



Bury Council Private Sector Housing Enforcement Policy

For the Regulation of Housing
Standards

Updated July 2021

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1. Introduction and Scope

The purpose of this policy is to outline Bury Council's ('the Council') approach to securing compliance with legislation pertinent to public health and in relation to private sector housing.

The policy outlines the extent to which the Council will intervene to make use of the powers held under Part 1 of the Housing Act 2004, Section 45 of the Energy Act 2011 (<http://www.legislation.gov.uk/ukpga/2011/16/section/45/enacted>) and the Council's approach to the licensing of HMO's and other private rented properties in Bury.

Bury Council is committed to improving standards in private sector housing with the aim of ensuring that all private accommodation is well managed, properly maintained, safe and habitable. All privately owned, privately rented and registered provider accommodation is covered.

Although Bury has some excellent landlords and letting agents, the Council has a vital role to play in tackling irresponsible landlords and property management / letting agents who do not comply with their legal obligations and prevent them from profiting from their non-compliance.

In order to achieve this the Council has a raft of statutory powers and duties to regulate private sector housing and public health. These are assisted by the Housing Health and Safety Rating System (HHSRS)¹, the mandatory licensing of houses in multiple occupation (HMO's), HMO Management Regulations and the option for selective licensing within the Bury area².

In addition the Council also has powers to ensure that letting agents are complying with certain legal requirements³ and powers in relation to smoke and carbon monoxide alarms.

In order to regulate private sector housing, the Council's Private Sector Housing team will request information, carry out inspections, process licence applications, encourage and promote good practice, provide owners, landlords and property management agents with advice and information, investigate possible offences, and where appropriate, take enforcement action which can include prosecution through the courts.

This policy should be read in conjunction with the Private Sector Housing Civil Penalties Policy and seeks to support the Council's corporate aims, objectives and strategies with respect to Private Sector Housing.

The Council welcomes the action that the Government is taking to crack down on irresponsible landlords – including the measures introduced under the Housing and Planning Act 2016 – and it is committed to making full use of its new powers to improve standards in Bury's rented sector.

Since the 6 April 2017, local housing authorities have had the power to impose civil penalties of up to £30,000 on individuals and organisations, as an

alternative to prosecution, for certain offences under the Housing Act 2004. Rent repayment orders have also been extended to cover a wider range of offences. The Council intend to make full use of these new powers.

Inter-departmental working

The Private Sector Housing team will work with other Council departments for shared targeted action making best use of resources and sharing information when it is right and appropriate to do so. To that end, we work with our colleagues in Planning and Building Control, Council Tax and Housing Benefits, Safer Stronger Communities, Housing Strategy including the Vacants Team and Housing Options (homelessness prevention), Social Services (both Adult and Children's) and any other department necessary.

Multi-Agency working

The range of enforcement matters dealt with by the Council in this policy area are such that it may be necessary on occasions to work with other agencies. For example the Council may carry out joint inspections with Greater Manchester Fire and Rescue Service ("GMFRS"), Greater Manchester Police, The Home Office, HMRC or the Health and Safety Executive.

Where a fire hazard is identified, the Council may consult with GMFRS on works required before taking enforcement action. In the case of proposed emergency measures, that consultation will be so far as practicable to do so.

In determining the most appropriate form of investigation or enforcement action, officers will have regard, so far as they are aware, to any potential or existing action of other Council services or outside agencies.

Where matters are identified or reported to our officers that are the responsibility of another Council service or outside agency, persons involved will, as far as practicable, be informed of the matter and it will be referred to the appropriate service or agency.

Where enforcement action is being taken by another Council service or outside agency, we will provide all reasonable assistance including the production of witness statements and collection/sharing of evidence subject to any legal constraints and the meeting of reasonable expenses.

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 delegated powers given to officers and under what legislation.

2. Purpose of the Enforcement Policy

The purpose of this Private Sector Housing Enforcement Policy is to address the legal responsibilities, policies, principles and priorities that the Council will follow when enforcing legislation pertinent to public health and housing matters and to explain how the Council will take steps to ensure safer and healthier private housing in Bury.

This Policy provides an overview of the broad principles and processes with which the Council will seek to follow when delivering our service within the private housing sector. It should be read in conjunction with other strategies and policies such as the Private Sector Housing Civil Penalties Policy and the Compliance and Enforcement Strategy.

What is enforcement action?

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

Our Objectives

In normal circumstances, enforcement action will be carried out by the Private Sector Housing team with the objectives to ensure that:

- Tenants of private landlords and Registered Providers (RP's) live in homes that are free of significant risks to their health, wellbeing and safety;
- All Houses in Multiple Occupation (HMO's) are appropriate to be used as a HMO, are safe and well managed and all relevant Management Regulations are adhered to;
- All licensable Houses in Multiple Occupation are licensed and all licensing conditions are met;
- Privately owned property and land does not present a statutory nuisance to other land owners, and does not directly or indirectly present an unacceptable risk to the public health, safety or the environment;
- All properties in Bury comply with the legal requirements in relation to smoke and carbon monoxide regulations⁴;
- Letting agents and property management agents in Bury are registered with one of three approved Government Ombudsman Schemes³; and
- The Council meets its statutory duties in relation to hazards within housing in so far as dealing with Category 1 Hazards using HHSRS and under the provisions of The Housing Act 2004.

- All applicable properties have a valid EPC as per the Energy Performance of Buildings (England and Wales) Regulations 2012.
- All privately rented properties in Bury comply with the legal requirements in relation to Minimum Energy Efficiency Standard regulations 2019.

3. Principles of Good Enforcement

When discharging its duties in relation to private sector housing, any enforcement action taken will generally be in line with the principles of good enforcement as outlined in:

- The Human Rights Act 1998
- Regulators Compliance Code 2014
- The Enforcement Concordat
- The Police and Criminal Evidence Act 1984 (as amended) and the Codes of Practice
- Criminal Procedures and Investigations Act 1985
- Regulation of Investigatory Powers Act 2000
- The Code for Crown Prosecutors⁵
- Enforcement Guidance issued under section 9 of the Housing Act 2004.

The aim is to enforce relevant legislation efficiently and effectively without providing unnecessary burdens upon property owners and occupiers. In carrying out this policy, the Council will have regard to the local economy, the role of inspections, compliance visits, advice and guidance, as well as the principles underpinning enforcement activity.

Economic/Commercial Development

In the context of a housing supply shortage, there is increased focus on the role the private rented sector can play in housing people who cannot access social housing and who cannot afford to purchase a property. This Policy is not intended to stifle growth and development within Bury as the Council recognises the need for a well-managed and regulated private rented sector and will always seek to work with business who wish to invest in the area; however, it is expected that developers and investors within the Borough ensure compliance with all housing legislation as a minimum.

Property Inspections and Compliance Visits

The Council will use risk assessment to concentrate resources in the areas that need them the most and on the properties in the worst condition.

The Council will respond to resident's complaints about substandard, unsafe and problematic private housing and adopt an escalated approach to enforcement. An initial assessment will normally be carried out and any follow up advice or action will depend on the outcome of the initial assessment, which may not

always involve a visit to the property. Complaints about housing provided by Registered Providers, will usually be referred to the Registered Provider to investigate first.

The Council will also carry out proactive property inspections, on a risk based intelligence led approach, to ensure that available resources are targeted at the worst properties based on priority, for example licensable Houses in Multiple Occupation which are avoiding mandatory licensing. These types of properties are 'high risk', particularly in relation to fire safety and therefore it is vital that the Council target resources on a risk based approach.

Above all the Council has a general duty to keep housing conditions under review in Bury in order to identify any action that may need to be taken under the Housing Act 2004.

Advice and Guidance

The Council will provide general information, advice and guidance to make it easier for businesses to understand and meet their responsibilities. This will usually be done through our website <https://www.bury.gov.uk> however where customers require specialist advice based on specific scenarios, there may be a charge for specialist advice and guidance.

Principles Underpinning Enforcement Action

The Private Sector Housing team's enforcement activity will be:

- **Targeted-** We aim to prioritise our resources in areas where they will be most effective. To ensure this we will use an intelligence and risk based approach, focusing on properties and persons who pose the greatest risk. This will include those landlords who fail to licence licensable properties as well as properties which put tenant's health and safety at risk along with evidence of poor property management, which is often evidenced by complaints of anti-social behaviour from the property.
- **Proportionate-** Enforcement action will be proportionate taking into account the scale, seriousness and nature of any breach and/or non-compliance. We will avoid actions which may provide a perverse incentive for non-compliance, for example, costly works in default where it is difficult for us to recover our costs.
- **Fair and Objective-** Enforcement action will be based on the individual circumstances of a case, taking all available information and evidence into account. Officers will carry out investigations in a fair and open minded manner.
- **Transparent-** Enforcement action taken will be in accordance with policies and procedures which are in the public domain. Communications will be easy to understand, with clear reasons being given for any enforcement action taken.

- **Consistent**- Enforcement action will be taken by well-trained investigators and the Private Sector Housing teams will ensure consistency in the interpretation and enforcement of legislation and will liaise with other regulatory agencies to share and develop good practice.
- **Accountable**- Enforcement action will be taken in a responsible manner that has a clear purpose.

4. The Regulation of Private Sector Housing

Dealing with Complaints

The Private Sector Housing team will respond to complaints from tenants as well as other residents and stakeholders about private housing, prioritising the complaints on the basis of seriousness and risk of harm. If enforcement action is necessary, a variety of regulatory powers can be used to address and resolve the issue. In the first instance and where appropriate, we expect the landlord/licence holder to take steps to rectify the issues prior to us intervening formally.

