



**Winchester**  
City Council

# Private Sector Housing Enforcement Policy

March 2018

Revision	Date	By	Notes
1	01/07/2020	John Easey	Rent Repayment Orders - decisions on assistance

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## 1. Purpose

This policy details how the Council will regulate standards in Private Sector Housing in Winchester. It also provides a background to the legislation and guidance upon which the policy is based.

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

Our aim is to raise standards in Private Sector Housing throughout Winchester; working with owners, landlords, letting agents and tenants to achieve this. However, it is recognised that if the law is broken, enforcement action may be necessary to protect the public and the environment.

In developing this policy, we will remain impartial with respect to owners and to both landlord and tenant in order to be fair to both sides and will provide help and advice to achieve our aim but will not hesitate in taking enforcement action where appropriate.

## 2. Introduction

The Private Sector Housing Team is part of the Council's Housing Service and aims to protect and improve lives by ensuring private sector homes are safe and warm.

When considering enforcement the Private Sector Housing Team adheres to the Council's Regulatory Services Enforcement Policy (<http://www.winchester.gov.uk/environment/enforcement-policy>). This document details the Council's general approach to enforcement across a wide range of activities in relation to which the Council has enforcement powers.

This Private Sector Housing Enforcement Policy provides details of the Council's specific approach to regulating private sector housing standards in Winchester. Private sector housing includes all tenures of housing that are not part of the Council's own housing stock.

The Private Sector Housing Enforcement Policy confirms that:

- The Council will promote awareness and provide advice and assistance whenever possible to the public, businesses and organisations to help them meet their legal obligations in relation to the relevant legislation before embarking on the enforcement process
- The Council is committed to carrying out its duties in a fair and consistent manner, ensuring that enforcement action is proportionate to the seriousness of any failure to comply with statutory requirements.
- The decision to take enforcement action will depend on the severity of non-compliance

Effective and well targeted regulation is essential in promoting fairness and protection from harm. The Regulators' Compliance Code is a statutory code of practice for regulators hereafter referred to as 'The Code'.

[www.gov.uk/government/publications/regulators-code](http://www.gov.uk/government/publications/regulators-code)

From 6 April 2014, the Council has been required to comply with the Code when regulating private sector housing standards and its specific obligations have been included in this policy. The overriding principle of the Code is that regulation and its enforcement should be proportionate and flexible enough to allow and encourage economic progress.

## 3. What to expect from us

### 3.1 Landlords

1. We will advise you of the legislation and help you understand how you can comply with it
2. We will advise you of any action you need to take to comply with the legislation and will ask you to respond with your proposal of how you intend to comply.
3. In deciding what level of action is appropriate we will refer to 7.1 and 7.2 of the Council's Regulatory Services Enforcement Policy, but generally -
  - i. If we are satisfied with your proposal, we will work with you to comply within agreed timescales in an informal, proactive manner.
  - ii. If we are not satisfied with your proposal or how the work is progressing, we will initiate formal action in a proportionate manner as appropriate to the circumstances
  - iii. In making any decision to prosecute we will have regard to how serious the offence is, the aim and benefit of any enforcement action and whether some other action may be appropriate

### 3.2 Tenants

1. We will expect you to have advised your landlord of any issues within your home, preferably in writing, before contacting us. Your tenancy agreement will usually place a duty on you to inform your landlord of any issues with your home and you should give your landlord reasonable time to address the issue before contacting us. The Deregulation Act 2015 provides protection to tenants against retaliatory eviction as a result of complaints, but only where the tenant has informed the landlord in writing and the landlord has failed to respond sufficiently. The Act currently applies to all assured shorthold tenancies which started on or after 1<sup>st</sup> October 2015 and from 1<sup>st</sup> October 2018 will apply to all existing shorthold tenancies.
2. We will advise you as to what action we can take on your behalf and advise you of the expected timescales. You should note that, like the tenant, the Council is required, in most cases, to give the landlord reasonable time to carry out repairs.
3. We will expect you to cooperate with the landlord to allow any works to be carried out and to advise us of any action taken by the landlord.

### 3.3 Owners

1. We will expect home owners to maintain the properties they live in
2. Enforcement action will be considered if there is an imminent risk to a person's life

### 3.4 Owners of Empty Homes

1. We will work proactively with owners of empty homes to encourage and assist in bringing their empty homes back into use
2. Where an empty property is having detrimental impact on the neighbouring area, enforcement action will be considered as appropriate
3. If owners fail to take responsibility for their properties, are not willing to engage or negotiations have failed, and where there is little prospect of a property being brought back into use voluntarily, enforcement action (Compulsory Purchase Order, Empty Dwelling Management Order, and Enforced Sale) will be considered
4. Further details of how the Council will act and enforce where there is an Empty home can be seen in the Empty Property Strategy.  
(<http://www.winchester.gov.uk/housing/private-housing-and-empty-properties/empty-properties>)



## 4. Enforcement Policy and Principles

### 4.1 Role of the Private Rented Sector

The supply of good quality, affordable, privately rented accommodation is essential to meeting local housing need and this is acknowledged in the Council's Housing Strategy 2017-2023. A key priority for this strategy is to provide professionally managed and well maintained homes. We will work with landlords to improve and sustain good quality accommodation and will only intervene when there is a risk to the health and safety of occupants, neighbours or visitors to a property.

### 4.2 Authority to Investigate or Enforce

The Housing Act 2004 and associated secondary legislation sets out the duties and powers that Winchester City Council has in relation to regulating housing standards in its capacity as the Local Housing Authority.

The Housing Act 2004 is the Private Sector Housing Team's primary legislation for enforcement of housing conditions.

Powers are also contained in The Housing Act 1985, as amended and other legislation, including The Environmental Protection Act 1990, The Building Act 1984, The Public Health Acts 1936 and 1961, The Prevention of Damage by Pests Act 1949, The Mobile Home Act 2013, The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, and The Housing and Planning Act 2016. This is not a complete list of the powers available.

### 4.3 Risk Assessment

The Private Sector Housing Enforcement team use risk assessments to concentrate resources in the areas that need them most and on the properties in the worst condition. In doing so, we also take account of any safeguarding issues and vulnerability of the occupant.

