

# Private Sector Housing Enforcement Policy

**2022**

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# Introduction

The Council seeks to ensure that all properties let as residential properties throughout the Borough, including those in Private Ownership, are of good quality and are well managed.

The Policy sets out the way in which the Council intends to secure effective compliance with the relevant legislation whilst minimising the burden to the Council, individuals, organisations, and business, which includes:

- Housing conditions in the Private Rented Sector and Private Ownership
- Landlord's obligations in the Private Rented Sector
- Houses in Multiple Occupation (HMOs)
- Empty Homes
- Mobile Home Sites

The aim of this Policy is to govern the way in which enforcement is undertaken to achieve the following objectives:

- Good quality, healthy housing for households renting in the Private Sector and to prioritise action to those which present the greatest risks to the Health and Safety of the occupants or their visitors
- Private Sector Housing is not left empty for an unreasonable amount of time or becomes an eyesore and nuisance to neighbouring homes
- Houses in Multiple Occupation (HMOs) are safe and well managed, and all relevant Management Regulations are adhered to
- All Mobile Homes sites are safe and well managed

All enquiries relating to this Policy should be directed to the Private Sector Housing Team on (01509) 634651 or email to [private.housing@charnwood.gov.uk](mailto:private.housing@charnwood.gov.uk)

# Enforcement Principles

The Council recognises that each case is unique and will be considered on its own merits. When deciding on the appropriate action, Officers will consider the Law, Government Guidance, Council Policies and the sufficiency and reliability of the evidence.

When deciding on appropriate action, Officers will have regards to the Council's Corporate Enforcement Policy. The Council supports 5 Principles of Good Regulations, as specified under Part 2 of the Legislative and Regulatory Reform Act 2006, and will exercise enforcement activities in a way which reflects these, as outlined below:

## Proportionate

Any enforcement action taken will be proportionate to the risks and the seriousness of the breach. This will ensure that the most serious risks are targeted first.

## Accountable

Enforcement activities will be open to Public Scrutiny, with clear and accessible policies and a fair and efficient complaints procedure.

## Consistent

Enforcement duties will be carried out in a fair and consistent manner. Officers will need to exercise their professional judgement and discretion according to the circumstances of each individual case. However, the Council will have regards to current procedures, best practice and advice provided by Regulatory Delivery, other Agencies (such as Leicestershire Fire and Rescue, the Police, Trading Standards and the Health and Safety Executive) and other relevant professional bodies.

## Transparent

We will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return.

## Targeted

Enforcement will be primarily directed towards those activities that are likely to give rise to the greatest risks and most serious breaches of legislation, reflecting local need, and national and corporate priorities.

# Key Legislation

The Council will predominately use the following relevant legislation to meet the aims of the Policy:

## The Housing Act 2004

Part 1 of The Act deals with housing conditions. Parts 2 and 3 of the Act deals with Licensing. Part 4 includes provisions for dealing with Empty Homes.

## Prevention of Damage by Pests Act 1949

Allows the Council to serve a Notice requiring an owner to clear any land of vermin, remove waste, deposits, and accumulations likely to attract vermin.

## Local Government Miscellaneous Provisions Act 1982

Allows the Council to undertake any works necessary to prevent unauthorised entry or to prevent a building from becoming a danger to public health.

## Building Act 1984

Sections 77 and 79 may be used to require the Owner to make a ruinous or dilapidated property safe or to enable the Council to board the property up. Section 59 enables the Council to serve Notice on the Owner to make satisfactory provisions for drainage where not currently in place.

## Caravan Sites and Control of Development Act 1960 and Caravan Sites Act 1968

Allows the Council to deal with breaches of Licence Conditions for Caravan Parks, Mobile Home sites and Residential Park Home sites and gives basic protection from eviction to mobile home occupiers with residential contracts, other than by the obtaining of a Court Order.

## Environmental Protection Act 1990

Used where a property defect is considered prejudicial to health or causing a nuisance.

## Other Relevant Legislation

<b>Anti-social Behaviour Crime and Policing Act 2014</b>	<b>Deregulation Act 2015</b>
<b>Energy Act 2011, 2013</b>	<b>Enterprise and Regulatory Reform Act 2013</b>
<b>Local Government Miscellaneous Provisions Act 1976</b>	<b>Mobile Homes Act 1983</b>
<b>Housing Act 1985 and 1996</b>	<b>Protection from Eviction Act 1977</b>
<b>Housing and Planning Act 2016</b>	<b>Public Health Acts 1875, 1932, 1936, 1961, 1984</b>

The legislation detailed is not exclusive but gives a list of the main pieces of legislation used

# Tenure Groups

The Private Sector Housing team have investigation and enforcement powers relating to all Private Sector Housing regardless of tenure; however, the approach taken will vary depending on the tenure of the household.

## Private Tenants

Tenants within rented accommodation are reliant on their Landlord, or their Landlord's Agent, to maintain their homes in accordance with legal requirements. Where Landlords or Landlord's Agents are putting the Health or Safety of their Tenants or those occupying a neighbouring property at risk, or are failing to meet their statutory obligations, the Council will take formal action as required.

## Owner Occupiers

Owner occupiers are responsible for the maintenance and safety issues of their own home. Therefore, formal enforcement action against Owner Occupiers will be limited, except for situations where neighbouring properties are being affected in some way, for example a defect leading to water penetration into a neighbouring property or where there is an 'Imminent Risk' to the Occupier or any visitors to their property.

## Registered Providers

Registered Providers (RPs) (formerly known as Housing Associations) are regulated by Homes England. RPs have their own procedures in place for reporting problems and making complaints and usually have clear response times for addressing any issues.

The Private Sector Housing Team will not normally act against an RP unless the problem in question has been properly reported to the RP who has then failed to take appropriate action. The Council will consider enforcement action against an RP where there are significant risks to the Health and Safety of Tenants and or the wider Public.

# Working Relationships

## Private Sector Landlords and Decent and Safe Homes Accreditation.

Landlord Accreditation Schemes aim to address issues and raise standards in the Private Rented Sector, whilst supporting and providing benefits for Landlords. Landlords are encouraged to become accredited and to take advantage of training opportunities, both through their accrediting organisation and other training available regionally.

The Council works in partnership with DASH (Decent and Safe Homes) Services and encourages Landlords to seek accreditation through the DASH scheme to demonstrate their commitment to developing as a Landlord. In return the Council offer reductions in House in Multiple Occupation (HMO) Licensing fees to DASH Accredited Landlords. In the spirit of self-regulation, any complaints or referrals made about conditions in properties owned by a DASH Accredited Landlord will be referred to the Scheme body for the matters to be addressed in accordance with the Scheme rules.

As well as utilising social media and the local press to inform Landlords, the Council produce an E-Newsletter for Landlords, providing information and advice on Private Rented Sector matters and Legislative changes.

# Types of Action Available

The Strategic and Private Sector Housing Service will respond to enquiries about substandard, unsafe, and problematic housing and adopt a graduated approach to enforcement.

Before considering any action in respect of a tenanted property, where it is appropriate, the Tenant(s) will be encouraged to contact their Landlord about the problems to give the Landlord an opportunity to respond.

In some cases where the Tenant is considered vulnerable or the nature of the concern requires immediate investigation, this will not be appropriate.

## Deciding on the Course of Action

The course of action will be decided having regard to the circumstances of each case, including the:

- Amount and nature of disrepair
- Vulnerability of the Occupant, if any (e.g., elderly Occupants, young children).
- Effect the problem has on the Occupants, neighbours, or the surrounding area.
- Relevant legislation
- Relevant history of the Owners, Neighbours or Tenant, particularly the Owner's history of carrying out repairs at a pre-formal stage or following service of notice

## No Action

In the case of occupied homes, in some circumstances, it may be appropriate to take no action, for example.

- When the Health and Safety risk is sufficiently low, or when action would be disproportionate, or inappropriate in the circumstances of the case
- Having taken the tenant's views into account and the Council is not under a statutory duty to do so
- The allegations or complaints are unsubstantiated

In such cases, occupiers may be directed to other sources of advice and support, for example The Bridge Housing Support Service or Citizens Advice Bureau. In some cases, the Council will cease to provide a service, for example, where the Tenant unreasonably refuses access to the Property Owner or a Contractor to carry out works; or where a Tenant continually fails to engage with Council Officers.



## Advice and Guidance

Council Officers will offer the following:

- Advice as to how the complainant can request repairs or improvements without the need for intervention from the Council
- A letter or telephone call to the Property Owner (without a visit), advising them of the information that the Council has received and allowing them a reasonable period to address the issues

## Pre-formal Action

Pre-formal action involves:

- A visit to the property to further investigate the complaint
- Once completed, the Council will write to the Property Owner identifying the Hazards and advise on the repair or improvements that are required
- In the case of an Empty Homes complaint – the Council will write to the Property Owner requesting information about their intentions for the property and offering advice and assistance on returning the home to use

When taking pre-formal action of any nature, Officers will clearly differentiate between what is legally required and what is recommended as Good Practice.

Where it is deemed appropriate to deal with issues through pre-formal action, in the first instance, the Council will work with the Property Owner to help them comply with their regulatory requirements. Clear and concise information will be provided along with the Council's contact details.

In cases where the Property Owner refuses or fails to carry out satisfactory works because of pre-formal action, the case will usually progress to formal action.

## Formal Action

Examples of circumstances in which formal action would be taken include where:

- A pre-formal action has had no effect
- There is a lack of confidence, due to a history of non-compliance from the Property Owner
- The risk to Health, Safety and Wellbeing is such that immediate formal action is necessary

## Notice of Entry

Where a complaint of housing disrepair has been received and an inspection is required, a Notice of Entry is to be served under Section 239 of the Housing Act 2004. This informs all relevant parties of the Councils intended inspection.

If the complaint is of an urgent nature and the Council intend to use its emergency powers, this will negate the need for the service of a Section 239 Notice.

Where the Council are unable to gain access using a Notice of Entry or where such Notice will defeat the object of entry, the Council are able to make an application to the Magistrates Court for a Warrant to enter.

## Serving of a Statutory Notice

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Such statutory notices are likely to require repairs or improvements to be completed within a specified timescale or requiring a specific action. These include notices served under the Housing Act 2004:

- Improvement Notices – 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 reduce its effect so that it ceases to be a Category 1 hazard. Where the Council determines that an Improvement Notice should be served in respect of a Category 2 Hazard, it will require works considered sufficient either to remove the hazard or reduce it to an appropriate degree.

Suspended Improvement Notices will be considered where it is reasonable, for example when the deferring of the work required is of benefit to the personal circumstances of the occupants.

- Prohibition Orders – can be used in respect of both Category 1 and Category 2 hazards for all or part of a dwelling and are likely to be used if repair or improvement appear inappropriate, due to practicality or excessive cost.

This option may be employed to prevent occupation by a particular description of persons, for example premises with steep staircases or uneven floors which make them particularly hazardous to elderly occupants, or premises with open staircase risers that make them particularly unsuitable for infants.

- Hazard Awareness Notices – may be served to notify owner-occupiers of the existence of hazards, where the risk from the hazard is mitigated by the longstanding nature of the occupancy, or where it is judged appropriate to draw a landlord's attention to the desirability of remedial action as part of a measured enforcement response.

Failure to comply with the Notice or Order may result in works being carried out in default, a Civil Penalty or Prosecution.

Details of the Notice will be recorded on the Council's Local Land Register against the property to which it relates until the Notice is withdrawn or complied with.

This Register is available to the Public and anyone may search for entries upon payment of a fee (details of which can be found on the Council's Website). Potential purchasers of a property will normally search this Register.

Charges may be made for Enforcement Action.

See Appendix 1 'Charges and Fees for Formal Action'.

## **Emergency Remedial Action and Emergency Prohibition Orders**

Where a Category 1 Hazard exists, which poses an imminent risk of serious harm to the occupiers or others and immediate action is required to mitigate or remove the risk, appropriate emergency action will be taken. Examples may include risk of electrocution, fire, noxious gases, explosion, or structural collapse.