Carrying out Inspections/compliance visits

This can be used where there is a statutory duty to do so, or in cases where the Council considers it is appropriate for an inspection to be conducted. Some inspections will be reactive based on a complaint or pro-active, for example to investigate whether a property is an unlicensed house which requires a Landlord Licence or to check compliance with licence conditions.

Housing, Health and Safety Rating System (HHSRS)

The Housing Act 2004, together with regulations made under it, prescribes the HHSRS as a means by which local housing authorities assess housing conditions and decide on action to deal with poor housing. It is a risk based system of the effect of housing conditions on the health of occupiers. Twenty nine potential hazards are assessed and scored for their severity. The scores for each are ranked in bands. There are two categories of possible hazards which are then identified from the bands:

- **Category 1 hazards (bands A-C)** represent a serious danger to health and the Council has a duty to take appropriate action to deal with these.
- **Category 2 hazards (bands D-J)** represent a less serious danger and the Council has the power, but no duty, to reduce category 2 hazards through appropriate action.

A range of enforcement powers are available under the Housing Act 2004 to remove or reduce any hazards identified to an acceptable level.

In most cases, the Council will follow a pre-formal process in which it will seek to work with landlords and property owners to reduce hazards. This may not be appropriate in all cases, such as when there is an imminent risk of serious harm

to the health or safety of occupants, therefore each case will be risk assessed to determine the appropriate course of enforcement action.

Hazards are scored on the basis of risk to the potential occupant who is most vulnerable to that specific hazard. In determining what action to take, the Council will take account of the hazard assessment score; whether the Council has a duty to take action or discretion to act; the views of the occupiers; the risk to the current and likely future occupiers and regular visitors; and the presence of other significant hazards in the property.

Houses in Multiple Occupation (HMO's)

A House in Multiple Occupation (HMO) is a building or part of a building occupied by two or more people who do not form a single household as their only or main residence, and there is some sharing of basic amenities. This includes houses containing bedsits, hostels and shared houses.

The full definition of a HMO is found at section 254 of the Housing Act 2004. Some HMO's require licensing, while others do not. Although many smaller HMO's are not required to be licensed, as all HMO's are higher risk than single family homes, the conditions, facilities⁶ and management are regulated.

Where a non-licensed HMO is badly managed and/or is in a poor state of repair, then the Council will prioritise it for action, based on an assessment of risk.

Section 257 HMO's as prescribed by section 257 of The Housing Act 2004

A 257 HMO comprises entirely of converted self-contained flats and the standard of conversion does not meet, at a minimum, that required by the 1991 Building Regulations and more than one third of the flats are occupied under short tenancies.

These types of properties can be problematic especially where there is a lack of fire precautions or where fire precautions are under specified and would usually be prioritised as high risk properties. Section 257 HMO's are also subject to Management Regulations⁷.

Mandatory HMO Licensing

The Housing Act 2004⁸ introduced a mandatory licensing requirement for certain types of HMO's and came into force in April 2006. The aim of licensing is to ensure that every licensable HMO is safe for the occupants and visitors, suitable to be used as a HMO and that the property is properly managed.

A HMO licence is required for HMO's that have 3 or more storeys, occupied by 5 or more persons, comprising of two or more households, who share facilities¹⁴. These type HMO's are the highest risk. With effect from 1 October 2018 mandatory licensing of HMOs will be extended so that smaller properties used as

HMOs in England which house 5 people or more in 2 or more separate households will in many cases require a licence.

The HMO licensing process consists of inspecting all mandatory HMO's to assess the suitability of the premises for the number of occupants indicated, including adequate provision of amenities. The process also ensures that the most appropriate person is granted the licence and scrutinises the fitness of a person to be the licence holder. The process also examines whether the management arrangements of the premises are acceptable⁹.

It is a criminal offence for a person to manage or control a HMO which requires a licence but isn't so licensed⁶. This offence is punishable by the courts to an unlimited fine on conviction or to a civil penalty imposed by the Council of up to £30,000 per offence¹⁰.

It is also a criminal offence for a HMO licence holder to fail to comply with licence conditions. This is also punishable by the courts to an unlimited fine on conviction or to a civil penalty imposed by the Council of up to £30,000 per offence.

The Council will robustly pursue anyone (individual or company) who is controlling or managing a mandatory licensable HMO without the required licence. The Council will take a zero tolerance stance to all unlicensed Mandatory HMO's. Appropriate enforcement action will be taken which may include imposing a civil penalty or prosecution through the courts¹¹.

The Council will also robustly enforce in relation to breaches of licence conditions¹² and management regulations⁹.

It is also a criminal offence to control or manage a HMO which is licensed, yet to knowingly permit more persons to occupy the property than is allowed under the terms of the licence¹³. Again this offence is punishable by the courts on conviction to an unlimited fine. The Council can also impose a civil penalty for up to £30,000 for this offence¹⁰.

The Council will take robust action against those found to be committing such an offence. Appropriate action may include prosecution through the courts or the imposition of a civil penalty¹¹.

A licence holder must continue to be fit and proper to hold a licence for the duration of the licence period. The Council will consider revoking a property licence if an issue comes to light regarding a person's fitness to hold such a licence.

Selective Licensing (Landlord Licensing)

Where deemed necessary, the Council may designate one or more areas of Bury as suitable for selective licensing.

The aim of such a scheme would be to ensure good standards of property management are adhered to and a minimum standard is met in relation to the private rented sector.

A license would be required for each privately rented dwelling within any designated area ¹⁴. A licence holder would have to be a fit and proper person to hold such a licence and there would have to be satisfactory management arrangements in place.

Licence conditions would have to be adhered to by the licence holder to ensure that minimum standards were met in relation to gas, electric and fire safety. Conditions would also relate to proper tenancy management and seek to ensure the rental property is in a good state of repair.

It is a criminal offence for a person to manage or control a property which requires a licence under the Landlord Licensing Scheme, yet doesn't have such a licence¹⁵. This offence is punishable on conviction by the courts to an unlimited fine. A civil penalty can also be imposed by the Council for up to £30,000.¹⁶

Overcrowding

We will investigate complaints from private rented sector tenants about overcrowded living conditions, from other properties where they are concerned about children or vulnerable adults living in overcrowded conditions or where overcrowded conditions are legitimately impacting on neighbour's health, safety or welfare.

In cases of severe overcrowding, the Council will explore housing options available to the tenant, including assisting in a move to alternative accommodation by liaising with other departments including Housing Options. When deciding on the most appropriate course of action each case will be judged on its own merits.

We may advise persons living in overcrowded conditions that their health is at risk but that the most appropriate action is not to require them to move out.

The Council has powers to issue an overcrowding notice in respect of a HMO ¹⁷, if having regard to the rooms available, it considers that an excessive number of persons is being, or likely to be accommodated in the HMO concerned.

It is a criminal offence to contravene an Overcrowding Notice and the Council will consider enforcement action against those who do, including issuing a civil penalty notice.

Where a landlord has failed in his duty to manage the property accordingly which has led to overcrowding, the Council may take enforcement action under licensing conditions if applicable.

Energy Performance Certificates (EPC)

As per the Department for Communities and Local Government Guidance on the enforcement of the requirements of the Energy Performance of Buildings (England and Wales) Regulations 2012, we shall be ensuring compliance.

Buildings need an EPC either on construction or when they are to be sold or rented out.

- An EPC is valid for 10 years or until a newer EPC is produced for the same building no matter how many times the property is sold or rented out during that period. Existing occupiers and tenants will not require an EPC unless they sell, assign or sublet their interest in a building.
- A building offered for sale or rent, must include the energy performance indicator for the building as shown on the EPC, for example C, in any advertisements in the commercial media. There is no requirement to include the full EPC in these advertisements; however, there are some circumstances in which full EPCs must be displayed.
- Commercial media includes: newspapers and magazines; written material produced by the seller / landlord / estate or letting agent that describes the building being offered for sale or rent, the internet.
- Buildings with a total useful floor area of more than 500m² which are frequently visited by the public and have a valid EPC must display it in a prominent location.
- There is no need to obtain an EPC specifically for this purpose, but if the property has one, it must be displayed.
- It should be noted that having and displaying an EPC does not mean that a building does not also need a DEC, if it meets the criteria.

Situations where an EPC is not required

- Officially protected as part of a designated environment or because of their special architectural or historic merit where compliance with certain minimum energy efficiency requirements would unacceptably alter their character or appearance
- Buildings used as places of worship and for religious activities
- Temporary buildings with a planned time of use of two years or less
- Industrial sites, workshops, non-residential agricultural buildings with low energy demand and non-residential agricultural buildings which are in use by a sector covered by a national sectoral agreement on energy performance
- Residential buildings which are intended to be used less than four months of the year or where the owner or landlord could reasonably expect the energy consumption of the building to be less than 25% of all year-round use

- Listed buildings on the English Heritage (or its Welsh equivalent) website (www.english-heritage.org.uk/caring/listing/listed-buildings)
- Stand-alone buildings with a total useful floor area of less than 50m² (i.e. buildings entirely detached from any other building)
- A building does not need an EPC where the seller or landlord can demonstrate that it is furnished holiday accommodation as defined by HMRC (see Glossary of Terms below) and the holiday-maker is not responsible for meeting the energy costs.
- Under certain circumstances buildings may be exempt where it may be demonstrated that they are to be demolished. This is subject to a number of conditions as set out in Regulation 8.

On initial investigations if it is found that a landlord, owner / seller is not compliant, we will issue a compliance notice, this will require the submission of a valid EPC to us within a period of 7 days.

As per Section 35 of the Regulations it is the duty of a person subject to such a requirement to comply with it within the period of seven days beginning with the day after that on which it is imposed. A requirement under this regulation may not be imposed (by us) more than six months after the last day on which the person concerned was subject to such a duty in relation to the building.