Suitably trained officers routinely use the Housing Health and Safety Rating System (HHSRS), which is a statutory, evidence-based, risk assessment method for assessing and dealing with poor housing conditions.

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

Complaints about social housing properties will be referred to the provider to investigate in the first instance. However, where intervention is required, we will act in the same way as with private landlords in considering what level of action is appropriate in the circumstances.

#### 4.4 Housing Health & Safety Rating System (HHSRS)

The Housing Act 2004 introduced the **Housing Health & Safety Rating System (HHSRS)**. It is a calculation of the effect of 29 possible hazards on the health of occupiers. The legislation provides a range of actions for addressing identified hazards. It is a two-stage calculation combining the likelihood of an occurrence taking place with the range of probable harm outcomes that might arise from that occurrence, which results in a numerical rating. This is repeated for each of the hazards present. The assessment is not based upon the risk to the actual occupant but upon the group most vulnerable to that particular risk. Once scored, any action that is then considered will take into account the effect of that risk upon the actual occupant.

The scores for each hazard present are then banded from A to J. Bands A to C (ratings of 1,000 points and over) are the most severe, and are known as **Category 1 hazards** when considering action. Bands D to J, the less severe (rating less than 1,000 points) are known as **Category 2 hazards**.

HHSRS provides a combined score for each hazard identified and does not provide a single score for the dwelling as a whole. It is applied to all residential premises, whether owner-occupied or rented.

This Policy takes account of guidance provided by the Government and sets out how the Council will use its powers and reach its decisions in relation to the Housing Health & Safety Rating System (Part 1 of the Housing Act 2004).

The Council has a duty to take appropriate action in response to a **Category 1 hazard**. (When a Category 1 hazard is identified, the Council must decide which of the available enforcement options it is most appropriate to use. These are explained in more detail below.)

The Council will exercise its discretion and consider individual cases and circumstances when deciding whether to take action in response to **Category 2 hazards**.

#### 4.5 Advice and Guidance

The Private Sector Housing Team will provide authoritative, accessible advice regarding private sector housing. The Council's website provides general information, advice and guidance to make it easier for landlords, agents, home owners and others to understand their obligations. This is provided in clear, concise and accessible language, using a range of appropriate formats and media. The Private Sector Housing Team will consult with landlords' associations and other appropriate stakeholders when developing the content and style of this guidance.

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

The Private Sector Housing team welcomes enquiries from home owners and landlords about complying with minimum standards and ensuring homes are safe and warm and will provide general advice and guidance. However, the team will not act as a consultant for home owners or landlords and is not able to complete non-statutory, detailed assessments for specific properties (such as fire risk assessments) or to provide detailed specifications for the work that would be required to let a property in multiple occupation; or detail the work required to reduce the risk from significant hazards in a property to an acceptable level).

#### **4.6 Inspections, Other Visits and Information Requirements**

No inspection will take place without reason. Inspections and other visits will take place in response to a reasonable complaint or request for service or where poor conditions have been brought to our attention.

Where a visit is considered necessary following receipt of a complaint and an initial risk assessment, we will conduct an initial visit to fully assess the nature of the complaint. If this visit identifies a need for the landlord to take some action or to be offered advice, the landlord or his or her agent will be contacted and given the opportunity to accompany the Investigating Officer at a further visit.

Where the initial visit indicates that the matter can be concluded by providing advice to the tenant, or advice only to the landlord, this will be provided and no further visit should be required. Where only advice to the tenant is considered necessary we will not contact the landlord.

Following an inspection, positive feedback will be given wherever possible to encourage and reinforce good practices.

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

#### **4.7 Compliance and Enforcement Actions**

The Private Sector Housing Team will seek to identify landlords, agents, property owners or businesses that persistently breach regulations and ensure that they face proportionate and meaningful sanctions. By facilitating compliance through a positive and proactive approach, the Private Sector Housing Team aims to achieve higher compliance rates and thereby reduce the need for reactive enforcement actions. However, those who deliberately or persistently break the law will be penalised.

When considering formal enforcement action the Private Sector Housing Team will, where appropriate, discuss the circumstances with those suspected of a breach and

take any relevant factors into account when deciding on the best approach. This will not apply where immediate action is required to prevent, or respond to, a serious breach or to deal with an imminent risk to health or safety, or where to do so is likely to defeat the purpose of the proposed enforcement action.

The Private Sector Housing Team will ensure that clear reasons for any enforcement action are provided and that complaints and appeals procedures are explained at the same time.

#### **4.8 Accountability**

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

Information about independent appeal mechanisms, such as to the First-Tier Property Tribunal can be found here:

[www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber](http://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber)

Complaints about our service will be handled in line with the Council's corporate complaints procedure which is outlined here:

<http://www.winchester.gov.uk/about/contact-us/complaints>

## 5. Tenure

The Housing Health and Safety Rating System (HHSRS) outlined at Section 4 of this policy, and the range of enforcement options within the Housing Act 2004 as outlined in Section 7, apply to all tenures of housing. Furthermore, the legislation does not specify that particular approaches or solutions should be used on the basis of ownership or the occupier's status. All enforcement options are available to the Council regardless of whether the premises in question are owner-occupied, privately rented or belong to a Registered Housing Provider.

Generally, the Council considers that owner-occupiers are in a position to make informed decisions concerning maintenance and improvement issues that might affect their welfare and are able to manage their financial priorities accordingly. Tenants however, are usually less able to do so.

For this reason, the Council proposes that it is appropriate for its powers to be used according to tenure, as follows:

### 5.1 Owner-Occupiers

The Council anticipates that Hazard Awareness Notices will frequently be the appropriate course of action. However, the use of Improvement Notices, Prohibition Notices and their emergency equivalents will be considered in cases involving:

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

Unless an identified hazard is judged to pose an imminent risk of serious harm, the Council will contact the owner to confirm our involvement, explain the nature of the hazard and confirm the action required to remove or reduce the hazard. The Council will take account of any proposals or representations made by or on behalf of the owner in determining the most appropriate course of action.

