment.

In developing this policy, the Council must remain impartial and be fair to all parties and provide help and advice to achieve our aim; but we must also be firm in taking enforcement action if appropriate.

2. Introduction

Private Sector Housing Enforcement is part of the Council's Environmental Health remit. It aims to protect and improve lives, by ensuring private rented homes and other homes in the private sector are safe and warm.

The 'Environmental Health and Licensing Enforcement Policy 2020' which can be found at: **https://www.tandridge.gov.uk/Portals/0/Documents/Business-and-Licensing/Health%20and%20safety%20at%20work/EH-licensing-enforcment-policy-approved-tdc-february-2020.pdf?ver=2020-08-17-143010-860** outlines the Council's general approach to enforcement across a wide range of Environmental Health activities.

This 'Private Sector Housing Enforcement Policy' however, provides details of the Council's specific approach to regulating housing standards in Tandridge. It follows the "Principles of Good Regulation" set out in the Legislative and Regulatory Reform Act 2006 (2006 Act):

- Regulatory activities should be carried out in a way which are transparent, accountable, proportionate and consistent.

- Regulatory activities should be targeted only at cases in which action is needed.

Regulators' Codes

The 2006 Act requires that we have regard to the current Regulators' code when developing policies and procedures that guide our regulatory activity. This policy has regard to the Regulators' Code.

The Private Sector Housing Enforcement Policy (the Policy) confirms that:

- The Council will provide information, advice and assistance whenever possible to the public, businesses and organisations to help them meet their legal obligations in relation to the relevant housing legislation, before embarking on any enforcement process.

- The Council is committed to carrying out its duties in a fair and consistent manner, ensuring that any enforcement action is proportional to the severity of the noncompliance and the risk posed to the public.

Enforcement means an action carried out in exercise of, or against the background of statutory enforcement powers. This is not limited to formal enforcement action such as prosecution, service of legal notices, an application for a rent repayment order or the issue of civil penalty notices. It also includes inspections or investigations related to property or land and any relevant person, where the purpose is checking compliance with legislation or to give advice to help comply with the law.

3. What to expect from the Council

3.1 Landlords

1. We will advise you of applicable legislation and provide advice about how you can comply with the requirements.
2. We may advise you of any remedial action you need to take to comply with the legislation and will ask you to provide your proposal for doing that.
3. If we are satisfied with your proposal, we will agree suitable time scales.
4. If we are not satisfied with your proposal or how the work is progressing, we will initiate formal action in a proportionate manner as appropriate to the circumstances.
5. Where a statutory notice is served, we may make a charge for the service of that notice.
6. Where you do not comply with the requirements of a formal notice, in making any decision whether to commence prosecution or other penal proceedings, we will have regard to how serious the offence is, the public benefit of enforcement action and whether some other action would be appropriate.

3.2 Tenants

1. We will expect you to advise your landlord of any issues within your property, wherever possible in writing, before contacting the Council to register a complaint about your accommodation.
2. We will advise you about the action the Council may take in order to resolve the matter and advise you of the expected timescales.
3. We will expect you to cooperate with the landlord in providing access to undertake any works and to advise us of any action taken by the landlord.

3.3 Owner Occupiers

1. We will expect owner occupiers, where practicable, to maintain the properties they live in.
2. If an owner occupied property is brought to the Council's attention, and the condition of the property presents a health and safety risk to an occupier or potential visitor, the Council will consider taking appropriate enforcement action to reduce or eliminate that risk.

4. Enforcement Policy and Principles

4.1 Role of the private rented sector

The supply of good quality, affordable, privately rented accommodation is essential to meeting local housing need. To this end the Council will work with landlords to improve and sustain good quality accommodation and will only intervene when there is a risk to the health and safety of occupants, neighbours or visitors to a property.

4.2 Advice and guidance

The Environmental Health and Licensing Service (the Service) will provide authoritative advice about private sector housing. The Council's website provides general information, to make it easier for landlords, agents and home owners to understand their obligations. The Service will consult with government guidance, landlords' associations and other appropriate stakeholders when developing the content and style of the guidance.

When offering advice, the Service will distinguish between statutory requirements and advice or guidance aimed at improvements above minimum standards. Advice will be confirmed in writing, if requested.

Whilst the Service welcomes general enquiries from home owners, tenants and landlords about complying with minimum standards and ensuring homes are safe and warm, it is not able to act as a private consultant for home owners or landlords. The Service will not undertake non-statutory, detailed assessments for individual properties, such as fire safety risk assessments, or specifying in detail the work that would be required to develop a proposed House in Multiple Occupation (HMO). However, the Service will advise landlords of their fire safety responsibilities to ensure HMOs are adequately protected, in consultation with Surrey Fire and Rescue where appropriate.

4.3 Inspections, other visits and information requirements

No inspection will take place without reason. Inspections and other visits will take place:

- in response to a reasonable complaint, or
- a request for service, or
- where poor conditions have been brought to our attention, or
- on receipt of relevant intelligence, or
- monitoring progress and compliance.

The inspections will be carried out in accordance with risk-based programmes and statutory inspection requirements (such as for mandatory licensing of HMOs).

Where it becomes clear that a formal inspection of a property is required, the landlord or their agent will be contacted and given the opportunity to accompany the investigating officer during the visit. Following an inspection, clear information will be provided, setting out any work required in order to meet statutory requirements and where appropriate, positive feedback will be given, to encourage and reinforce good practice.

The Service will focus its resources on the highest risk properties, those in worst condition and properties owned by landlords who regularly fail to comply with regulations or frequently have properties with poor conditions.

4.4 Compliance and enforcement actions

By facilitating compliance through a positive and proactive approach, the Service aims to achieve higher compliance rates and reduce the need for reactive enforcement actions. When considering formal enforcement action, the Service will, where appropriate, discuss the circumstances with those suspected of a breach and take their representations into account when deciding on the best approach. This will not apply where immediate action is required to prevent, or respond to, a serious breach or to deal with an imminent risk to health and safety, or where to do so is likely to defeat the purpose of the proposed enforcement action.

The Service will ensure that clear reasons for any enforcement action are given and information about complaints and appeal procedures are provided.

4.5 Accountability

The Service will be accountable for the efficiency and effectiveness of its activities, while remaining independent in the decisions that it takes. Officers will provide a courteous, prompt and efficient service and will identify themselves by name. A contact point, telephone number and email address will be provided. Applications for licences etc. will be dealt with efficiently and promptly and services will be effectively coordinated to minimise unnecessary overlaps and time delays.

Information about independent appeal mechanisms, such as to the First-Tier Property Tribunal can be found here: https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber

Complaints about our service will be handled in line with the Council's Corporate Complaints procedure which is outlined here: https://www.tandridge.gov.uk/Report/Compliments-complaints-and-feedback

4.6 Risk Assessment

Officers use basic risk assessments to focus resources in the areas that most require them and on the properties in the worst condition. In doing so, we also take account of any safeguarding issues and the vulnerability of the occupants.

Where formal enforcement is likely, a more detailed assessment is required. Suitably trained and experienced officers apply the Housing, Health and Safety Rating System (HHSRS), a statutory, evidence-based, risk assessment method for assessing and dealing with poor housing conditions. HHSRS can also be applied to HMOs. Additionally, HMOs will be assessed in accordance with appropriate licence conditions and Management Regulations.

Following receipt of a service request or complaint about poor housing conditions, an initial risk assessment will be carried out. Follow-up advice or action will be dependent on the outcome of the initial risk assessment and may not always involve a visit to the property.

Complaints about Social Housing properties will be referred to the relevant housing provider (Housing Association) to investigate and resolve in the first instance. However, where the provider fails to investigate within a reasonable time period, or the tenant considers the action taken has not resolved the matter we may intervene.

4.7 Housing Health & Safety Rating System

This Policy takes account of guidance provided by the Government and sets out how the Council will use its powers and reach its decisions in relation to the Housing Health & Safety Rating System (HHSRS).

The HHSRS is a calculation of the effect of 29 possible hazards on the health and safety of occupiers and potential visitors to a residential property. It is a two-stage calculation combining the likelihood of an occurrence taking place, (that occurrence being caused by defects to the property) and the range of probable harm outcomes that could arise from that occurrence. The calculation is repeated for each of the hazards identified at the property and provides a numerical rating for each hazard. Once scored, any action considered will take into account the effect of the identified risk upon the occupant.

Hazard ratings of 1,000 points and over are the most severe, and are classed as Category 1 hazards. The less severe ratings, with less than 1,000 points are classed as Category 2 hazards.