If following the 7-day period the landlord, Owner / Seller is still not compliant they will be issued with a Fixed penalty of £200.

Defences: Regulation 37 sets out the circumstances in which a person shall not be liable to a penalty charge for not making an EPC available to a prospective tenant. These include where a person is able to demonstrate that they have made all reasonable efforts to obtain an EPC since becoming subject to the duty, and where the prospective tenant required urgent relocation and an EPC was given as soon as reasonably practicable thereafter.

Reviews: Regulation 39 sets out an enforcement authority's obligations regarding the conduct of reviews of the issuing of penalty charge notices. These include considering any representations made by the recipient of the penalty charge notice and deciding whether to confirm or withdraw the penalty charge notice. It also sets out the circumstances in which the authority shall withdraw the penalty charge notice.

Appeals: If the recipient of the penalty charge notice is dissatisfied with the confirmation of the notice after the review, they may appeal to a county court on any of the grounds specified in regulation 40.

Duty to cooperate and obstruction of enforcement officers: Regulation 45 sets out the duty of a person with an interest in, or in occupation of, a building, to cooperate with any landlord to enable them to comply with requirement to make an EPC available. They must also allow access to the building to any energy assessor appointed by the seller or landlord. Regulation 42 establishes a penalty for obstructing an enforcement officer or for imitating an enforcement

officer of a fine not exceeding level 5 on the standard scale, upon summary conviction.

Minimum Energy Efficiency Standards

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 establish a minimum level of energy efficiency for privately rented property in England and Wales. This minimum level of energy efficiency means that, subject to certain requirements and exemptions:

- a) from the 1 April 2018, landlords of relevant domestic private rented properties may not grant a tenancy to new or existing tenants if their property has an EPC rating of band F or G (as shown on a valid Energy Performance Certificate for the property);
- b) from the 1 April 2020, landlords must not continue letting a relevant domestic property which is already let if that property has an EPC rating of band F or G (as shown on a valid Energy Performance Certificate for the property).

In both cases this is referred to in the Regulations as the prohibition on letting sub-standard property. Where a landlord wishes to continue letting property which is currently sub-standard, they will need to ensure that energy efficiency improvements are made which raise the EPC rating to a minimum of E. In certain circumstances landlords may be able to claim an exemption from this prohibition on letting sub-standard property.

Exemptions

For full detailed exemptions see Chapter 4 of Part 3 of the Regulations. Landlords may claim exemptions on the following basis:

- a. Where all the "relevant energy efficiency improvements" for the property have been made (or there are none that can be made) but the property remains sub-standard (regulation 25)
- b. Where a recommended measure is not a "relevant energy efficiency improvement" because the cost of purchasing and installing it would exceed the £3,500 cap (inc. VAT) ("high cost" exemption). If this applies 3 quotes must be obtained from different installers and uploaded as evidence to the PRS Exemptions Register.
- c. Relevant energy efficiency improvements - wall insulation (regulation 24(3)). The Regulations recognise that measures are not always appropriate even though it may be deemed a "recommended measure" due to various technical reasons. Written evidential advice must be sought from an independent expert such as:
 - An Architect registered on the Architect Accredited in Building Conservation register,
 - A Chartered Engineer registered on the Institution of Civil Engineers' and the Institution of Structural Engineers' Conservation Accreditation Register for Engineers,

- A Chartered Building Surveyor registered on the Royal Institution of Chartered Surveyors' Building Conservation Accreditation register
 - A Chartered Architectural Technologist registered on the Chartered Institute of Architectural Technologists' Directory of Accredited Conservationists.
 - Alternatively, if the advice is not, or cannot be, obtained from one of the above experts, advice may be obtained from an independent installer of the wall insulation system in question who meets the installer standards for that measure, as set out in Schedule 3 to the Building Regulations 2010.
- d. Third party consent exemption (regulation 31). The landlord may need consent from another party, such as a tenant, superior landlord, a mortgagee, freeholder (if the landlord in question is a leaseholder of the property being let) or planning or listed building consent, and despite their reasonable efforts they could not obtain that consent, or the consent was given subject to conditions they could not reasonably comply with; or could not carry out the proposed improvements without the consent of the tenant or tenants of the property, and one or more of the tenants refused to give consent. The landlord must be able to demonstrate to us on request that "reasonable effort" has been made to seek consent such as attempts made on a number of separate occasions using a number of different means of communication. *Please note: prior to 01 April 2019, domestic landlords were able to register a "tenant consent" exemption where a sitting tenant refused to consent to a Green Deal finance plan for funding improvements. With effect from 01 April 2019, regulation 31 is amended so that domestic landlords are no longer able to register an exemption where a tenant has refused to consent to a Green Deal Finance Plan. The landlord must seek alternative means of financing the required improvements, including landlord self-funding.*
- e. Property devaluation exemption (regulation 32 and regulation 36 (2)) An exemption of five years from meeting the minimum standard will apply where the landlord has obtained a report from an independent surveyor who is on the Royal Institution of Chartered Surveyors (RICS) register of valuers advising that the installation of specific energy efficiency measures would reduce the market value of the property, or the building it forms part of, by more than five per cent.
- f. Temporary exemption due to recently becoming a landlord (regulation 33 & regulation 36 (2)) The Regulations acknowledge that there are some limited circumstances (as set out in the Regulations) where a person may have become a landlord suddenly and as such it would be inappropriate or unreasonable for them to be required to comply with the Regulations immediately. This exemption will last for six months after the date they become the landlord and will apply from that date.

Where a valid exemption applies, landlords must register the exemption on the national PRS Exemptions Register. The National PRS Exemptions Register is a digital service which allows landlords (or an agent acting on a landlord's behalf)

to centrally register valid exemptions from the minimum energy efficiency requirements. The Register service can be accessed here: <https://prsregister.beis.gov.uk/NdsBeisUi/used-service-before> alternatively it can be accessed via the gov.uk Private Rented Property Minimum Standard page.

It is also important to note that while some landlords of F and G rated rental properties may be able to claim valid exemptions from the requirement to improve a property to EPC E, this exemption will not excuse them from meeting the existing obligation keep their property free from serious hazards. A property that does not have adequate heating and or insulation may be identified by an Enforcement Officer as having a Category 1 Hazard for Excess Cold using the Housing Health and Safety Rating System. Depending on the case, we may aim to deal with problems informally at first, but if this is unsuccessful, we may take legal action against a landlord requiring them to carry out improvements to the property e.g. installing central heating and or insulation. Where a legal notice is served under the Housing Act 2004, the landlord will have to meet the cost of the required work.

Compliance Notices and Penalties

The Council has powers to enforce compliance with the domestic minimum level of energy efficiency (as per Regulation 34). We may check whether a property meets the minimum level of energy efficiency and may issue a compliance notice requesting information where it appears to us that a property has been let in breach of the Regulations (or an invalid exemption has been registered in respect of it).

As per Regulation 37 we may serve a compliance notice on a landlord up to 12 months after the suspected breach. This means that a person may be served with a compliance notice after they have ceased to be the landlord of the property. It is good practice, therefore, for landlords to retain any records and documents relating to a let property that may be used to demonstrate compliance with the Regulations. Any notice that is served under the Regulations must be in writing and may be sent in hard copy or electronically. Where a notice is served on a corporate body it may be given to the secretary or clerk of that body if a suitable named individual cannot be identified. Where a notice is served on a partnership, it may be addressed to any partner, or to a person who has control or management of the partnership business. A compliance notice served by Bury Council may request either the original or copies of the following information:

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

The compliance notice may also require the landlord to register copies of the requested information on the PRS Exemptions Register. The compliance notice will specify:

- the name and address of the person that a landlord must send the requested information to;
- the date by which the requested information must be supplied (the notice must give the landlord at least one calendar month to comply).

The landlord must comply with the compliance notice by sending the requested information to us and allow copies of any original documents to be taken. Failure to provide documents or information requested by a compliance notice, or failure to register information on the PRS Exemptions Register as required by a compliance notice, may result in a penalty notice being served. We may withdraw or amend the compliance notice at any time in writing, for example where new information comes to light. We may also use the documents provided by the landlord or any other information it holds to decide whether the landlord is in breach of the Regulations.

Where we are satisfied that a property has been let in breach of the Regulations, we may serve a notice on the landlord imposing financial penalties. We may also publish details of the breach on the national PRS Exemptions Register.

Financial Penalties

Where we decide to impose a financial penalty, we have the discretion to decide on the amount of the penalty, up to maximum limits set by the Regulations. The maximum penalties are as follows:

- a) Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, we may impose a financial penalty of up to £2,000 and may impose the publication penalty.
- b) Where the landlord has let a sub-standard property in breach of the Regulations for 3 months or more, we may impose a financial penalty of up to £4,000 and may impose the publication penalty.
- c) Where the landlord has registered false or misleading information on the PRS Exemptions Register, we may impose a financial penalty of up to £1,000 and may impose the publication penalty.
- d) Where the landlord has failed to comply with compliance notice, we may impose a financial penalty of up to £2,000 and may impose the publication penalty.

We may not impose a financial penalty under both paragraphs (a) and (b) above in relation to the same breach of the Regulations. But we 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.

It is important to note that this maximum amount of £5,000 applies per property, and per breach of the Regulation. Given this, it means that, if after having been previously fined up to £5,000 for having failed to satisfy the requirements of the Regulations, a landlord proceeds to unlawfully let a substandard property on a new tenancy; we may again levy financial penalties up to £5,000 in relation to that new tenancy.

Appeals

The landlord may ask us to review the penalty notice and, if the penalty is upheld on review, the landlord may then appeal the penalty notice to the First-tier Tribunal.