### 5.2 Social Landlords

Registered Providers exist to provide suitable and properly maintained accommodation for their tenants. They are managed by Boards (which typically include tenant representatives) and their performance is scrutinised by Homes England. Housing Providers normally employ staff to manage and maintain their properties and will usually have written arrangements for reporting problems, setting out the response times they aim to achieve, and also for registering any complaints about service failure.

On this basis, the Council will not typically take formal action against Housing Providers unless:

- It is satisfied that the problem in question has been properly reported to the Registered Provider and
- The Registered Provider has subsequently failed to take appropriate action

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

### **5.3 Private Landlords**

The Council will have regard to the principles of statutory guidance and relevant guidance from First-tier Tribunal (Property Chamber) decisions and will initially seek to proceed informally.

Formal action will be initiated immediately if:

- A hazard in question is judged by the Council to pose an imminent risk of serious harm to any person (whether or not immediate action is required, and whether the hazard(s) in question is likely to affect a tenant, an employee or a member of the public), or
- The landlord in question is known to have failed, on a previous occasion, to take appropriate action in response to an informal approach
- A hazard exists and retaliatory eviction as defined by the Deregulation Act 2015 is in process or is considered likely to occur

When arranging a formal inspection, the Council will write to the landlord (or his/her relevant agent) to confirm their involvement and the time and date of the visit. Following the inspection, the Council will explain the nature of any hazard(s) identified in writing and seek the landlord/agent's proposals for remedying the problem. If the Council requires additional information a Requisition for Information Notice (Section 16 Local Government (Miscellaneous Provisions) Act 1976 or Section 235 Housing Act 2004) may be served.

Following the inspection, the Council will not ordinarily need to take any further action to discharge its duties as long as:

- Satisfactory proposals and timescales for the work to be carried out are received and agreed within 14 days and
- The work is carried out to a satisfactory conclusion within agreed timescales

Landlords are expected to either:

- Provide any agent acting for them with sufficient authority to act on their behalf in the event that they are contacted by the Council, or

- To ensure that they maintain appropriate communication with their agent in order that appropriate decisions and responses can be provided to the Council

The failure of an agent to respond to communication from the Council or any failure to take appropriate action may be treated as a failure by the landlord.

If the Council receives:

- No response from the landlord/agent or
- A response it judges inadequate or
- Proposals that were judged acceptable but which are not then followed through (for example if works fail to start when agreed, fail to make proper progress or are completed to an inadequate standard) or
- In the event that retaliatory eviction as defined by the Deregulation Act 2015 is in process or is likely to occur

it will proceed with formal action by taking the most appropriate enforcement action in accordance with this Policy.

#### **5.4 Expectations of Tenants**

Before considering taking any action in respect of a tenanted property, the tenant(s) will normally be required to contact their landlord about the problems (preferably in writing), allowing a reasonable time period for the landlord to make representation.

Legislation relating to landlord and tenant issues requires that tenants notify their landlords of any problems with the property.

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

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

- Where there is a history of harassment/threatened eviction/poor management practice
- Where the tenant could not for some other reason be expected to contact their landlord/managing agent – for example where the landlord has not provided a contact address or email address, or for reasons of the tenant's vulnerability.

Tenants are responsible for keeping officers informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.) which may affect the action the Council is taking or considering taking.

Tenants should also consider seeking independent legal advice about their own individual powers to resolve any dispute with their landlord.

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

## **5.5 Retaliatory Evictions**

Retaliatory eviction is where a tenant makes a legitimate complaint to their landlord about the condition of their property and, in response, instead of carrying out the repair their landlord serves them with an eviction notice. On 1st October 2015, a number of provisions in the Deregulation Act 2015 came into force. These provisions are designed to protect tenants against unfair eviction.

Where a tenant makes a genuine complaint about the condition of their property that has not been addressed by their landlord, their complaint has been verified by a local authority inspection, and the local authority has served either an Improvement Notice or a Notice of Emergency Remedial Action, a landlord cannot evict that tenant for 6 months using the 'no fault' eviction procedure (a section 21 eviction). The landlord is also required to ensure that the repairs are completed.

In order to rely on the protection against retaliatory eviction that the Deregulation Act 2015 provides, a tenant must approach the landlord in writing in the first instance. If, after 14 days from the tenant making a complaint, the landlord does not reply, the reply is inadequate, or they respond by issuing a Section 21 eviction notice, the tenant should approach the Private Sector Housing Team and ask them to carry out an inspection to verify the need for a repair. We will then undertake an HHSRS inspection. If the inspection verifies the tenant's complaint, the enforcement officer will take appropriate action.

We will work with landlords to help them to understand their obligations and the implications of the legislation, and will work alongside the Council's Housing Options Team to provide support, advice and guidance to the tenant in these circumstances.



## 6. Situations where a Service may not be provided

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

- Where the tenant(s) unreasonably refuse access to the landlord, managing agent or landlord's builder, to arrange or carry out works
- Where the tenant(s) have, in the opinion of the Council, clearly caused the damage to the property they are complaining about, and there are no other items of disrepair
- Where the tenant's only reason for contacting the Private Sector Housing Team, in the opinion of the Council, is in order to pursue a position on the housing register or by means of a contrived homelessness application. (The Council will aim to bring their present accommodation up to standard as a first priority)
- Where the tenant(s) have requested a service and then failed to keep an appointment and have not responded to a follow-up letter or appointment card
- Where the tenant(s) have been aggressive, threatening, verbally or physically abusive towards officers
- Where, on visiting the property, there is found to be no justification for the complaint
- Where the tenant unreasonably refuses to provide the Council with relevant documentation

## 7. Enforcement Powers

### 7.1 Authorisation of Officers

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

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

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

### **Housing Act 2004**

#### 7.2 Powers of Entry and Power to Require Information

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

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

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

If admission is refused, premises are unoccupied, or prior warning of entry is likely to defeat the purpose of the entry, then a warrant may be granted by a Justice of the Peace under Section 240, on written application. A warrant under this section includes power to enter by force, if necessary.

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

- Any purpose connected with the exercise of its functions under Parts 1-4 of the Housing Act 2004
- Investigating whether any offence has been committed under Parts 1-4 of the Housing Act 2004

The Council also has powers under Section 237 of the Housing Act 2004 to use the information obtained above, and Housing Benefit and Council Tax information

obtained by the authority, to carry out its functions in relation to these parts of the Act.

