Private Sector Housing Enforcement Policy 2026 - 2031

This document contains the Private Sector Housing Enforcement Policy and explains when and how we will use our enforcement powers to enforce landlord legislation and housing standards.

Updated July 2026

Tunbridge Wells Borough Council

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1. Introduction

Tunbridge Wells Borough Council (the Council) has a duty to enforce a wide range of statutory provisions relating to private sector housing standards, landlord legislation, management practices, and environmental conditions which affect the health, safety and welfare of occupants, neighbours and the wider community.

This policy sets out the Council's principles for enforcing and executing its duties as a Housing Authority under the relevant statute, including but not limited to:

- housing conditions and hazards;
- property management and licensing;
- tenant protections and rights;
- unlawful practices by landlords and agents;
- environmental conditions affecting residential premises.

Section 3 of the Housing Act 2004 imposes a duty on Councils to keep housing conditions in their district under review with a view to identifying any action that may need to be taken by them

The Policy has been updated to incorporate the enforcement powers and duties introduced by the Renters' Rights Act 2025 (RRA 2025), while continuing to apply to all other relevant housing and environmental legislation enforced by the Council's Private Sector Housing Team.

In this policy, the term 'landlord' should be read as including letting agents, managing agents, licensors, property owners, directors of corporate landlords and any other person involved in the letting or management of privately rented accommodation.

In this policy, the terms 'House of Multiple Occupation' or 'HMO' are defined by the Housing Act 2004.

In this policy, the term 'landlord legislation, is used to refer to the legislation the Council has a duty to enforce under Section 107 of the RRA.

Statutory duties under the Renters' Rights Act 2025

The RRA 2025 introduces new enforcement duties and enhanced powers for local authorities, focusing on improved housing standards and strengthening tenant rights.

Section 107 of the RRA 2025 places a duty on the Council to enforce the landlord Legislation. The Landlord Legislation comprises:

- Chapters 3 and 6 of Part 1 of the Renters' Rights Act 2025;
- Part 2 of the Renters' Rights Act 2025;
- Sections 1 and 1A of the Protection from Eviction Act 1977;
- Chapter 1 of Part 1 of the Housing Act 1988.

The new tenancy reforms and enforcement responsibilities are aided by new investigatory powers that came into effect on 27 December 2025.

Additionally, under section 110 of the Renters' Rights Act 2025, the Council must report to the Secretary of State on the exercise of these enforcement functions. Responsibility for ensuring compliance with these statutory duties' rests with the Head of Housing, Health and Environment.

Operational responsibility for enforcing the Landlord Legislation is delegated to officers authorised under the Council's scheme of delegation within the Private Sector Housing Team. In practice, the preparation and submission of the required annual report will be carried out by an authorised Private Sector Housing officer, on behalf of the Head of Housing, Health and Environment, and in accordance with the Council's governance and reporting arrangements.

2. Policy Scope

This Policy applies to enforcement action taken under all private sector housing legislation. This includes, but is not limited to:

- Protection from Eviction Act 1977
- Environmental Protection Act 1990
- Housing Act 1985
- Housing Act 1988
- Housing Act 2004
- Housing and Planning Act 2016
- Tenant Fees Act 2019
- Renters' Rights Act 2025

Purpose of the Policy

The purpose of this Enforcement Policy is to provide a clear and transparent framework for how the Council exercises its private sector housing enforcement functions. It sets out what owners, landlords, their agents or other persons involved in the letting or management of private rented accommodation, and tenants, can expect from the Council when non-compliance is identified.

It provides guidance for officers within the Private Sector Housing ("PSH") team to ensure enforcement action is taken in line with the Regulators Code and the principles of good regulation where required by The Legislative and Regulatory Reform (Regulatory Functions) Order 2007. It also provides guidance for to ensure enforcement action is taken in line with the provisions of the Renters' Rights Act 2025 and mandatory guidance to local authorities, as the S107 RRA duty to enforce landlord legislation sits outside of the Regulators' Code, and its provisions do not apply. Part 1 of the Housing Act 2004 is also outside of the code's scope.

This policy document sets out what owners, landlords, their agents or any other person involved in the letting or management of rented accommodation, tenants in the private rented sector and tenants of registered providers of social housing, can expect from officers when dealing with non-compliance.

All enforcement action taken will be in accordance with relevant statutory Codes of Practice, Council procedures and protocols, and official guidance from central and local government bodies.

As a public body under the Human Rights Act 1998, the Council will apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Regulatory Framework

Certain private sector housing enforcement functions are “regulatory functions” for the purpose of the Legislative and Regulatory Reform (Regulatory Functions) Order 2007 and are therefore subject to the Regulators’ Code.

The following pieces of legislation are subject to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007:

- Parts 8, 9 and 10 of the Housing Act 1985
- Part 8 of the Housing Act 1996
- Parts 2 to 5 of the Housing Act 2004

Where enforcement falls within a regulatory function, the Council will ensure that this enforcement activity is proportionate, consistent, risk-based and transparent, providing clear information and engagement opportunities for those we regulate. Where specific statutory guidance directs a different approach, the Council will record the reasons for departing from any particular Code provision. The Regulators’ Code can be found at https://www.gov.uk/government/publications/regulators-code.

Statutory Guidance

In exercising its enforcement functions, the Council will have regard to any statutory guidance issued by the Secretary of State, including (but not limited to) guidance relating to the use of civil penalties, investigatory powers, enforcement of the Renters’ Rights Act 2025, and rent repayment orders.

Where statutory guidance sets out a required approach, the Council will follow it unless exceptional circumstances justify a different course of action.

Human Rights and Equality Duties

As a public authority, the Council will apply the principles of the Human Rights Act 1998 and the European Convention on Human Rights, and will have due regard to the Public Sector Equality Duty when exercising functions under this Policy. Decisions will be necessary, proportionate and non-discriminatory.

3. General principles

The Council wants to support responsible landlords to raise housing standards. However, the Council expects landlords to have a good understanding of the housing standards and management issues that should be met in privately rented accommodation.

Section 5, of The Housing Act 2004, places a duty on Councils to take formal enforcement action where a Category 1 hazard exists, whilst Section 7 gives Councils a discretionary duty to take action where a Category 2 hazard exists. The Council will usually take action where a significant Category 2 hazard exists.

Section 6A Housing Act 2004 permits the Council, when first taking appropriate enforcement action under Section 5 Housing Act 2004 in relation to a Category 1 hazard or a failure to meet a Type 1 requirement on qualifying residential premises, to impose a Civil Financial Penalty on the responsible person where, in the Council’s opinion, it would have been reasonably practicable for that person to secure the removal of the hazard or the meeting of the requirement. This power applies to qualifying residential premises other than the common parts of a building containing one or more flats.