5. Responding to Different Tenures

Different tenures need to be dealt with in different ways. For example an owner occupier has control over the condition of their home. A tenant is dependent on the landlord being willing to carry out repairs. Leaseholders have their own alternative remedies under the lease. Registered Providers are subject to their own regulation.

Owner Occupiers

Generally, the Council will only take enforcement action against owner occupiers without their consent, in the following situations;

- The problem is adversely affecting someone else, for example a drainage problem which is also affecting an adjoining property. Other examples would be where there are also tenants living at the property or where there is a danger to the health and safety of the public or visitors to the property.
- In certain circumstances, the Council may take enforcement action to protect the health and safety of a vulnerable or elderly owner occupier, for example in cases of hoarding. However, this would only be done where all alternative means to resolve the problem had first been explored.

Private Tenants and Landlords

Before considering taking action in relation to a tenanted property, the tenant(s) will normally be required to contact their landlord about the problem first.

Legislation covering Landlord and Tenant issues requires that a tenant notify their landlords of any problems with the property. This is because it is more difficult for landlords to carry out their obligations under the legislation, unless they have been made aware of the problem.

Where the matter concerns an imminent risk of serious harm to the health and safety of the occupants, it is expected that the tenant will contact the landlord, even if this is after they have contacted the Private Sector Housing team. It would be helpful if the tenant could provide the Council with copies of any correspondence with the landlord about the issue. In certain circumstances it

might not be appropriate for the tenant to write to their landlord first, for example if there is a history of threats of violence or harassment/illegal eviction against the tenant, where the tenant or an occupier appears to be vulnerable, or where the property is one which requires a licence but does not have one.

Tenants should consider seeking independent legal advice about their own individual powers to resolve any dispute with the landlord, as a tenant may want to take their own private action against the landlord.

The Council will generally seek to consult tenants before taking enforcement action and take into account any representations. This may not always be possible, for example in an emergency. Consultations with landlords will depend on the severity of the issue.

Leaseholders

The Council often receives complaints from leaseholders requesting assistance in taking action against other leaseholders or freeholders. Council assistance will be limited to;

- Category 1 and 2 hazards where the leasehold property is tenanted
- Contraventions of HMO management regulations affecting the common parts
- Statutory nuisances/serious emergency situations affecting either the common parts of or multiple flats in a leasehold block
- Breaches of HMO or Landlord Licence conditions

Registered Providers (Social Landlord's)

Registered Providers (RP's) exist to provide suitable and properly maintained accommodation for their tenant's. They are managed by Board's and their performance is scrutinised the regulator.

RP's normally employ staff to both manage and maintain their properties and will usually have written arrangements for reporting problems, setting out the response times they aim to achieve, an also for registering any complaints about service failures.

On that basis the Council will not usually take complaints from tenants of RP properties unless:

- It is satisfied that the problem in question has been properly reported to the RP;
- The RP has failed to take the appropriate action;
- The tenant has exhausted all internal RP complaint procedures; **and**
- Has made a formal complaint to the Housing Ombudsman; **or**
- There is a serious risk of imminent harm **or**
- There is a statutory nuisance arising from an RP property

If the Council determines that it is appropriate to take action, it will usually notify the RP that a complaint has been received and/or the hazard identified and seek the RP's comments and proposals.

Only in cases where it judges the RP's response to be unsatisfactory will the Council take further action determining at this stage the appropriate enforcement action to take, after considering all the facts and circumstances of the case. Any formal action taken will be subject to the usual charging procedure. The Council would only undertake works in default in the most extreme of circumstances.

6. Situations Where a Service May Not Be Provided

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

- Where the Council has evidence that the tenant(s) unreasonably refused access to the landlord, managing agent or landlord's contractor, to arrange to carry out works;
- Where a tenant(s) already has instructed a solicitor/legal advisor in relation to a claim for disrepair;
- Where the tenant(s) have, in the Council's opinion, clearly caused the damage to the property which they are complaining about, and there are no other items of disrepair;
- Where the tenant(s) only reason for contacting the Private Sector Housing teams, is in the Council's opinion, in order to get re-housed. The Council will aim to bring their present accommodation up to standard;
- Where the tenant(s) has requested a service and then failed to keep an appointment and not responded to a follow up letter or appointment card;
- Where the tenant(s) have been aggressive, threatening or being verbally or physically abusive towards officers;
- Where there is found to be no justification for the complaint, on visiting the property;
- Where the tenant(s) unreasonably refuse to provide the Council with relevant documentation.

7. Range of Options to Regulate and Ensure Compliance with Housing Legislation

The following are examples of situations where different types of action may be taken. The list is not exhaustive and decisions will be made on a case by case basis.

No action

In some circumstances it may be appropriate to take no action at all.

Pre-formal action and advice

Wherever possible the Council will try to enforce in a pre-formal manner. This would involve the officer drawing to the attention of the owner, manager or responsible person, in the form of a letter, email or telephone call. This letter will normally list any hazards and deficiencies and action needed to be taken within a reasonable period of time.

If this pre-formal approach does not result in works or action being completed, insufficient progress made and/or information requested not supplied, then the Council may choose to treat this in a formal way.

Pre-formal action may be appropriate where:

- The matter does not involve a category 1 hazard; or failure to apply for a HMO licence or a Landlord Licence;
- Confidence in the individual/business management is high;
- There is insufficient evidence for formal action at that time (although formal action may follow at a later stage);
- The act or omission is not sufficiently serious to warrant formal action;
- The consequences of non-compliance does not pose a significant risk to occupiers/public health and safety;
- There are no concerns that the tenant may be subject to retaliatory eviction

Formal action

Formal action may be taken when:

- Pre-formal action has not resulted in compliance or progress;
- A statutory duty exists to do so, for example a category 1 hazard has been identified;
- There are significant contraventions of legislation, for example category 2 hazards are identified.
- An owner, landlord or managing agent is known to have a history of non-compliance with statutory requirements;
- There is a belief the tenant may be subject to retaliatory eviction;
- A serious offence has been committed, such as failure to apply for a HMO or Landlord Licence, serious breaches of HMO Management Regulations and/or HMO or Landlord Licence conditions and/or non-compliance with a statutory notice served;
- Where standards are extremely poor and the responsible person or company shows little or no awareness of the management regulations or statutory requirements;
- The consequences of non-compliance are significant;

- The likely ability of any witness to give evidence and their willingness to cooperate;

The Council will determine which of the formal enforcement options it will use, taking all the circumstances and facts of the individual case into account.

6. Statutory notices

The most common forms of formal action are the issuing of statutory notices. Most notices served by the Private Sector Housing team are under the Housing Act 2004. The main ones used are:

- Hazard Awareness Notice
- Improvement Notice (including a Suspended Improvement Notice)
- Prohibition Order (including a Suspended Prohibition Order)
- Emergency Prohibition Order
- Emergency Remedial Action

A statement of reasons will be provided with the Notice, explaining why the Council has decided to take a particular course of action, rather than any other kind of enforcement action.

The Council also has powers to enforce further legislation and can serve relevant Notices in relation to these. Further information can be found at Appendix 3 to this Policy.

Improvement Notice

Improvement Notices¹⁸ require remedial works to be undertaken within a specified time. The Notice can require that the hazard is reduced to an appropriate level or removed completely. The Council will take all the circumstances of a case into account, including the category of hazard, when making this decision.

An Improvement Notice will often provide the most appropriate course of action for most hazards.

The Council has the power to suspend an Improvement Notice in certain circumstances¹⁹ and would consider this if reasonable, in all the circumstances of the case, to do so.

Failure to comply with an Improvement Notice is a criminal offence¹⁹ and enforcement action can be taken in relation to this, such as the imposition of a civil penalty, prosecution and works in default.

Prohibition Orders

A Prohibition Order can be used in respect of both Category 1 and 2 hazards.

Prohibition Orders may prohibit use of all of or part of a dwelling, HMO or building containing flats or its common parts²¹. This may be appropriate, for example, if repair and/or improvement appear inappropriate on grounds of practicality or excessive cost.

A Prohibition Order can also relate to occupation by a particular number of persons or households and/or particular description of persons²². This might be appropriate, for example, if the property has a steep staircase or uneven floors which would make them particularly hazardous for elderly occupants or a property with an open staircase that would make it particularly hazardous for infants.

The Council has the power to suspend a Prohibition Order in certain circumstances²³ and would consider where it was reasonable to do so if the facts of a particular case appear to justify it.

Failure to comply with a Prohibition Order is a criminal offence²⁴ and enforcement action can be taken in relation to this, such as prosecution and/or works in default.

Hazard Awareness Notice

A Hazard Awareness Notices²⁵ give formal notification that a hazard exists and does not require the recipient to carry out any works (however, the notice can specify remedial works which the Council considers it would be practicable and appropriate to carry out).

Such a Notice might be served when it is judged appropriate to draw the landlord's attention to the desirability of remedial action or to notify the landlord of a hazard as part of a measured enforcement response.

Emergency Remedial Action and Emergency Prohibition Orders

The situations when the Council may use Emergency Remedial Action and Emergency Prohibition Orders are outlined by the Housing Act 2004³⁷. Specifically, the Council must be satisfied that:

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

If the above conditions are met, then the Council will take the appropriate emergency action. The serving of an Emergency Prohibition Order is a significant power which the Council has. The issuing of such an Order has serious consequences in relation to displacing tenants with immediate effect and for that reason, only in the most serious of situations (when no other enforcement action is appropriate) will this power be used.

Situations where such action may be appropriate include (but are not limited to):

- Residential accommodation above a commercial premises with a lack of safe means of escape in the event of a fire because there is no independent access
- Risk of electrocution, fire, gassing, explosion or collapse
- Residential accommodation housing vulnerable occupants, poor and or absentee management and a serious hazard(s) in relation to fire safety.