Where emergency remedial action is taken, further action will be taken to recover the full costs incurred by the Council.

## **Works in Default**

Where the Property Owner has failed to undertake legally required works within the permitted time, the Council may carry out the Works in Default. This will only be considered to remove serious Hazards.

Once the Council has started works, it is an offence to obstruct Council Officers, or any Contractors to carry out the Works.

The cost of the Works and all other associated relevant costs will be recovered in accordance with the relevant Statutory Provisions. All outstanding debts will be registered as a Local Land Charge against the property and where interest can be charged, this will be added to the debt. The Council may consider using the Enforced Sale Procedures to recover the charges owed, where appropriate.

Carrying out Works in Default is a Discretionary Power, and the Council reserves the right not to do so where the costs of the Works is likely to be high, or there may be difficulties recovering the costs.

See Appendix 1 'Charges and Fees for Formal Action' for further information.

## **A Simple Caution**

Charnwood Borough Council has the power to issue informal cautions as an alternative to prosecution, where a person admits an offence and consents to the informal caution. Where an informal caution is offered and declined, Charnwood Borough Council is likely to consider prosecution.

An informal caution will be kept on the Council's Register of Cautions. It is likely to influence how Charnwood Borough Council deal with any similar breaches in the future and may be cited in court if the offender is subsequently prosecuted for a similar offence.

## Prosecution

The Council may prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute, Charnwood Borough Council has regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions.

Prosecution will only be considered where Charnwood Borough Council is satisfied that it has enough evidence to provide a realistic prospect of conviction against the defendant(s). Before deciding that prosecution is appropriate, Charnwood Borough Council will consider all relevant circumstances carefully and will have regard to the following public interest questions:

- How serious is the offence committed
- What is the level of culpability of the suspect
- What are the circumstances of, or harm caused to any victim
- Was the suspect under 18 at the time of the offence
- What is the impact on the community
- Is prosecution a proportionate response
- Do sources of information require protecting

The questions above are not exhaustive and not all the questions may be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will vary according to the facts and merits of each case.

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence.

## Civil Penalties

The power to impose a Civil Penalty as an alternative to prosecution was introduced under the Housing and Planning Act 2016. See Appendix 2 'Civil Penalties' for further details.

## Banning Orders

Where a Property Owner has been successfully prosecuted for certain offences, the Council can apply for a Banning Order.

In certain circumstances, the Council may apply for a Banning Order. Housing related Banning Order offences include:

- Illegally evicting or harassing a residential occupier in contravention of the Protection from Eviction Act 1977 or the Criminal Law Act 1977

- Any of the following offences under the Housing Act 2004
  - Failure to comply with an Improvement Notice
  - Offences in relation to Licensing of HMOs
  - Allowing an HMO that is not subject to Licensing to become overcrowded
  - Failure to comply with Management Regulations in respect of HMOs
  - Failure to comply with a Prohibition or Emergency Prohibition Order
- An offence under the Health and Safety at Work Act etc. Act 1974 where a person contravenes Section 36 of the Gas Safety (Installation and Use) Regulations 1998
- An offence under Section 32 of the Regulatory Reform (Fire Safety) Order 2005

When someone is convicted of such an offence, a Banning Order would have the effect of banning a person from:

- Letting housing in England
- Engaging in Letting Agency work that relates to housing in England
- Engaging in Property Management work that relates to housing England
- Holding a licence under Part 2 or 3 of the Housing Act 2004

## Rent Repayment Orders

Where Housing Benefit has been paid to a Landlord and the Council are satisfied that the Landlord has committed one or more specific offences, the Council, or in some cases the Tenant, can apply for a Rent Repayment Order. See Appendix 3 'Rent Repayment Orders' for information.

## Who Decides What Enforcement Action is Taken

For less serious infringements of the law, decisions about the most appropriate course of action are usually determined by the Investigating Officer(s). Decisions are based upon professional judgment, legal guidelines and priorities set by the council and/or Central Government.

For more serious offences, where the nature of the offence points towards a Civil Penalty or Prosecution, any decision will initially be considered at a case conference attended by the Investigating Officers, the Private Sector Housing Manager, a representative from Legal Services and in some cases, the Head of Strategic and Private Sector Housing.

## Publicity

Where appropriate, publicity will be actively sought for any enforcement action taken which could draw attention to the need to comply with the law or deter anyone else from non-compliance.

Information about enforcement actions will be made available on request subject to the restrictions placed on the authority by the Data Protection Act 2018 and the Freedom of information Act 2000.

# Housing Standards

## The Housing Health and Safety Rating System (HHSRS)

The Housing Act 2004 places a duty on the Council to keep housing conditions in the area under review and to take appropriate action where necessary.

Part 1 of the Act contains a system for assessing housing conditions, known as the Housing Health and Safety Rating System (HHSRS), which is used in the enforcement of housing standards in all types of residential accommodation.

Where Officers have reason to enter a home, they will inspect the whole property (including associated paths, yards, gardens, and outbuildings etc.) using the HHSRS.

A Hazard is defined as any risk of harm to the Health or Safety of an actual or potential occupier, or visitor to the property, that arises from a deficiency such as the failure of an element; for example, the heating system or the roof does not meet the ideal. The failure could be because of the original design or because of disrepair or deterioration. There are 29 potential Hazards including 'Damp and Mould Growth', 'Excess Cold', 'Falls (on level surfaces, stairs or between levels)', 'Electrical Hazards' and 'Fire'.

The HHSRS contains 2 categories of possible Hazards:

- Category 1 Hazards represent a danger to health or safety and the Council has a duty to take appropriate action to deal with these
- Category 2 Hazards represent a lesser danger, and the Council will exercise its discretionary power to reduce these where appropriate

Formal actions (where there is no Interim Management Order in force) that can be considered under Part 1 of the Act are:

- Improvement Notice (Housing Act 2004, Section 11 and 12)
- Emergency Remedial Action (Housing Act 2004, Section 40 Category 1 Hazards only)
- Prohibition Order (Housing Act 2004, Section 20 and 21)
- Emergency Prohibition Order (Housing Act 2004, section 43, Category 1 Hazards only)
- Hazard Awareness Notice (Housing Act 2004, Section 28 and 29)
- Demolition Order (only available where there is a Category 1 Hazard)
- Clearance area (all properties must have a Category 1 Hazard)

When taking formal action under Part 1 of the Housing Act 2004, the Council will prepare a statement of reasons, under Section 8, which will indicate why that course of action has been taken. The statement of reasons will accompany all Notices and Orders served, including copies.

The recipient of a Notice or Order may appeal against it (other than the Hazard Awareness Notice) to the Property Chamber of the First-tier Tribunal. Details of how to appeal will be provided with the Notice or Order where applicable.

Under Section 49 of the Housing Act 2004, the Council will make a reasonable charge for taking enforcement action. See Appendix 1 'Charges and Fees for Formal Action' for information.

## Environmental Protection Act 1990

Under the Environmental Protection Act 1990, property in such a state as to be prejudicial to Health or a nuisance constitutes a 'Statutory Nuisance'.

The Council has a duty to serve an Abatement Notice, where it is satisfied that a Statutory Nuisance:

- Exists
- Is likely to occur
- Is likely to recur

The Abatement Notice will:

- Require the abatement of the nuisance or prohibiting or restricting its occurrence.
- Require the execution of such works or steps (where necessary) for these purposes
- Specify the time or times within which the Notice is to be complied within.
- Indicate the rights of the recipient and time limits for appeal

## Energy Efficiency

Properties which have an EPC below band E are classed as 'substandard' by regulations  
Unless the property is exempt, a landlord should not:

- from 1 April 2018, be granting a tenancy or renewing an existing tenancy for a property that has an EPC rating below band 'E'. Renewal in this context means when the tenancy is replaced by a new tenancy or becomes statutory periodic
- from 1 April 2020, continuing to let a property that has an EPC rating below Band 'E'

The EPC must be no more than ten years old.

A breach of the regulations does not affect the validity of any tenancy granted.

Enforcement is by the local authority. The landlord can be fined if they breach the regulations  
The penalty notice cannot be issued more than 18 months after the date of the breach.

## Exemptions from Energy Performance requirements

The regulations governing the minimum level of energy efficiency are limited to tenants of properties let under:

- an assured or assured shorthold tenancy
- a regulated tenancy



- an assured agricultural occupancy or occupancy granted under the Rent (Agriculture) Act 1976

The Secretary of State has the power to extend the scope of the regulations further.

The minimum energy efficiency requirements do not apply to tenancies let by private registered providers of social housing in their role as social landlords in cases where the tenant refuses consent to allow the energy efficiency improvement to be carried out. This applies if consent has been refused at any time in the last five years unless, from 1 April 2019, that tenant's lease comes to an end if the required improvements would result in a reduction of more than 5 per cent in the market value of the property for six months (temporary exemption) from the date a landlord becomes the landlord of the property in question in certain circumstances

## Cost exemption

Until 31 March 2019, landlords are not required to make energy efficiency improvements if they cannot be financed (at no cost to the landlord) by central government, a local authority, or any other person, either separately or in combination.

A 'cost cap' was introduced on 1 April 2019 so that a landlord can be expected to make improvements identified as necessary and costing £3,500 (including VAT) or less even if they must part or wholly finance them.

Cost exemptions obtained between 1 October 2017 and 31 March 2019 because no financing was available expire on 31 March 2020. At this point, the landlord must reapply, subject to the cost cap (unless another exemption is in place).

## Exemptions register

Landlords who are relying on an exemption must register on the National Private Rented Sector (PRS) Exemptions Register and give certain prescribed information including a copy of the energy performance certificate and details of recommended improvements as well as the exemption which applies.

Where work is exempt because it would cost above the cap (from 1 April 2019), the landlord must include three quotes for the cost of the work as evidence.

If, from 1 April 2019, it is more than the cap (or until 31 March 2019 cannot all be financed other than by the landlord), but no funding is available, evidence of the lack of funding should be provided.

More information is available in the guidance [PRS exemptions and exemptions register evidence requirements](#).

## Restriction on service of Section 21 notice

A landlord cannot serve a valid section 21 notice to end an assured shorthold tenancy (AST) if they have not provided a tenant with a copy of the EPC.

This restriction only applies to ASTs granted in England on or after 1 October 2015.

Tenant requests for consent for energy efficiency improvements.

From 1 April 2016, a private-sector tenant can request their landlord's consent for a relevant energy efficiency improvement in their home.

A relevant energy efficiency improvement includes draught proofing, cavity wall insulation, the installation of heating and hot water controls such as timers and thermostats, and replacement glazing.

To be a relevant energy efficiency improvement it must be wholly financed by:

- means of funding provided by central government, a local authority or any other person
- the tenant
- a combination of the above two arrangements

As such, a request is only relevant if there is no cost to the landlord. The tenant's request must:

- be in writing (it can be posted)
- specify the improvements for which consent is being sought

## Who can request consent from the landlord?

The power to request a relevant energy efficiency improvement is limited to private-sector tenants of properties let under:

- an assured or assured shorthold tenancy
- a regulated tenancy

The Secretary of State can extend the power to request an improvement to other types of tenants. To date, the power has been extended to specified tenancies granted to agricultural occupiers.

Tenancies let by private registered providers of social housing are excluded.

## When a landlord can refuse an energy efficiency improvement

A landlord can only refuse consent to a relevant energy efficiency improvement on limited grounds.

This includes when the request was made after the:

- tenant had served a notice to quit
- landlord had served a notice to end the tenancy and possession proceedings may be brought

A landlord can refuse consent if the improvements would result in a reduction of more than five per cent in the market value of the property.

See Appendix 4 'Minimum Energy Efficiency Standards' for further information.

# Houses in Multiple Occupation

The Strategic and Private Sector Housing Service is responsible for ensuring that all Houses in Multiple Occupation (HMOs) comply with necessary Management Regulations and Mandatory and Additional Licensing Schemes. Further information can be found in the HMO Licensing Policy.