Section 107, of the Renters’ Rights Act 2025, places a duty on the Council to enforce the landlord legislation. This defines taking enforcement action as imposing a financial penalty or instituting proceedings against a person for an offence in their area.

Officers within the Private Sector Housing Team will often investigate and identify the need to take enforcement action through a range of routes, including (but not limited to): proactive inspections of dwellings through licensing provisions; in response to a complaint or request for assistance; and referrals from other public bodies. All investigations will be carried out in accordance with the relevant statutory requirements. The Council will ensure that appropriate governance is in place to ensure that action is taken in accordance with appropriate policies.

The Council’s Responsibility for Functions and Scheme of Delegations can be found on the Council’s website. Officers authorised to act under relevant legislation will do so only in accordance with the Scheme of Delegations and this Policy. Only officers who are competent by training, qualification and/or experience will be authorised to undertake enforcement action.

Enforcement decisions will be fair, independent and objective. They will not be influenced by ethnicity, national origin, gender or gender identity, religion or belief, political views, disability, age or sexual orientation of any party involved. Decisions will not be affected by improper or undue pressure from any source. Where relevant, the Council will consider the views of any injured party or relevant person in assessing harm, loss, and the significance of non-compliance.

The Council expects landlords providing accommodation to be aware of the statutory obligations placed upon them, recognising their responsibility for the health, safety and welfare of occupants.

The Council may commence enforcement with formal action instead of informal action in the first instance. In deciding whether to do so, the circumstances of the case will be taken into account. Relevant factors may include, but are not limited to:

- Where there is a risk to public health
- Where there is a blatant or deliberate contravention of the law
- Where there is history of non-compliance

The Council will usually take formal action in the first instance if there has been:

- Non-compliance with previous formal or informal action
- Offences in relation to the licensing of HMOs, or houses if Selective Licensing is in force.
- Unlawful eviction or harassment

The Council will take formal enforcement action in the first instance for breaches of the landlord legislation.

Tenure

In considering the most appropriate course of action, we will have regard to the extent of control that an occupier has over works required to the dwelling. In normal circumstances, this will mean taking the most appropriate course of action against a landlord (including a Registered Provider of social housing).

With regard to owner occupiers, in most cases they will not be required to carry out works to their own home and the requirement to take the most appropriate course of action will be satisfied by the service of a hazard awareness notice. However, in certain circumstances we may require works to be carried out or use emergency remedial action or serve an emergency prohibition order (see Appendix 1).

This is likely to be where there is an imminent risk of serious harm to the occupiers themselves or to others outside the household, or where the condition of the dwelling is such that it may adversely affect the health and safety of others outside the household. This may be because of a serious and/or dangerous deficiency at the property.

Risk based enforcement

We will ensure that our resources are targeted where they will be most effective and that intelligence and risk assessment inform all aspects of our approach to regulatory activity, including:

- data collection and other information requirements.
- inspection programmes.
- advice and support programmes.
- enforcement activity and sanctions.

We will focus our efforts on property where intelligence and risk assessment show a higher likelihood of non-compliance, or which pose a more serious risk.

Advice and guidance

We will provide general information, advice, and guidance to make it easier for landlords to understand and meet their obligations. This will be provided promptly, in clear and concise language, using a range of appropriate formats and media.

When offering advice, we will clearly distinguish between statutory requirements and advice or guidance aimed at improvements above minimum legal standards.

A lack of advice and guidance would not be considered as a mitigating factor for the Council to depart from taking enforcement activities.

Liaison with other regulatory bodies and enforcement agencies

Where we and other regulators have a shared interest in a property, we will try to work together to co-ordinate our activities to minimise any burdens for the landlord, providing this is of benefit and does not harm the standard of enforcement for either regulator. This will be done in accordance with any joint protocols that may be in place.

We will place significant weight on advice provided by other regulators and enforcement agencies. Where a matter involves enforcement by one or more regulator and/or enforcement agency, where appropriate they will be informed as soon as possible.

Relevant intelligence relating to regulatory matters will be shared with other regulatory bodies and enforcement agencies, for example government agencies, the police, the fire authority, other statutory bodies, and local authorities.

4. Housing, Health and Safety Rating System (HHSRS)

The Housing Health and Safety Rating System (HHSRS), established in Part 1 of the Housing Act 2004, is the statutory system used by the Council to assess housing conditions and identify risks to the health and safety of occupiers. The Housing Health and Safety Rating System (England) (Amendment) Regulations 2026 came into force on 23 June 2026 and introduced a revised hazard assessment methodology, updated hazard descriptions, and new statutory operating and enforcement guidance. The Council will have regard to the current HHSRS Operating Guidance and Enforcement Guidance issued by the Secretary of State when carrying out inspections and determining enforcement action

The HHSRS assesses 21 housing hazards and the potential effect they may have on the health, safety and wellbeing of current or future occupants. The system remains a risk-based assessment tool and is used to determine whether a hazard constitutes a Category 1 or Category 2 hazard

Enforcement decisions follow a three-stage process:

1. **Hazard Assessment** – Each hazard is assessed in accordance with the Housing Act 2004, the Housing Health and Safety Rating System (England) Regulations 2005 as amended, and the current statutory operating guidance.
2. **Duty or Power to Act** – Where a Category 1 hazard is identified, the Council has a duty to take the most appropriate enforcement action available under section 5 of the Housing Act 2004. Where a Category 2 hazard is identified, the Council has discretionary powers to take enforcement action under section 7 of the Act.
3. **Most Appropriate Course of Action** – Officers will determine the most appropriate enforcement response, having regard to statutory enforcement guidance, the nature and seriousness of the hazard, the vulnerability of the occupiers, the condition of the dwelling, the conduct of the landlord, and the Council's wider enforcement principles.

Under the revised HHSRS, hazards are banded:

1. **High –** Scores of 1,000 or above and therefore Category 1 hazards.
2. **Medium** – Scores between 100 and 999 are Category 2 hazards.
3. **Low Band Hazards –** Scores below 100 are Category 2 hazards**.**

In addition to its statutory duty to take action in respect of Category 1 hazards, the Council will normally consider formal intervention for Category 2 hazards in the following circumstances:

1. **Medium Band hazards** where the level of risk, vulnerability of the occupants, or likelihood of harm indicates that informal action would not adequately protect health and safety.

2. **Multiple Category 2 hazards** where the combined effect of several deficiencies creates a significant risk to the health, safety or wellbeing of occupiers, or indicates substantial property disrepair.

3. **Failure to comply with informal requests** or where there is a history of non-compliance with housing standards.