Breach of an Emergency Prohibition Order²⁴ is a criminal offence and is likely to lead to a prosecution due to the seriousness of the offence and the level of harm occupiers have been exposed to.

7. Powers of Entry and non-compliance with statutory notices

In certain circumstances, Powers of Entry into a property are provided to authorised officers in accordance with the legislation²⁷ under which the Council operate. In general these powers will allow an officer at any reasonable time to;

- Enter a property to carry out an inspection or gather evidence;
- Take another person with them to carry out the function which they are there for;
- Take equipment or materials with them;
- Take measurements, photographs or make recordings;
- Leave recording equipment on the premises for later collection;
- Take samples of any substances or articles found on the premises
- In some cases, carry out works;
- Where necessary to protect the health and safety of any person, or to protect the environment without delay.

Generally these powers will be used:

- Where it is necessary to carry out a statutory duty or power;
- Where it is necessary to investigate an offence;
- Where it is necessary to prevent obstruction of officers;

In most cases, notice of entry must be given to owners and occupiers. The notice period depends on the legislation being enforced but is usually a minimum of 24 hours' notice. Notice will usually be given in writing or by email, but can in some circumstances be given verbally, depending on the relevant statutory provision.

There are circumstances when entry without notice can be used, for example to investigate whether a property is an unlicensed HMO²⁸ or an unlicensed property

which should have a licence under Part 3 of the Housing Act 2004²⁹ (Landlord Licensing Scheme), or in relation to offences relating to Management Regulations³⁰.

The powers of entry can be enforced with a warrant issued by a court. The police and or security staff will usually accompany officers when executing a warrant if appropriate. It is an offence to obstruct an officer in the course of their duty. Officers exercising their Power of Entry will carry identification and details of their authorisation to carry out such action.

Powers to require documents or information to be provided

Authorised officers have powers to require documentation and/or information to be provided in the course of their duties. This power is usually exercised under section 235 of the Housing Act 2004 and section 16 of the Local Government (Miscellaneous Provisions) Act 1976, however other legislative provisions may also be used.

This power may be exercised:

- Where it is necessary for information to be provided to enable officers to carry out their powers and duties;
- Where it is necessary for information to be provided to enable officers to carry out their powers and duties under the Housing Act 2004;
- Where it is necessary for any person with an interest in a property/land to provide details about ownership and occupation;
- Where it is necessary for electrical certificates, gas safety certificates and fire risk assessments to be provided in relation to HMO's;
- Where it is necessary for electrical certificates, gas safety certificates and copy tenant agreements to be provided in relation to properties falling under the Landlord Licensing Scheme;
- Where it is necessary for Energy Performance Certificates to be provided in relation to privately rented properties.

Failure to comply with formal requests for information under specified legislation is a criminal offence and enforcement action can be taken, such as a prosecution.

The Council also has powers under Section 237 of the Housing Act 2004 to use information obtained by the Council from Housing Benefit and Council Tax information to carry out its functions or investigate the commission of an offence in relation to Parts 1-4 of the same Act.

Carrying out Works in Default

The Council is given powers under the Housing Act 2004 and other legislation to carry out works in default where a person has been required to carry out work, but has failed to do so. In most circumstances a person will be given notice of the Council's intention to carry out works in default. Once the work has started it

is an offence to obstruct the Council or any of its contractors that have been employed to carry out the works. The cost of the works will be recovered in accordance with the relevant statutory provisions.

If a Notice has not been complied with the Council will consider whether works in default are appropriate. The Council is not obliged to carry out works and reserves the right not to do so where the cost of the works is likely to be very high or there are likely to be difficulties in recovering the costs.

Injunctive Actions

In certain circumstances injunctive actions may be used to deal with repeat offenders, dangerous circumstances or significant public detriment. Injunctive actions made also be used where it is necessary to prevent further offences and/or the harassment of tenants, witnesses or other people.

Revocation of HMO or Landlord Licenses

A HMO or Landlord Licence can be revoked on the grounds that the Council no longer considers that the licence holder is a 'fit and proper person' or where the Council no longer consider that the management of the house is carried out by persons who are fit and proper persons to be involved in the management of the property.

The Council can also revoke a HMO or Landlord License where we consider that the license holder or any other person has committed a serious breach of a condition of the license or repeated breaches of such a condition.

Civil Penalties

The Council has the power to impose civil penalties in respect of certain specified for up to £30,000³¹ per offence.

The same standard of criminal proof is required for a civil penalty as for a prosecution. This means that before a civil penalty can be imposed, the Council must satisfy itself that it can be demonstrated beyond reasonable doubt that the landlord did commit the offence in question and that if the matter were to be heard at a magistrates' court, there is a realistic prospect of a conviction. This is known as the 'Evidential Test'.

The Council must also be satisfied that it is in the public interest to impose a civil penalty rather than using another form of enforcement action such as a simple caution or prosecution through the courts. In making this assessment the Council will have regard to 'Crown Prosecution Service Code for Crown Prosecutors⁵ Full Code Test'.

It is the intention of the Council to consider civil penalties as one available enforcement option in all cases where they can legally be imposed. An initial assessment of each case will be undertaken to determine whether a civil penalty would be more appropriate than other courses of action such as prosecution through the courts.

A civil penalty is an available option (for certain offences) when a caution is not deemed appropriate and/or when an offender has been offered a caution but refuses to accept this.

Prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. However, it does not mean that civil penalties should not be used in cases where serious offences have been committed.

A civil penalty of up to £30,000 can be imposed where a serious offence has been committed and therefore where the Council is of the view that the most disruptive sanction to impose on an irresponsible landlord is a civil penalty (or civil penalties), then it will do so.

The Council will consider whether there are particular reasons, on a case by case basis, why a prosecution may be more appropriate than the imposition of a civil penalty. These reasons include, but are not limited to, the following:

- The offence is so serious that it warrants a penalty in excess of the maximum amount the Council can impose;
- The offence is one which a civil penalty cannot legally be imposed for;
- The facts of the case mean that it is in the public interest for the case to be heard in public;
- It is the Council's intention to seek a Banning Order³² on conviction;
- The offender has had civil penalties imposed on them previously, which they have not paid, resulting in County Court action.

The above list is not exhaustive and there may be other circumstances which are applicable which mean that the Council conclude that prosecution, rather than a civil penalty would be more appropriate. Likewise, there may be circumstances where a caution³³ may be more appropriate.

Any decision to impose a civil penalty will be fully considered at a case conference attended by the appropriate authorised officers. Advice and guidance may be sought from the Council's Legal Services.

In deciding the level of civil penalty that will be applied in relation to each offence, the Council will have regard to the Private Sector Housing Civil Penalties Policy, using the method to determine the civil penalty contained therein.

The Council will also have regard to the statutory guidance which has been issued³⁴ and overall will ensure that the civil penalty imposed removes any financial benefit the offender may have obtained by the commission of the offence. The guiding principle will be to ensure that the offender does not benefit as a result of committing the offence, for example, it should not be cheaper to offend than ensure that a property is well maintained and properly managed.

Issuing other financial or monetary penalties

The Council has the power to impose other financial and monetary penalties. These are dealt with in section 12 and 13 below.

Simple Cautions

A simple caution is a formal warning which is given to a person aged over 18 years old, who admits the commission of an offence.

A simple caution is usually a means to deal with less serious, mainly first-time types of offending, without the need for a prosecution. Whether the landlord has since rectified the issue will be an important factor in deciding the suitability of a caution.

The Council will offer a simple caution (or any other form of caution made available for us to use) to an offender in accordance with the most current and up to date guidance regarding out of court disposals from any relevant Government department or any other guidance which is relevant to prosecutors³⁵

For the Council to offer a simple caution for an offence, there must first be sufficient evidence to prove the commission of the offence beyond reasonable doubt (criminal standard of proof) if the offence were to be prosecuted through the courts. In assessing this, the Council can take account of any clear and reliable verbal or written admissions by the offender to committing the offence being considered.

Before deciding that a simple caution is appropriate, the Council must also be satisfied that it is in the public interest to offer a simple caution in relation to the offence, rather than taking other forms of enforcement action such as prosecution or the imposition of a civil penalty (such as when they cannot legally be imposed for the particular offence or are not appropriate).

A caution can only be offered in cases where the offender has made a full and frank admission of guilt in relation to an offence/s and this has been recorded. An offender would also need to formally accept the caution. Those offenders who are offered a caution and do not accept this will be prosecuted or a civil penalty imposed.

Whether an offender will be offered a simple caution is a matter for the Council to consider, on a case by case basis, having considered all the facts and circumstances of the offence.

A simple caution may be cited in later court proceedings and the Council may use this information to influence decisions going forward in relation to enforcement action and/or licence applications.

Consideration of offering a simple caution will be initially considered at a case conference attended by the appropriate authorised officers. Advice and guidance may be sought from the Council's Legal Services.

Prosecution

When deciding to prosecute, the Council must be satisfied that there is sufficient admissible and reliable evidence that an offence has been committed by an identifiable individual/s or company and that there is a realistic prospect of conviction.

In determining whether there is sufficient evidence to secure a conviction, the Council will have consideration 'Crown Prosecution Service Code for Crown Prosecutors⁵' for this purpose. The Code has two stages: (i) the evidential test and (ii) the public interest test.

Evidential Test

In accordance with this Policy, the Council will carry out an objective assessment of the evidence, including the impact of any defence and any other information that the offender has put forward or on which he or she might rely.

The Council will only prosecute where it is satisfied that the required burden of proof has been met and that an objective, impartial and reasonable bench of magistrates, or a judge hearing the case alone, properly directed and acting in accordance with the law, would be sure that the individual/s or company is guilty of the offence alleged.