## House in Multiple Occupation (HMO) – Definition

The definition of an HMO is given in the Housing Act 2004.

Premises classed as HMOs are:

- a building or flat in which two or more households share a basic amenity, such as bathroom, toilet or cooking facilities: this is known as the 'standard test' or the 'self-contained flat test'
- a building that has been converted and does not entirely comprise of self-contained flats: this is known as the 'converted building test'
- a building that is declared an HMO by the local authority
- a converted block of flats where the standard of the conversion does not meet the relevant building standards and fewer than two-thirds of the flats are owner-occupied: this is known as a section 257 HMO

A household is generally taken to mean a single person, cohabiting partners, or people living together who are members of the same family. There are circumstances where people will be regarded as a single family where they are not related, for example where accommodation is provided for a carer, au pair, or nanny etc.

Two unrelated persons sharing a flat or house would not constitute an HMO.

To be classed as an HMO the property must be used as the tenants only or main residence. Properties let to students and migrant workers will be treated as being their only or main residence, as would properties used as domestic refuges and hostels.

Schedule 14 of the Housing Act 2004 exempts certain buildings from the HMO definition.

## Mandatory HMO Licensing

The Housing Act 2004 requires mandatory licensing of certain [houses in multiple occupation \(HMOs\)](#).

Mandatory licensing is required where the HMO is occupied by five or more persons living in two or more separate households. Children of any age contribute to the number of occupants.

Mandatory licensing includes HMOs that meet the:

- standard test
- converted building test
- self-contained flat test (unless it is a purpose built flat within a block comprising three self-contained flats or more)

Where a building (or part of a building) does not meet one of the above tests but is subject to an HMO declaration, it is not subject to mandatory licensing.

Before 30 September 2018 only HMOs comprising three or more stories were subject to mandatory licensing.

Where a property was already subject to additional or selective licensing before 30 September 2018, this remains valid until the end of the licence.

# Additional HMO Licensing

On the **(Date to be confirmed)** Charnwood Borough Council designated the whole of the Borough subject to Additional Licensing in respect of the following types of HMOs:

- HMOs of any size of building that are occupied by 3 or 4 persons: and
- Section 257 HMOs where all the self-contained flats are let and occupied

## Licensing Offences

Where the Council considers that a property needs to be entered to ascertain whether an offence has been committed, an Authorised Officer may enter the property at any reasonable time without giving prior Notice. For example, if the Council receives a report of a property being used as an unlicensed HMO, a visit may be arranged without giving prior notice.

It is an offence to be a person having control of or managing a licensable house in multiple occupation (HMO) without a licence. This applies to mandatory and additional licences.

Such a person may have a defence if they have applied for temporary exemption from the requirement to have a licence. No offence will have been committed once an application for a licence or for a temporary exemption notice has been submitted.

Licence holders or persons in control may have committed an offence if they are either:

- knowingly permit another person to occupy and this results in more persons or households occupying than authorised by a licence, or,
- breach any condition of a licence

## Defences

There is a general defence of 'reasonable excuse'. The Court of Appeal has held that a landlord could not rely on a defence of reasonable excuse on the basis that it had been told by a local authority employee that it did not need to apply for a license until a planning issue was resolved.

Where an HMO becomes licensed for the first time but there are more people in occupation (and were in occupation previously) than the licence permits, it is a defence to any action that the licence holder is taking reasonable steps to reduce the numbers to comply with the licence.

Where an HMO that should be licensed is registered under a registration scheme with control provisions when the licensing provisions commence, it will be deemed to be licensed and the licence will last until such time as the registration would be due for renewal

The Council will investigate all cases of HMOs that are found to be operating without a licence.

This is a criminal offence, and if the Council is satisfied that it has enough evidence to provide a realistic prospect of conviction, consideration will be given the issuing of a financial penalty of up to £30,000 (see Appendix 2 for further details), or to prosecution, which could lead to an

unlimited fine. The same approach will be taken in instances of an HMO being occupied by more persons than a licence allows.

In the case of breaches of HMO licence conditions, the same approach will be taken, and consideration will be given the issuing of a financial penalty (see Appendix 2 for further details), or to prosecution, which could lead to a fine of up to £5,000 per offence.

In addition to the above actions for licensing related offences, the Council will consider seeking a Rent Repayment Order after a person is the subject of a successful Civil Penalty or Prosecution (see Appendix 3 for further details).

## Refusal of a Licence

An HMO licence will generally run for 5 years, but we may issue a licence for a shorter period in some circumstances. For example:

- if we have concerns over the management arrangements
- if there has been the need for previous intervention by the Council
- if there has been a history of non-compliance, or
- if planning permission is needed for the building but has not been obtained, a shorter licence period can be issued.

In more serious cases, or where we consider the applicant is not a 'fit and proper person' to hold a licence the Council may refuse to grant one. This will normally only be the case if the Council are of the view that there are serious difficulties with the management of the property, the fitness of the applicant to be involved in its management, or if the applicant is subject to a Banning Order. In such cases alternative licensing and management arrangements will need to be put in place. If arrangements for the satisfactory management of an HMO cannot be put in place and there is no prospect of the HMO being licensed within a reasonable time the Council may make an Interim Management Order.

The order can last for up to a year until suitable permanent arrangements can be put in place. If the order expires and the issue has not been resolved the Council can then make a Final Management Order which can last for up to five years and can be renewed.

## Licence Conditions

Conditions listed on a Licence cover the provision of amenities and property management standards and include the number of persons and households that are permitted to occupy a property. Failure to comply with the Conditions of a HMO Licence without reasonable excuse, will lead to the Council considering formal action. This is a criminal offence, and if the Council is satisfied that it has enough evidence to provide a realistic prospect of conviction, consideration will be given the issuing of a financial penalty (see Appendix 2 for further details), or to prosecution, which could lead to a fine of up to £5,000 per offence.

In addition to the above, the Council will consider seeking a Rent Repayment Order after a person is the subject of a successful Civil Penalty or Prosecution (see Appendix 3 for further details).

The Council will consider the revocation of a licence where a serious breach of a condition of the licence or repeated breaches of such a condition occurs.

## The Management of Houses in Multiple Occupation (England) Regulations 2006

The Regulations apply to all HMOs, except for section 257 HMOs have their own broadly similar, management regulations, which impose duties on a person managing an HMO as per the following:

Duties	Requirements
<b>Providing and clearly displaying information to all occupiers</b>	The Manager should provide his or her name, address, and telephone contact number to all occupiers
<b>Taking safety measures</b>	Maintain means of escape and ensure that they are free from obstruction. Ensure fire safety measures including fire equipment, alarms and signage are correctly positioned and in good working order (the requirement to display appropriate signage, indicating the location of the means of escape from fire does not apply where the HMO has 4 or fewer occupiers). The Manager must make all reasonable efforts to protect occupiers from injury having regard to design, structural condition, and occupancy numbers, paying particular attention to roof and balcony safety and protection from low sill heights
<b>Maintaining the water supply and drainage</b>	Ensuring supply is in good, clean, and working condition whilst avoiding unreasonable interruption including all tanks, cisterns, and water fittings (pipes, baths, water closets etc)
<b>Supplying and maintaining gas and electricity</b>	Having it regularly inspected and not causing it to be unreasonably interrupted. The Manager must supply the Council with the annual Gas Certificate or 5 yearly fixed electrical installation reports within 7 days of such a request being made by the Council and issued by recognised Gas (an engineer approved under Regulation 3 of the Gas Safety (installation and Use) Regulations 1998) and electrical engineers respectively
<b>Maintaining common parts in good repair, safe working condition and kept free from obstruction</b>	This includes handrails and banisters, stair carpeting, window openings and communal area light fittings; the duty extends to outbuildings, gardens, boundary walls and fences in addition to shared communal areas, fixtures, fittings, and appliances
<b>Maintaining living accommodation and any furniture</b>	Ensure the living accommodation and furniture is in a clean condition at the beginning of a person's occupation of it. The Manager's duty does not extend to maintenance of fixtures, fittings or appliances that require repair due to irresponsible Tenant behaviour, or to furniture outside the control of the Manager



**Providing suitable and sufficient** Ensure compliance with the Council's household waste storage and disposal scheme at the HMO pending collection

Where compliance with the Management Regulations has not been achieved, then enforcement will be considered based on the impact of the breaches, thereby providing tenants and neighbours confidence that the Council are addressing any issues relating to all HMOs. The enforcement options that will be considered by the Council are a financial penalty of up to £30,000 (see Appendix 2 for further details) or prosecution, which could result in an unlimited fine.

# Selective Licensing

On the **(Date to be confirmed)** Charnwood Borough Council designated the 2 Wards of Lemyngton and Hastings subject to Selective Licensing. The scheme will run for five years when it may be renewed.

Selective Licensing is a scheme for landlords who privately rent properties that meet the below criteria and fall within the designated areas for Selective Licensing.

A non- exempt privately rented property will require a licence under the Selective Licensing scheme if there is:

- 1 occupant
- More than 1 occupant who form 1 household (eg a family) or.
- Two unrelated individuals who form two households (eg 2 friends)

Where the privately rented property does not meet the above/has more occupants; it is likely to fall under an HMO licensing scheme. See the Selective Licensing Policy and HMO Licensing Policy for more information.

A Selective Licence is required for each property.

## Licensing Offences

Where the Council considers that a property needs to be entered to ascertain whether an offence has been committed, an Authorised Officer may enter the property at any reasonable time without giving prior Notice. For example, if the Council receives a report of a property being used as an unlicensed HMO, a visit may be arranged without giving prior notice.

Section 95 of the Housing Act 2004 sets out several licensing related offences, including:

- Operating an unlicensed property; A person controlling or managing a house which is required to be licensed under Part 3 of the Act, without the required licence, is committing an offence. However, no offence is committed by a person who has an outstanding application either for a licence, or for a temporary exemption
- Breach of any condition of a licence

It is a defence for any of these offences if the person accused can demonstrate a reasonable excuse.

The Council will investigate all cases of houses that require to be licensed, that are found to be operating without a licence. This is a criminal offence, and if the Council is satisfied that it has enough evidence to provide a realistic prospect of conviction, consideration will be given the issuing of a financial penalty of up to £30,000 (see Appendix 2 for further details), or to prosecution, which could lead to an unlimited fine.

In the case of breaches of licence conditions, the same approach will be taken, and consideration will be given the issuing of a financial penalty (see Appendix 2 for further details), or to prosecution, which could lead to a fine of up to £5,000 per offence.

In addition to the above actions for licensing related offences, the Council will consider seeking a Rent Repayment Order after a person is the subject of a successful Civil Penalty or Prosecution (see Appendix 3 for further details).

## Refusal of a Licence

A Selective Licence will generally run for 5 years, but we may issue a licence for a shorter period in some circumstances. For example:

- if we have concerns over the management arrangements
- if there has been the need for previous intervention by the Council
- if there has been a history of non-compliance, or
- in more serious cases, or where we consider the applicant is not a 'fit and proper person' to hold a licence, the Council may refuse to grant one.

This will normally only be the case if the Council are of the view that there are serious difficulties with the management of the property, the fitness of the applicant to be involved in its management, or if the applicant is subject to a Banning Order. In such cases alternative licensing and management arrangements will need to be put in place. If arrangements for the satisfactory management of a house cannot be put in place and there is no prospect of the house being licensed within a reasonable time, the Council may make an Interim Management Order.

The order can last for up to a year until suitable permanent arrangements can be put in place. If the order expires and the issue has not been resolved the Council can then make a Final Management Order which can last for up to five years and can be renewed.

## Licence Conditions

Conditions listed on a Licence will regulate the management, use, or occupation of the house concerned. Failure to comply with the Conditions of a Selective Licence without reasonable excuse, will lead to the Council considering formal action. This is a criminal offence, and if the Council is satisfied that it has enough evidence to provide a realistic prospect of conviction, consideration will be given the issuing of a financial penalty (see Appendix 2 for further details), or to prosecution, which could lead to a fine of up to £5,000 per offence.