In exceptional circumstances, the Private Sector Housing Manager may authorise formal action for any Category 2 hazard where this is considered necessary and proportionate to protect occupiers.

Further information on the HHSRS assessment methodology, hazard profiles and enforcement options is provided in Appendix 1 and the current statutory HHSRS guidance.

5. Powers of entry and Investigatory Powers

In addition to the Council's informal and formal powers of enforcement, there are investigatory powers relating to the collection of information and relating to the entry of premises. Authorised officers may exercise the following powers:

Power to Investigate

Section 114 Renters' Rights Act 2025 gives the Council power to issue a notice to a relevant person to require the person to provide specified information to the Council.

This notice may be given to any person with an estate or interest in the land; the licensor; their agents; or a marketer of a property. It may be given in regard to any offence under the following Legislation:

- Sections 1 and 1A of the Protection from Eviction Act 1977;
- Chapter 1 of Part 1 of the Housing Act 1988;
- Section 83(1) or 84(1) of the Enterprise and Regulatory Reform Act 2013;
- Sections 21 to 23 of the Housing and Planning Act 2016;
- Chapter 3 of Part 1 and Part 2 of the Renters' Rights Act 2025.

Failure to comply with a section 114 notice is an offence under section 131 Renters' Rights Act 2025, as is being obstructive and intentionally or recklessly making false or misleading statements in response to a section 113 notice.

Section 115 Renters' Rights Act 2025 permits the Council when it reasonably suspects a breach of the landlord legislation to issue a notice to any person requiring them to provide the information specified. This may only be done to investigate whether a breach has occurred under the landlord legislation, or to determine the amount of a penalty. For the purposes of this section, the landlord legislation means:

- Sections 1 and 1A of the Protection from Eviction Act 1977;
- Chapter 1 of Part 1 of the Housing Act 1988;
- Parts 1 to 4 and 7 of the Housing Act 2004 ;
- Section 83(1) or 84(1) of the Enterprise and Regulatory Reform Act 2013;
- Sections 21 to 23 of the Housing and Planning Act 2016;
- Chapter 3 of Part 1 and Part 2 of the Renters' Rights Act 2025.

Where an individual has not complied with a section 115 notice, section 116 Renters' Rights Act 2025 enables the Council to make an application to the Court to enforce the provisions of the notice and seek reimbursement for the costs of the application.

Section 131 Renters' Rights Act provides that, in addition to the offence of non-compliance with a section 114 notice, it is an offence for an individual to obstruct a Council officer seeking to exercise their powers without reasonable excuse. It is also an offence to fail to give an officer any additional assistance or information which they reasonably require without reasonable excuse.

Section 235 Housing Act 2004 allows the Council to issue a notice to relevant individuals, including occupiers, directing them to provide specified documents under their control for the purpose of investigating whether an offence has been committed under Parts 1 to 4 of the Housing Act 2004 or exercising the Council's functions under Parts 1 to 4 of the Housing Act 2004.

Section 16 Local Government (Miscellaneous Provisions) Act 1976 also permits the Council to issue a notice to an occupier, manager, or individual with an interest in the land to compel them to provide the Council with information on the nature of their interest and the names and addresses of current occupiers and of any others with an interest in the land.

Entry and seizure

In circumstances where access to premises or records is necessary to carry out an investigation, the Council may use statutory powers of entry and, where permitted, seize relevant documents or materials.

The Renters' Rights Act 2025 introduces enhanced investigatory powers enabling authorised officers to obtain documents, access premises, and secure evidence for enforcement purposes. These powers support the Council in determining whether landlord legislation has been breached and allow officers to act swiftly where documentation or access is obstructed or at risk of destruction. These are:

- **Entry to business premises for documents (without warrant) (s118) –**
  Permits Council officers to enter business premises of relevant people (including landlords, letting agents, and marketers) if it is necessary for the production or seizure of documents under section 122 - 123 Renters' Rights Act 2025. This power will be exercised without a warrant.

- **Entry to other non-residential premises under warrant (s121) –**
  Section 121 Renters' Rights Act 2025 allows a Council officer named in a warrant to enter premises used for a rental sector business which is not mainly accommodation if there are documents on the premises which the officer could require under section 122 or seize under section 123. In addition, for this power to be exercised, one of the following conditions must be met:

  - That access to the premises has been or is likely to be refused, and the Council has provided notice of their intention to apply for a warrant to the occupier;
  - Those documents on the premises would likely be concealed or interfered with if notice of entry were to be given;
  - That no occupier is present, and waiting for their return might defeat the purpose of the entry.

- **Power to require production of documents (s122) –**

Following a section 118 or section 121 Renters' Rights Act 2025 entry, section 122 allows an officer at any reasonable time to require a relevant person on the premises to produce any documents relating to the business and to take copies of them. This may only be exercised to ascertain whether there has been a breach of the Rented Accommodation Legislation where an officer reasonably suspects there has been a breach or an offence; or to ascertain whether the documents may be required in evidence for proceedings regarding a breach or offence.

- **Power to seize documents (s123) –**
  Following a section 118 or section 121 Renters' Rights Act 2025 entry, section 123 authorises Council officers to seize and detain documents that the officer reasonably suspects may be required as evidence in proceedings relating to a breach of, or an offence under, the Rented Accommodation Legislation. When doing so, the officer will provide evidence of the officer's identity and authority if reasonably practicable. The officer will take reasonable steps to inform the person from whom documents have been seized that they have been seized, and will provide that person with a written record of what has been taken.

- **Entry to residential premises as part of an investigation (normally with 24 hours' notice) unless an exception applies (s126) –**
  Permits the Council to enter residential premises used for a tenancy at a reasonable time if the officer considers it necessary as part of an investigation into potential offences specified in subsection 1(b). Where required, the Council will give at least 24 hours' notice of this to the occupier and individuals with an interest in the property as per subsection 1(c), detailing in writing why the entry is necessary and the suspected offences. Where there are occupiers found on the premises, the officer will provide evidence of the officer's identity and authority to at least one of the occupiers if reasonably practicable.

Additionally, the Council also retains long-established rights of entry under the Housing Act 2004. These provisions enable officers to undertake housing surveys, inspections and assessments where hazards or management concerns may be present. Where access is refused or advance notice would undermine the investigation, the Act provides for warrants to secure lawful entry

- **Entry for survey or examination with notice (s239) –**
  Permits Council officers to enter, if necessary and at a reasonable time, a property in order to carry out a survey or examination. This may be done if any one of the following is met:
  - to determine if any Part 1-4 enforcement functions should be exercised;
  - the premises are part of an Improvement Notice or Prohibition Order;
  - a management order is in force under Chapter 1 or 2 of Part 4 on the premises.