The following factors will be considered when deciding whether there is a realistic prospect of conviction:

- Whether there is enough evidence to prove each element which makes up an offence (points to prove);
- Whether the offender can make out any statutory defence or is likely to have a reasonable excuse to put before the court;
- Whether the evidence is admissible in court and the importance of that evidence to the case as a whole, for example evidence which might be excluded because it breaches the rules of hearsay;
- Whether there is evidence to suggest a witnesses' background, credibility, age, intelligence or level of understanding is likely to weaken the Council's case in relation to the accuracy or the integrity, for example does the witness have a motive that may affect their attitude to the case, or relevant previous conviction?

Evidence will not be ignored because the Council is not sure that it can be used or that it may be unreliable; however, it should be closely considered when assessing whether there is a realistic prospect of conviction.

Public Interest Test

In every case where there is sufficient evidence to meet the evidential test outlined above, the Council must then go on to consider whether a prosecution is in the public interest. A prosecution will not take place automatically once the evidential test is met.

The Council will consider public interest factors in favour and against prosecution and a prosecution will normally occur if the factors in favour of a prosecution outweigh those against.

The Council will consider the following when assessing public interest:

How serious is the offence committed?

The more serious the offence, the more likely a prosecution will be appropriate. Consider whether the offence amounts to a significant risk to public health and safety or the environment when making this assessment (although some serious offences can also be dealt with by way of a civil penalty, if appropriate, by taking all the circumstances into account). The Council will consider whether the particular circumstances of the offence mean that the case should be heard in public.

What is a level of culpability?

The greater the offender's culpability, the more likely a prosecution will be appropriate (although again, a civil penalty may still be appropriate for highly culpable offenders for some offences). Culpability is likely to be determined by the level of the offenders involvement; the extent to which the offending was pre-planned/premeditated; whether they have relevant³⁶ previous unspent convictions, civil penalties (within the last 2 years) or cautions (within the last 2 years) (and whether they are subject to a Banning Order or on the Database of Rogue Landlords and Property Agents – subject to commencement); any offending whilst the offender was already subject to court proceedings; whether the offending is likely to be repeated or continue; also consider whether the offender was or is suffering from a mental or health issue which means that it is less likely that a prosecution will be needed.

What are the circumstances of harm caused to the victim?

The circumstances of the victim are highly relevant. The greater the vulnerability of the victim (tenant or visitors to the property), the more likely a prosecution will be required.

Consideration should be given to the worst possible harm outcomes that could reasonably occur as a result of the offender committing the specific offence that is being considered. This means that even if some harm has already come to tenants, or visitors to the property, consideration should still be given to whether there was the potential for even greater harm to have occurred. The vulnerability³⁷ of the tenant or any visitors to a property will be taken into account when determining the seriousness of the harm risked. This will be determined on a case by case basis.

When assessing the level of harm, the Council will take all the circumstances of the case into account, for example an unlicensed HMO were the landlord has served an illegal s21 notice on the tenant to quit the property.

The Council will have regard to whether the offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability,

age, religion or belief, sexual orientation or gender identity; or the offender has demonstrated hostility towards the victim based on those characteristics. The presence of those factors would mean that it is more likely that a prosecution is required.

The Council will also consider whether a prosecution is likely to have a significant adverse effect on the victim's physical or mental health. Although this factor if present, may mean that a prosecution is less likely, the Council must have regard to whether it is in the wider public interest to prosecute the case through the courts.

What is the impact on the wider community?

The greater the impact of the offending on the wider community, the more likely it is a prosecution will be required.

If it is the intention of the Council to seek a Banning Order on conviction, then a prosecution will be required. This will be the case when the circumstances of the offence/offender mean that the wider public will need to be protected from the commission of further offences.

Is a prosecution the appropriate response?

The Council will consider whether a prosecution is proportionate to the likely outcome of a prosecution, and in doing so the following may be appropriate (not exhaustive):

1. The likely cost to the Council weighed against the likely sentence at court (although the Council will always seek to recover full costs against the offender in successful court proceedings, which will mitigate the cost to council tax payers). Consider if a nominal penalty is likely;
2. The offence has resulted from a genuine mistake and the offender is prepared to rectify the problem;
3. The offender has been issued a civil penalty previously and did not pay the penalty charge, leading to County Court enforcement action and so a civil penalty is not appropriate;
4. The offender has deliberately obstructed an officer in the execution of their duty;
5. The offender has provided false or misleading information to the Council;
6. The offender has used or threatened violence towards a tenant, member of the public or an Officer of the Council;
7. The facts of the case mean that it is in the public interest for the case to be heard in public.

Any decision to prosecute will be initially considered at a case conference attended by the appropriate authorised officers. If a prosecution is deemed appropriate, taking the evidential test and the public interest test into consideration, then the case will be fully prepared, including an interview under

caution for the potential defendants(s) if applicable, and referred to the Council's Legal Services for consideration

Prosecutions will be brought forward without unavoidable delay and generally there is a requirement to lay information with the courts within 6 months of the identified date of the offence being committed.

To ensure fairness and consistency in decisions taken to prosecute, account will be taken of the Code for Crown Prosecutors.

8. Additional Enforcement Options for Licensable Properties

In addition to the enforcement options described above, the Council has further powers to ensure that adequate standards are met and maintained in licensable properties.

The additional enforcement powers are as follows:

- Interim Management Orders³⁸
- Final Management Orders³⁸

Interim Management Orders

If the Council is satisfied that there is no reasonable prospect of a licensable HMO or other property (which requires a Landlord Licence) being licensed (with appropriate conditions) in the near future, or if it is necessary to protect the health, safety or welfare of the occupiers of the property or properties in the vicinity, it must make an Interim Management Order in respect of the unlicensed property.

Although the Council may delegate the management of the property to another agency or partner - and there are provisions to vary, revoke and appeal against an Interim Management Order - an Interim Management Order will be in force for 12 months or until a HMO or Landlord Licence is granted if this happens within the 12 months.

An Interim Management Order allows the Council to manage the property with many of the rights of a landlord, including the right to collect the rent and to use that rent to pay for work to the property.

Final Management Order

If the Council is satisfied (on the expiry of an Interim Management Order) that the property still requires a licence, but it is still not able to grant a HMO or Landlord Licence, it must make a Final Management Order.

A final Management Order is similar to an Interim Management Order in that there are provisions to vary, revoke and appeal against the Final Management

Order, the Council may delegate the management of the property to another agency or partner.

9. Rent Repayment Orders

Rent repayment orders can be made by a First-Tier Tribunal (Property Chamber) where they are satisfied beyond reasonable doubt that a landlord has committed certain offences (whether or not there has been a conviction). The landlord can be required to pay up to 12 months' rent, either to a tenant for rent paid or to a Council for housing benefit or universal credit paid in relation to the rent of a property.

The Housing Act 2004 introduced rent repayment orders to cover situations where a landlord was in control of or managing property which required a licence under Part 2 or 3 of the Act³⁹ but did not have such a licence.

The Housing and Planning Act 2016 has now extended the scope of rent repayment orders to cover a much wider range of offences⁴⁰:

- Violence to secure entry to a property (under section 6 of the Criminal Law Act 1977)⁴¹
- Eviction or harassment of occupiers under section 1 of the Protection from Eviction Act 1977)⁴²
- Failure to comply with an Improvement Notice (under section 30 of the Housing Act 2004)⁴³
- Failure to comply with a Prohibition Order Notice (under section 32 of the Housing Act 2004)⁴⁴
- Breach of Banning Order (subject to implementation as not yet in force)⁴⁵

The Council must consider applying for a rent repayment order when a landlord has been convicted of a relevant offence. The Council may also help a tenant apply for a rent repayment order, for example by providing them with evidence to assist in their application. Applications for a rent repayment order can be made in addition to other enforcement action taken in respect of the same conduct, such as prosecution or the imposition of a civil penalty.

When deciding whether to apply for a rent repayment order the Council's policy is to:

- Treat each case on its own merit;
- Ensure that applying for a rent repayment order would meet the objectives and principles which underpin this policy;
- Consider the likelihood of the application being successful;
- The level of resources it would take to make the application;
- Whether it is more appropriate for the tenant to make the application themselves;

- Consider the impact of the breach or offence on the occupier or others affected.

The Council is also obliged to have regard to the statutory guidance issued to local authorities on applying for rent repayment orders entitled Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities.

Income received from a rent repayment order can be retained by the Council to further the Council's statutory functions in relation to our enforcement functions covering the private rented sector⁴⁶

10. Power to Charge for Enforcement Notices

The Council has the power under section 49 of the Housing Act 2004 to make a reasonable charge as to the means of recovering certain administrative and other expenses incurred in serving an Improvement Notice, making a Prohibition Order, serving a Hazard Awareness Notice, taking emergency Remedial Action and making an Emergency Prohibition Order⁴⁷.

Charges for Notices and Orders

Where a charge is made, the Council can recover a reasonable amount for expenses incurred in connection with time spent gaining entry to the premises, visiting and inspecting the premises to determine the appropriate course of action and the administrative costs for the production of a Notice, Order or Remedial Action. It is the Council's intention to charge for such work.

Cost incurred carrying out Work in Default or Remedial Action will be charged separately.

When the charge demand becomes operative, the sum recoverable is, until recovered, a charge on the premises concerned. The charge takes effect at that time as a legal charge which is a local land charge. 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 works in default (as well as any other charges).

11. Memorandum of Understanding

The Council has an agreed Memorandum of Understanding with Greater Manchester Fire and Rescue Service which clearly distinguishes roles and responsibilities in relation to the enforcing authority for each property type. This is to avoid duplication and to be able to work together collaboratively supporting each other when required.