HHSRS provides a combined score for each hazard identified. It does not provide a single score for the dwelling as a whole. It is applied to all residential premises, whether owner-occupied or rented. The Council has a duty to take appropriate action in response to Category 1 hazards. When a Category 1 hazard is identified, the Council must decide which of the available enforcement options it is most appropriate to use. The Council will exercise its discretion and consider individual cases and circumstances when deciding whether to take action in response to Category 2 hazards and what form that action may take.

5. Tenure

The HHSRS applies to all tenures of housing. It does not specify that particular approaches or solutions should be used on the basis of ownership or the occupier's status. All enforcement options are available to the Council regardless of whether the premises in question are owner-occupied, privately rented or belong to a social housing provider. Generally, the Council considers that owner-occupiers are usually in a position to take informed decisions concerning maintenance and improvement issues that might affect their welfare and are then able to set their financial priorities accordingly; tenants however, are not usually able to do so.

The Council proposes that it is appropriate for its powers to be used according to tenure, as follows:

5.1 Owner-Occupiers

The range of formal notices available to the Council under the Housing Act are detailed in Section 8 of this policy. Most of the powers may be applied to owner occupied properties in the same way as they apply to rented properties. However, we anticipate that Hazard Awareness Notices will frequently be the appropriate course of action when dealing with hazards in an owner-occupied property. The use of Improvement Notices, Prohibition Orders and their emergency equivalents will be considered however, in certain cases involving:

- vulnerable elderly people who are judged incapable of making informed decisions about their own welfare
- vulnerable individuals who require the intervention of the Council to ensure their welfare is best protected
- hazards that might reasonably affect persons other than the occupants
- serious risk of life-threatening harm such as electrocution or fire

Unless an identified hazard is judged to pose an imminent risk of serious harm, the Council will contact the owner to confirm its involvement, explain the nature of the hazard and confirm the action it is intending to take. The Council will take account of any proposals or representations made by, or on behalf of the owner. The Council will solicit and take account of the opinion of the relevant Welfare Authority in considering both the vulnerability and capability of such persons as well as in determining what action it will then take.

5.2 Registered Social Landlords

Registered Social Landlords, better known as Housing Associations (HA), exist to provide suitable and properly maintained accommodation for people in housing need. They are managed by boards and their performance is scrutinised by Homes England. HAs normally employ staff to both manage and maintain their properties and will usually have written arrangements for reporting problems, setting out the response times they aim to achieve, and also for registering any complaints about service failure.

On this basis, the Council will not normally take formal action against a HA unless:

- it is satisfied that the problem in question has been reported to the HA by the tenant and
- the HA has then failed to take appropriate action or
- the HA’s complaints procedure has run its course without adequately mitigating the hazard(s).

If the Council determines that it is appropriate to take action, it will notify the HA that a complaint has been received and/or a hazard identified and seek their comments and proposals. Only in cases where it judges that an unsatisfactory response has been received will the Council consider taking further action and will determine which of the available enforcement options is the most appropriate, considering the facts of the case.

5.3 Private Landlords

The Council will have regard to the principles of statutory guidance and relevant guidance from the First-tier Tribunal (Property Chamber) decisions and will initially seek to proceed informally. Where appropriate, officers will seek to work with landlords to provide advice and guidance to bring about the improvements and repairs necessary without the need for formal action.

In some instances however, there may be a need to initiate formal enforcement action as a first step. Immediate formal action will be taken by the Council in the following circumstances:

- Where a hazard is identified which poses an imminent risk of serious harm to any person.
- The landlord in question is known to have failed, on a previous occasion, to take appropriate action in response to an informal approach.
- Where a hazard exists and retaliation eviction as defined by the Deregulation Act 2015 is likely to occur.

When arranging a formal inspection the Council will notify the landlord (or his/her relevant agent) usually in writing, to confirm their involvement and the time and date of the visit. Following the inspection, the Council will explain the nature of any hazard(s) identified in writing and seek the landlord/agent's proposals for remedying the problem. Unless the Council already holds the required information, a Requisition for Information Notice may also be served which requires the full details of the landlord and anyone else with a financial or other interest in the property.

Following an inspection, the Council will not normally need to take formal enforcement action to discharge its duties as long as:

- satisfactory proposals and timescales for the work to be carried out are received from the landlord or his agent, and agreed within 14 days and
- the work is carried out to a satisfactory conclusion within agreed timescales

Landlords are expected to either:

- provide any agent acting for them with sufficient authority to act on their behalf, in the event that they are contacted by the Council, or
- to ensure that they maintain appropriate communication with their agent in order that appropriate decisions and responses can be provided to the Council.

The failure of an agent to respond to a communication from the Council, or any failure to take appropriate action, may be treated as a failure by the landlord. The Council will proceed with formal action in accordance with this Policy, where:

- it does not receive a response from the landlord/agent, or
- it receives a response that it judges inadequate, or
- it receives proposals that were judged acceptable but which are not then followed through (for example if works fail to start when agreed, fail to make sufficient progress or are completed to an inadequate standard), or
- a retaliation eviction, as defined by the Deregulation Act 2015, is in process or is likely to occur.

5.4 What is expected of Tenants

Legislation covering landlord and tenant issues (that includes the detail of tenancy agreements and landlord and tenant obligations), requires that tenants notify their landlords, normally in writing, of any problems with the property. Before considering taking any action in respect of a tenanted property, the Council will generally require the tenant to contact their landlord, in writing, to inform them about the problems, and allow a reasonable time period for the landlord to respond and undertake any works.

Where the matter appears to present an imminent risk to the health and safety of the occupants, it is expected that tenants will still continue to try to contact their landlord, even if this is after they have contacted the Service. Copies of correspondence between the landlord and tenant should be provided for officers upon request.

In certain situations, tenants, will not be required to write to their landlord first, for example:

- Where there is a history of harassment/threatened eviction/poor management practice.
- Where the tenant appears to be vulnerable or where there are vulnerable members of the household.
- Where the tenant could not for some other reason be expected to contact their landlord/managing agent.
- Where the property is an HMO which appears to fall within HMO licensing.

Tenants are responsible for keeping officers informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.) which may affect the action the Council is taking or considering taking. Tenants should also consider seeking independent legal advice about their own individual powers to resolve any dispute with their landlord.

HA tenants have standard procedures to follow if their landlord does not carry out repairs in a satisfactory manner that includes the HA formal complaints process, and a final right of appeal to the Housing Ombudsman Service. However, if the HA has not taken appropriate action to deal with problems with the property, then the Council will investigate and take appropriate action.

5.5 Retaliatory Evictions

A 'Retaliatory Eviction' is one where a tenant makes a legitimate complaint to their landlord about the condition of their property and, in response, instead of making the repair, their landlord serves them with an eviction notice.

The Deregulation Act 2015 introduced additional provisions, designed to protect tenants against unfair eviction. In order to rely on the protection against retaliatory eviction that the Act provides, a tenant must inform the landlord, in writing, of a defect in the property. If, after 14 days from the tenant making a complaint; the landlord does not reply, or that reply is inadequate, or they respond by issuing a Section 21 Eviction Notice, the tenant should approach the Service and request an inspection of the property to verify the need for a repair. If the HHSRS inspection confirms that the tenant's complaint was justified, appropriate enforcement action will be taken.

If the Council serves an Improvement Notice or Notice of Emergency Remedial Action, the landlord cannot evict the tenant for 6 months using the no-fault eviction procedure. The landlord is also required to ensure that the repairs are completed.
We will work with landlords to understand their obligations and the implications of this legislation, and will work alongside the Housing Service to provide support, advice and guidance to the tenant in these circumstances.

6. Situations where a service may not be provided

Where any of the following situations arise, consideration will be given to not providing, or ceasing to provide, a service to a tenant:

- The tenant(s) unreasonably refuse access to the landlord, managing agent or landlord's builder, to arrange or carry out works.
- The tenant(s) have, in the opinion of the Council, clearly caused the damage to the property they are complaining about, and there are no other items of disrepair.
- The tenant(s) have requested a service and then failed to keep an appointment and not responded to a follow-up letter or appointment card.
- The tenant(s) have been aggressive, threatening, verbally or physically abusive towards Officers.
- There is found to be no justification for the complaint, on visiting the property.
- The tenant unreasonably refuses to provide the Council with relevant documentation.

7. Powers available to the Council to deal with poor standards

7.1 Authority to investigate or enforce

The Housing Act 2004 and associated secondary legislation sets out the duties and powers that Tandridge District Council has in relation to regulating housing standards, in its capacity as the Local Housing Authority. Additional powers are also contained in the Housing Act 1985and other legisl ation such as the Environmental Protection Act 1990, the Town and Country Planning Act 1990, the Public Health Acts 1936 and 1961 and the Housing and Planning Act 2016. This is not a complete list of the powers available.

7.2 Authorisation of Officers

Only officers who are competent by training, qualification and/or experience will be authorised to undertake enforcement action. The Council's Scheme of Delegation sets out the powers delegated to officers and these are recorded in each officer's Warrant of Authority.