### **7.3 Choice of Appropriate Enforcement Action**

Unless there is an imminent risk to the health and safety of the occupant or visitors to the property, the Council will attempt to secure the required improvements informally and within a reasonable amount of time.

Where this approach fails, the Council will determine which of the specific enforcement options it will use, taking into account the facts and circumstances in each individual case.

A statement of reasons will be provided with any notice it serves, explaining why the Council has decided to take a particular course of action.

### **7.4 Enforcement Action**

In accordance with the Enforcement Policy, the decision to use enforcement action will depend on the severity of the non-compliance. Factors that will be taken into consideration include:

- The risk that the non-compliance poses to the safety, health or economic welfare of the public at large or to individuals
- The culpability of the responsible party
- Evidence that suggests that there was premeditation in the commission of an offence
- Whether the alleged offence involves a failure to comply in full or in part with the requirements of a statutory notice or order
- Whether there is a history of previous warnings or the commission of similar offences
- Aggravated circumstances such as aggressive or violent behaviour

Enforcement action will be consistent with the Council's overall Housing Strategy and the Private Sector Housing Team will adopt a coordinated approach with other council services and other relevant agencies, in particular in relation to preventing and dealing with homelessness.

### **Enforcement Options using the Housing Act 2004**

#### **7.5 Improvement Notices**

It is anticipated that Improvement Notices will be an appropriate and practical remedy for most hazards.

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
- Require works which will reduce its effect so that it ceases to be a Category 1 hazard,

The Council will take whichever of these two options it considers appropriate, having considered the circumstances of the case.

If the Council determines that the hazard can only be reduced to a Category 2 hazard rather than removed, it will require works to be carried out as far as is reasonably practical to reduce the likelihood of harm.

Where the Council determines that an Improvement Notice should be served in respect of a Category 2 Hazard, it will:

- Require works it considers sufficient either to remove the hazard or
- Require works which reduce it to an appropriate degree

The Council will take whichever of these two options it considers appropriate having considered the circumstances of the case.

## **7.6 Suspended Improvement Notice**

The Council has the power to suspend an Improvement Notice once served and will consider this course of action where it is reasonable in the circumstances, to do so.

The following are situations in which it may be appropriate to suspend an Improvement Notice:

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

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

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

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

## **7.7 Prohibition Orders**

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 and/or

improvement appear inappropriate on grounds of practicality or excessive cost (i.e. the cost is unrealistic in terms of the benefit to be derived). Examples include:

- A dwelling or part of a dwelling where adequate natural lighting or adequate fire escape cannot realistically be provided
- In an HMO, to prohibit the use of specified dwelling units or of common parts. This might, for example, be used if the means-of-escape is unsatisfactory
- To specify the maximum number of persons who can occupy a dwelling where it is too small for the household's needs, in particular in relation to the number of bedrooms
- In relation to premises lacking certain facilities but which are nonetheless suitable for a reduced number of occupants

In addition to prohibiting all uses in relation to the whole or part of the premises in question (other than uses specifically approved by the Council), Prohibition Orders can prohibit specific uses (Section 22(4)(b) Housing Act 2004); this option may be employed to prevent occupation by particular descriptions of persons. Use of this power may be appropriate in situations such as the following:

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

## **7.8 Suspended Prohibition Order**

The Council has the power to suspend a Prohibition Order once served and will consider this course of action where it is reasonable in the circumstances to do so.

Suspended Prohibition Orders will be reviewed on an ongoing basis, at least every 6 months.

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

## **7.9 Hazard Awareness Notice**

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

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

Hazard Awareness Notices will be reviewed no less than annually to ascertain whether conditions have changed and would merit varying the enforcement action taken.

## **7.10 Emergency Remedial Action & Emergency Prohibition Orders**

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

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

If these conditions are met, the Council will take appropriate emergency action.

Situations in which emergency action may be appropriate include:

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

## **7.11 Demolition Orders**

Section 46 of the Housing Act 2004 provides the Council with the power to make Demolition Orders. Demolition Orders are a possible response to a Category 1 hazard (where they are judged the appropriate course of action). In determining whether to issue a Demolition Order, the Council will take account of Government guidance and will consider all the circumstances of the case.

## **7.12 Clearance Areas**

The Council can declare an area to be a Clearance Area if it is satisfied that each of the premises in the area is affected by one or more Category 1 hazards (or that they are dangerous or harmful to the health and safety of inhabitants as a result of a bad arrangement or narrowness of streets). In determining whether to declare a Clearance Area, the Council will act only in accordance with Section 289 of the Housing Act 1985 (as amended) and having had regard to relevant Government guidance on Clearance Areas and all the circumstances of the case.

## **7.13 Failure to Comply with Notices**

If a Notice is complied with, no further action will be taken. However, if a Notice is not complied with, the Council will consider the following options:

- Prosecution;
- Carrying out the works in default;
- Carrying out the works in default and prosecution;
- Whether a simple caution is appropriate;
- Civil penalty

Failure to comply with an Improvement Notice or a Prohibition Order is an offence punishable by an unlimited fine. Following conviction, it is an offence to carry on using the premises in breach of the Prohibition Order, and this attracts a daily fine.

The Council will take action to recover its costs in connection with works in default. The Council will also take action to recover the costs incurred in carrying out works associated with Emergency Remedial Action.

As a charge on the property, unpaid costs give the Authority the same powers and remedies as a Mortgagee under the Law of Property Act 1925 (Enforced Sale).

#### **7.14 Revocation and Variation of Notices**

The Council must revoke an Improvement Notice once the Notice has been complied with.

If part of the work required within the Notice is carried out, then the Notice can be varied.

#### **7.15 Review of Enforcement Action**

If there is a change in the occupation of a premises (leading to either an increase or decrease in the apparent risk to occupiers) the current state of any outstanding enforcement action should be reviewed by the investigating officer, in consultation with his or her line manager, to ensure that it is still appropriate and proportionate to the risk posed from the identified hazard(s).

#### **7.16 Works in Default**

Works in Default will be considered if **all** other methods to try to remedy the necessary works have been unsuccessful.