In addition to the above, the Council will consider seeking a Rent Repayment Order after a person is the subject of a successful Civil Penalty or Prosecution (see Appendix 3 for further details).

The Council will consider the revocation of a licence where a serious breach of a condition of the licence or repeated breaches of such a condition occurs.

# Empty Homes

Long term Empty Homes are a waste of valuable housing resource and can sometimes be a source of nuisance to those who live nearby. The Council aims to return long term Empty Homes into use to endeavour to meet the growing housing demand.

The Empty Homes Officer will focus on long term Empty Homes (empty for 6 months or more) and will work with the homeowners to identify their plans to bring the home back into use. The Council's initial approach will be to offer support, advice, and assistance with regards to selling, renovating, or finding Tenants to make use of the Empty Home.

Where Owners do not engage and homes remain empty despite the Council's efforts, formal action will be considered to secure that the home is bought back into use.

## Empty Dwelling Management Order

Part 4 of the Housing Act 2004 introduced 2 types of Empty Dwelling Management Order (EDMO), an interim EDMO and a final EDMO. An interim EDMO allows the Council to take steps to secure occupation of an Empty Home. A final EDMO is made in succession to an interim EDMO for the purpose of securing that a home becomes and remains occupied.

The Council will seek partner arrangements with Registered Providers or Private Sector Managing Agents to facilitate a Leasing Scheme for the management of properties under EDMOs.

An EDMO may be used where:

- An Owner leaves a home empty for at least 2 years and has no intention of bringing it back into use; and
- The Empty Home is causing a nuisance and blighting the local community; and
- The property does not fall within any exempt categories as defined by: Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006

The Council will consider the rights of the Owner under Article 8 of The Human Rights Act 1998 as well as the interests of the wider neighbourhood.

Where appropriate, the Council will conduct surveys consulting with residents on the Council's intention to bring the property back into use to gauge support. Responses will be gathered to support the potential application for authorisation to the First-Tier Tribunal (Property Chamber). The Council will give the Owner at least 3 months warning before an application for an Interim EDMO is made.

The Council will give at least 24 hours' Notice to the Owner of their intention to entry. If entry to the property cannot be made, a warrant to enter the property will be sought.

The interim EDMO becomes operative when it is made and a copy of the Order and Notice will be served on every person having an estate or interest in the property concerned, within 7 days of the commencement of the Order. Interim EDMOs will be registered as a Local Land Charge. Details of how to appeal the Order and the appeal period for doing so will be included.

An Interim EDMO will expire after a maximum of 12 months. At this point the Council can make a final EDMO to continue to manage the property if it remains unoccupied or is likely to become unoccupied again.

The final EDMO process and the making of an Order do not require the consent of an Owner. Once authorised, the Council has the right to possession of the property and can do anything an Owner can do other than dispose of the property.

Under the Housing Act 2004, the Council is under a duty to keep a Public Register of the Interim or Final Empty Property Management Orders.

## **Compulsory Purchase Orders**

Compulsory Purchase Orders (CPOs) can be made under several pieces of legislation for several reasons including the clearance of unfit housing or the acquisition of individual Empty Homes for continued housing use under the provisions of the Housing Act 1985, Development or Regeneration under the Town and Country Planning Act 1990 and for local road schemes under the Highways Act 1980.

CPOs will be considered where the Council is able to make a compelling case for a home to be compulsorily purchased to facilitate the renovation and reoccupation of an Empty Home. The purchase would have to be in the interest of the Public and where pre-formal attempts to work with the Owner to bring the home into use have been unsuccessful.

The Council will have to show that all other options have been exhausted before a CPO can be granted.

## **Enforced Sale**

Enforced sale allows the Council to sell properties to release money tied up in the value to recover a debt owed to them. In addition, this can serve indirectly as a way of bringing an Empty Home back into use.

This action entails the service of a Section 103 Law of Property Act 1925 Notice on the Owner, the property sold at Auction, and the cost of the statutory works, administration and the Land Registry fees are recovered from the sale.

This option may be used if a charge has been placed against a property, for example because of Works in Default by the Council, such as boarding up or clearance of rubbish or even for the non-payment of Council Tax.

# Mobile Homes

Local Authorities are responsible for safeguarding the interests of Mobile Home Residents living on Residential Mobile Home sites through the Licensing regime under the Caravan Sites and Control of Development Act 1960 as amended by the Mobile Homes Act 2013.

## Caravan Sites and Control of Development Act 1960 as amended by the Mobile Homes Act 2013

All site Owners are required to obtain a Site Licence before any land may be used as a Caravan Site.

The Council has powers to attach Licence Conditions to a Site Licence that are necessary or desirable for the interests of people living on the site or the Public at large, for example the number of units, the size of the units, the positioning of the units, sanitary provisions etc.

In formulating Site Licence Conditions, the Council must have regard to the Model Standards 2008 for Caravan Sites in England: Caravan Sites and Control of Development Act 1960, Section 5.

Section 8 of the 1960 Act allows the Council to change Licence Conditions at any time following consultation with the site owner.

The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 (“the Regulations”) require the manager of a relevant protected site to be a Fit and Proper Person.

The occupier of a relevant protected site under the Regulations must apply to the Council for the relevant person (themselves or their appointed manager) to be added to the register of fit and proper persons (“the register”).

The occupier may only apply to be added to the register if they hold, or have applied for, a site license for the site. This provision applies where the occupier or site manager is a registered company.

Existing occupiers will be required to submit a completed application before 1 October 2021. New occupiers will be required to make an application within the relevant period in accordance with the Regulations.

A local authority must be satisfied that the site owner “*is a fit and proper person to manage the site*” or, if the owner does not manage the site, “*that a person appointed*” to do so by the site owner “*is a fit and proper person to do so*” or has, with the site owner’s consent, “*appointed a person to manage the site.*”

Where a site owner or their manager fails the fit and proper person test, and they are unable to identify and appoint a suitable alternative manager, who must pass the fit and proper person assessment, the local authority can instead appoint a person to manage the site, but only with the consent of the site owner.

If the Council must appoint a person to manage a site, with the occupier's consent, the costs incurred by the Council will be recovered from the occupier in accordance with the Regulations. See Appendix 7 for full details of the Council's determination Policy in respect of the fit and proper person test for entry onto the register of fit and proper persons under the Caravan Sites and Control of Development Act 1960 (as amended).

## Enforcement

Section 9A of the Caravan Sites and Control of Development Act 1960 allows the Council to serve Compliance Notices on the Site Owner, where a Breach of a Site Licence Condition has occurred.

Where possible, an informal approach will be taken in the first instance, working to an agreed schedule of works provided to the site owner in writing.

A Compliance Notice can only be used in relation to Breaches of the Site Licence Conditions and will:

- Set out the Condition which has been breached and the details of the failure
- Detail the steps the Site Owner must take to remedy the Breach of the site Licence Conditions(s)
- Specify a timescale for completion
- Include the Right of Appeal against the Notice to the First-tier Tribunal. See Appendix 1 'Charges and fees for Formal Action' for further information on charges in respect of Compliance Notices

Failure to comply with a Compliance Notice within the given timescale is an offence which on conviction carries a fine. Where the Site Owner is convicted of an offence the Council may carry out Works in Default. Where the Licence Holder has been convicted on 2 or more previous occasions for failing to comply with a Compliance Notice, the Council may apply to the Court for revocation of the Site Licence.

The Council will take emergency action where the Site Owner has failed or is failing to comply with a Site Licence Condition and where, because of such failure, there is an imminent risk of serious harm to the Health or Safety of any person who is or may be on the land.

# Resources and Monitoring

In Order to deliver the Private Sector Housing Enforcement Policy, the Council will utilise all available resources across its own Services and its external Partners. The Policy will be monitored and reviewed on an annual basis or more frequently as changes in Legislation occur.

## Resources

The key resources required to deliver this Policy include:

- Housing Specialist Environmental Health Officers and Housing Standards Officers
- A close working relationship with The Bridge, Leicestershire Fire and Rescue, Trading Standards, Police, Development Control, Enviro-Crime, Environmental Protection, Community Safety, Electoral Registration, Local Councillors and Residents Groups and Associations
- A close working relationship with Legal Services. It is imperative and essential that legal action is taken promptly and in accordance with the law in problematic cases
- Funds to resource the team and implement enforcement action where required.
- All Civil Penalties will be used to finance further enforcement of standards in the Private Rented Sector in line with the Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017

## Monitoring

The Policy will be monitored and reviewed on an annual basis or more frequently as changes in legislation occur.

Minor changes which make no significant difference to service provision will be made to the document under delegated authority by the Head of Strategic and Private Sector Housing in consultation with the Lead Member for Housing.

Should the Policy be impacted by significant changes or financial implications, it will be taken to Cabinet for consideration.



# Appendix 1: Charges and Fees for Formal Action

## Housing Act 2004

Under Section 49 of the Housing Act 2004, the Council will make a reasonable charge for taking enforcement action in the following circumstances:

- Serving an Improvement Notice under Section 11 or 12
- Making a Prohibition Order under Section 20 or 21
- Taking emergency remedial action under Section 40
- Making an Emergency Prohibition Order under Section 43 or
- Making a Demolition Order under Section 265 of the Housing Act 1985
- Carrying out a review under section 17 (review of Suspended Improvement Notices) or Section 26 (review of Suspended Prohibition Orders) or
- Serving copies of the Council's decision on such a review

Where expenses are to be charged, they will be made relating to all stages of enforcement as detailed in Section 49 of the Housing Act 2004 and will be charged at the current hourly Officer rate (with on-costs). The average cost for the service of an Improvement Notice is £400, but an exact calculation of officer time will be undertaken for each notice where a charge is made, and the recipient of the notice will be advised of the charge.

In exceptional circumstances, the Council may exercise its discretion and decide not to charge for the cost of enforcement. An example may be in the case of a Landlord wishing to complete the necessary works at the pre-formal stage, but the Tenant requesting that the works be completed after they have moved out, leading to the service of a Suspended Improvement Notice. Such decisions will be made by the Private Sector Housing Manager.

## Caravan Sites and Control of Development Act 1960

Charges will be made for the serving of a Compliance Notice under Section 9A of the Caravan Sites and Control of Development 1960, relating to all stages of enforcement at the current Officer hourly rate (with on costs). A demand for expenses which is served in conjunction with a compliance Notice will be registered as a Local Land Charge, which will be removed once the full amount has been recovered.

See the Park Homes Fee Policy for further information on Fees and Charges.

## Works in Default

Where the Council undertakes Work in Default, or exercises its power to take emergency remedial action, it will seek to recover expenses reasonably incurred in doing so, in line with relevant statutory provisions, from the relevant person i.e., the full cost of the works carried out and the full cost of the Officer time taken (current Officer hourly rate including on-costs).

Expenses will be recovered via a demand for payment of the charge. As from the time that the demand becomes operative, the sum recoverable will be registered as a Local Land Charge on the property concerned until recovered and the debt will be pursued. If interest can be charged while the debt remains unpaid, this will be added to the debt.

# Appendix 2: Civil Penalties

Civil Penalties may be used 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 HMOs - Section 72
- Offences in relation to Licensing of houses - Section 95
- Failure to comply with an overcrowding Notice – Section 139
- Breach of Management Regulations in respect of an HMO – Section 234

In addition, a Civil Penalty can be imposed for a breach of a Banning Order, or under regulation 11 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, where the Council is satisfied, beyond a reasonable doubt, that a private landlord has breached a duty under Regulation 3. See Appendix 5 Electrical Safety Standard Regulations.

## The Decision to Prosecute or Issue a Civil Penalty

Where the Council considers that an offence detailed above has been committed, it will decide whether to Prosecute or to issue a Civil Penalty.

Any decision to Prosecute or to issue a Civil Penalty will initially be considered at a case conference attended by the Investigating Officers, the Private Sector Housing Manager, and a representative from Legal Services.