Officers who undertake criminal investigations will be conversant with the provisions of all relevant criminal investigation law.

Officers are sometimes asked to give evidence on behalf of one of the parties in a private action. In order to prevent any implication that the officer has taken sides, officers will usually only attend in response to a witness summons.

7.3 Powers of entry and power to require information

The Council has the power of entry into private residential properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004 provided that:

- The Officer has written authority from an appropriate Officer stating the particular purpose for which entry is authorised
- The Officer has given 24 hours' notice to the owner (if known) and the occupier (if any) of the premises they intend to enter

No prior notice is required where entry is to ascertain whether an offence has been committed under Sections 72 (offences in relation to licensing of HMOs), section 95 (offences in relation to licensing of houses) or 234(3) (offences in relation to HMO Management Regulations).

If admission is refused, premises are unoccupied or prior warning of entry is likely to defeat the purpose of the entry, then a warrant may be granted by a Justice of the Peace on written application. A warrant under this section includes power to enter by force, if necessary.

The Council also has power under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with:

- any purpose connected with the exercise of its functions under Parts1-4 of the Housing Act 2004, or
- investigating whether any offence has been committed under Parts 1-4 of the Housing Act 2004

The Council also has powers under Section 237 of the Housing Act 2004 to use the information obtained above, and also Housing Benefit and Council Tax information obtained by the authority, to carry out its functions in relation to these parts of the Act.

7.4 Choice of appropriate enforcement action

Unless there is an imminent risk to the health and safety of the occupant or visitors to the property, the Council will normally attempt to secure any required repairs and improvements through informal engagement with the landlord and within a reasonable amount of time.

The decision to use enforcement action will depend on the severity of any non-compliance and the factors that will be taken into consideration include:

- The risk that the non-compliance poses to the safety, health or economic welfare of the public at large or to individuals,
- The culpability of the responsible party,
- Evidence that suggests that there was premeditation in the commission of an offence,
- Whether there is a history of previous warnings or the commission of similar offences,
- Aggravated circumstances such as aggressive or violent behaviour towards the officer or occupants,

The Council will determine which of the specific enforcement options it will use, taking into account the facts and circumstances in each individual case. A statement of reasons will be provided with any Notice it serves, explaining why the Council has decided to take a particular course of action. The Council will remain impartial and take action that is proportionate to the situation. The Service will adopt a coordinated approach with other Council services and relevant agencies in taking any action.

7.5 Power to charge for enforcement action

The Council has the power, under the Housing Act 2004, to make a reasonable charge as a means of recovering certain administrative and other expenses incurred in serving certain Housing Act notices. The Council may recover a reasonable amount for expenses incurred in connection with time spent gaining entry to a property, visiting and inspecting the property to determine appropriate action and the administration costs for the production of a Notice, Order or Remedial Action

The Council may make a charge where the following notices are served under the Housing Act 2004:

Section	Type of Notice
Section 11 and 12	Improvement Notice
Section 20 and 21	Prohibition Order
Section 28 and 29	Hazard Awareness Notice
Section 40	Emergency Remedial Action Notice
Section 43	Emergency Prohibition Order
Section 265 (Housing Act 1985)	Demolition Order

The charge reflects the expenses incurred by the council in the inspection of the property, consideration of action to be taken and service of the appropriate Notice. The investigating officer records the time spent and applies the hourly cost to calculate the total cost of the action. The hourly cost to the council constitutes the officers hourly rate plus on-costs. This charging structure seeks to recover the cost of administration and compliance only. The invoice for the charge will be included when the notice is served. When the charge demand becomes operative, the sum recoverable will be a local land charge. Costs incurred carrying out Work in Default or Remedial Action will be charged separately.

7.6 Recovery of Debts

Where charges for enforcement action are levied, they will be registered as a local land charge against the owner's property. If the charge has not been paid when the property is sold, the debt has to be repaid, including any interest accrued on the initial charge. The Council will vigorously pursue all debts owed to it as a result of enforcement charges or charges for carrying out works in default (as well as any other charges).To recover debts the Council will use some of the following means:

- The enforced sale procedure under the Law and Property Act 1925. This allows the Council to force the owner to sell their property in order to recover its costs
- Use tracing services to track down debtors and secure judgments to recover debts
- Demand rents are paid to the Council instead of the landlord to recover outstanding debts (where the legislation allows and it is appropriate to do so).

8. Housing Notices and other types of Enforcement Action

8.1 Hazard Awareness Notice

Hazard Awareness Notices may be served to notify owner-occupiers of the existence of hazards (for example where the risk from the hazard is mitigated by the longstanding nature of the occupancy). It might also be applicable where:

- It is judged appropriate to draw a landlord's attention to the desirability of remedial action
- To notify a landlord about a hazard as part of a measured enforcement response

8.2 Improvement Notice

It is anticipated that Improvement Notices will be an appropriate and practical remedy for most hazards. Having considered the circumstances of the case, where the Council determines that an Improvement Notice should be served in respect of a Category 1 Hazard, it will require works that will either remove the hazard entirely or will reduce it to an acceptable level of risk.

Where the Council determines that an Improvement Notice should be served in respect of a Category 2 Hazard, it will require works it considers sufficient to reduce it to an acceptable degree.

8.3 Suspended Improvement Notice

The Council has the power to suspend an Improvement Notice so that it only comes into effect once a certain situation exists or arises. The following are situations in which it may be appropriate for the Council to serve a Suspended Improvement Notice:

- The need to obtain planning permission (or other appropriate consent) that is required before repairs and/or improvements can be undertaken
- Works which cannot properly be undertaken whilst the premises are occupied and which can be deferred until such time as the property becomes vacant or temporary alternative accommodation can be provided for the tenants
- Personal circumstances of occupants; for example, temporary ill health, which suggests that works ought to be deferred

When deciding whether it is appropriate to suspend an Improvement Notice, the Council will have regard to:

- the level of risk presented by the hazard(s)
- the turnover of tenants at the property
- the response or otherwise of the landlord or owner and
- any other relevant circumstances (e.g. whether the vulnerable age group is present)

Suspended Improvement Notices will be reviewed on an ongoing basis, at least every 6 months.

8.4 Prohibition Order

Prohibition Orders may be served in respect of both Category 1 and Category 2 hazards, for all, or part of a property. An Order may prohibit the use of the property where it is unsafe, until work has been carried out to make it safe, or where works of repair and/or improvement are inappropriate on grounds of practicality or excessive cost. Examples include:

- a room in a property which is badly affected by rising damp,
- a property which is structurally unsound,
- a property or part of a property where adequate natural lighting or a suitable fire escape cannot realistically be provided.

In addition to prohibiting all uses in relation to the whole or part of the premises in question, Prohibition Orders can prohibit specific uses. This option may be used to prevent occupation by particular descriptions of persons who may be more vulnerable to the hazard identified. Use of this power may be appropriate in situations such as the following:

- Premises with steep staircases or uneven floors which make them particularly hazardous to elderly occupants.
- Premises with open staircase risers or widely spaced balustrades that make them particularly unsuitable for infants.

8.5 Suspended Prohibition Order

The Council may decide that the operation of a Prohibition Order may be suspended until a particular time, or the occurrence of an event, takes place at the property. This could include for example, the time when a person of a particular description begins, or ceases, to occupy any property. Suspended Prohibition Orders will be reviewed on an ongoing basis, at least every 6 months.

The Council will consider any written requests made for alternative uses of premises or part-premises which are subject to a Prohibition, or a Suspended Prohibition Order, and will not withhold its consent unreasonably. Any such consent will be confirmed in writing.

8.6 Emergency Remedial Action & Emergency Prohibition Order

The situations in which Emergency Remedial Action and Emergency Prohibition Orders may be used are specified by Sections 40 to 45 of the Housing Act 2004. Specifically, the Council must be satisfied that:

- A Category 1 hazard exists, and that
- The hazard poses an imminent risk of serious harm to health or safety, and that
- Immediate action is necessary

If these conditions are met, the Council will take appropriate emergency action. Situations in which emergency action may be appropriate include:

- Residential accommodation located above commercial premises which lack a safe means of escape in the event of fire because there is no independent access
- Risk of electrocution, fire, gassing, explosion or collapse

8.7 Demolition Orders

The Housing Act 1985 provides the Council with the power to make Demolition Orders. Demolition Orders are a possible response to a Category 1 hazard (where they are judged the appropriate course of action). In determining whether to issue a Demolition Order, the Council will take account of Government guidance and will consider all the circumstances of the case.