In determining if work in default is appropriate, officers will report to the Head of Housing who will consider approval based on the following information;

- The impact of not carrying out the work on the health and safety of the occupant/s of the property concerned
- The wishes of the tenant where the notice has been served in respect of a rented property
- The reason for the work not being carried out in the first place
- Any other factors that are specific to individual properties
- The Council will normally seek to recover all of the costs associated with undertaking work in default (including time spent by its officers, administrative costs, contractors costs, the cost of any specialist reports, supervisory costs etc.)

In relation to officer time, the Council will calculate costs as follows:

- The actual time spent by Council Officers on chargeable activities and recorded using file notes and our database

- Time spent will be converted into a monetary figure using the appropriate hourly rate set for the officer(s) concerned.

The expenses incurred are to be recovered from the person(s) on whom the Notice or Order is/are served (“the relevant person”). Where the relevant person receives the rent on behalf of another, the expenses are also to be recovered from that other person. The expenses will carry interest from the date of service of the notice until payment of all sums due under the demand, at a rate of 1% over the Bank of England Base Rate. The recoverable expenses, together with interest accrued on them, are a charge on the premises.

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

### **7.17 Recovery of Debts**

Where costs and charges related to enforcement action are levied, they will be registered as a local land charge against the owner’s property. This means that when the property is sold the debt has to be repaid including any interest accrued on the initial charge. The Council will vigorously pursue all debts owed to it as a result of enforcement charges or charges for carrying out works in default (as well as any other charges). This includes smaller debts where the cost of recovery is greater than the debt owed. To recover debts the Council will use some of the following means;

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



## **8. Houses in Multiple Occupation (HMO)**

The Housing Act 2004 introduced a mandatory licensing system for certain types of Houses in Multiple Occupation (HMO). This mandatory licensing requirement will be expanded, effective from 1<sup>st</sup> October 2018 such that all dwellings which have 5 or more occupants forming 2 or more households are required to be licenced.

The aim of licensing is to ensure that every licensable HMO is safe for the occupants and visitors and is properly managed.

The responsibility for applying for a licence rests with the person having control of or the person managing the property.

The Housing Act 2004 also provides the Council with the power to apply Discretionary Licensing, either by way of Additional or Selective Licensing based on specific conditions being met. Such schemes would further expand the range of dwellings subject to licencing. Should an area within Winchester ever become subject to discretionary licensing, a specific enforcement policy will be developed to accompany any scheme.

When considering the space and amenities required in a HMO, regard will be given to the Hampshire Amenity Standards which were adopted in May 2010. These include minimum room sizes along with bathing facilities and cooking amenities as outlined here:

<http://www.winchester.gov.uk/housing/private-housing-and-empty-properties/houses-in-multiple-occupation>

The Government is in the process of bringing forward legislation which will set minimum room sizes in HMOs and which is expected to come into force alongside the new mandatory licencing regime in October 2018.

### **8.1 Licensing Offences**

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

- Operating an unlicensed HMO or allowing an HMO to be occupied by more persons than a licence allows
- Breach of a licence condition
- Supplying incorrect information in a licence application

In addition to the above, a landlord who operates an unlicensed HMO can be subject to a Rent Repayment Order (RRO) made by a First-tier Tribunal (Property Chamber) under sections 96 and 97 of the Housing Act 2004. The Council may also decide to apply a civil penalty for certain offences using the provisions of The Housing and Planning Act 2016. The approach to these sanctions is outlined at section 10.

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

Where an unlicensed HMO is identified, the Council will assess whether there are good reasons why an application has not been received. If there are no good reasons, the Council will look to take formal proceedings with a view to prosecution in the criminal courts or by way of issuing a civil penalty.

If a landlord of an unlicensed HMO approaches the Council for licensing and the landlord fully cooperates with the Council, including addressing any management, safety or amenity issue within an agreed timescale, the Council would not normally take enforcement action.

Generally, any breach of licence condition will be dealt with informally initially. However, if the breach is serious and effects the safety of the occupants or the responsible person does not carry out necessary works within an agreed timescale, the Council will pursue legal proceedings.

## **8.2 General Management of HMOs**

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

- Suitable management contact information is provided to the occupants.
- Safety measures are in place regarding fire risks and prevention of injuries.
- Water supply and drainage provision are maintained
- Electricity and (where installed) gas installations are maintained and kept safe
- Common parts, fixtures fittings and appliances are maintained
- Living accommodation is maintained in good repair
- Waste disposal facilities are provided

Tenants also have duties under the Regulations to act in a reasonable manner and to not hinder or frustrate the person having control in their compliance with their duties.

The Regulations can be viewed at:

<http://www.winchester.gov.uk/housing/private-housing-and-empty-properties/houses-in-multiple-occupation>

These Regulations do not provide for the service of Improvement Notices and enforcement against breaches of the Regulations is by prosecution only. The Private Sector Housing Team will apply the same principles for enforcement of general management in HMOs as in other housing, except that failure of the landlord to complete works agreed as being required or within an agreed timeframe will result in prosecution.. The Council may also complete works in default and seek repayment of the debt as detailed at 7.16.

### **8.3 Interim Management Orders**

An Interim Management Order (IMO) (Part 4 Housing Act 2004) transfers the management of a residential property to the Council for a period of up to twelve months. The circumstances in which an order can be made are discussed below. In particular, the IMO grants the Council possession of the property from the relevant landlord, and subject to existing rights to occupy can;

- Carry out any functions in relation to the property, which could have been done by the landlord, including repairs, collecting rents etc.
- Spend monies received through rents and other charges on carrying out its responsibility of management, including the administration of the property
- Create new tenancies (with the consent of the landlord).

Under an IMO the Council must pay to the relevant landlord (that is the person(s) who immediately before the order was made was entitled to the rent for the property) any surplus of income over expenditure (and any interest on such sum) accrued during the period in which the IMO is in force. It must also keep full accounts of income and expenditure in respect of the property and make such accounts available to the relevant person.