12. The Property Redress Scheme

The Redress Scheme for Lettings Agency Work and Property Management (Requirement to Belong to a Redress Scheme etc.) (England) Order 2014 came into force on the 1 October 2014.

The Order requires persons who engage in letting agency work or property management work to belong to a redress scheme for dealing with complaints in connection with that work, which has been approved by the Secretary of State or that which has been designated as a government administered redress scheme.

Under Article 4 of the Approval of Schemes Order the Secretary of State has approved two Ombudsman schemes that already operate voluntary redress schemes in these sectors: The Property Ombudsman (www.tpos.co.uk) and Ombudsman Services Property (www.ombudsman-services.org/property.html). In addition he has approved a new scheme, the Property Redress Scheme (PRS) (www.theprs.co.uk).

As part of our work, the Council systematically check that property lettings and management agencies comply with the requirements to belong to an approved Property Redress Schemes.

Where the Council is satisfied on the balance of probabilities that a person has failed to comply with the requirement to belong to a redress scheme under article 3 (letting agency work) or article 5 (property management work) of the Order, the Council may by Notice require the person to pay a monetary penalty of such an amount as the Council may determine. The amount of the monetary penalty may not exceed £5,000⁴⁸. The Council will issue such Notices if it is satisfied that a person has failed to comply with the legal requirements.

Each approved redress scheme as outlined above will publish a list of members on their respective websites and it is relatively easy to check whether a letting agent or property manager has joined one of the schemes.

The Council must follow a process outlined by the Regulations when issuing a monetary penalty. The Council will usually issue a £5,000 monetary penalty amount on a Notice of Intent to lettings agencies who are found to have failed to comply with the requirements.

The person on whom the notice is served has 28 days starting with the day after the date the notice was sent to make written representations and objections to the Council in relation to the proposed penalty amount.

A £5,000 monetary penalty will be imposed by the Council on a person who has failed to comply with this requirement, unless the Council is satisfied that there are extenuating circumstances which exist, which mean that a lesser penalty should be imposed. This will be considered individually on a case by case basis.

It will be a matter for the Council to decide what such circumstances may be, taking into account any representations made during the 28 day period following the Council issuing a Notice of Intent to issue a monetary penalty⁴⁹.

Circumstances which may, for example, be considered extenuating are representations that a £5,000 penalty would be wholly disproportionate to the scale/turnover of the business or would lead to an organisation going out of business. The Council will then decide whether to impose the penalty (with or without modifications) and if so, issue a Final Notice.

The Council must follow a process outlined by the Regulations when issuing a monetary penalty. The penalty sums which are received by the Council may be used by the Council for any of its functions.

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

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 ("The Regulations") came into force on the 1 October 2015 as ancillary legislation made under sections 150(1) and (6) and (10) of the Energy Act 2013 and paragraph 3(a) of Schedule 4 of the Housing Act 2004. This is the legal basis for the duties imposed on relevant landlords and the powers given to local housing authorities to ensure relevant landlords are meeting their responsibilities.

The Regulations impose the following duties on relevant landlords ("the landlord") of a residential property of a specified tenancy to ensure that⁵⁰:

During any period beginning on or after the 1 October 2015 when the premises are occupied under the tenancy -

- a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation;
- a carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance;
- checks are made 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

Duty of Local Housing Authority to Serve a Remedial Notice

Where the Council has reasonable grounds to believe that, in relation to premises situated within its area, a relevant landlord is in breach of one or more of the duties under regulation 4(1), the Council must serve a Remedial Notice on the landlord within 21 days beginning with the day the Council believe a landlord is in breach of one or more of their duties.

If the Council is satisfied, on the balance of probabilities, that a landlord on whom it has served a Remedial Notice is in breach of the duty under Regulation

6(1), the Council must arrange for an authorised person to take the remedial action specified in the Remedial Notice (within 28 days of being so satisfied).

The Council is not to be taken to be in breach of a duty under these Regulation 7 where the Council can show it has taken all reasonable steps, other than legal proceedings, to comply with the duty.

Penalty Charge

The Regulations provide that where the Council are satisfied, on the balance of probabilities, that the landlord on whom it has served a Remedial Notice is in breach of his duties under the Regulations, the Council may require the landlord to pay a penalty charge at such an amount that the Council determine, however this penalty charge must not exceed £5,000.

The Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in the Remedial Notice within the required timescale. Sums recovered by the Council from such penalty charges can be used by the Council for any of its functions.

Information to be published by the Council

The Regulations state that the Council the Council must prepare and publish a Statement of Principles which it proposes to follow in determining the amount of penalty charge. A copy of the Statement of Principles is published on Bury Councils website via this policy and can found at the end of this document as Appendix 4.

These Regulations do not apply to licensed HMO's and properties licensed under the city wide Landlord Licensing Scheme (under Part 2 and 3 of the Housing Act 2004). This is because these Regulations inserted mandatory licence conditions into the property licenses of HMO's or properties covered by the Landlord Licensing Scheme.

14. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 ('the regulations') came into force in June 2020 and applied to all new tenancies from 1 July 2020 and since 1 April 2021 they apply to all existing tenancies. The regulations were made under section 122 of The Housing and Planning Act 2016 for the purposes of introducing new requirements for electrical safety in the private rented sector.

Duties placed on private Landlords include ⁵¹

- To ensure that electrical safety standards are met during any period when the residential premises are occupied under a tenancy, and that every

fixed electrical installation is inspected and tested at least every five years by a qualified person;

- To obtain a report which gives the results of the inspection and test, supply that report to each tenant within 28 days, and to the local housing authority within 7 days of a request and retain a copy until the next inspection is due.
- To supply a copy of the last report to any new tenant before occupation, or any prospective tenant within 28 days of a request from the prospective tenant;
- Where the report requires the private Landlord to carry out further investigative or remedial work, the private landlord must undertake such further investigative or remedial work within 28 days or within such lesser time period as specified in the report and
- To obtain and supply written confirmation of completion of such further investigative or remedial work to the tenant and local housing authority.

Duty of Local Housing Authority to serve notice

Where a private Landlord is in breach of the regulations, The Council has a statutory duty to serve either a remedial or urgent remedial notice under regulations 4 and 10, specifying what action needs to be taken to achieve compliance and when this needs to be achieved by.

Works in default and recovery of costs

Where an urgent or non-urgent notice has not been complied with, the regulations provide the Council with the discretionary power to organise works in default and reclaim any associated costs back from the private Landlord.

Civil Penalty Notice

Under Part 5 of the regulations, where a local housing authority is satisfied, beyond reasonable doubt, that a private landlord has breached a duty under regulation 3, the authority may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach.

The maximum amount of the financial penalty must not exceed £30,000.

When issuing a penalty under these regulations, the Council will adopt the principles detailed in the Private Sector Housing Civil Penalty Policy.

15. Publicity

Verdicts and sentences in criminal cases are in open court and a matter of public record. Evidence suggests that the public want to know about local court cases and offences committed locally. Providing this information to the public is a legitimate way of engaging communities and making criminal justice more transparent and accountable.

The Council may publish the outcome of criminal cases and basic personal information about the offender, and this will always be in accordance with guidance issued by the Criminal Justice System (Publishing Sentencing Outcome, CJS, 2011). The reasons are to:

- Reassure the public;
- Increase trust and confidence in the criminal justice system;
- Improve the effectiveness of the criminal justice system; and
- Discourage offending and/or re-offending

16. Guidance

There is a wide range of Government as well as other sources of guidance that cover the Council's enforcement activities. The Council will consider the most up to date guidance when formulating our policies and procedures. Enforcement officers will follow our policies and procedures and where appropriate will take the relevant Government guidance into account on a case by case basis.

17. Complaints

If you are unhappy that the Council has taken enforcement action (for example a Notice has been served on you or work in default carried out), we suggest that you first discuss the matter with the officer concerned. If that fails to resolve the matter then you do have a right of appeal to the First-Tier Tribunal (Property Chamber), depending on the type of Notice. Information concerning the relevant appeal process will be included on any legal Notice you are served with.

Officers of the Council will provide an effective and courteous service to landlords and others against whom enforcement action may be taken. Any complaints regarding the behaviour of staff will be dealt with according to Bury Councils complaint procedure. If you feel that we have failed to treat you in accordance with this policy, then please contact us.

18. Governance

This policy is subject to change and will be reviewed periodically, in line with changes in legislation, Government statutory guidance and Council policy.

19. Contacts

For general enquiries about the service the Private Sector Housing Team provide please contact:

Urban Renewal Department, Bury Council, Town Hall, Knowsley Street, Bury.