8.8 Clearance Areas

The Council can declare an area to be a Clearance Area if it is satisfied that each of the properties in the area is affected by one or more Category 1 hazards (or that they are dangerous or harmful to the health and safety of inhabitants as a result of a bad arrangement or narrowness of streets). In determining whether to declare a Clearance

Area, the Council will act only in accordance with Section 289 of the Housing Act 1985 and having had regard to relevant Government guidance on Clearance Areas and all the circumstances of the case.

8.9 Revocation and Variation of Notices

The Council has a duty to revoke certain Housing Act Notices once they are complied, to the satisfaction of the Council. An Improvement Notice being an example. In some circumstances, if only part of the work required within the Notice is carried out, then the Notice can be varied by the Council.

8.10 Failure to Comply with Notices

If a landlord does not comply with a Housing Act notice, the Council will consider the reasons for non-compliance and consider taking the following options:

- Take no action (for example, where non-compliance is not the fault of the landlord i.e. the tenant refusing access)
- The issue of a simple caution
- Prosecution
- Carrying out the works in default
- Carrying out the works in default and prosecution
- Issue a Civil Penalty

Failure to comply with an Improvement Notice or a Prohibition Order is an offence for which an unlimited fine may be administered by the courts. Where a landlord is prosecuted for non-compliance with a Prohibition Order, it is an offence to carry on using the property in breach of the Prohibition Order, attracting a daily fine.

8.11 Simple Cautions

Officers may use Simple Cautions where someone has committed a less serious offence. Simple Cautions warn people that their behaviour has been unacceptable and makes them aware of the legal consequences should they commit further offences.

Simple cautions are not appropriate where there is a history of offending within the last 2 years or where the same type of offence has been committed before. In these circumstances, prosecution is more appropriate.

8.12 Works in Default

Works in Default will be considered if all other methods to try to remedy the necessary works have been unsuccessful. In determining if work in default is appropriate, Officers will report to the Environmental Health Shared Partnership Manager who will consider approval based on the following information:

- The effects of not carrying out the work on the health and safety of the occupants of the property concerned

- The wishes of the tenant where the Notice has been served in respect of a rented property
- The reason for the work not being carried out in the first place
- Any other factors that are specific to individual properties

The Council will normally seek to recover all of the costs associated with undertaking work in default (including time spent by its Officers, administrative costs, contractors costs, the cost of any specialist reports, supervisory costs etc.)

The expenses incurred are recovered from the person(s) on whom the Notice or Order is/are served ("the relevant person"). Where the relevant person receives the rent on behalf of another, the expenses are also to be recovered from that other person. The recoverable expenses, together with interest accrued on them, are registered as a charge on the property. As a charge on the property, the costs give the Authority the same powers and remedies as a Mortgagee under the Law of Property Act 1925 (Enforced Sale).

In addition, as a means of recovering the costs, the Council may also serve Recovery Notices to recover, receive and give a discharge for any rent or sums in the nature of rent.

8.13 Review of Enforcement Action

If there is a change in the nature of the occupation of a premises (leading to either an increase or decrease in the apparent risk to occupiers) the current state of any outstanding enforcement action will be reviewed by the Council. This ensures that the type of enforcement action is still appropriate and proportionate to the risk posed from the identified hazard(s).

9. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations) require private sector landlords to ensure that at least one smoke alarm is installed on every storey of their rented property and that a carbon monoxide alarm is installed in any room containing a solid fuel burning appliance (for example a coal fire or a wood burning stove). They also require landlords to ensure that such alarms are in proper working order at the start of each new tenancy.

The Council may issue a remedial notice where it has reasonable grounds to believe a landlord has not complied with one or more of the requirements. The landlord must comply with the notice within 28 days. If they do not, the Council is required to carry out the remedial action (where the occupier consents) to ensure the requirements in the regulations are met.

The Council may also impose a civil penalty of up to £5,000 on landlords who do not comply with the remedial notice. The Regulations require the Council to be open and transparent regarding the civil penalty and publish a Statement of Principles which it will follow when determining the amount of a penalty charge. The Statement of Principles is set out at Appendix 1.

Penalty charges for non-compliance are as follows:

First offence	£1,500	Reduced to £750 if paid within 14 days
Second offence	£3,000	No reduction for early payment
Any additional offences	£5,000	No reduction for early payment

In determining the level of the fixed penalty charge, the Council has considered the likely costs it will incur and that the amount charged is sufficient to provide a deterrent to future non-compliance. Increasing the charge for a second offence and then again for further offences reflects the seriousness of the offence and is designed to deter repeat offending.

While these charges are set as standard, a landlord may seek to review a penalty charge notice. Further information about this is provided in the Council's Statement of Principles.

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

It is a legal requirement for all lettings agents and property managers (subject to certain exclusions) in England to join one of three Government approved redress schemes. This means that tenants and landlords with agents in the private rented sector, and leaseholders and freeholders dealing with residential property managers, are able to complain to an independent organisation about the service they have received.

A maximum penalty of £5,000 may be imposed by the enforcement authority (the Council) where it is satisfied, on the balance of probabilities that someone is engaged in letting or property management work and is required to be a member of a redress scheme, but has not joined. The level of penalty is to be determined by the Council and it will follow the procedure for issuing a monetary penalty as defined in the 2014 Order mentioned above and as set out in its Redress Schemes Statement which provides more detail and can be found at Appendix 2.

10.1 Implementation

The Council will investigate complaints or intelligence received concerning unregistered agents. Where it finds that an agent who should have registered with a scheme, has not done so, it will serve notice that it intends to issue a monetary penalty and will specify the reasons. It will also outline how the person notified can submit any representations concerning the notice and also provide information about the appeal process.
The standard penalty charge for breach of duty under the Order is set as follows:

Breach	Penalty	Notes
Failure to register with an approved redress scheme	£5,000	Reduced to £2,500 if paid within 14 days for first offence only

In determining the level of the fixed penalty notice, the Council has considered the likely costs it will incur and the amount required to be sufficient to provide a deterrent to non-compliance.

A guide for letting agents and property managers has been produced by the Ministry of Housing, Communities and Local Government and is available at https://www.gov.uk/government/publications/lettings-agents-and-property-managers-redress-schemes

11. Civil Penalties for offences under the Housing Act 2004

The Housing and Planning Act 2016 introduced a range of measures to crack down on rogue landlords, including the power for Councils to issue civil penalties. Penalties of up to £30,000 may be issued as an alternative to prosecution for certain specified offences.

Income received from a civil penalty can be retained by the Council, provided that it is used to further its statutory functions in relation to enforcement activities covering the private rented sector.

A civil penalty may be imposed as an alternative to prosecution for the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice (section 30)
- Offences in relation to licensing of Houses in Multiple Occupation (section 72)
- Offences in relation to licensing of houses under Part 3 of the Act (section 95)
- Contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234)

The amount of penalty is to be determined by the Council in each case. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord's previous record of offending. In determining an appropriate level of penalty, the Council will have regard to the publication 'Civil Penalties under the Housing and Planning Act 2016' in which the Government's Department for Communities and Local Government (DCLG) provides statutory guidance.

A civil penalty can only be imposed as an alternative to prosecution. However, unlike prosecution action, where there are offences under Houses in Multiple Occupation Management Regulations, the Council may issue a civil penalty for each separate offence.

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, the Council must satisfy itself that if the case were to be prosecuted in a magistrates' court, there would be a realistic prospect of conviction. The Residential and Environment Team will consult with the Council's legal team in this respect.

11.1 Determining the Sanction

The following principles will apply to each case to be considered in relation to a civil penalty;

- Each case will be considered on its own merits
- There must be sufficient, reliable evidence to justify the action taken
- The action taken must be in the public interest
- Any mitigating circumstances will be considered
- The decision to prosecute an individual is a serious step and has serious implications for all involved. Decisions to prosecute should always be fair and consistent.

11.2 Factors to be taken into consideration when determining the Penalty

In accordance with the statutory guidance, the Council will consider the following factors to help ensure that the civil penalty is set at an appropriate level:

- **Severity of the offence**. The more serious the offence, the higher the penalty should be.

- **Culpability and track record of the offender.** A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

- **The harm caused to the tenant.** This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

- **Punishment of the offende**r. A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.

- **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a

high enough level such that it is likely to deter the offender from repeating the offence.

- **Deter others from committing similar offences.** While the fact that someone has received, a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

- **Remove any financial benefit the offender may have obtained as a result of committing the offence.** The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

11.3 Determining the Penalty

Tandridge District Council's 'Policy on determining the level of Civil Penalty as an alternative to prosecution under the Housing Act 2004' is provided as Appendix 3.
It sets out how the Council will determine the level of financial penalty in individual cases, once the decision to impose a financial penalty has been made. It also provides further information about how the penalties are imposed, the procedure for issuing them and the process for appealing a penalty.