The Council must take enforcement action in respect of a licensable property (which means an HMO subject to Part 2 Housing Act 2004, or other residential property subject to Part 3) by making an IMO if:

- The property ought to be licensed, but is not, and the Council considers there is no reasonable prospect of it granting a licence in the near future. An IMO may not, however, be made on these grounds if an effective application is outstanding with the authority for the grant of a licence or a temporary exemption notice or if such a notice is in force
- The Private Sector Housing Team is satisfied that the Health and Safety Condition isn't met and therefore, it would not have granted an application for a licence
- The Private Sector Housing Team intends to revoke the licence on one or more of the grounds specified in Parts 2 or 3 of the Act, other than the property has ceased to be licensable, and upon revocation there will be no reasonable prospect of the property being licensed in the near future (e.g. to another suitable person)
- The Private Sector Housing Team is satisfied that when the licence is revoked, the Health and Safety Condition test will be met

### **8.4 Final Management Orders**

In exceptional circumstances the Council can also apply for a Final Management Order (FMO) (s.113 Housing Act 2004) which can last for up to five years. Such powers will only be used in exceptional circumstances and will be authorised by the Head of Housing.

A FMO cannot be made unless an IMO or another FMO was already in force. An FMO transfers the management of the house to the Private Sector Housing Team for the duration of the order. In particular, the FMO allows the Council;

- Right to possession of the property from the relevant landlord, but subject to existing rights of occupation
- To do anything in relation to the property which could have been done by the landlord, including repairs, collecting rents etc.
- To spend monies received through rents and other charges in carrying out its responsibility of management, including the administration of the property;
- To create new tenancies (without the consent of the landlord).

### **8.5 Management Order Management Schemes**

The Council must adopt a management scheme for a property subject to an FMO. The scheme must set out how the Council intends to manage the house. In particular, the management scheme must include:

- The amount of rent it will seek to obtain whilst the order is in force
- Details of any works which the Council intends to undertake in relation to the property
- The estimate of the costs of carrying out those works
- Provision as to the payment of any surpluses of income over expenditure to the relevant landlord, from time to time
- In general terms how the authority intends to address the matters that caused the Council to make the order. The Council must also keep full accounts of income and expenditure in respect of the house and make such accounts available to the relevant landlord.

### **8.6 Temporary Exemption Notices**

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

### **8.7 Raising Standards in HMOs**

Under current legislation many HMOs do not require a licence. These include houses containing self-contained flats and smaller HMOs. Many of these still pose a significant degree of risk to occupants and/or have a history of being poorly managed. The Council will continue to regulate such HMOs through enforcement of the HMO Management Regulations and by use of the Housing Health and Safety Rating System. All HMOs will however, be subject to a risk assessment which will allow the prioritisation of proactive inspections to secure appropriate improvement work.

## **8.8 Fire Safety in HMOs**

Statistically, HMOs have one of the highest incidents of deaths caused by fire in any type of housing. It is therefore essential that any HMO possesses an adequate means of escape in the event of a fire, and adequate fire precautions. The actual level of fire protection and detection required will be determined by a risk assessment.

The Private Sector Housing Team is generally the lead enforcing authority for fire safety in HMOs, however where an HMO is in a building that also contains communal areas, a Fire Risk Assessment must be carried out in accordance with the Regulatory Reform (Fire Safety) Order 2005 which is administered and enforced by Hampshire Fire & Rescue Service.

## Other Legislation

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

Where the Council has reasonable grounds to believe that the requirements of these Regulations have not been met by a landlord, there is a duty on the Council to serve a 'remedial notice'. Failure to comply with a remedial notice imposes a further duty on the Council to arrange remedial action and a power to require payment of a penalty charge. Penalty charges for non-compliance are currently as follows:

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

In determining the level of the penalty charge the Council has considered the likely costs it will incur and the amount required to provide a deterrent to non-compliance. Increasing the fine for a second or third offence reflects the seriousness of the offence and is designed to deter repeat offending.

While these charges are set as standard, a landlord may seek to review a penalty charge notice within 28 days by service of notice on the Council. A senior officer not directly involved in the service of the original notice, usually the Head of Housing, will carry out this review. The reviewing officer will consider the representations made by the landlord and decide whether to confirm, vary or withdraw the penalty charge notice.

In doing so the reviewing officer will have regard to the amount required for the Council to recover its costs and that the Council has considered and agreed a level of fine that it considers is sufficient to act as a deterrent to non-compliance. After reviewing the penalty notice the reviewing officer will inform the landlord by service of notice of their decision. The 50% reduction for a first offence will apply to any revised charge set should payment be within 14 days of service of the revised notice.

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

Where the Council is 'satisfied on the balance of probabilities' that a person has failed to belong to a redress scheme as required by article 3 or 5 of the 2014 Order, it may by notice require that person to pay a 'monetary penalty'.

The Council will follow the procedure for issuing a monetary penalty as set out in the 2014 Order. This includes serving notice that it intends to issue a monetary penalty for specified reasons. It will also outline how the person notified can submit any representations and what the appeal process is.

The standard penalty charge for breach of duty under article 3 or 5 is set as follows:

Breach of duty under article 3 or 5	£5,000	Reduced to £2,500 if paid within 14 days for first offence only
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In determining the level of the penalty charge the Council has considered the likely costs it will incur and the amount required to act as a deterrent to non-compliance. If written representations are received within 28 days of the service of the notice of intent, a senior officer not directly involved in the service of the original notice, usually the Head of Housing will carry out a review.

When considering any formal review of a notice of intent, the reviewing officer will consider the representations and decide whether to serve the final notice. The final notice shall state the reasons for imposing the monetary penalty, the amount to be paid, how to pay and by when. The notice shall include information about rights of appeal and the consequences of non-payment which would usually be prosecution.

The 50% discount will apply to any revised charge set, should payment be within 14 days of service of the revised notice. The reviewing officer will refer to this protocol in considering any request for a review.

## **11. Civil Penalties**

The Housing & Planning Act 2016 introduced a range of measures to crack down on rogue landlords including the power for Councils to issue civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences. This power came into force on 6 April 2017 and was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

Income generated by payment of a civil penalty can be retained by the local housing authority provided that it is used to further the local housing authority's statutory functions in relation to their enforcement activities in relation to the private rented sector.