  No notice is needed if the property is entered for the purpose of ascertaining whether an offence has been committed under section 72 (relating to licensing of HMOs), section 95 (relating to selective licensing), or section 234 (relating to HMO Management Regulations); or where the person having control or managing the premises has waived the requirement to give notice in relation to qualifying residential premises.

- **Warrants authorising entry where access is refused or where giving notice would defeat the purpose (s240) –**
  In certain circumstances, such as where entry under section 239 is refused or the property is temporarily empty, the Council may obtain a warrant to enter, by force if necessary, under s240 Housing Act 2004.

The Police will accompany officers where that is appropriate. It is an offence to obstruct an officer in the course of their duty. Officers exercising their power of entry will carry identification which includes the details of their authorisation.

The Council may supplement statutory inspection powers with remote inspection methods where appropriate, although these do not replace statutory inspection requirements.

Remote inspections may be used in appropriate circumstances to supplement statutory powers, but will not replace statutory inspection requirements. Any covert surveillance will only be undertaken where lawful and in accordance with the Council's Covert Surveillance and Access to Communications Data Policy and Guidance and approvals.

6. Enforcement action

In accordance with good practice, we will:

- publish our Enforcement Policy.
- follow up enforcement actions where appropriate.
- be transparent in the way in which we enforce requirements and apply and determine penalties (when such powers are available).

When considering what action should be taken, we will look to:

- be proportionate to the nature of the offence and the harm caused.
- change the behaviour of the offender.
- eliminate any financial gain or benefit from non-compliance.
- address the harm caused by regulatory non-compliance, where appropriate.
- deter future non-compliance.
- be responsive and consider what is appropriate for the offender and the regulatory issue.
- Ensure we follow statutory guidance

When considering enforcement action, we will, when appropriate, discuss the circumstances with those suspected of a breach. We will take any comments made into account when deciding on the best approach, unless immediate action is required to prevent or respond to a serious breach, or when to do so would be likely to defeat the purpose of the proposed enforcement action.

We will ensure that clear reasons for any enforcement action are given at the time the action is taken and confirmed in writing at the earliest opportunity. Complaints and relevant appeals procedures will be explained at the same time.

Informal action

Informal action taken by the Council may be written or verbal advice. Additionally, a visit may be made at the outset by Council Officers in cases where the initial complaint indicates that an immediate investigation by a Council officer is warranted.

In cases where officers visit an address, whether this is a result of a landlord's failure to adequately resolve a highlighted issue or as part of an audit or other investigation, written or verbal advice may be deemed sufficient should the inspection highlight only very minor deficiencies.

Where written advice is deemed appropriate by the Council and is provided, timescales will normally be included to undertake any specified work or actions.

While the Council will use its discretion on whether to carry out informal action for a Category 2 hazard, it does not need to provide written or verbal advice before commencing formal action.

For breaches and offences covered by the section 107 enforcement duty under the Renters' Rights Act 2025, there is no expectation that we will issue informal advice or warnings before taking formal action (civil penalties or prosecution), in line with MHCLG guidance.

Formal action

Formal enforcement action will be taken at the outset where the circumstances justify an immediate regulatory response, including situations such as:

- There is a risk to public health or an imminent risk of serious harm.
- There is a blatant or deliberate contravention of the law.
- There is a history of non-compliance or non-cooperation.
- There has been non-compliance with previous formal or informal action.
- Where it would have been reasonably practicable for the landlord to secure the removal of a Category 1 hazard, or a failure to meet a Type 1 requirement, on qualifying residential premises.
- Offences that relate to the licensing of HMOs or management regulations.
- Unlawful eviction or harassment is suspected.
- Breaches or offences of the landlord legislation covered by the enforcement duty under the RRA 2025.

Deciding what enforcement action is appropriate

In assessing what enforcement action is necessary and proportionate, consideration will be given to:

- the seriousness of the failure to comply
- the harm and risk of the failure to comply
- past performance of the landlord and current practice, for example the commission of similar offences.
- in the case of new landlords, an assessment of the willingness to undertake the work required.
- where evidence suggests there was premeditation in the committing of an offence.
- the risks that non-compliance poses to the safety, health, and welfare of the public or individuals.
- legal, official, or statutory guidance.
- acting in the interests of public health.
- any other relevant matters.

If formal action is considered appropriate, the following options are available to the Council.

a. Statutory Notices
b. Civil Penalty Notice
c. Works in default.
d. Prosecution.
e. Rent Repayment Orders.
f. Management and licensing of houses in multiple occupation.
g. Management Orders.
h. Empty Dwelling Management Orders.
i. Banning Orders.
j. Caravan site licensing.
k. Injunctive actions.
l. Enforced sales.

a. Statutory Notices

Housing and relevant legislation contains provisions for the use of statutory notices. These may be served to require the execution of works, the removal of statutory nuisances or the protection of public health and/or safety.

Notices will normally be served where:

- providing advice and information has not achieved the desired effect.
- there is a reason to believe that the landlord will not respond to the provision of advice and information.
- there is a history of non-compliance.
- standards are generally poor with little management awareness of statutory requirements.

- the consequences of non-compliance could be potentially serious to the health and safety of the occupants or their neighbours.
- there is an imminent risk to health.

Realistic time limits will be attached to notices and wherever possible these will be agreed with the recipient of the notice in advance. In some circumstances, requests for extension of time can be made in writing to the officer issuing the notice, prior to the expiry date, explaining the reason for the request.

All notices issued will contain the details of any appeals process available to the recipient.

A charge will apply to the issue of a statutory notice where the law allows. Charges will be levied on the person upon whom the notice is served and will be made at a level fixed within our agreed charges, having regard to a written record assessing the costs reasonably incurred.

Where a notice is not complied with by the expiry date and no extension has been agreed, other enforcement options including prosecution will be considered.

Statutory notices may be served in conjunction with prosecutions and failure to comply with a statutory notice can be a criminal offence.

b. Civil Penalties (Financial Penalties)

This section relates exclusively to Civil Financial Penalties issued by the Council for offences and breaches of the below housing law.