When making the decision, the Council will have regard to the provisions of The Code for Crown Prosecutors as issued by the Director of Public Prosecutions:

- The Evidential Test: The Council will consider whether there is sufficient evidence to provide a realistic prospect of a conviction for each offence (considering any potential defence). This will not require that the evidence is overwhelming, but that an objective, impartial and reasonable court, properly directed and following the law, is more likely than not to convict the defendant. The Council will review and assess the evidence as part of this test.

If the evidential test is satisfied, the Council will proceed to the second test.

- The Public Interest Test: The Council must be satisfied that it is in the public interest to pursue a legal sanction and determine which sanction is appropriate. The public interest factors that will be considered include:
  - The seriousness or severity of the offence
  - The compliance history of the offender(s)
  - The level of culpability of the offender
  - Any harm suffered by the tenant, including consideration of the vulnerability of the tenant(s)

- The potential deterrent effect that instigating any action would have on the offender and other potential offenders within the local area
- Any financial benefit resulting from the offence.

At the conclusion of the decision-making process, the Council may determine that one of the following outcomes is appropriate:

- Pursue a prosecution for the offence(s)
- Impose a civil penalty
- Gather additional evidence so that it can be further considered
- Utilise alternative enforcement options
- Utilise informal methods
- Take no further action

If the Council believes that it has a reasonable prospect of conviction in a particular case, it will always consider a Civil Penalty in the first instance.

The following factors, whilst not exhaustive, are examples of where it may be appropriate to consider the issuing of a Civil Penalty rather than Prosecuting:

- No evidence of previous non-compliance with appropriate legislation
- No previous convictions recorded
- Not in the Public Interest to Prosecute
- Positive interaction with Strategic and Private Sector Housing
- The offence was committed because of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence)
- A Civil Penalty is likely to have a deterrent effect
- Prosecution is likely to have a serious adverse effect upon an individual's well-being e.g., a Landlord's physical or mental health (these factors must be balanced against the seriousness of the offence)

## **Determining the Level of a Civil Penalty**

In accordance with Government recommendations, to ensure that the Civil Penalty is set at an appropriate level, the Council will consider the following factors:

- The seriousness of the offence
- Culpability and track record of the offender
- Harm caused by the Tenant
- Punishment of the offender for the offence
- Deterrent value to prevent the offender from repeating the offence and to prevent others from committing the offence
- Removing any financial benefit obtained from the committing the offence

## **The Harm Caused**

In determining the level of harm, the Council will have regard to the:

- Person i.e., physical injury, damage to health and psychological distress
- Community i.e., economic loss, harm to the Public
- Other types of harm, i.e., public concerns with regards to the impact of poor housing conditions on the local neighbourhood

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

Where no actual harm has resulted from the offence, the Council will consider the relative danger that persons have been exposed to because of the offender’s conduct, the likelihood of harm occurring and the gravity of harm that could have resulted.

Factors that indicate a higher degree of harm include:

- Multiple victims
- Serious or psychological effect on the victim
- Victim is particularly vulnerable

## Culpability

The Council will have regard to 4 levels of culpability, where the offender:

- Has the intention to cause harm: the highest culpability where an offence is planned
- Is reckless as to whether harm is caused: i.e., the offender appreciates at least some harm would be caused but proceeds giving no thought to the consequences, even though the extent of the risk would be obvious to most people
- Has knowledge of the specific risks associated with the actions: even though harm is not intended
- Is negligent in their actions

## Civil Penalty Amount

The table below sets out the interrelation between harm and culpability as a *starting point* in the determination of the Civil Penalty which Officers will use on a case-by-case basis:

	Low Harm	Medium Harm	High Harm	Very High Harm
Low Culpability	£1,000	£3,000	£4,000	£5,000
Medium Culpability	£3,000	£6,000	£8,000	£10,000
High Culpability	£4,000	£8,000	£12,000	£18,000
Very High Culpability	£5,000	£10,000	£18,000	£27,000

## Aggravating and Mitigating Factors

Aggravating factors in the case will be considered and may increase the initial amount by 3% (for each aggravating factor), up to a maximum of 15% (or £30,000 whichever is the lesser) and equally, any mitigating factors will be considered and will reduce the initial amount by 3% (for each mitigating factor), to a maximum of 15% of the initial penalty level.

Examples of Aggravating Factors include:

- Previous convictions having regard to the offence to which it applies, and the time elapsed since the offence.
- Motivated by financial gain.
- Lack of co-operation/communication or obstruction of the investigation.
- Deliberate concealment of the activity/evidence.
- Offending over an extended period i.e., more than 6 months
- Number of items of non-compliance – the greater the number, the greater the potential aggravating factor.
- A history of non-compliance.
- A history of poor management.
- Lack of a tenancy agreement.
- Already a member of an accreditation scheme or letting standard

Examples of Mitigating Factors include:

- Co-operation with the investigation.
- Voluntary steps taken to address issues e.g., submit a licence application.
- Willingness to undertake training.
- Willingness to join the DASH Landlord Accreditation Scheme.
- Evidence of health reasons preventing reasonable compliance – mental health, unforeseen health issues, emergency health concerns.
- No previous convictions.
- Vulnerable individual(s) where their vulnerability is linked to the commission of the offence.
- Good character and/or exemplary conduct.
- Early admission of guilt i.e., within 1 month

## Actions and Process

The Council will give Notice of its proposal (Notice of Intent) to impose a financial Penalty within 6 months where there is sufficient evidence of the conduct to which the Penalty relates, or at any time when the conduct is continuing.

At the end of the period for representations, the Council will decide whether to impose a Civil Penalty and if so, the amount.

Where a decision is made to impose a Civil Penalty, the Council will give Notice (Final Notice) requiring the amount to be paid within 28 days.

The Council may withdraw or reduce the amount specified at any time.

## **Financial Means to Pay a Civil Penalty**

An Offender will be assumed to be able to pay a Civil Penalty up to the maximum amount unless they can demonstrate otherwise. It is for the Offender to disclose to the Council such information relevant to his or her financial position that will enable the Council to assess what he or she can reasonably afford to pay.

The Council will decide whether a Civil Penalty is affordable for the Offender based on all evidence available to them. This will include any equity that could be released from properties owned by the offender if refinanced. Consideration will be given to whether any of the properties can be sold.

Income received from Civil Penalties will be retained by the Council and used for further enforcement work covering the Private Rented Sector.

## **Right of Appeal**

A person issued with a Civil Penalty has a Right of Appeal to the First-Tier Tribunal. The Tribunal has the power to confirm, vary (increase or reduce) or cancel the Civil Penalty issued. The First-Tier Tribunal can dismiss an appeal if it is satisfied the appeal is frivolous, vexatious or an abuse of process, or has no reasonable prospect of success.

## **Recovery**

If the final notice remains unpaid, the Council may apply for an order for payment from the county court, then employ bailiffs to collect unpaid penalties if necessary.

# Appendix 3: Rent Repayment Orders

A Rent Repayment Order (RRO) is an Order made by the First-Tier Tribunal requiring a Landlord to repay a specified amount of rent.

Rent Repayment Orders cover a wide range of offences, as detailed below:

- Failure to comply with an Improvement Notice - Section 30 of the Housing Act 2004
- Failure to comply with a Prohibition Order – Section 32 of the Housing Act 2004
- Breach of a Banning Order - Section 21 of the Housing and Planning Act 2016
- Using violence to secure entry to a property – Section 6 of the Criminal Law Act 1977
- Illegal Eviction or Harassment of the Occupiers of a property – Section 1 of the Protection from Eviction Act 1977
- Offences in relation to Licensing of HMOs - Section 72(1)
- Offences in relation to Licensing under Part 3 of the Act - Section 95(1)

Rent Repayment Orders require repayment, of rent, or Housing Benefit, or of the housing costs element of Universal Credit paid in respect of a tenancy or licence, by a landlord/agent who has committed one of the offences listed. The RRO can be granted to either the Tenant or the Council. If the Tenant paid their rent themselves (or a proportion) then the rent (or equivalent proportion) must be repaid to the Tenant. If the rent (or a proportion) was paid through Housing Benefit or through the housing element of Universal Credit, then the rent (or equivalent proportion) must be repaid to the Council. The maximum amount of rent that can be recovered is capped at 12 months.

A Rent Repayment Order can be applied for by the tenant, or the Council, when the Landlord has committed an offence, whether a Landlord has been convicted. Where an application for Rent Repayment Order is made and the Landlord has not been convicted of the offence for which the Rent Repayment Order application is being made, the First-Tier Tribunal will need to be satisfied beyond reasonable doubt that the Landlord has committed the offence.

The Council will consider applying for a Rent Repayment Order after a person is the subject of a successful Prosecution, or Civil Penalty for the following offences:

- Failure to comply with an Improvement Notice - Section 30
- Failure to comply with a Prohibition Order – Section 32 of the Housing Act 2004
- Breach of a Banning Order - Section 21 of the Housing and Planning Act 2016
- Offences in relation to Licensing of HMOs - Section 72(1)
- Offences in relation to Licensing under Part 3 of the Act - Section 95(1)

In most cases the Council will make an application for a Rent Repayment Order to recover monies paid through Housing Benefit, or through the housing element of Universal Credit and will offer advice and guidance to assist Tenants to apply for a Rent Repayment Order in cases where the Tenant paid the rent themselves.



# Appendix 4: Minimum Energy Efficiency Standards

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 are designed to improve the least energy efficient properties those with Energy Efficiency Performance Certificates (EPC) rated F or G.

Unless an exemption applies, a domestic Private Rented Sector property must not be let unless it has a minimum Energy Performance Certificate (EPC) rating of E.

Exclusions and exemptions are detailed in Regulations and the Domestic Private Rented Property Minimum Standard Guidance (or any subsequent Government Guidance), and include:

- Where all ‘relevant Energy Efficiency Improvements’\* for the property have been made (or there are none that can be made) and the property remains sub-standard
- Where a recommended measure is not a ‘relevant Energy Efficiency Improvement’ because the cost of purchasing and installing it cannot be wholly financed at no cost to the Landlord
- The relevant Energy Efficiency Improvement is wall insulation, and it cannot or should not be installed on the property in question, where the Landlord has obtained written expert advice which indicates that the measure is not appropriate for the property due to its potential negative impact
- The relevant Energy Efficiency Improvements require third party consent, e.g., planning permission and consent has not been given
- The relevant Energy Efficiency Improvements would devalue the market value of the property by more than 5%
- Where the Landlord is exempt due to recently becoming a Landlord

All exclusions and exemptions must be registered by the Landlord on the National Private Rented Sector Exemptions Register and will last for 5 years.

Landlords of a domestic property for which an EPC is not a legal requirement (for example a property which has Listed Building status) are not bound by the prohibition on letting sub-standard property.

*\*Relevant Energy Efficiency Improvements are improvements for which funding is available from third party finance to cover the full cost of purchasing and installing the improvements, for example a Green Deal Plan, Energy Company Obligation, or a central Government Grant.*

The Council will check for different forms of non-compliance with the Regulations including:

- For any property that is sub-standard (rated F or G); and does not have a registered exemption

- Where the Landlord has registered any false or misleading information on the Private Rented Sector Exemptions Register or has failed to comply with a compliance Notice

Buildings that are not legally required to have an EPC are not required to provide an entry on the Exemptions Register.

The Council will serve a Compliance Notice requiring information from the Landlord to help them decide whether the Landlord has breached the Regulations, this may be served up to 12 months after the suspected Breach. The information requested can include:

- The EPC that was valid for the time when the property was let
- The current tenancy agreement used for letting the property
- Information on energy efficiency improvements made
- Any Energy Advice Report in relation to the property
- Any other relevant document that the enforcement authority requires to carry out its compliance and enforcement functions

## Infringements and Penalties

Infringements which may result in a Penalty Notice:

- Failure to comply with a Compliance Notice
- The letting of a non-compliant property in breach of the Regulations or
- The uploading of false or misleading information to the Exemptions Register

If the Council confirms that a property is (or has been) let in breach of the Regulations, a Penalty Notice may be served relating to a financial Penalty, a publication Penalty, or both and may be served on a Landlord (a person or entity that lets, or proposes to let, a domestic Private rented property) up to 18 months after the Breach.