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

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

The amount of penalty is to be determined by the Council in each case. In determining an appropriate level of penalty, the Private Sector Housing team will have regard to statutory guidance given in the Department for Communities and Local Government publication 'Civil Penalties under the Housing and Planning Act 2016'.

Only one penalty can be imposed in respect of the same offence and a civil penalty can only be imposed as an alternative to prosecution. However, a civil penalty can be issued as an alternative to prosecution for each separate breach of the Management of Houses in Multiple Occupation (England) Regulations 2006. Section 234(3) of the Housing Act 2004 provides that a person commits an offence if he fails to comply with a regulation. Therefore, each failure to comply with the regulations constitutes a separate offence for which a civil penalty can be imposed.

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, the Council must satisfy itself that if the case were to be prosecuted in a magistrates' court, there would be a realistic prospect of conviction. In order to achieve a conviction in the magistrates' court, the Private Sector Housing Team must be able to demonstrate beyond reasonable doubt that the offence has been committed.

### **11.1 Determining the Sanction**

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



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

## 11.2 Factors to be taken into consideration when determining the penalty

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

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

the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

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

### 11.3 Penalties Structure

For the purpose of the offence, a fine will usually be calculated using the financial penalty notice matrix at Appendix 1. The selection of the relevant fine range, and the position of the individual offence within that range, is determined by the seriousness of the offence. The following factors will be considered;

- In assessing seriousness there is a need to consider both culpability and harm

There can be an imbalance i.e.

- Harm that results is greater than the harm intended by the offender
- Culpability may be at a higher level than the harm resulting from the offence

Culpability will be greater if;

- The offender deliberately causes more harm than necessary
- The offender targets a vulnerable victim (old age, youth, disability)

The culpability of the offender should be the initial factor in determining the seriousness of the offence

### 11.4 Procedure

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

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

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

A person who is given a notice of intent may make written representations to the Council about their intention to impose a financial penalty within 28 days from the date the notice was served.

Where written representations are made, a senior officer not previously involved with the case will consider the appeal. This will usually be the Head of Housing or another relevant officer at this level within the Council's structure. The decision notice from the senior officer will clearly set out their reasons for making their decision. The following options will be available to them:

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

At the end of the 28 day period, the Council will decide whether to impose a penalty and, if so, will set the amount of the penalty. If the decision is made to impose a financial penalty, we will issue a final notice requiring that the penalty is paid within 28 days. The final notice will include the following information:

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

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

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

In these circumstances, the final notice is suspended until the appeal is determined or withdrawn.

## **12. Rent Repayment Orders**

In addition to the powers provided by the Housing Act 2004 to apply Rent Repayment Orders (RROs) in response to offences relating to HMOs (as outlined at section 73 and 74 of Housing Act 2004) the Housing and Planning Act 2016 extended the power to apply RROs in respect of the following offences committed after 6<sup>th</sup> April 2017:

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

The maximum amount of rent that can be recovered is capped at 12 months.

A criminal standard of proof is required.

Winchester City Council will consider an application for a RRO in all cases where a successful prosecution has been achieved, or where the alternative of a Civil Penalty has been served and paid or where all possibilities for appeal have expired.

The Council will apply for a Rent Repayment Order in all cases where rent was paid through Universal Credit/Housing Benefit.

In all other cases the Council may help tenants apply for a Rent Repayment Order in a range of ways the extent of which will be determined on a case by case basis. The Council will take the following into consideration when determining the level of help that would be appropriate in each case.

- 1) Whether the Council has prosecuted the landlord or served a Civil Penalty in respect of the offence. (NB a Rent Repayment Order can be sought and made even if the offence in question has not been the subject of a prosecution or Civil Penalty, however the Tribunal would still have to be persuaded beyond reasonable doubt that the offence had been committed)
- 2) The landlord's acceptance of responsibility, or otherwise, where a successful prosecution has been achieved or a Civil Penalty served and paid or not appealed.
- 3) The management and condition of the property at the time of any inspection related to the offence with particular regards to both the Housing Act 2004 Part 1 and a Housing Health and Safety Rating System assessment and The Management of Houses in Multiple Occupation (England) Regulations 2006, and other statutory requirements detailed in this policy and those enforced by Trading Standards and Hampshire Fire and Rescue that are applicable to the property.
- 4) Whether tenants would require the assistance of the Council, due to vulnerabilities or disabilities, to pursue an application. No action will be commenced without the agreement of the tenants.
- 5) The Service Lead: Legal services is satisfied that there is sufficient evidence and reason to apply for the RRO and that the public interest test is met.
- 6) In determining whether the public interest test is met the following are to be considered:
  - a. Proportionality of the outcome
  - b. Circumstances
  - c. Intent / attitude / repeated breaches
  - d. Public perception
  - e. Public sector equality duty]

## 13. Empty Homes

Empty homes can be a blight on our community as well as a wasted housing resource. Our approach will be to work alongside owners of empty homes with a solution based approach to support and encourage voluntary action. However, we are also committed to using appropriate enforcement action where owners fail to take responsibility for their properties, reasonable negotiations fail or there is little prospect of the property being bought back into use voluntarily.

A number of factors will be considered in deciding the best course of action for an empty home. For more information please see the Winchester Empty Property Strategy 2016 or contact the Empty Homes Officer (web links are provided at the end of this document).

The Council will provide advice, assistance and in some circumstances financial assistance to the owners of empty properties to help bring the home back into use, subject to appropriate funding being available. It will also consider using any of the following enforcement options:

- **Empty Dwelling Management Orders (EDMOs)**  
Where a property has been left empty for over two years and is becoming a blight in its neighbourhood, the Council may seek an EDMO, the provisions for which are contained in the Housing Act 2004. An EDMO allows the Council to take over full management of the property for up to seven years, reclaiming any management and refurbishment costs from the rental income.
- **Compulsory Purchase Orders (CPOs)**  
CPOs can be made under s17 of the Housing Act 1985 or s226 of the Town & Country Planning Act 1990. They allow local authorities to purchase properties in specific circumstances without the owner's consent.
- **Statutory nuisance provisions**  
If a property is unsafe, causing or is likely to cause a nuisance within the locality, there are several legislative tools available to the Council to ensure that the condition of the property is improved, principally within the Environmental Protection Act 1990.
- **Enforced sale procedure**  
The Law of Property Act 1925 allows the recovery of debt secured by a registered charge by forcing the sale of a property. In situations where the Council has served notices requiring the owner to ensure that their property is not unsafe or having a negative impact, but they have failed to act, the Council may be forced to carry out the works in default. If the costs incurred are not paid, the Council will register a charge against the property and should the owner still not pay this debt; the Council can commence legal proceedings to sell the property to recover the costs. An enforced sale under a different procedure can be used to recover Council Tax arrears.