12. Rent Repayment Orders

The Housing Act 2004 enabled Councils to apply for Rent Repayment Orders (RROs) in regard to offences related to HMOs. A landlord who operates an unlicensed HMO can be subject to a RRO when issued by a First-tier Tribunal (Property Chamber). The Housing and Planning Act 2016 extended the power to apply RROs in respect of the following offences committed after 6th April 2017:

- Failure to comply with an Improvement Notice under Section 30 of the Housing Act 2004
- Failure to comply with a Prohibition Order under Section 32 of the Housing Act 2004
- Breach of a banning order made under Section 21 of the Housing and Planning Act 2016
- Using violence to secure entry to a property under Section 6 of the Criminal Law Act 1977
- Illegal eviction or harassment of the occupiers of a property under Section 1 of the Protection from Eviction Act 1977

A RRO requires repayment of rent received by the landlord over a period of up to 12 months. The Council will usually consider applying for such a measure if the landlord has

received rent that has been paid by Housing Benefit. A criminal standard of proof is required. The Council must apply to the First-tier Property Tribunal for an RRO. A tenant may apply for a rent repayment order themselves if they are not in receipt of housing benefit.

Tandridge District Council will consider making an application for a Rent Repayment Order in all cases where a person has been prosecuted in relation to one of the above offences.

13. Houses in Multiple Occupation

A House in Multiple Occupation (HMO) is defined in the Housing Act 2004. It is a residential property which is rented to three or more persons who form two or more households, and where those households share one or more amenities such as a bathroom, toilet or cooking facilities. A household is defined as a single person, a family, or a cohabiting couple.

The Housing Act 2004 introduced mandatory licensing for certain types of HMO. In October 2018 the definition of the types of HMO requiring to be licensed was extended to include all HMOs that contain five or more occupants, who form two or more households and share one or more amenities.

13.1 HMO Licensing

The aim of licensing is to ensure that every licensable HMO is safe for the occupants and visitors and is properly managed. The responsibility for applying for a licence rests with the person having control of, or the person or company managing the property. Prospective licence holders are required to submit an application form, supply various certificates for gas and electrical safety, a fire alarm installation or servicing certificate and pay the licensing fee. Where possible an officer will normally undertake an inspection of the property as part of the application process, but this can happen at any time during the licensing period. The licence is issued for a period of five years, with mandatory conditions attached to the licence, which will include the maximum number of occupants and households that can occupy the HMO.

Where the Council is not confident in the management arrangements in place for a licensable HMO, it may only licence it for a one year trial period before deciding whether to issue the full five year licence.

The property is inspected at least once in the licence period. The officer will assess the room sizes and associated occupancy limits, numbers and condition of amenities such as kitchens, cookers, wash areas, bathrooms and toilets, and also the location and condition of fire detection devices, as well as protected fire escape routes. Where standards fall short of mandatory licence conditions, or the property is not being managed in accordance with the HMO Management Regulations, the Council will take enforcement action to improve standards. This may be done informally or through the service of notices.

If on inspection, an HMO does not comply with licence conditions and the officer deems that the state of the property is such that it presents a risk to the health and safety of the occupants, a full assessment will be carried out using the Housing, Health and Safety Rating System to determine the hazards that exist in the property. Using the results of the

assessment the officer will specify the works required to the property and require these informally, or by the service of an Improvement Notice.

If the repair works required are of a nature that is not feasible for them to be carried out, the officer will consider the service of a Prohibition Order under the Housing Act 2004. The Order would require that the occupants move out of the property for their own safety. In this situation, if the landlord does not have suitable alternative accommodation for the occupants to move to, the officer would first liaise with the Council's Housing Options team to find temporary accommodation, until such a time as the HMO is considered safe to return to, or if necessary assist them to find a new permanent residence.

13.2 Fit and Proper Person

To be able to hold an HMO licence a person has to be considered to be "fit and proper". As part of the licence application process each applicant will be asked details of:

- Any unspent convictions for offences involving fraud or other dishonesty, or violence or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003.
- Any unlawful discrimination on grounds of sex, colour, race, ethnic or national origins, or in connection with the carrying on of a business.
- Any contravention of any provision of the law relating to housing or of landlord and tenant law (including any civil proceedings that resulted in a judgement against the landlord).

The Council will also carry out an internal consultation to determine the licence holder is a fit and proper person to hold that licence. Where an applicant is deemed not to be 'fit and proper', an alternative licence holder must be nominated and assessed. If there is no suitable nominated licence holder this is not a reason to refuse a licence. In this situation the Council becomes responsible for the management of the HMO.

13.3 HMO Licensing Offences

The Housing Act 2004 sets out a number of licensing related offences all of which carry an unlimited fine on conviction, including:

- Operating an unlicensed HMO
- Breach of a licence condition
- Supplying incorrect information in a licence application

In addition to the above, a landlord who operates an unlicensed HMO can be subject to a Rent Repayment Order (RRO) by a First-tier Tribunal (Property Chamber). The Council may also impose a Civil Penalty for certain offences under the Housing and Planning Act 2016. The approach to these sanctions is outlined at sections 11.

Where an unlicensed HMO is identified, the Council will assess whether there are good reasons why an application has not been made. If a landlord of an unlicensed HMO approaches the Council for the purposes of licensing an HMO and the landlord can justify why a licence has not previously been applied for, the Council would normally not take enforcement action. However, if there are no good reasons why the landlord has not applied for a licence, the Council will consider taking formal proceedings leading to prosecution in the courts, or may issue a Civil Penalty.

Generally, a breach of a licence condition will be dealt with informally in the first instance. However, if the breach is serious and affects the safety of the occupants, or the landlord (or other responsible person) does not carry out the necessary works within an agreed timescale, the Council will pursue legal proceedings.

13.4 Temporary Exemption Notices

Where a landlord is, or shortly will be taking steps to make an HMO non-licensable, the Council may agree to serve a Temporary Exemption Notice (TEN). A TEN can only be granted for a maximum period of three months. In exceptional circumstances a second TEN can be served for a further three-month period. A TEN will be served where the owner of the HMO states in writing that steps are being taken to make the HMO non-licensable within 3 months and provides evidence of this, for example the property may be on the market or the number of tenants may be reducing.

13.5 Fire Safety in HMOs

It is essential that any HMO possesses an adequate means of escape in event of a fire and adequate fire precautions. The actual level of fire protection and detection required will be determined by a risk assessment.

The Council's Environmental Health Officers are generally the lead enforcing authority for fire safety in HMOs, working closely with Surrey Fire and Rescue Service. Where an HMO contains communal areas, a Fire Risk Assessment must be carried out in accordance with the Regulatory Reform Order. For clarification, and/or general fire safety guidance, contact the Residential and Environment Team by emailing: privatesectorhousing@tandridge.gov.uk.

13.6 General Management of HMOs

The Management of Houses in Multiple Occupation (England) Regulations 2006 (Regulations) require the person having control of the house to ensure that: -

- All services, furnishings, fixtures and fittings are maintained in good, sound, and clean condition
- The structure is kept in good order
- All communal areas of the interior are regularly cleaned and redecorated as necessary

- All yards, boundary walls, fences, gardens and outbuildings are maintained in a safe and tidy condition
- Satisfactory arrangements for the disposal of refuse and litter have been made
- At the commencement of all tenancies the lettings are clean, in a satisfactory state of repair and decoration, and comply in all respects with these standards
- All staircases and multiple steps should be provided with suitable handrails
- All Tenants should fulfil their tenancy obligations.

Where the Council determines that a landlord has not complied with the Regulations, it will normally seek to resolve the matter informally, by requesting the necessary improvements and providing advice to the landlord. However, where there is repeated failure by the landlord to comply with the Regulations, or refusal to improve the management of the HMO, the Council will consider formal enforcement by way of prosecution or imposing a Civil Penalty. Offences under these Regulations, attract a separate civil penalty for each separate offence.

13.7 Interim Management Orders

Interim Management Orders (IMO) may be made when the licensing regime fails. They enable the Council to take over the management of a HMO where there is no fit and proper person available to manage it.

The Council also has a duty to make an IMO if:

- The property is required to be licensed, but is not, and the Council considers there is no reasonable prospect of it granting a licence in the near future.

- The Council intends to revoke an existing licence and upon revocation there will be no reasonable prospect of the property being licensed in the near future (e.g. to another suitable person)

13.8 Final Management Orders

In exceptional circumstances the Council may need to make a Final Management Order (FMO) on a property which is already being managed under an IMO. An FMO must be made if the property should be licensed by the date of expiry of the IMO, but the Council consider that a licence cannot be granted by that date. The FMO would enable the Council to continue to manage the HMO for the duration of the order and it also enables the Council to create new tenancies without the consent of the landlord. FMOs can be varied or revoked by the Council and the provisions, including on appeals, are similar to those for the variation and revocation of HMO licences.