The Council has the power to impose a Civil Financial Penalty for the following:

- Unlawful eviction and harassment of occupier as defined under the Protection from Eviction Act 1997
- Failure to comply with an Improvement Notice [s30 Housing Act 2004]
- Offences in relation to licensing of Houses in Multiple Occupation (HMOs) [s72 Housing Act 2004]
- Offences in relation to the Selective Licensing of ‘houses’ [s95 Housing Act 2004]
- Failure to comply with an Overcrowding Notice [s139 Housing Act 2004]
- Failure to comply with a management regulation in respect of an HMO [s234 Housing Act 2004]
- Failure to secure the removal of a category 1 hazard and failure to meet Type 1 requirements on qualifying residential premises, where it would have been reasonably practicable to do so [s6A Housing Act 2004]
- Offences in relation to Regulation 3, 3B, 3C, and 3D of The Electrical Safety Standards in the Private Rented Sector and Social Rented Sector (England) Regulations 2020
- Failure to comply with a banning order [s21 Housing and Planning Act 2016]
- Failure to give a written statement of terms under section 16D of the Housing Act 1988

- Failure to give an existing tenant information about changes made by the Renters' Rights Act under paragraph 7(2) of schedule 6 to the Renters' Rights Act 2025
- Attempting to let a property for a fixed term under section 16E of the Housing Act 1988
- Attempting to end a tenancy orally or by service of a notice to quit under section 16E of the Housing Act 1988
- Serving an eviction notice that attempts to end a tenancy outside the prescribed section 8 process under section 16E of the Housing Act 1988
- Relying on a ground where the person does not reasonably believe that the landlord is/will be able to obtain possession under section 16E of the Housing Act 1988
- Relying on a ground knowing the landlord would not be able to obtain possession or being reckless as to whether they would under section 16J of the Housing Act 1988
- Failing to provide a tenant with prior notice that a ground which requires it may be used under section 16E of the Housing Act 1988
- Reletting or remarketing a property before expiry of the 12 month no-let period after using the moving and selling grounds under sections 16E and 16J of the Housing Act 1988
- Discriminating against prospective tenants during the letting process on the grounds that those tenants are in receipt of benefits or have children under sections 33 and 34 of the Renters' Rights Act 2025
- Marketing a letting without stating the proposed rent under section 56 of the Renters' Rights Act 2025
- Inviting or encouraging any person to offer to pay an amount of rent under the proposed letting that exceeds the stated rent under section 56 of the Renters' Rights Act 2025
- Accepting an offer from any person to pay an amount of rent under the proposed letting that exceeds the stated rent under section 56 of the Renters' Rights Act 2025

Civil Financial Penalties in respect of these offences operate according to their own independent standalone policy. Our Private Sector Housing Civil Penalty Policy can be found by following link civil-penalty-policy-for-landlords

c. Works in Default

In some circumstances, failure to comply with a notice may result in the Council arranging for the necessary works to comply with the notice to be carried out, known as works in default.

Works in default or emergency remedial action may be carried out if:

- there is no prospect of the landlord carrying out the work for example the person responsible is absent or obstructive.

- there is an imminent risk to the health, safety or welfare of the occupants or neighbours.
- a prosecution is not appropriate.
- a prosecution has been brought and works have still not been carried out.

The cost to the landlord will usually be more than if the landlord carries out the works, because we will seek to recover all costs incurred, including the cost of the works, officer time, and our administrative costs. Until cleared the debt will be registered on the local land charges register as a financial charge and once registered, the charge will accrue compound interest.

d. Prosecution

Where a Civil Financial Penalty is an available alternative to prosecution, the Council will only consider using its power to prosecute under Part 1 Housing Act 2004 in more serious cases.

Once an officer has completed his/her enquiries, the next step will be to submit a case report to the Head of Housing, Health and Environment. This officer is independent of the investigation and will approve the commencement of legal proceedings, subject to advice from the Council's Legal Services.

The decision to prosecute will be determined by the evidential strength of the Council's case and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors.

In many circumstances, where an offence is committed by a body corporate, legislation enables local authorities to pursue persons involved with the body corporate in addition to, or instead of, the body corporate. These include company officers and, where applicable, company members.

The Council will determine, on a case-by-case basis, whether to take enforcement action against any person or persons that they consider fall within the scope of this category in addition to prosecuting the body corporate.

e. Rent Repayment Orders

The Council is permitted by Part 2 of the Housing and Planning Act 2016 to seek a Rent Repayment Order (RRO) at the First Tier Tribunal Property Chamber to recover rent paid through Housing Benefit or Universal Credit where a landlord or agent has committed certain housing-related offences. Section 48 places a duty on the Council to consider applying for RROs.

Tenants also have the right to apply for an RRO independently or alongside the Council. Section 49 enables the Council to assist tenants in applying for Rent Repayment Orders. The Council will usually assist tenants by referring or signposting them to a relevant organisation'.

An RRO can be sought for any of the following offences committed within the last two years in the Tunbridge Wells Borough Council area:

- Unlawful eviction and harassment of occupier as defined under the Protection from Eviction Act 1997
- Failure to comply with an Improvement Notice [s30 Housing Act 2004]
- Offences in relation to unlicensed HMOs [s72(1) Housing Act 2004]
- Offences in relation to unlicensed houses [s95(1) Housing Act 2004]
- Failure to comply with an Improvement Notice [s30(1) Housing Act 2004]
- Failure to comply with a Prohibition Order [s32(1) Housing Act 2004]
- Breach of a Banning Order [s21 Housing and Planning Act 2016]
- Using Violence to secure entry [s6(1) Criminal Law Act 1977]
- Knowingly or recklessly misusing a possession ground [s16J(1) Housing Act 1988]
- Letting or marketing of a property within twelve months of using the ‘moving in’ or ‘selling’ ground of eviction [s16J(2) Housing Act 1988]
- Continuous breach of certain tenancy reform requirements [s16J(3) Housing Act 1988]

The First-tier Tribunal may make a RRO if satisfied, beyond reasonable doubt, that a landlord has committed an offence whether or not the landlord has been convicted.

A RRO can be against both the immediate landlord and/or any “superior” landlord and may extend to company directors and other officers of the company if the landlord is a limited company.

Where the Council intends to apply for a RRO, we must serve a notice of intended proceedings on the landlord which must:

- inform the landlord that we intend to apply for an RRO and set out the reasons
- state the amount that we are seeking to recover
- give the landlord at least 28 days to respond

An application for an RRO may be in addition to other formal action, such as prosecution proceedings or the imposition of a Civil Penalty.

f. Management and Licensing of Houses in Multiple Occupation

We have powers to ensure that adequate standards in houses in multiple occupation (HMOs) are met and maintained. The Housing Act 2004 introduced a mandatory scheme to licence HMOs, and this was extended in 2018 to include an HMO occupied by five or more people, comprising two or more households. The requirement for there to be three storeys no longer exists.

HMO licensing covers:

- procedures to assess the fitness of a person to be a licence holder.
- the potential management arrangements for the property.

- the suitability of the property for the number of occupants, including the provision of relevant and adequate facilities.