References

1. <https://www.gov.uk/government/publications/hhsrs-operating-guidance-housing-act-2004-guidance-about-inspections-and-assessment-of-hazards-given-under-section-9>
2. Part 3 of the Housing Act 2004.
3. Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014.
4. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015.
5. https://www.cps.gov.uk/publications/code_for_crown_prosecutors/
6. The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006
7. Management of Houses in Multiple Occupation (Additional Provisions)(England) Regulations 2007
8. Housing Act 2004, Part 2. This came into force on the 6th April 2006
9. The Management of Houses in Multiple Occupation (England) Regulations 2006 and The Licensing and Management of Houses in Multiple Occupation (Additional Provisions)(England) Regulations 2007
10. Housing Act 2004, section 249A.
11. Please see the Private Sector Housing Civil Penalties Policy.
12. Section 2(3) Housing Act 2004.
13. Section 72(2) Housing Act 2004.
14. Unless the property is covered by the licensing regime under Part 2 of the Housing Act 2004 or covered by a statutory exemption.
15. Section 95(1) Housing Act 2004
16. Housing Act 2004, section 249A and please also see the Private Sector Housing Civil Penalties Policy.
17. Section 139 Housing Act 2004
18. Sections 11 and 12 of the Housing Act 2004
19. Section 14 of the Housing Act 2004
20. Section 30 of the Housing Act 2004
21. Section 20 and 21 of the Housing Act 2004
22. Section 22 of the Housing Act 2004
23. Section 23 of the Housing Act 2004
24. Section 32 of the Housing Act 2004
25. Section 28 and 29 of the Housing Act 2004
26. Section 40 to 45 of the Housing Act 2004
27. Section 239 of the Housing Act 2004

28. Section 72(1) of the Housing Act 2004
29. Section 95(1) of the Housing Act 2004
30. Section 234(3) of the Housing Act 2004
31. Section 249(a) of the Housing Act 2004
32. Chapter 2 of the Housing and Planning Act 2016
33. Please see the section above on cautions and the statutory guidance issued: Simple Caution for Adult Offenders: Guidance for Police Officer and Crown Prosecutors (effective from 13th April 2015)
34. Civil Penalties under the Housing and Planning Act 2016-Guidance for Local Authorities
35. Simple Caution for Adult Offenders: Guidance for Police Officer and Crown Prosecutors
36. See Appendix 1 for list of relevant offences
37. See appendix 2
38. Part 4, Chapter 1 of the Housing Act 2004
39. Section 72(1) and 95(1) Housing Act 2004
40. Offences committed after 6th April 2017. For transitional arrangements should be applied in accordance with the Rent Repayment Orders (Supplementary Provisions) (England) Regulations 2017
41. Criminal Law Act 1977, section 6(1)
42. Protection from Eviction Act 1977, section 1(2), (3) or (3a)
43. Housing Act 2004, section 30(1)
44. Housing Act 2004, section 32(1)
45. Housing and Planning Act 2016, section 21
46. The Rent Repayment Orders and Financial Penalties (Amounts Recovered)(England) Regulations 2017
47. Also included are making a Demolition Order, however this would be dealt with by another service area within the Council
48. Article 8 of the Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc)(England) Order 2014
49. See the Schedule to the Redress Scheme for Letting Agency work and Property Management.
50. Part 2 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015.
51. Part 2, regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

Appendix 1

Non exhaustive list of relevant offences

Housing law or Landlord and Tenant Offences under:

The Public Health Acts 1936 and 1961

The Building Act 1984

The Environmental Protection Act 1990

The Town and Country Planning Act 1990

The Prevention of Damage by Pests Act 1949

The Protection from Eviction Act 1977

The Local Government (Miscellaneous Provisions) Act 1976 and 1982

The Local Government and Housing Act 1989

The Housing Act 2004

The Housing and Planning Act 2016

Appendix 2

Non Exhaustive List of Vulnerable Persons

Children (under 18 years)

Persons on a very low income

Disabled persons

Persons with a drug or alcohol addiction

Victims of domestic abuse

Looked after children

People with complex health needs

People exploited where English is not their first language

Victims of trafficking or sexual exploitation

Refugees

Asylum Seekers

People at risk of harassment or eviction

People at risk of homelessness

Appendix 3

Summary of legislative powers/actions in addition to those already outlined in the policy under Housing Act 2004 and the Housing and Planning Act 2016. This list is not exhaustive.

Problem	Legislation	Action
Property in such a state as to be a nuisance or have an otherwise detrimental effect on the quality of life of the local community.	Environmental Protection Act 1990 s.79 Building Act 1984, s.76 Anti-social Behaviour, Crime and Policing Act 2014, s.43	Requires owner to take steps to abate the nuisance Gives the Council powers to take action to abate the nuisance. Requires owners take steps to remove items and/or carry out maintenance
Blocked or defective drains or private sewers.	Local Government (Miscellaneous Provisions) Act 1976, Section 35 Building Act 1984, Section 59 Public Health Act 1961, Section 17	Requires an owner to address obstructed private sewers Requires the owner to address blocked or defective drains, gutters etc. Requires the owner to address defective drains or private sewers
Vermin either present or risk of attracting vermin that may detrimentally affect people's health.	Prevention of Damage by Pests Act 1949, s.4 Environmental Protection Act 1990, s.79 Public Health Act 1936, s.34	Requires the owner to take steps to clear the land of vermin and/or requires the owner to remove waste likely to attract vermin.

Appendix 4

Statement of principles

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

Introduction:

This statement sets out the principles that Bury Council (“the Council”) will apply in exercising its powers under the regulations to impose a penalty charge on a relevant landlord who fails to comply with a remedial notice and breaches one or more of the duties imposed on them under the regulations.

The purpose of this statement of principles:

The Regulations require the Council to prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge. The Council may revise its statement of principles and, where it does so, it must publish the revised statement.

In determining the amount of the penalty charge, the Council must have regard to the most recently published statement of principles in place at the time when the breach in question occurred.

The legal framework:

The powers come from The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (“the regulations”), being a Statutory Instrument (2015 No 1693) which came into force on the 1 October 2015.

The Regulations impose the following duties on relevant landlords (“the landlord”) of a residential property of a specified tenancy, to ensure that:

- I. During any period beginning on or after 1st October 2015 when the premises are occupied under the tenancy –
 - a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation;
 - a carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance;
- II. checks are made 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

Where the Council believes (on the balance of probabilities) that a landlord is in breach of one or more of the above duties, the Council must serve a Remedial Notice on the landlord under Regulation 5.

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

A landlord will not be considered to be in breach of their duty to comply with the Remedial Notice, if they can demonstrate they have taken all reasonable steps to comply. This can be done by making written representations to the Council at the address given at the bottom of this document within 28 days of when the Remedial Notice is served.

Bury Council will impose a penalty charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in the Remedial Notice within the required timescale.

The purpose of imposing a financial penalty charge:

The primary purpose of the Council exercising its regulatory power is to protect the interests of the public. The primary aims of financial penalties are to: -

- Lower the risk to tenant's health and safety;
- Change the behaviour of the landlord;
- Eliminate any financial gain or benefit from non-compliance with the regulations;
- Be proportionate to the nature of the breach of the regulations and the potential harm outcomes;
- Penalise the landlord for not installing alarms as required, on notice
- Aim to deter future non-compliance;
- Reimburse the costs incurred by the Council in arranging remedial action in default of the landlord

Criteria for the imposition of a financial penalty

A failure to comply with the requirements of a Remedial Notice allows the Council to require payment of a penalty charge.

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

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

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

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

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

Principles to be followed in determining the amount of a penalty charge:

The Regulations state that the amount of the penalty charge must not exceed £5000.

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

The penalty charge is payable within 29 days beginning with the day on which the Penalty Charge Notice is served.

A notice is taken to be served on a landlord on the day it is either given to the landlord in person; delivered by hand to the landlord's last known address; on the day the notice is sent via email to an address provided by the landlord for such; or on the second business day if the notice was sent by first class post to the landlords last known address.

The Council has discretion to an early payment discount reduction if the landlord pays the penalty charge within 14 days beginning with the day after the Penalty Charge Notice is served.

The charges are as follows:

- £3000 for the first breach to comply with a Remedial Notice
- £1500 for early payment, representing 50% reduction, for the first breach to comply with a Remedial Notice
- To deter continued non-compliance, any further offence will be subject to a penalty charge of £5,000, for which an early payment discount will not be eligible.

Procedural matters for Penalty Charge Notices

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

When the Council is satisfied that the landlord has failed to comply with the requirement of the Remedial Notice, all Penalty Charge Notices will be served within 6 weeks.

Where a review is requested within 29 days from when the Penalty Charge Notice is served, the Council will consider any representations made by the landlord. All representations are to be sent to the address at the bottom of this document. The Council will notify the landlord of its decision by Notice, which will either be to confirm, vary or withdraw the Penalty Charge Notice.

If a landlord is still dissatisfied with the Council's decision following a review of the Penalty Charge Notice, the landlord may then appeal to the First-tier Tribunal (Property Chamber) against the Council's decision. Appeals should be made within 28 days of service of the Council's review decision.

Recovery of penalty charge

If the penalty charge is not paid, then the Council may recover the penalty charge on the order of a court as if it was a court order.

Recovery proceedings may not be started before the end of the period within which the landlord can appeal to the First-Tier Tribunal (Property Chamber) against the Council decision on review or where a landlord subsequently appeals to the First-tier Tribunal (Property Chamber) against the Council's decision on review, not before the end of the period of 28 days beginning with the day on which the appeal is finally determined or withdrawn.

Remedial action taken in default of the landlord

Where the Council is satisfied that a landlord has not complied with a specification described in the Remedial Notice in the required timescale and consent is given by the occupier, the Council will arrange for remedial works to be undertaken in default of the landlord. This work in default will be undertaken within 28 days of the Council being satisfied of the breach. In these circumstances, battery operated alarms will be installed as a quick and immediate response.

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

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

A full fire assessment will subsequently be undertaken, with regards to LACORS Housing-Fire Safety Guidance and consultation with Greater Manchester Fire and Rescue Service if appropriate. This will consider the adequacy of the types and

coverage of the smoke alarm system, fire escape routes including escape windows and fire separate measures such as fire doors and protected walls and ceilings. Any further works required to address fire safety hazards in residential property, that are not undertaken through informal arrangement (if appropriate) will be enforced using the Housing Act 2004, in accordance with the Council's Private Sector Housing Enforcement Policy.

Carbon Monoxide Alarms- In order to comply with these Regulations, a carbon monoxide alarm will be installed in every room containing a solid fuel combustible appliance.

All communications

For representation made against a Remedial Notice (Regulation 5) or the Penalty Charge Notice (Regulation 8) are to be sent to:

Urban Renewal,
Bury Council,
Town Hall,
Knowsley Street,
Bury.