For more information on HMO Licensing or Management Orders please contact Private Sector Housing.

14. Minimum Energy Efficiency Standards

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 require that where a privately rented property has a valid, registered Energy Performance Certificate (EPC), the minimum acceptable rating for the energy performance of the property must be 'E' or above. Properties for which a valid EPC has been registered, which indicates an EPC rating of 'F' or 'G' must not be rented out until works have been carried out to improve the energy performance.

14.1 Exemptions

There are various exemptions from the requirement to undertake the necessary energy improvements to meet the minimum requirement. These may be due to limitations in cost or to limitations associated with the type of construction of a property. Any exemption must be correctly registered with supporting documentation at the PRS Exemptions Register at: https://prsregister.beis.gov.uk. The exemption is valid for a maximum of 5 years.

14.2 Penalties

Where officers identify a privately rented property that does not meet the Minimum Energy Efficiency Standards (MEES) and has not registered an exemption, the Council may administer a fixed penalty and require the improvements to be carried out. The maximum amount a landlord can be fined per property is £5,000.

The financial penalty may be served up to 18 months after the breach has occurred.
The maximum penalty limits are:

Up to £2,000 and/or publication penalty for renting out a non-compliant property for less than 3 months.

Up to £4,000 and/or publication penalty for renting out a non-compliant property for 3 months or more.

Up to £1,000 and/or publication for providing false or misleading information on the PRS Exemptions Register.

Up to £2,000 and/or publication for failure to comply with a compliance notice.

The amount of civil penalty issued may be subject to representations as to the exceptional, or extenuating circumstances and may be reduced on consideration of the representations made.

15. Electrical Safety Standards

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 apply to private landlords in respect of any specified tenancy and require all private landlords to:

- ensure that the electrical safety standards (currently the 18th edition of the Wiring Regulations, published by the Institution of Engineering and Technology and the British Standards Institution as BS 7671: 2018) are met during any period when their property is occupied by a tenant as their main or only home
- ensure every electrical installation in the property is inspected and tested at least every 5 years by a qualified person who will provide a written report;
- ensure the first inspection and testing is carried out before the tenancy and provide the inspection/testing report to tenants; and to the local authority within 7 days of receiving a written request for the report.
- carry out any further or investigative work recommended by the report within 28 days or any lesser period specified in the report and obtain written confirmation that the work has been done to the correct standard.

15.1 Enforcement

Tandridge District Council, as the local housing authority, is responsible for enforcing the Regulations. Where the Council has reasonable grounds to believe that a private landlord is in breach of the regulations, it must, within 21 days of arriving at this belief, serve a remedial notice on the landlord setting out the breaches and action required to remedy them. That action must then be taken within 28 days of the notice being served.

The landlord may make written representations in respect of the notice, in which case the notice will be suspended until the Council has considered those representations and informed the landlord of the outcome.

If a landlord fails to carry out the required works, the Council may, with the tenant's consent, carry them out itself and charge the cost back to the landlord, to be paid within 21 days.

The landlord has a right of appeal against the authority to the First Tier Tribunal and there is dispensation for landlords who are prevented by tenants from gaining entry to the property to carry out works.

The Council may impose a civil penalty, up to a maximum of £30,000 if satisfied beyond reasonable doubt that a landlord has breached the Regulations. These penalties may be appealed to the First Tier Tribunal.

16. Empty Homes

Empty homes can be a blight on our community as well as a wasted housing resource. The Council's Housing Team aims to work alongside owners of empty homes with a solution based approach to support and encourage voluntary action. However, the Council will also use appropriate enforcement action where owners fail to take responsibility for their properties and the condition of the property affects the community. There is a range of legislative powers available to different teams across the Council to deal with issues of anti-social behaviour linked to an empty home, or where an empty property presents a risk to health and safety.

17. Monitoring and Review

The Service will keep its regulatory activities and interventions under review, with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose, where the Council has direct control of these matters.

Changes will be introduced into this document where necessary to accommodate new legislation, guidance and local needs.

18. Application of the Policy

All authorised officers must have regard to this Policy when making enforcement decisions in relation to Private Sector Housing.

If you have any comments or queries regarding this Policy, please contact:

Residential and Environment Team Leader, Environmental Health

By Email: _envhealth@tandridge.gov.uk

By telephone: 01883 722000

At this address: Environmental Health and Licensing Partnership, Tandridge District Council, Station Road East, Oxted, Surrey, RH8 0BT.

Appendix 1

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
Statement of Principles for determining the amount of the Penalty Charge

Introduction

The purpose of this Statement of Principles is to set out a framework for determining the amount of a penalty charge to be imposed for breaches of the above Regulations.

This statement sets out the principles that Tandridge District Council (the Council) will apply in exercising their right to require a landlord to pay a fixed penalty charge under the provisions of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015. if the Council is satisfied that the landlord has breached his duty under Regulation 6(1) to comply with the requirements of a Remedial Notice under Regulation 5.

The Legal Framework

Regulation 8 provides that where a local housing authority (the Council) is satisfied, on the balance of probabilities, that a landlord on whom it served a remedial notice under Regulation 5 is in breach of their compliance duty under Regulation 6(1), it may require the landlord to pay a penalty charge. The amount of the charge to be determined by the Council and may be up to a statutory maximum of £5000.

The scope of this document

Regulation 13 requires Council's to prepare and publish a Statement of Principles to be followed in determining the amount of such a penalty charge. The Council will have regard to the criteria set out below in deciding whether to impose a penalty and what level that penalty should be.

The primary aims of financial penalties will be to:

- Recover the Council's costs in carrying out the necessary remedial work, under Regulation 7.
- Lower the risk to tenant's health, safety and wellbeing by ensuring that the property in question benefits from basic early warning in the event of a fire.
- Promote compliance of landlords in the private rented sector.
- Eliminate any financial gain or benefit from non-compliance with regulation.
- Be proportionate to the nature of the breach of legislation and the risk posed.
- Aim to prevent future non-compliance.

Criteria for the imposition of a penalty charge

In deciding whether it would be appropriate to impose a penalty charge, the Council will take full account of the particular facts and circumstances of the breach. Factors which the Council will take into consideration include, but are not limited to:-

- The extent to which the circumstances giving rise to the contravention were within the control of the landlord,
- The presence or absence, of internal controls or procedures on the landlord's part which were intended to prevent the breach,
- The steps that the landlord has taken since being served with the remedial notice,
- Whether the landlord has been obstructed in his duty, or if tenant removal of alarms has occurred,
- Evidence provided that supports compliance with a Remedial Notice, (this may include a signed inventory at the start of a tenancy, or photographic evidence showing alarms installed, with a date & time stamp).

Criteria for determining the amount of a penalty charge

The Regulations set a maximum penalty charge of £5000. A penalty charge will be set at a level which the Council considers is proportional to the breach. It will also include the costs incurred by the Council in taking remedial action following non-compliance, including officer time and the cost of contractor supervision. The Council will consider:-

- Whether or not the breach under consideration is a first-time breach.
- The nature of the breach of the Regulations
- Continued, or repeat breaches of the Regulations

Tandridge District Council has set the penalty charge as follows:-

First Offence **£1,500** - if paid within 14 days from the service of the Penalty Charge Notice, there will be a discount of 50% to £750.

Second Offence **£3000** - No early payment discount

Subsequent Offences **£5,000** - No early payment discount

The Council will exercise discretion, and may not make, or may reduce, any penalty charge where the landlord is a housing charity providing housing services for vulnerable persons.

The Council will enforce penalty charges, to include obtaining a Court Order for payment, where necessary.

Review of Penalty Charge Notice & Appeals

On receipt of a Penalty Charge Notice (PCN) from the Council, a landlord may, within 28 days from the service of the notice, make a written request asking the Council to review their decision. The Council will review the facts of the case and may confirm or vary their decision, and will serve notice giving the result of their review.

A landlord may appeal the review decision, to the First-tier Property Tribunal. The Tribunal may quash, confirm, or vary the PCN, but cannot increase the penalty charge.

The operation of the PCN is suspended until the Tribunal has determined the appeal.

Information about independent appeal mechanisms, such as to the First-Tier Property Tribunal can be found here: https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber

Appendix 2

The Redress Schemes for Lettings Agencies and Property Managers

Statement of Implementation

1. Introduction

The 'Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014' (the Order), makes it a legal requirement for all lettings agents and property managers (subject to certain exclusions) in England to join one of three Government approved schemes meaning that tenants and landlords with agents in the private rented sector, and leaseholders and freeholders dealing with residential property managers, will be able to complain to an independent organisation about the service they have received.