Infringement	Penalty (less than 3 months in breach)	Penalty (3 months or more in breach)
Renting out a non-compliant property	£2,000 And/or a Publication Penalty	£4,000 And/or a Publication Penalty
Providing false or misleading information on the Private Rented Sector Exemptions Register	£1,000 And/or a Publication Penalty	
Failing to comply with a compliance Notice	£4 2,000 And/or Publication Penalty	

The financial Penalty amounts will be applied per property and per infringement, up to a maximum of £5,000.

A Publication Penalty will include the publishing of:

- The Landlords name (except where the Landlord is an individual)
- Details of the Infringement
- The address of the property in relation to which the infringement occurred
- The amount of the financial Penalty imposed

The details will be published on a publicly accessible part of the Private Rented Sector Exemptions Register which will be available for view by the Public through the 'gov.uk' website. The Council recognises that each case is unique and will be considered on its own merits.

When deciding on the appropriate action, Officers will consider the Law, Government Guidance, Council Policies and the sufficiency and reliability of the evidence.

## Right of Appeal

A Landlord has the right to ask the Council to review its decision to serve a Penalty Notice. This request must be in writing and the Council will consider everything detailed in the request in deciding whether to withdraw the Penalty Notice. Details of the right to make a request and the associated timescales will be included with the Notice.

A Landlord has 28 days to submit an appeal in respect of a Penalty Notice to the General Regulatory Chamber (GRC) of the First-Tier Tribunal. A Landlord may appeal if a request to review the Council's decision results in the Penalty Notice being upheld.

# Appendix 5: Electrical Safety Standard Regulations

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 require Landlords of privately rented accommodation to:

- Ensure national standards for electrical safety are met. These are set out in the appropriate 'wiring regulations', which are published as British Standard 7671
- Ensure all electrical installations in their rented properties are inspected and tested by a qualified and competent person at least every five years.
- Obtain a report from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test.
- Supply a copy of this report to the existing tenant within 28 days of the inspection and test.
- Supply a copy of this report to a new tenant before they occupy the premises.
- Supply a copy of this report to any prospective tenant within 28 days of receiving a request for the report.
- Supply the local housing authority with a copy of this report within seven days of receiving a written request for a copy.
- Retain a copy of the report to give to the inspector and tester who will undertake the next inspection and test.
- Where the report shows that further investigative or remedial work is necessary, complete this work within 28 days or any shorter period if specified as necessary in the report.
- Supply written confirmation of the completion of the further investigative or remedial works from the electrician to the tenant and the local housing authority within 28 days of completion of the works.

Landlords must obtain a report giving the results of the test and setting a date for the next inspection. Landlords must comply within 7 days with a written request from the Council for a copy of the report and must supply the Council with confirmation of any remedial or further investigative works required by a report.

The Council may wish to request reports following inspections of properties to ascertain the condition of the electrical installation and confirm the landlord is complying with the Regulations. Inspectors will use the following classification codes to indicate where a landlord must undertake remedial work. More information can be found in the relevant edition of the Wiring Regulations:

- Code 1 (C1): Danger present. Risk of injury.
- Code 2 (C2): Potentially dangerous.
- Further Investigation (FI): Further investigation required without delay.
- Code 3 (C3): Improvement recommended. Further remedial work is not required for the report to be deemed satisfactory.

If the report contains a code C1, C2 or FI, then the landlord must ensure that further investigative or remedial work is carried out by a qualified person within 28 days, or less if specified in the report.

The C3 classification code does not indicate remedial work is required, only that improvement is recommended.

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

If the Council has reasonable grounds to believe a landlord is in breach of one or more of the duties in the Regulations and the report indicates urgent remedial action is required, it may, with the consent of the tenant or tenants, arrange for a qualified person to take the urgent remedial action and recover their costs.

Otherwise, a remedial notice will be served requiring the landlord to take remedial action within 28 days. Should a landlord not comply with the notice, the Council may, with the tenant's consent, arrange for any remedial action to be taken themselves.

Landlords have the rights to make written representation and appeal against remedial action. The Council can recover the costs of taking the action from the landlord.

Under regulation 11 of the Regulations where the Council is satisfied, beyond a reasonable doubt, that a private landlord has breached a duty under regulation 3, the authority may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach.

Regulation 3 states that.

- (1) a private landlord who grants or intends to grant a specified tenancy must—
  - (a) ensure that the electrical safety standards are met during any period when the residential premises are occupied under a specified tenancy.
  - (b) ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified person; and
  - (c) ensure the first inspection and testing is carried out—
    - (i) before the tenancy commences in relation to a new specified tenancy; or
    - (ii) by 1 April 2021 in relation to an existing specified tenancy.
- (2) For the purposes of sub-paragraph (1)(b) “at regular intervals” means—
  - (a) at intervals of no more than five years; or
  - (b) where the most recent report under sub-paragraph (3)(a) requires such inspection and testing to be at intervals of less than five years, at the intervals specified in that report.
- (3) Following the inspection and testing required under sub-paragraphs (1)(b) and (c) a private landlord must—

- (a) obtain a report from the person conducting that inspection and test, which gives the results of the inspection and test and the date of the next inspection and test.
  - (b) supply a copy of that report to each existing tenant of the residential premises within 28 days of the inspection and test.
  - (c) supply a copy of that report to the local housing authority within seven days of receiving a request in writing for it from that authority.
  - (d) retain a copy of that report until the next inspection and test is due and supply a copy to the person carrying out the next inspection and test; and
  - (e) supply a copy of the most recent report to—
    - (i) any new tenant of the specified tenancy to which the report relates before that tenant occupies those premises; and
    - (ii) any prospective tenant within 28 days of receiving a request in writing for it from that prospective tenant.
- (4) Where a report under subparagraph (3)(a) indicates that a private landlord is or is potentially in breach of the duty under subparagraph (1)(a) and the report requires the private landlord to undertake further investigative or remedial work, the private landlord must ensure that further investigative or remedial work is carried out by a qualified person within—
- (a) 28 days; or
  - (b) the period specified in the report if less than 28 days, starting with the date of the inspection and testing.
- (5) Where paragraph (4) applies, a private landlord must—
- (a) obtain written confirmation from a qualified person that the further investigative or remedial work has been carried out and that—
    - (i) the electrical safety standards are met; or
    - (ii) further investigative or remedial work is required.
  - (b) supply that written confirmation, together with a copy of the report under subparagraph (3)(a) which required the further investigative or remedial work to each existing tenant of the residential premises within 28 days of completion of the further investigative or remedial work: and
  - (c) supply that written confirmation, together with a copy of the report under subparagraph (3)(a) which required the further investigative or remedial work to the local housing authority within 28 days of completion of the further investigative or remedial work.
- (6) Where further investigative work is carried out in accordance with paragraph (4) and the outcome of that further investigative work is that further investigative or remedial work is required, the private landlord must repeat the steps in paragraphs (4) and (5) in respect of that further investigative or remedial work.
- (7) For the purposes of sub-paragraph (3)(e)(ii) a person is a prospective tenant in relation to residential premises if that person—
- (a) requests any information about the premises from the prospective landlord for the purpose of deciding whether to rent those premises.
  - (b) makes a request to view the premises for the purpose of deciding whether to rent those premises; or
  - (c) makes an offer, whether oral or written, to rent those premises.

A financial penalty may be of such amount as the authority imposing it determines but must not exceed £30,000.

In determining the Civil Penalty amount, the Council will have regard to the statutory guidance issued under schedule 9 of the Housing and Planning Act 2016 and to the developed Civil Penalty Matrix.

The approach to issuing a Civil Penalty is fundamentally made up of two stages, firstly determining the appropriate sanction and secondly (if appropriate) the level of Civil Penalty charged.

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

The Council currently consults this code when determining whether to seek prosecution for offences committed and will continue to do so on a case-by-case basis in line with this procedure and its Enforcement Policy.

The maximum penalty that can be set is £30,000. A minimum penalty level has not been set and the appropriate amount of penalty is to be determined by the Local Housing Authority. Only one penalty can be imposed in respect of the same offence.

# Appendix 6: Mobile Home Site Manager – Fit and Proper Person Determination

The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020, require the manager of a site to be a Fit and Proper Person (“the Regulations”). The Council is accordingly required to introduce a fit and proper person test for mobile home site owners, or the person appointed to manage the site, unless they are eligible for an exemption under the Regulations.

The Regulations, made on 23 September 2020, allow local authorities to receive applications from site owners, or the person appointed to manage the site, from 1 July 2021 up to and including 30 September 2021.

The Council must be satisfied that the site owner “*is a fit and proper person to manage the site*” or, if the owner does not manage the site, “*that a person appointed*” to do so by the site owner “*is a fit and proper person to do so*” or has, with the site owner’s consent, “*appointed a person to manage the site.*”

Where a site owner or their manager fails the fit and proper person test, and they are unable to identify and appoint a suitable alternative manager (who must pass the fit and proper person assessment) the Council can appoint a person to manage the site, but only with the consent of the site owner.

Principally, the fit and proper person test applies to relevant protected sites. A relevant protected site is a site which requires a licence, which is not solely for holiday purposes, or is otherwise not capable of being used all year round. The fit and proper person requirement will ensure that site owners, or their managers, have integrity and follow best practice. Additionally, it provides the safeguard that such individuals will not pose a risk to the welfare or safety of persons occupying mobile homes on the site.

## The Evidence

When conducting the fit and proper person assessment, the Council must consider the following points relevant to the application:

1. Is the individual able to conduct effective management of the site. This includes, but is not limited to, securing compliance with the site licence and the long-term maintenance of the site. The Council must have regard to:

- i. whether the person has a sufficient level of competence to manage the site.

<sup>1</sup> \*i.e., it is a non-commercial, family occupied site under Regulation 3



- ii. the management structure and funding arrangements for the site, or the proposed management structure and funding arrangements.

### Competence to manage the site

This includes reviewing the competency of the appointed individual. The individual must have sufficient experience in site management, or have received sufficient training, and be fully aware of the relevant law as well as health and safety requirements.

### The management structure and funding arrangements for the site

The Council must consider whether relevant management structures are in place and whether they are adequate to ensure effective management of the site. The applicant is expected to have a robust management plan, which should address following:

- the pitch fee payment,
- proximity of the manager to the site,
- manager's contact details for residents (including out of office and emergency contact details),
- the complaints procedure,
- maintenance, refuse/recycling removal.
- Staffing.

It is advisable that the site is managed by an applicant based in the UK and that a management structure would be unlikely to be considered suitable if the applicant is an individual, or a company (including its directors), which does not reside or have a permanent UK address. This is because there may complex issues because of this, such as needing the court's permission to serve a claim in a foreign country.

The applicant's interest in the land will have an important impact, as would their financial standing, management structures and competence, all of which could contribute to the overall assessment of their suitability to manage to effectively manage the site.

### *The proposed management structure and funding arrangements in place for managing the site*

The Council must consider whether the applicant has sufficient funds (or has access to sufficient funds) to manage the site and comply with licence obligations. Evidence of these funds should be readily available.

2. Personal information relating to the applicant concerned. This would include a criminal record check and should include evidence that the applicant:

- has not committed any offence involving fraud or other dishonesty, violence, firearms or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (Offences attracting notification requirements)
- has not contravened any provision of the law relating to housing, caravan sites, mobile homes, public health, planning, or environmental health or of landlord and tenant law

- has not contravened any provision of the Equality Act 2010 in, or in connection with, the carrying on of any business
- has not harassed any person in, or in connection with, the carrying on of any business
- is not or has not been within the past 10 years, personally insolvent
- is not or has not been within the past 10 years, disqualified from acting as a company director
- has the right to work in the UK
- is a member of any redress scheme enabling complaints to be dealt with in connection with the management of the site (when this is in place)

The Council has a duty to investigate any conduct which could amount to harassment and any evidence obtained will be reviewed to determine whether it is sufficient to be used to prosecute a site owner. Local authorities may rely on convictions by the courts as evidence of harassing behaviour.