It is a criminal offence for a person controlling or managing an HMO not to have the required licence. Breaking any condition of a licence is also an offence. The Housing Act 2004 addresses the management of unlicensed or problem HMOs, with a view to protecting occupiers and those in the vicinity, and having properties licensed and properly managed.

Management Regulations made under the Housing Act 2004 impose duties on landlords and managers of HMOs, whether or not they are subject to licensing (occupiers also have duties). There are no notice serving provisions where there are contraventions, enabling the Council to prosecute straight away for a breach, or to issue a civil penalty notice.

In a licensed HMO, overcrowding is dealt with by enforcing the licence conditions, as the licence states the number of occupants for the HMO. For HMOs that are not required to be licensed, an overcrowding notice can be served (see statutory notices) which will prohibit new residents or limit the number of people sleeping in the HMO.

g. Management Orders

The Housing Act 2004 enables the Council to take over the management of an HMO, where there is no fit and proper person available to manage it. Management orders are used where an HMO must be licensed but where a licence cannot be issued because the property does not meet the right criteria. The Council takes on all responsibility for the property such as management, repairs and collecting rents, but the landlord retains ownership.

Management orders must be made where:

- there is no reasonable prospect of an HMO being licensed in the near future; and
- it is necessary to protect the health and safety or welfare of persons occupying it or having an estate or interest in any premises in the vicinity.

An interim management order (IMO) that lasts for 12 months can be made to ensure that:

- immediate steps are taken to protect the health, safety and welfare of occupiers and adjoining occupiers/owners; and
- any other steps are taken to ensure the proper management of the house pending further action.

On expiry of the IMO and where the HMO is required to be licensed but officers consider that they are unable to grant a licence, a final management order (FMO) will be made, which would be in place for up to five years.

h. Empty Dwelling Management Orders

Empty dwelling management orders (EDMOs) enable councils to take control of and manage an empty residential property. The key points are:

- the dwelling has been unoccupied for at least two years.
- there is no prospect of the dwelling becoming occupied in the near future.
- all attempts to contact the owner or negotiations to bring the property back into use have failed.

There are two stages, an interim EDMO, and a final EDMO.

Further information can be found by following this link to the Government's website [empty-dwelling-management-orders-guidance]

i. Banning Orders

Part 2, Chapter 2 of the Housing and Planning Act 2016 permits a Council to apply for a Banning Order against a person who has been convicted of one or more of the relevant offences. This would prevent the landlord from:

- Letting housing in England;
- Engaging in English letting agency work;
- Engaging in English property management work; or
- Doing two or more of those things.

The Council may consider a Banning Order for the more serious offenders. It will take into account the seriousness of the offence(s), whether the landlord has committed other offences (or received any Civil Penalty in relation to a Banning Order offence) and any history of failing to comply with their obligations or legal responsibilities. It will also take into account other relevant factors, including but not limited to:

- The harm, or potential harm, caused to the tenant;
- The need to punish the offender;
- The need to deter the offender from repeating the offence;
- The need to deter others from committing similar offences.

Breach of a banning order is a criminal offence.

j. Caravan Site Licensing

The use of land as a caravan site usually requires a licence under the Caravan Sites and Control of Development Act 1960 and the Mobile Homes Act 2013. We may impose site licence conditions and take enforcement action should a site be operating without a licence or where site licence conditions are not being met.

k. Injunctive Actions

In some circumstances we may seek a direction from the court (an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

l. Enforced Sales

If a charge has been recorded in the local land charges register, we may opt to recover the charged debt by way of an enforced sale of the property. The criteria for this course of action are:

- the total debt on the property should normally exceed £500.
- the property is vacant and has been empty for more than one year.
- the necessary enforcement notices and documents have been served.

If the first two criteria are not met, then a compulsory purchase order or an empty dwelling management order may be considered. However, if an empty property is derelict and causing a major problem but does not meet the above criteria, the owner is missing or refusing to co-operate, the use of an enforced sale would still be considered providing there was justification for doing so.

Upon disposal of the property we will recover all debts and costs from the sale proceeds. The balance will be held by the Council until it is claimed by the owner.

7. Costs and Charges

The Council incurs costs in carrying out its functions. Where legislation allows, the Council will seek to recover reasonable costs and expenses associated with its enforcement, licensing and wider regulatory activity. This may include (non-exhaustively) costs arising from inspections, investigation, evidence gathering, notices and other statutory documentation, follow-up action, compliance monitoring, and works or other interventions.

Recovery may be pursued using all available lawful routes, which may include civil action, local land charges, and enforcement against the property.

Where permitted, interest may be applied to outstanding sums until paid.

8. Contact Us

Contact may be made with the Council about any matters listed here by email at privatesectorhousing@tunbridgewells.gov.uk, by telephone on 01892 554241, or by post at:

Private Sector Housing team
Tunbridge Wells Borough Council
Town Hall
Royal Tunbridge Wells
Kent TN1 1RS

A landlord can still make a complaint in cases where the Council has instigated legal proceedings. However, making a complaint will not stop any impending legal action.

Where statutory notices have been served, making a complaint does not replace the statutory rights of appeal or the right to make representations. It also does not allow extra time to comply with any notice or order.

If a landlord disagrees with a statutory notice, they should take action as specified in the notice or order to make an appeal, if any exists. Reference should be made to any notes that may accompany the notice or order for more detail.

9. Appeals

Any person served with a statutory notice, civil penalty notice, or other enforcement action under this Policy has the right to appeal.

- Appeals against statutory notices (e.g. improvement notices, prohibition orders) may be made to the First-tier Tribunal (Property Chamber) within 21 days of service.
- Appeals against civil penalties under the Renters' Rights Act 2025 or other housing legislation may also be made to the First-tier Tribunal within 28 days of service.

Details of how to appeal, including relevant forms and guidance, will be provided with the enforcement notice or penalty notice. Enforcement action will normally remain in effect pending the outcome of an appeal unless the Tribunal directs otherwise.

Further information on appeals can be found on the First-tier Tribunal (Property Chamber) website.

First-tier Tribunal (Property Chamber)
Residential Property Havant Justice Centre
The Court House Elmleigh Road
Havant Hampshire
PO9 2AL

E-mail: rpsouthern@justice.gov.uk
Telephone: 01243 779 394

10. Review and Governance

This Enforcement Policy will be reviewed periodically to ensure it remains legally compliant, consistent with statutory guidance, effective in protecting residents and improving housing standards.

Amendments may be made to reflect changes in legislation, case law or national policy.