Definitions of what constitutes letting agency and property management work is found in the Enterprise and Regulatory Reform Act 2013

There are two Government approved schemes as follows:

1. Property Redress Scheme (https://www.theprs.co.uk)
2. The Property Ombudsman (www.tpos.co.uk)
3. Ombudsman Services: Property (https://www.ombudsman-services.org)

The schemes deal with breaches of letting agency codes of conduct and issues including:

- Lack of transparency about fees for tenants
- Inaccurate property descriptions
- Disputes about refunds of holding deposits taken to reserve a property
- Inaccurate accounting and not passing tenants' rents to their landlord
- Slow or poor service

Redress schemes typically require letting agencies to:

• Follow a code of practice

• Have an in-house complaints procedure

• Cooperate with any investigation and agree to pay compensation promptly if the redress scheme awards it.

A maximum penalty of £5,000 may be imposed by the enforcement authority (the Council), where it is satisfied, on the balance of probabilities that someone is engaged in letting or property management work and is required to be a member of a redress scheme, but has not joined. The level of penalty is to be determined by the Council.

2. Implementation

Proactive checks of required membership will be undertaken as part of Mandatory Licence Applications for Houses in Multiple Occupation (HMO). All agents and property managers will be required to confirm details of scheme membership as part of all HMO Licence applications. The authority will also reactively investigate complaints/intelligence received concerning unregistered agents.

The Council will allow only one opportunity for agents to join a scheme once identified. If the agent/property manager fails to join within 14 days of being contacted by the Council, then a Notice of Intent to issue a monetary penalty will be issued, setting out the reasons and the amount of the penalty.

The lettings agent or property manager has 28 days to make written representations or objections to the authority.

At the end of the 28 day period the authority, having taken into account any representations received, will decide whether to impose the penalty.

If the authority decides to issue the penalty a Final Notice will be issued giving 28 days for payment to be made. Full details of payments methods are detailed on the notice.

If the letting agent or property manager does not pay the monetary penalty within the period specified, the Council may recover the penalty, with the permission of the court, as if payable under a court order.

The letting agents/property manager can appeal against the penalty to the First-tier Property Tribunal. The appeal must be made within 28 days of the day on which the Final Notice was sent.

The Council can impose further penalties if a lettings agent or property manager fails to join a redress scheme despite already having had a penalty imposed. There is no limit to the number of penalties that may be imposed on an individual lettings agent or property manager if they continue to fail to join a scheme.

3. Enforcement Process

Step 1: Notice of Intent

The enforcement authority must give written notice of their intention to impose a penalty, setting out:

i) the reasons for the penalty;
ii) the amount of the penalty; and
iii) that there is a 28 day period to make written representations or objections, starting from the day after the date on which the notice of intent was sent.

This written notice must be served within 6 months of the date on which the enforcement authority is in the position to issue the fine (have gathered sufficient evidence and satisfied any internal requirements that a fine is appropriate).

It is up to each local authority to decide who should serve the notice. The enforcement authority may withdraw the notice of intent or reduce the amount specified in the notice at any time by giving notice in writing.

Step 2: Representations and Objections

The person who the notice of intent was served on has 28 days starting from the day after the date the notice of intent was sent to make written representations and objections to the enforcement authority in relation to the proposed fine.

Step 3: Final Notice

At the end of the 28 day period the enforcement authority must decide, having taken into account any representations received, whether to impose the fine and, if so, must require the penalty to be paid within 28 days, from the day after the day on which the final notice was sent. When imposing a fine, the enforcement authority must issue a Final Notice in writing which explains:

i) why the fine is being imposed;
ii) the amount to be paid;
iii) how payment may be made;
iv) the consequences of failing to pay;
v) that there is a right to appeal against the penalty to the First-tier Tribunal and that any appeal must be made within 28 days after the imposition of the fine.

The enforcement authority may withdraw the final notice or reduce the amount specified in the notice at any time by giving notice in writing.

Step 4: Appeals

If an appeal is lodged, the penalty cannot be enforced until the appeal is disposed of. Appeals can be made on the grounds that:

i) the decision to impose a fine was based on a factual error or was wrong in law;
ii) the amount of the fine is unreasonable; or
iii) that the decision was unreasonable for any other reason.

The First-tier Tribunal may agree with the enforcement authority's notice to issue a penalty or may decide to quash or vary the notice and fine.

Step 5: Recovery of the penalty

The penalty charges received by the enforcement authority may be used by the authority for any of its functions. If the lettings agent does not pay the fine within the 28 day period, the authority can recover the fine on the order of the county court, as if payable under a court order. Where proceedings are necessary for the recovery of the fine, a certificate, signed by the enforcement authority's Chief Finance Officer, stating that the amount due has not been received by a date stated on the certificate, will be taken as conclusive evidence that the fine has not been paid.

Further guidance can be found at:

https://www.gov.uk/government/publications/lettings-agents-and-property-managers-redress-schemes

Appendix 3

Policy on determining the level of Civil Penalty as an alternative to prosecution under the Housing Act 2004

Introduction

The Housing and Planning Act 2016 ('the 2016 Act') amends the Housing Act 2004 ('the 2004 Act') to allow financial penalties, up to a maximum of £30,000, to be imposed as an alternative to prosecution for certain relevant housing offences.

This policy sets out guidance as to how Tandridge District Council (the Council) will determine the level of financial penalty in individual cases, once the decision to impose a financial penalty has been made.

Legal reference

Schedule 9 of the 2016 Act has introduced amendments to the 2004 Act that allow local housing authorities to impose financial penalties as an alternative to prosecution for the following relevant housing offences under the 2004 Act:

- section 30 (failure to comply with an Improvement Notice),
- section 72 (licensing of Houses in Multiple Occupation (HMOs)),
- section 95 (licensing of houses under Part 3),
- section 139(7) (failure to comply with Overcrowding Notice), or
- section 234 (management regulations in respect of HMOs).

Schedule 13A of the 2004 Act prescribes the procedures that a local housing authority must follow before imposing a financial penalty, for imposing the penalty, the appeal process and the procedure for the recovery of the penalty.

Government Guidance

The Government's Department for Communities and Local Government (DCLG) published the following document: "Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities" to which local housing authorities must have regard. It recommends certain factors a local authority should take into account when deciding on the level of civil financial penalty and that local authorities develop and document their own policy on determining the appropriate level of financial penalty in a particular case.

The purpose of this policy

This is Tandridge District Council's published policy in line with DCLG's recommendation that it should have a policy on determining the appropriate level of financial penalty.

This policy is based on one which is recognised as good practice, which was produced in consultation with a number of authorities and also the Local Government Association.

Basis of this policy

In accordance with the new section 249A(4) of the 2004 Act the amount of a financial penalty is to be determined by the local housing authority. Although the statutory guidance recommends factors a local authority should take into account when deciding on the level of penalty, it does not go into any detail in this regard. The Council therefore has a wide discretion in determining the appropriate level of civil penalty in a particular case and seeks to set out further guidance through this policy as to how it will do so.

This policy is based largely on the principles set out in the Sentencing Council Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline which this Council considers to be the most relevant sentencing guidance issued by the Sentencing Council. The Sentencing Council have set out a range of fines which are linked to the culpability of the offender and the actual and potential harm resulting from the offence.

The range of financial penalties in this guidance use similar ratios to those that are used by the Sentencing Council because these ensure that penalty levels are fair, appropriate and reasonable for the seriousness of the offence.

THE PROCESS FOR DETERMINING THE LEVEL OF PENALTY

1. Determining the offence category

The Council will determine the offence category using only the culpability and harm factors in the tables below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment.

Culpability

Very high - Where the offender intentionally breached, or flagrantly disregarded the law, or who has a high public profile and knew their actions were unlawful
High - Actual foresight of, or wilful blindness to risk of offending, but risk nevertheless taken Medium - Offence committed through act or omission which a person exercising reasonable care would not commit
Low - Offence committed with little fault, for example, because:

- significant efforts were made to address the risk although they were inadequate on this occasion
- there was no warning/circumstance indicating a risk
- failings were minor and occurred as an isolated incident

Harm

The categories of harm below contain factors relating to both actual harm and risk of harm. Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does.

Category 1 – High Likelihood of Harm

- Serious adverse effect(s) on individual(s) and/or having a widespread impact
- High risk of an adverse effect on individual(s) – including where persons are vulnerable

Category 2 – Medium Likelihood of Harm

- Adverse effect on individual(s) (not amounting to Category 1)
- Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect
- The Council and/or legitimate landlords or agents substantially undermined by offender's activities
- The Council's work as a regulator to address risks to health is inhibited
- The tenant has been misled

Category 3 - Low Likelihood of Harm

- Low risk of an adverse effect on individual(s)
- Public misled but little or no risk of actual adverse effect on individual(s)

The Council will use the following definition of harm taken from the statutory guidance on hazard rating under the Housing Act 2004, 'Harm is an adverse physical or mental effect on the health of a person. It includes, for example, physical injury, and illness, condition, or symptom whether physical or mental. It also includes both permanent and temporary harm.'