The Council may have records of previous harassment complaints made against a site owner, or their manager and even if no action was taken on these complaints, they will still be taken into consideration in the fit and proper person determination. These complaints may identify further potential risks and can provide an indication of potential underlying problems with the management of the site, or the site owner's lack of experience/skills in dealing with customers.

The Council may address any underlying issues by attaching conditions to the individual's entry on the register.

3. Rejection of an application by other local authorities. Upon rejection of a person's application by any other local authority this should be centrally recorded and include the details of the person involved and the reasons for the rejection.

#### Other Considerations

1. The applicant" is defined at paragraph 2 of the Regulations as "the person who makes an application under regulation 6".
2. The "relevant person" is defined at paragraph 2 of the Regulations to mean "the subject of the fit and proper person assessment under Regulation 7".
3. The conduct of any person associated or formerly associated with the relevant person (whether on a personal, work, or other basis) is an important factor to be considered in the fit and proper person assessment.
4. Site owners may be required to provide details of any current or former associates of the relevant person in the application form. Those associates will not include other current joint owners as that information would have already been required in their own application forms.
5. It is not routinely required to provide information of all current or past associates of the site owner. However, prior to making any final decisions, the Council will consider the conduct of past and current associates relevant to that individual's application. The site owner can be asked to provide additional information during the application process.

6. The Council is required to establish whether an individual is an associate of the relevant person and then whether their conduct is relevant to the application. A relevant associate could be defined as any individual who may have played a part, directly or indirectly, in a decision or action, which has had an impact on residents' rights, or the quiet enjoyment of their homes.
7. The Regulations are drafted widely giving the opportunity for local authorities to take into consideration other relevant matters. The Council is mindful that poor management practices do not necessarily affect a person's conduct unless they are a breach of the criminal or civil law. A person cannot be deemed unfit due to conduct, simply because of poor management, although this is highly relevant to determining any question of suitability or competence. All conduct is relevant in relation to the person's fitness to hold a licence and/or manage the mobile home site.
8. The Council can decide the specific matters they deem relevant to the fit and proper person application. These matters could be in relation to current or previous issues, or events, that have occurred in relation to the mobile home site, or any other mobile home site owned or managed by the site owner, or site manager, in another local authority area. Additionally, the site owner's conduct regarding other business, outside of the mobile homes sector, can have implications on the financial and management arrangements of the site in question. Any matters which the Council believe to be of relevance to the application should primarily focus on the relevant person's conduct, competence, and their suitability to manage the site.
9. The Council aim to obtain evidence to support any additional matters that they require to be taken into consideration for each application. The evidence could include previous tribunal and court decisions, documents or records from Companies House, or other public bodies or financial institutions. It is not anticipated that allegations which have not been investigated or documented will be used as evidence to support a decision.

## Applications

The Regulations use various terms in the application process, and these are outlined below:

"Relevant Person" is defined in paragraph 2 of the Regulations and is "the subject of the fit and proper person assessment under Regulation 7". Please note that this could be the site owner or person appointed to manage the site by the site owner.

"Relevant Officer" is defined in paragraph 1 of Schedule 2 of the Regulations, where the applicant is a company, a relevant officer will be a director or other officer of the company; or, where the applicant is a partnership, a partner; or, where the applicant is a body corporate, a member of the management committee of that body.

"Required Information" is defined in paragraph 14 of Schedule 2 of the Regulations (N.B: The Regulations incorrectly state that this information is contained in paragraph 13) as:

- the person's name and business contact details

- details of the person's role or proposed role in relation to the management of the site; where the person has not yet been appointed, the address, telephone number and email address (if any) at which the person may be contacted in respect of the application
- details of each relevant protected site (other than that to which the registration application relates) — for which the person holds a licence issued under section 3 of the Caravan Sites and Control of Development Act 1960, or in which the person has a legal estate or equitable interest, or which the person manages

The application for inclusion in the fit and proper register, must therefore include the following:

Details of the site and the applicant:

Information provided must include:

1. The applicant's name and business contact details.

Where the applicant is not an individual, the following information in relation to the individual completing the application on behalf of the applicant and each relevant officer:

- (i) the person's name
- (ii) details of the person's role (if any) in relation to the management of the site

2. The name and address of the site
3. Evidence of the applicant's legal estate or equitable interest in the site
4. Confirmation that the applicant is the occupier within the meaning of Section 1 of the Caravan Sites and Control of Development Act 1960
5. The name and business contact details of any other person that has a legal estate or equitable interest in the site

The name and address of each other relevant protected sites:

Information provided must include the name(s) and address(es) of any other relevant protected site(s):

- for which the applicant holds a licence issued under section 3 of the Caravan Sites and Control of Development Act 1960
- in which the applicant has a legal estate or equitable interest; or
- that the applicant manages

The applicant must clearly specify whether their application is made in respect of either the applicant, or site owner, or the person that the applicant or site owner has appointed to manage the site.

Information relating to the site manager:

In circumstances where a site manager has been appointed to manage a site, more information is needed. The person who is applying for the site manager to be registered as a fit and proper person (the relevant person) must provide the following information: the site manager's name and details of that person's role (if any) in relation to the management of the site.

If the site manager has appointed or intends to appoint a further individual ("A"), Required Information would be needed from A. And where A is not a relevant officer of the site manager, the relevant officer to whom A is accountable for the day-to-day management of the site, should be the one to provide the Required Information.

Additional information when the applicant is the relevant person and an individual

When the applicant is the relevant person, and is an individual, and the applicant has appointed, or intends to appoint, someone else ("B") to be responsible for the day-to-day management of the site, Required Information would be needed from B. If B is not an individual but is, instead, for example, a company, and B has appointed an individual ("C") to do the day-to-day management, Required Information would be needed from C. Where C is not a Relevant Officer of a company, the Relevant Officer to whom C is accountable for the day-to-day management of the site would need to provide the Required Information.

Additional information where the applicant is the relevant person and not an individual

When the applicant is the relevant person but is not an individual and the applicant has appointed or intends to appoint someone else ("B") to be responsible for the day-to-day management of the site, required information would be needed from this person. If B is not a Relevant officer of the applicant, the person to whom B is accountable for the day-to-day management of the site ("C") would need to provide the Required Information. Where B itself is not an individual, the individual ("D") that B has appointed or intends to appoint to be responsible for the day-to-day management of the site would need to provide the Required Information. Where D is not a Relevant officer of B, the relevant Officer to whom D is accountable for the day-to-day management of the site would need to provide the Required Information.

It can be seen from the above that the Regulations prohibit the operation of a relevant protected site unless the site owner or its site manager (whatever the management structure might be) has been assessed by the local authority as a fit and proper person to do so. This has been included to ensure that consistent standards are applied to companies and other organisations that are not individuals.

Criminal Record Certificate/s

Criminal Records Certificates must be issued under section 113A (1) of the Police Act 1997 and will be required where: (a) the Relevant Person is an individual and (b) for everyone in relation to whom the applicant is required to provide information for example, a site manager or individuals A, B, C or D as outlined above.

The Council has the discretion to require the criminal record check to be either basic or enhanced.

The certificate must have been issued no more than six months before the date of the application. It is incumbent upon the site owner to ensure that any certificates provided meet this requirement.

## Declaration

A declaration made and signed by the “appropriate person”, which means:

- (a) where the applicant is a company, a director or other officer of the company
- (b) where the applicant is a partnership, one of the partners
- (c) where the applicant is a body corporate and the conduct of the management of the body is vested in its members, a member
- (d) where the applicant is not a body falling within (a) to (c) above, a member of the management committee
- (e) where the applicant is an individual, that individual

Where the applicant is not the relevant person, the declaration must confirm that the applicant has made all reasonable enquires into the matters mentioned in paragraph 9 of the Regulations and considerations relevant to the fit and proper person assessment as set out below.

The declaration should state that the information provided in the application is correct and complete to the best of the applicant’s knowledge and belief.

## Considerations relevant to Fit and Proper Person Assessment

Proper management of the site includes, but is not limited to, securing compliance with the site licence and the long-term maintenance of the site.

To be able to secure the proper management of the site, the Council must (amongst other things) have regard to whether the relevant person has a sufficient level of competence to manage the site and the management structure, or proposed management structure and funding arrangements for the site in question.

## Decisions, Notifications and Rights of Appeal

The Council must decide on the application in a timely and practicable manner.

Where the decision is to grant the application unconditionally and include the relevant person on the register for 5 years, the Council will serve a final decision notice on the applicant. Where this is not the case, the Council will serve a preliminary decision notice on the applicant.

On receipt of an application the Council may:

- grant the application unconditionally
- grant the application subject to conditions; or
- reject the application

## Grant the Application Unconditionally

Where the Council is satisfied that the applicant meets the fit and proper person test unconditionally, the applicant will be included on the register for a maximum 5 years. Charnwood will issue a final decision notice to the applicant to inform them of its decision. The final decision notice will clearly state:

- (a) the date the final decision notice is served
- (b) the final decision
- (c) the reason(s) for the decision
- (d) when the decision is to take effect
- (e) information about:
  - (i) the right of appeal to the First Tier Tribunal; and
  - (ii) the period within which an appeal may be made

## To Include the Application on the Register Subject to Certain Conditions

In some circumstances, the Council can specify that the individual for the fit and proper person test will only be successful if certain conditions are met. If these conditions are satisfied, an application can be granted subject to those condition(s). An entry on the register can be granted for less than 5 years.

The Council may decide to include the person on a register subject to condition(s), if it would only be satisfied that the person would meet the fit and proper requirement if the condition(s) were complied with. An applicant will be able to appeal against the decision to attach (or vary) any condition to an entry on the register. It is therefore imperative for the Council to have clear and justifiable reasons for attaching any condition(s) and that any conditions imposed can be enforced.

Conditions will need to be clearly stated for the applicant’s understanding and this will allow the Council to ensure that the condition(s) are enforceable.

An example of the requirements is included in the table below:

Specific	The specific condition(s) a site owner is being requested to address
<b>Measurable</b>	The condition(s) required, and the outcome(s) expected
<b>Achievable</b>	The applicant should be reasonably expected to be able to achieve the condition. For example, it may not be reasonable to expect a site owner of one small site to have the same resources to introduce the same procedures as a medium sized company.
<b>Realistic</b>	The applicant should have a clear understanding of how the required outcome can be reached and that there are no circumstances or factors which would make the achievement of the outcome impossible or unlikely.

A clear timescale in which the task/action must be completed.

## Matters to Which Conditions Can Relate

The fit and proper person test is aimed at ensuring that the person managing the site is competent and the conditions should relate directly to the person's ability to secure the proper management of the site.

Where a person has contravened legislation, or committed offences set out above, it is not recommended that conditions are set in relation to those matters. This is because such a condition would be unlikely to meet the tests set out above; for example, if a person has committed fraud or violence, that specific incident cannot be reversed by requiring the person to perform a specific task.

In cases where the person has committed those listed offences or contravened legislation, the Council will consider these breaches, together with all the other information available, to reach a preliminary decision.

Conditions can relate to any factors which are relevant to the persons competence to manage the site, the management structure, or funding arrangements for the site, an associated person's influence, or any other relevant factor.

Example 1 - A local authority has evidence of a site owner's failure over a certain period to address resident's complaints. This is an example of poor management which could be resolved by the site owner implementing an adequate complaints procedure. A condition could be attached requiring the site owner to:

*“Implement an effective and accessible three stage complaints process for residents by xx date and provide the LA with quarterly reports of complaints and outcomes, from that date and for the first year”.*

If the condition is met within the specified time frame, the local authority can record this in the register. If, at a future date, it is found that the site owner failed to implement a complaints procedure, a further opportunity to comply may be given and this could include a new condition of the site owner providing quarterly reports of complaints and outcomes for each year. The site owner could be expected to complete a relevant “CPD customer service/Dealing with complaints” course by a certain period. However, should the local authority consider the actions as unlikely to achieve the desired outcome, the site owner could be removed from the register.