Appendix 1 - Housing Health and Safety Rating System Hazards and Enforcement Framework

Housing Health and Safety Rating System (HHSRS)

The Housing Health and Safety Rating System (HHSRS) is the statutory method for assessing housing conditions under Part 1 of the Housing Act 2004. The Housing Health and Safety Rating System (England) (Amendment) Regulations 2026 came into force on 23 June 2026 and introduced a revised hazard assessment methodology, updated hazard descriptions, a simplified scoring system, and new statutory operating and enforcement guidance. The HHSRS remains a risk-based assessment tool used by local housing authorities to identify and assess hazards that may affect the health, safety and wellbeing of occupiers.

The Council will have regard to the current HHSRS Operating Guidance and Enforcement Guidance issued by the Secretary of State when carrying out inspections, assessing hazards and determining the most appropriate enforcement response.

Prescribed Hazards

The HHSRS currently assesses 21 prescribed hazards. These hazards are set out in the Housing Health and Safety Rating System (England) Regulations 2005 (as amended) and the statutory HHSRS Operating Guidance. The prescribed hazards are:

Protection Against Accidents

1. Falls on the level.
2. Falling on stairs, steps and ramps.
3. Falling between levels.
4. Fire and explosions.
5. Flames, hot surfaces and similar hazards.
6. Collisions, entrapment and ergonomics.
7. Structural collapse and falling elements.
8. Electrical hazards.

Physiological Requirements

9. Excess cold.
10. Excess heat.
11. Noise.
12. Lighting.
13. Crowding and space.

Protection Against Infection

14. Domestic hygiene.
15. Food safety.
16. Water supply.

Protection Against Threats to Health

17. Damp and mould.
18. Indoor air pollutants.
19. Lead.
20. Radiation.
21. Entry by intruders.

The HHSRS is a risk-based assessment system and each hazard is assessed in accordance with the statutory operating guidance and associated hazard profiles.

Hazard Categories

An HHSRS assessment considers the likelihood of harm arising from a hazard and the potential outcomes of that harm. Following assessment, hazards are classified as either:

- **Category 1 Hazards** – hazards with a score of 1,000 or above. The Council has a duty to take the most appropriate enforcement action in relation to Category 1 hazards.
- **Category 2 Hazards** – hazards with a score below 1,000. The Council has discretionary powers to take enforcement action in relation to Category 2 hazards.

Under the revised HHSRS methodology, hazards are grouped into:

- **High Band** – Category 1 hazards.
- **Medium Band** – Category 2 hazards.
- **Low Band** – Category 2 hazards.

Enforcement Framework

Where a Category 1 hazard is identified, the Council must take the most appropriate action available under the Housing Act 2004. Where a Category 2 hazard is identified, the Council may take the most appropriate action having regard to the circumstances of the case and relevant statutory guidance.

The enforcement options available for Category 1 and Category 2 hazards include:

- Serving an Improvement Notice requiring remedial works.
- Making a Prohibition Order in respect of the whole or part of a dwelling.
- Suspending an Improvement Notice or Prohibition Order until a specified date, event or circumstance.
- Serving a Hazard Awareness Notice.

The following powers are available only where a Category 1 hazard exists:

- Emergency Remedial Action.
- Emergency Prohibition Order.
- Demolition Order.
- Declaration of a Clearance Area.

The action taken will be that which the Council considers to be the most appropriate and proportionate response to the hazard identified and the circumstances of the case.

Where required by legislation, notices and orders may be registered as local land charges. Failure to comply with statutory notices may adversely affect the future sale, transfer, financing or management of a property.

Determining the Most Appropriate Course of Action

The statutory document Housing Health and Safety Rating System (HHSRS): Enforcement Guidance provides guidance on determining the most appropriate enforcement response. The Council will have regard to this guidance when exercising its powers and duties under Part 1 of the Housing Act 2004.

For the purpose of hazard assessment, each hazard is assessed against the relevant vulnerable age group identified within the statutory HHSRS Operating Guidance. When determining the most appropriate enforcement response, officers will also consider the actual occupants and circumstances of the dwelling.

Officers will consider all relevant circumstances, including:

- The nature, location and severity of the hazard.
- The likelihood and potential outcome of harm.
- The vulnerability and needs of current occupiers.
- The existence of multiple hazards and any cumulative risks.
- The condition of the property as a whole.
- The practicability, effectiveness and proportionality of remedial measures.
- The extent to which occupiers have control over the hazard.
- The views of occupiers and other affected persons.
- The compliance history of the relevant person.
- Any wider public health, safeguarding or housing management considerations.
- Any applicable statutory guidance.

Where appropriate, the Council may consult with other agencies, regulators or emergency services before taking enforcement action, for example where we take action to improve fire safety and consult with the Kent Fire and Rescue.

Category 2 Hazards

In addition to its duty to act in relation to Category 1 hazards, the Council will normally consider formal enforcement action for Category 2 hazards where:

- The hazard falls within the Medium Band.
- The hazard presents a significant risk to the health or safety of occupiers.
- Occupiers include children, older persons, disabled persons or other vulnerable individuals.
- Multiple hazards combine to create a more serious overall risk.
- The condition of the property indicates significant or widespread disrepair.
- Informal action is unlikely to achieve compliance.
- There is a history of non-compliance or poor property management.
- Formal intervention is otherwise considered necessary, reasonable and proportionate.

In exceptional circumstances, the Private Sector Housing Manager may authorise enforcement action in respect of any Category 2 hazard where this is considered necessary to protect the health, safety or welfare of occupiers or others.

Level to Which Hazards Are to Be Improved

Where enforcement action is taken in relation to a Category 1 hazard, the Council will normally require works sufficient to remove the Category 1 hazard and achieve a substantial and sustainable reduction in risk.

Where enforcement action is taken in relation to a Category 2 hazard, the Council will normally require works that significantly reduce the likelihood of harm and improve the safety of the dwelling.

When determining the extent of remedial works required, officers may have regard to:

- The relevant HHSRS baseline indicators.
- The statutory operating guidance.
- Relevant building, fire safety and housing standards.
- The age, type and construction of the dwelling.
- The practicality and proportionality of the proposed measures.

Whilst baseline indicators do not create mandatory minimum standards, they provide useful benchmarks for achieving an appropriate level of safety.

The Council will generally seek remedies that are practical, proportionate and durable and which are likely, with normal standards of maintenance and repair, to prevent the need for further enforcement intervention within a reasonable period.

Appendix 2 - Statement of principles to determine the amount of a penalty charge under Part 4 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 as amended by The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022 ("the Regulations")

Section 13 of the Regulations requires local housing authorities to prepare and publish a statement of principles which they propose to follow in determining the amount of a penalty charge.

The Regulations introduced legal requirements on relevant landlords to:

1. Equip a smoke alarm on each storey of the premises on which there is a room used wholly or partly as living accommodation.