2. Starting point and category range of the penalty

Having determined the category of the penalty, the Council will refer to 'starting points' to reach an appropriate level of civil penalty within the category range. These are set out in the table below.

Penalty Starting Points and Ranges			
		Range	
	Starting Point	Minimum	Maximum
LOW CULPABILITY			
Harm Category 3	£ 50	£ 25	£ 175
Harm Category 2	£ 125	£ 50	£ 350
Harm Category 1	£ 300	£ 125	£ 750
MEDIUM CULPABILITY			
Harm Category 3	£ 350	£ 175	£ 750
Harm Category 2	£ 1,000	£ 350	£ 2,000
Harm Category 1	£ 2,500	£ 750	£ 4,500
HIGH CULPABILITY			
Harm Category 3	£ 1,000	£ 500	£ 2,250
Harm Category 2	£ 3,000	£ 1,000	£ 5,500
Harm Category 1	£ 6,250	£ 2,500	£ 12,500
VERY HIGH CULPABILITY			
Harm Category 3	£ 2,500	£ 1,250	£ 4,500
Harm Category 2	£ 6,250	£ 1,500	£ 12,500
Harm Category 1	£ 15,000	£ 6,250	£ 30,000

The table gives the starting points, minimum and maximum financial penalties for each harm category and level of culpability.

Context

Having determined the appropriate penalty range and the starting point, the Council will consider further adjustment to the level of penalty within the category range by taking into account any aggravating and mitigating features of the case.

Below is a list of some, but not all the factual elements that provide the context of the offence and the factors relating to the offender which the Council will need to identify in each case and consider whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

In particular, relevant recent convictions are likely to result in a substantial upward adjustment. In some cases, having considered these factors, it may be appropriate to move above the original identified category range.

Aggravating Factors – Increasing Seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Other aggravating factors include:

- Motivated by financial gain
- Deliberate concealment of illegal nature of activity
- Established evidence of wider/community impact
- Obstruction of justice
- Record of providing substandard accommodation
- Record of poor management or not meeting legal requirements
- Refusal of free advice or training
- Member of Accreditation scheme, so should be aware of responsibilities

Mitigating Factors - reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Steps voluntarily taken to remedy problem
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of maintaining property
- Self-reporting, co-operation and acceptance of responsibility
- Good character and/or exemplary conduct
- Mental disorder or learning disability, where linked to the commission of the offence
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

Obtaining financial information

The statutory guidance advises that local authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just rental income) they receive when determining an appropriate penalty.

In setting a financial penalty, the Council may conclude that the offender is able to pay any financial penalty imposed, unless the Council has obtained (or the offender has supplied) any financial information to the contrary. An offender will be expected to disclose to the Council such data relevant to his financial position to enable the Council to assess what an offender can reasonably afford to pay. Where the Council is not satisfied that it has been given sufficient reliable information, the Council will be entitled to draw reasonable inferences as to the offender's means from evidence it has received and from all the circumstances of the case which may include the inference that the offender can pay any financial penalty.

For example: It is likely that an offender will be an owner of one or more properties in Tandridge. They are likely to have assets that they can sell or borrow against. Property values in Tandridge are high and have consistently increased, so even those offenders with mortgaged properties are likely to have value in the property that can be released. Therefore, if an offender claims that they are unable to pay a financial penalty and shows that their income is small, consideration should be given to properties owned that can be sold or refinanced.

3. Review any financial element of the penalty

The Council will consider whether the proposed level of financial penalty is proportionate to the overall means of the offender. It may increase or reduce the proposed fine reached at step two, if necessary moving outside of the range in the table above.

Full regard should be given to the totality principle at step 6, below, where multiple offences are involved.

General principles to follow in setting a penalty

a) The Council should finalise the appropriate level of penalty so that it reflects the seriousness of the offence and the Council must take into account the financial circumstances of the offender.
b) The level of financial penalty should reflect the extent to which the offender fell below the required standard. The financial penalty should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to take the appropriate precautions.
c) The principle behind issuing civil penalty notices is that there is no financial gain to the alleged perpetrator of the relevant offences and that funds from the financial penalties should fund the work of the private rented sector team in the Council.

The cost of serving a financial penalty notice will be added to the penalty as a further deterrent to non-compliant landlords or agents. This is calculated by taking into account the time spent on investigating the case and may vary, depending on whether a case is either straightforward or alternatively more complex and takes a longer time.

Review of the penalty

The Council will review the penalty and, if necessary adjust the initial amount reached at step two to ensure that it fulfils the general principles set out above.

Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the total financial penalty arrived at in step two. Where this is not readily available, the Council may draw on information available from enforcing authorities and others about the general costs of operating within the law. Whether the penalty will have the effect of putting the offender out of business will be relevant but in some serious cases this might be an acceptable outcome.

4. Reductions

The Council will consider any factors which indicate a reduction in the penalty and in so doing will have regard to the following factors relating to the wider impacts of the financial penalty on innocent third parties; such as (but not limited to):

- the impact of the financial penalty on offender's ability to comply with the law or make restitution to victims;
- the impact of the financial penalty on employment of staff, service users, customers and local economy.

Reduction for early admission of guilt

The Council will take into account a potential reduction in penalty for an admission of guilt. The following factors will be considered in setting the level of reduction:

- The stage in the investigation or thereafter when the offender admitted guilt
- The circumstances in which they admitted guilt
- The degree of co-operation the offender offers with the investigation

The maximum level of reduction in a penalty for an admission of guilt will be one-third. In some circumstances, even where there is an admission of guilt, there may be no further reduction. For example, where the evidence of the offence is overwhelming or there is a pattern of criminal behaviour.

Any reduction should not result in a penalty which is less than the amount of gain from the commission of the offence itself.

5. Additional actions

In all cases the Council must consider whether to take additional action. This may include works in default, Interim Management Orders or Rent Repayment Orders. The Council cannot however take a prosecution case for the same conduct as is the subject of a financial penalty notice.

6. Totality principle

If issuing a financial penalty for more than one offence, or where the offender has already been issued with a financial penalty, the council will consider whether the total penalties are just and proportionate to the offending behaviour.

Where the offender is issued with more than one financial penalty, the Council will consider the following guidance from the definitive guideline on Offences Taken into Consideration and Totality.

'The total financial penalty is inevitably cumulative.

The Council should determine the financial penalty for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the LA.

The Council should add up the financial penalties for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate the Council should consider how to reach a just and proportionate financial penalty. There are a number of ways in which this can be achieved. For example:

- where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a financial penalty which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;
- where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate financial penalty for each of the offences. The Council should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the Council should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.

Where separate financial penalties are passed, the Council must be careful to ensure that there is no double-counting.'

7. Recording the decision

The officer making a decision about a financial penalty will record their decision giving reasons for coming to the amount of financial penalty that will be imposed.

PROCEDURE

The Council will issue the person deemed to have committed a relevant offence a notice of its proposal to impose a financial penalty ('notice of intent').

The Notice of Intent will include:

- The amount of the proposed financial penalty
- The reasons for proposing to impose the penalty
- Information about the right of the landlord to make representations

A landlord/agent who receives a Notice of Intent may make written representations to the Council about the intention to impose a financial penalty within 28 days from the when the notice was served.

Where written representations are received by the Council, a senior officer who was not previously involved with the case will consider the appeal. This will usually be the Environmental Health Shared Partnership Manager. The decision of the senior officer will set out their reasons for making their decision and the following options will be available to the

- Withdraw a notice of intent or final notice; or
- Reduce or increase the amount specified in a notice of intent or final notice
- Uphold the original decision to issue the notice of intent

At the end of the 28-day period, the Council will decide whether to impose a penalty and, if so, will set the amount of the penalty. If the decision is made to impose a financial penalty, the Council will serve a Final Notice on the person, which will include the following information;

- The amount of the financial penalty;
- The reasons for imposing the penalty;
- Information about how to pay the penalty;
- The period for payment of the penalty (28 days);
- Information about rights of appeal; and
- The consequences of failure to comply with the notice.

A person who receives a Final Notice may appeal to the First-tier Tribunal (Property Chamber) against:

- The decision to impose a penalty; or
- The amount of the penalty.

In these circumstances, the Final Notice is suspended until the appeal is determined or withdrawn.

MONITORING AND REVIEW

The Service will keep its regulatory activities and interventions under review, with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose, where the Council has direct control of these matters. Changes will be introduced into this document where necessary to accommodate new legislation, guidance and local needs.

APPLICATION OF THE POLICY

All Environmental Health Officers must have regard to this Policy when making enforcement decisions.