Example 2 – If, when considering an application, certain documents or information are unavailable to the applicant, because of delays from third parties, the local authority may wish to attach a condition to the entry on the register that the site owner “is to provide the authority by registered post, with the original xx document by xx date”.

Example 3 - An associated person has been visiting the mobile home site and, through their action 'X', has caused distress to the residents impacting their wellbeing and security. A condition could



be attached to the register requiring the site owner to put measure(s) in place by xxx date preventing the associated person, or any other person, from carrying out action X on the site.

## Decision Not to Include the Applicant on the Register

Should the Council determine that the applicant does not meet the requirements, and attaching conditions would not be appropriate, a refusal to grant the application can be issued.

Where the Council decides to include the applicant on the register, subject to conditions, or not to include the applicant on the register, a preliminary decision notice to the applicant must be issued.

The preliminary decision notice must clearly state:

- (a) the date the preliminary decision notice is served
- (b) the preliminary decision
- (c) the reason(s) for it
- (d) the date it is proposed that the final decision will have effect
- (e) information about the right to make written representations
- (f) where the preliminary decision is to refuse the application, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of the Regulations; and
- (g) where the preliminary decision is to grant the application subject to condition(s), the consequences of failing to comply with any condition(s)

### Right to Make Representation

An applicant who receives a preliminary decision notice will have 28-days in which to make representations to the Council. The 28-day period begins with the day after the day on which the notice was served. The Council is obliged to consider any representations before making a final decision.

### Final Decision Notice

Following the end of the 28-day representation period, the Council must, as soon as reasonably practicable, make a final decision and serve the decision notice on the applicant. The final decision notice must set out:

- (a) the date the final decision notice is served
- (b) the final decision
- (c) the reason(s) for it
- (d) when the decision is to take effect
- (e) information about the right of appeal and the period within which an appeal may be made
- (f) where the decision is to refuse the application, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of the Regulations; and
- (g) where the decision is to grant the application subject to conditions, the consequences of failing to comply with any condition

## Appeals

The applicant can decide to appeal the decision by making an application to the First tier Tribunal (Property Chamber) (“the tribunal”) within specific timeframes set by the tribunal. The applicant is permitted to appeal against any decisions served by the Council. These could include:

- (a) including the relevant person on the register for an effective period of less than 5 years
- (b) including the relevant person on the register subject to conditions; and
- (c) rejecting the application

Where an applicant accepts the Council’s decision not to include the person originally stated in the application on the register, they will be required to seek alternative management arrangements to comply with the fit and proper person requirement. If they fail to do so they will be committing an offence.

An appellant will not be able to claim compensation for losses incurred pending the outcome of an appeal.

## Withdrawal or Amendment of Notice

There may be circumstances where the Council may decide not to continue, or to withdraw, a previously agreed action, such as after serving:

- (a) a preliminary decision notice, but before service of the final decision notice
- (b) a final decision notice, but before the decision to which it relates takes effect; or
- (c) a notice of proposed action, but before the proposed action is taken

To withdraw or amend a notice, the Council must serve notice to the person on whom the original notice was served.

There are no requirements for notices to contain specific information, however, it is recommended that a withdrawal or amendment notice should state:

- a) that the original notice (a copy of the original notice should be attached for reference) is being withdrawn/amended
- b) the reason(s)
- c) the date it takes effect; and,
- d) the implications of the decisions in relation to the person’s entry on the register

## Removal from the Register

If, after a person is included in the register, and new evidence relevant to the person’s inclusion becomes available, the Council may decide to:

- a) remove the person from the register

- b) impose a condition on the inclusion of the person in the register (whether there are conditions already imposed)
- c) vary a condition; or
- d) remove a condition

The Council must use its judgement when determining whether to review an entry and consider any subsequent actions are required. It is recommended that any such decision should be related to the person being a fit and proper person rather than, for example, site licensing issues which are governed separately. If the Council decides to take any of the actions listed a) to c) in the above paragraph, a notice of proposed action will be served on the occupier.

The notice of proposed action must clearly state:

- a) the date the notice of proposed action is served
- b) the action that the Council proposes to take
- c) the reason(s) for it
- d) the date it is proposed that the Council will take the action
- e) information about the right to make written representations
- f) where the proposed action requires the removal of a person from the register, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of the Regulations; and
- g) where the proposed action is to impose a condition on the inclusion of a person in the register or to vary a condition, the consequences of failing to comply with said condition(s)

A notice of proposed action is not required if the Council decides to remove a condition attached to an entry. A removal of a condition is viewed widely as being a positive step, which is unlikely to be opposed. It is for that reason that a notice of proposed action is not required. As good practice though, it is recommended that local authorities make the site owner or their manager aware of the decision in writing and ensure the register is updated.

#### Notice of Action Taken

Where a notice of proposed action is given, the occupier will have 28-days, starting from the day after the notice is served, in which to make representations.

The Council must, as soon as reasonably practicable after the end of the 28-day period, decide whether to carry out the proposed action.

Where the Council decides to take the action, a further notice will be served on the occupier, indicating the action that has been taken, within the period of 5 working days beginning with the day after the day on which the action was taken.

The notice of action must set out:

- a) the date the notice of action is served
- b) the fact that they have taken the action
- c) the reason(s) for doing so
- d) the date the action was taken

e) Information about the right of appeal and the period within which an appeal may be made where the action is to remove a person from the register, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of Regulations: and where the action is to impose a condition on the inclusion of a person in the register or to vary a condition, the consequences of failing to comply with any condition

## Offences

There are 3 offences which can occur within the Regulations, details below:

- Operating a site in contravention of the fit and proper person Regulations - The site owner will have certain defences under the Regulations in any proceedings brought against them.
- Withholding information or including false or misleading information in the registration application the site owner will not have any defences under the Regulations in any proceedings brought against them for this offence.
- Failing to comply with a specified condition - The site owner will have certain defences under the Regulations in any proceedings brought against them.

A site owner found guilty of any of the above offences will be liable on summary conviction to a level 5 (currently unlimited) fine.

## Defences

One defence is available to a site owner who has inherited a site and would be found to have a reasonable excuse for failing to make an application within the relevant periods as set out below.

### Relevant Periods in Specific Circumstances

The below table outlines limited circumstances where a site owner may have a defence:

Row	Circumstance	Relevant period for making an application in the circumstance
1	The occupier held a site licence immediately before the day on which Regulation 4 (operating a site without being a fit and proper person) came into force, on 1 October 2021.	From 1 <sup>st</sup> July 2021 and before 1 October 2021, the day on which Regulation 4 came into force
2	The period of a person's inclusion in the register in relation to the site has come to an end other than because of action by the local authority under Regulation 8(1) (a) (removal from the fit and proper register after new relevant evidence becomes available).	Not less than two months before the end of the period of the person's inclusion in the register
3	At the time that the occupier became entitled to possession of the land it was in use as a relevant protected site; and within the period of 28 days beginning with the day after the	Within the period of 3 months beginning with the day after the day on which the person became the occupier of the land

	day on which the person became the occupier of the land the occupier notifies the relevant local authority of its intention to make an application under Regulation 6 (application for inclusion in the register)	
4	At the time that the occupier became entitled to possession of the land it was in use as a relevant protected site: and the occupier does not give the notification referred to in row 3 above	Within the period of 28 days beginning with the day after the day on which the person became the occupier of the land
5	A person appointed to manage the site no longer does so; and within the period of 28 days beginning with the day after the relevant day the occupier notifies the relevant local authority that the person no longer does so	Within the period of 3 months beginning with the day after the relevant day
6	A person appointed to manage the site no longer does so; and the occupier does not give the notification referred to in row 5 above	Within the period of 28 days beginning with the day after the relevant day
7	The breach of Regulation 4(1) (operating a site without being a fit and proper person) arises because the local authority has removed a person from the register; and within the period of 28 days beginning with the relevant day in relation to the local authority's decision the occupier notifies the relevant local authority of its intention to make a new application under Regulation 6 (application for inclusion in the register) in relation to the site	Within the period of 3 months beginning with the relevant day
8	The breach of Regulation 4(1) arises because the local authority has removed a person from the register; and the occupier does not give the notification referred to in row 7 above	Within the period of 28 days beginning with the relevant day
9	The breach of Regulation 4(1) (operating a site without being a fit and proper person) arises because the local authority has rejected an in-time application; and within the period of 28 days beginning with the relevant day in relation to the rejected application the occupier notifies the relevant local authority of its intention to make a new application under Regulation 6	Within the period of 3 months beginning with the relevant day
10	The breach of Regulation 4(1) (operating a site without being a fit and proper person) arises because the local authority has rejected an in-time application; and the occupier does not give the notification referred to in row 9 above	Within the period of 28 days beginning with the relevant day

## The Fit and Proper Persons Register

The Council will set up and maintain a register of persons who they are satisfied are fit and proper persons to manage a site in their area. This register will be open to inspection by the public during normal office hours and will be published online.

The register will provide a record of the outcome of the fit and proper person tests carried out and will include the following:

- a) the name and business contact details of the person
- b) the name and address of the relevant protected site to which the application relates
- c) the status of the person (site owner or manager of the site)
- d) the dates of the first and last day of the period for which the person's inclusion in the register has effect
- e) whether any condition is attached to the person's inclusion in the register; and
- f) where any condition is attached to the person's inclusion in the register—
  - (i) the number of any such conditions
  - (ii) the dates of the first and last day of the period for which any such condition applies (if applicable); and
  - (iii) the date any condition is varied or satisfied (if applicable)

A person's inclusion on the register will be for such period as the Council decide but will not exceed 5 years.

To comply with the fit and proper person requirement, a site owner must submit a new application for the person (or alternative) to be included in the register at least two months before the existing inclusion in the register comes to an end.

Where there are refused applications, the following information must be included in the register:

- a) the name and address of the site to which the application relates
- b) that an application in respect of the site has been refused
- c) the date on which the application was refused

Details of the refused application will remain on the register until a successful fit and proper person application is made in respect of the owner or manager of the site. The name of the refused applicant will not be included on the register; however, the Council will be able to consider requests for further information about the entry on the register; for example, the details of the specific conditions attached and any additional information, on a case-by-case basis and in accordance with data protection legislation.

Where the Council has, with the site owner's consent, appointed a person to manage the site, the Council must include the following information:

- a) the name and business contact details of the person
- b) the name and address of the site which the person has been appointed to manage
- c) the status of the person

- d) the dates of the first and last day of the period for which the person's inclusion in the register has effect
- e) whether any condition is attached to the person's inclusion in the register; and
- f) where any condition is attached to the person's inclusion in the register—
  - (i) the number of any such conditions
  - (ii) the dates of the first and last day of the period for which any such condition applies (if applicable); and
  - (iii) the date any condition is varied or satisfied (if applicable)

# Appendix 7: The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Require landlords of private rented accommodation to:

- Have at least one smoke alarm installed on every storey of their rental property, which is used as living accommodation, and
- Have a carbon monoxide alarm in any room used as living accommodation which contains a solid fuel burning appliance
- Ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy

This Policy gives specific consideration in relation to the above legislation and provides a statement of principles that the Council will apply in exercising its powers to require a relevant landlord to pay a financial penalty and or prosecution, which it will follow.



# Appendix 8: Redress schemes for lettings agency and property management work:

All letting agents and property managers must belong to one of the Government approved schemes:

- [The Property Ombudsman](#)
- [The Property Redress Scheme](#)

The Council will act where is it satisfied that, on the balance of probability, someone is engaged in letting or management work and is required to be a member of a redress scheme but has not joined.

The Council may impose further penalties if a lettings agent or property manager continues to fail to join a redress scheme despite having previously had a penalty imposed.

There is no limit to the number of penalties that may be imposed on an individual letting's agent or property manager and further penalties may be applied if they continue to be in breach of the legislation.