2. During any period when the premises were occupied under the tenancy, to ensure that a carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and which contains fixed combustion appliance other than a gas cooker.

3. Carry out checks by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

4. Where, following a report made on or after 1st October 2022 by a tenant or by their nominated representative to the landlord, a prescribed alarm is found not to be in proper working order, the alarm is repaired or replaced.

For the purposes of the legislation, living accommodation includes a bathroom or lavatory.

Where the Council believe that a landlord is in breach of one or more of the above duties, the Council must serve a remedial notice on the landlord. The remedial notice is a notice served under Regulation 5 of the Regulations.

If the landlord then fails to take the remedial action specified in the notice within the specified timescale, the Council can require a landlord to pay a penalty charge and can arrange for remedial action to be taken under certain circumstances. The power to charge a penalty arises from Regulation 8 of the Regulations. Failure to comply with each remedial notice can lead to a fine of up to £5,000. Fines will be applied per breach, rather than per landlord or property.

The Council <u>will</u> impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in the remedial notice within the required timescale.

A landlord will not be considered to be in breach of their duty to comply with the remedial notice if they can demonstrate they have taken all reasonable steps to comply. Where there is evidence, including written correspondence, of repeated and consistent efforts to obtain access to the property, with access repeatedly being prevented by the occupant(s) of the property, a landlord will not be considered to be in breach of their duty to comply with the remedial notice. A landlord will be expected to have:

- Communicated the risk of harm that the lack of functioning alarms posed to all occupants in writing on multiple occasions
- Requested access to comply with the remedial notice on a regular basis of no longer than every seven days in writing

In considering the imposition of a penalty, the Council may look at the evidence concerning the breach of the requirement of the notice. A non-exhaustive list of methods that may be used to obtain relevant evidence includes, but is not limited to:

- Evidence obtained from a property inspection
- Evidence provided by the tenant or agent
- Evidence provided by the landlord demonstrating compliance with the Regulations by supplying dated photographs of alarms, together with installation records
- That all detector heads have not passed their expiration or replacement date

Landlords need to take steps to demonstrate that they have met the testing requirements at the start of the tenancy requirements. A non-exhaustive list of methods that may be used to evidence compliance with these testing requirements includes, but is not limited to:

- Tenants signing an inventory form which states that they observed the alarms being tested and confirming that the alarms were in working order at the start of the tenancy

Where a landlord is in breach, the local housing authority may serve a remedial notice. Failure to comply with each remedial notice can lead to a fine of up to £5,000. Fines will be applied per breach, rather than per landlord or property

When determining the amount of the penalty charge, regard will be had to whether this is a first breach under the Regulations.

Determining the amount of the penalty charge for a first breach

The minimum amount of a penalty charge for a first breach of the Regulations will be £2500. The starting level of a penalty charge for a first breach of the Regulations will be £3000. The penalty charge amount will then be varied depending on aggravating and mitigating factors.

Aggravating factor include, but are not limited to:

- The number of alarms not working or missing (the Regulations state there should be one per storey)
- Other fire safety concerns/defects in the property which increase the risk posed to the occupants
- The length of time the offence is believed to have been on-going
- The frequency of complaints by the occupiers to the landlord about the non-working or missing alarms
- The costs of any remedial work the Council have carried out in response to the breach
- Whether the property is let as a HMO (which increases the overall risk)

- The number of occupants living in the property
- Presence of vulnerable occupiers such as elderly, children or disabled people
- Any history of previous enforcement or non-compliance of the landlord
- Attempts to obstruct the investigation

Mitigating factors include, but are not limited to:

- The property being small and low-risk (for example a one-bedroom ground floor flat with a large number of fire escapes including large windows)
- A single occupant living in the property
- Evidence that all required alarms were checked and in working order at the start of the tenancy
- Written evidence that some efforts to gain access and comply with the remedial notice were made and access was prevented by the occupant

Determining the amount of the penalty charge for a subsequent breach

The penalty for subsequent breaches by the same landlord will be £5000.

Appendix 3 - Statement of principles to determine the amount of a penalty charge for a breach of minimum energy efficiency standards (MEES) with respect to domestic privately rented property

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (“the Regulations”) make it unlawful to rent out a domestic property if it has an EPC (Energy Performance Certificate) rating of F or G (unless a valid exemption has been registered on the PRS Exemptions register).

The Regulations make it unlawful to fail to comply with a compliance notice served by the Council.

The Regulations cover all relevant properties, even where there has been no change of tenancy.

The Regulations were introduced to improve the energy efficiency of housing in the private rented sector and to reduce greenhouse gas emissions and tackle climate change. They should help make tenants’ homes more thermally efficient.

An energy performance certificate (EPC) gives the property an energy efficiency rating – A rated properties are the most energy efficient and G rated are the least efficient. It’s valid for 10 years and must be provided by the owner of a property, when it is rented or sold.

If you are a landlord and you fail, when requested, to provide an EPC for the start of a tenancy, you will be in breach of the Regulations.

An EPC contains information about the type of heating system and typical energy costs. It also gives recommendations about how the energy use could be reduced, lowering running costs. You can find the recommended energy efficiency improvements on the current EPC.

If you’re a private landlord, you must either:

- ensure your rented properties have an EPC with a minimum ‘E’ rating
- register a valid PRS exemption on the PRS exemptions register

Failure to do either of these is a breach of the Regulations.

The Council investigates any potential breaches of the regulations. If the Council is satisfied that you are, or have at any time in the 18 months preceding the date of service of the penalty notice, breached the Regulations, you may be subject to a penalty notice imposing a financial penalty. The Council may also impose a publication penalty.

The “publication penalty” means publication, for a minimum period of 12 months, or such longer period as the Council may decide, on the PRS Exemptions Register of such of the following information in relation to a penalty notice as the Council decides:

- Where the landlord is not an individual, the landlord’s name

- Details of the breach of these Regulations in respect of which the penalty notice has been issued
- The address of the property in relation to which the breach has occurred, and
- The amount of any financial penalty imposed.

The Council will impose the following financial penalties:

(a) letting a property with an F or G rating for less than 3 months: £2,000
(b) letting a property with an F or G rating for more than 3 months: £4,000
(c) registering false or misleading information on the PRS exemptions register: £1,000
(d) failing to provide information to the Council demanded by a compliance notice: £2,000

The Council may not impose a financial penalty under both subsections (a) and (b) above in relation to the same breach of the Regulations. But they may impose a financial penalty under either paragraph (a) or paragraph (b), together with financial penalties under paragraphs (c) and (d), in relation to the same breach. Where penalties are imposed under more than one of these paragraphs, the total amount of the financial penalty may not be more than £5,000.