## 14. Monitoring and Review

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

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

The satisfaction of service users will be assessed through regular random sample customer questionnaires.

The information collected will be used to improve the delivery of the team's private sector housing work.

## **15. Other legislation.**

While the majority of enforcement will be carried out using the powers conferred by the Housing Act 2004 and other regulations detailed in this document, the Private Sector Housing Team may also use powers available under other Acts where appropriate, as indicated at 4.2, and these can be seen in the accompanying list of Authorisations of Officers.

Enforcement under any of these powers will be carried out in accordance with the aforementioned Regulatory Services Enforcement Policy and the provisions of the Acts or Regulations referred to.

Where further housing or other related legislation is introduced which is enforced by the Council and permits the imposition of any monetary penalty or penalty charge the Council will seek to fully implement any duty or power conferred upon it.

## **16. Application of the Policy**

All officers must have regard to this policy when making enforcement decisions.

If you have any comments or queries on this policy, please contact:

### **Head of Housing**

By Email: [privatesectorhousing@Winchester.gov.uk](mailto:privatesectorhousing@Winchester.gov.uk)

By telephone: 01962 848526

Or at this Address:

Private Sector Housing  
City Offices  
Colebrook Street  
Winchester  
SO23 9LJ.

## **17. Related policies and documents**

- Winchester City Council Housing Strategy
- Winchester City Council Preventing Homelessness Strategy
- Winchester City Council Private Sector Housing Renewal Strategy
- Winchester City Council Empty Property Strategy

All of the above are available at:

<http://www.winchester.gov.uk/housing/housing-strategies-policies>

Printed copies of these are also available by emailing:

[privatesectorhousing@Winchester.gov.uk](mailto:privatesectorhousing@Winchester.gov.uk)

<b>Appendix 1</b>					
<b>Financial Penalty Matrix</b>					
	<b>Score =1</b>	<b>Score = 5</b>	<b>Score = 10</b>	<b>Score =15</b>	<b>Score = 20</b>
<b>FACTORS</b>					
<b>1. Severity of offence and culpability</b>	No previous enforcement history. Single low level offence.	Minor previous enforcement. Single offence.	Recent second time offender. Offence has moderate severity or small but frequent impact(s).	Multiple offender. Ongoing offence of moderate to large severity or a single instance of a very severe offence.	Serial offender. Multiple enforcement over recent times. Continuing serious offence.
<b>2. Deterrence of offender and others</b>	High confidence that a financial penalty will deter repeat offending. Informal publicity not required as a deterrent.	Medium confidence that a financial penalty will deter repeat offending. Minor informal publicity required for mild deterrence in the landlord community.	Low confidence that a financial penalty will deter repeat offending (e.g. no contact from offender). Some informal publicity will be required to prevent similar offending in the landlord community.	Little confidence that a financial penalty will deter repeat offending. Likely informal publicity will be required to prevent similar offending in the landlord community.	Very little confidence that a financial penalty will deter repeat offending. Informal publicity will be required to prevent similar offending in the landlord community.



<p><b>3. Removal of financial benefit</b></p>	<p><b>No significant assets. No or very low financial profit made by offender.</b></p>	<p><b>Little asset value. Little profit made by offender.</b></p>	<p><b>Small portfolio landlord (between 2-3 properties). Low asset value. Low profit made by offender.</b></p>	<p><b>Medium portfolio landlord (between 4-5 properties) or a small Managing Agent. Medium asset value. Medium profit made by offender.</b></p>	<p><b>Large portfolio landlord (over 5 properties) or a medium to large Managing Agent. Large asset value. Large profit made by offender.</b></p>
<p><b>4. Harm to the tenants (x2 weighting)</b></p>	<p><b>Very little or no harm caused. No vulnerable occupants. Tenant provides no information on impact.</b></p>	<p><b>Likely some low-level health/harm risk(s) to occupant. No vulnerable occupants. Tenant provides poor quality information on impact</b></p>	<p><b>Likely moderate level health/harm risk(s) to occupant. Vulnerable occupants potentially exposed. Tenant provides some information on impact but with no primary or secondary evidence</b></p>	<p><b>High level of health/harm risk(s) to occupant. Tenant(s) will be affected frequently or by occasional high impact occurrences. Vulnerable occupants more than likely exposed. Small HMO (3-4 occupants), multiple occupants exposed. Tenant provides good information on impact with primary evidence (e.g. prescription drugs present, clear signs of poor health witnessed) but no secondary evidence.</b></p>	<p><b>Obvious high level health/harm risk(s) and evidence that tenant(s) are badly and/or continually affected. Multiple vulnerable occupants exposed. Large HMO (5+occupants), multiple occupants exposed. Tenant provides excellent information on impact with primary and secondary evidence provided (e.g. medical, social services reports).</b></p>

<b>Score range</b>	<b>Penalty</b>				
<b>&lt;6</b>	<b>£250.00</b>				
<b>6&lt;11</b>	<b>£500.00</b>				
<b>11&lt;21</b>	<b>£750.00</b>				
<b>21&lt;31</b>	<b>£1,000.00</b>				
<b>31&lt;41</b>	<b>£2,500.00</b>				
<b>41&lt;51</b>	<b>£5,000.00</b>				
<b>51&lt;61</b>	<b>£10,000.00</b>				
<b>61&lt;71</b>	<b>£15,000.00</b>				
<b>71&lt;81</b>	<b>£20,000.00</b>				
<b>81&lt;91</b>	<b>£25,000.00</b>				
<b>91+</b>	<b>£30,000.00</b>				