

Appendix D

APPENDIX B: ENVIRONMENTAL HEALTH

1.0 General statement of purpose and scope

The Environmental Health Enforcement Policy forms part of the Council's overarching Corporate Enforcement Policy (CEP). It follows the principles laid down in the core policy and does not seek to duplicate these except where necessary to aid clarity or context.

1.1 In framing this policy, regard has been made to the Regulators Code, corporate policies, specific legislation under which an investigation is conducted and associated national guidance. In addition to the primary legislation that applies to the work of the Environmental Health Service (the "Service"), the following statutory instruments have also been considered:

- Human Rights Act 1998
- Regulatory Enforcement and Sanctions Act 2008
- Legislative and Regulatory Reform Act 2006
- Police and Criminal Evidence Act 1984
- Regulation of Investigatory Powers Act 2000
- Criminal Justice Act 2003
- Criminal Proceedings and Investigation Act 1996
- Local Government Act 1972
- Equality Act 2010
- Regulation of Investigatory Powers Act 2000C
- Renters' Rights Act 2025

1.2 This policy also considers the implied prioritisation of enforcement over less formal means of achieving compliance as required by the Renters' Rights Act 2025. Although permitting less formal options to achieve compliance, the assumption with provisions covered by this Act is that these measures should only be used where there is clear evidence that they will achieve compliance. In every other instance, when considering any intervention under this Act, enforcement shall be the first and main course of redress.

1.3 This policy covers all the core functions of the Service. It outlines the approach to enforcement and lays down the principles which will be followed in deciding appropriate and proportionate action in relation to any given case.

In this policy, enforcement includes any criminal or civil action taken by the Service aimed at ensuring parties such as members of the public or businesses comply with the law.

Reasonable steps will be taken to assist businesses and individuals in complying with legal requirements, however the Service is prepared to ensure compliance by exercising formal powers where they exist, and when necessary.

Where appropriate the Service will seek to raise awareness and increase compliance levels by publicising unlawful practices, criminal activity and related enforcement action taken. This may include publicising the outcomes from specific court cases.

2.0 Environmental Health

The Service is responsible for the enforcement of a wide range of regulatory powers. The purpose of this policy is to detail the processes the Service will follow when determining enforcement actions in relation to carrying out its statutory duties on behalf of the Council.

The main activities delivered by the Service are:

- Food safety
- Occupational health and safety
- Environmental protection
- Public health
- Housing standards and protection of tenants
- Stray dog control

This policy is not intended to be operational guidance but to provide a basis for framing operational interventions and procedures regarding enforcement activities. Each case will be dealt with on its own merits and due to the range of activities covered by the Service, this policy is not exhaustive. However, all formal enforcement action and performance carried out by the Service will be reviewed and considered under this policy.

3.0 Principles of good enforcement

The Service will take an open, fair, and balanced approach in dealing with breaches of legislation. Where possible, officers will raise awareness and promote good practice by signposting affected parties to relevant guidance and good practice.

Where a supportive and guidance related approach has not worked to resolve a potential breach of legislation, the Service will not hesitate to take proportionate formal action as appropriate.

Advice regarding non-compliance with legislation, the actions required to be taken to remedy poor or non-compliance, and decisions surrounding our actions will be provided as part of the intervention.

Where believed necessary, the Service will consider the decision on its chosen course of action with other external authorities and/or Council Services, to ensure actions are proportionate and consistent. Where immediate enforcement action is permitted and deemed to be required, and if the breach of legislation is sufficiently serious and/or if there is an imminent public health or safety risk the Service will intervene immediately and without any prior consultation, although such consultation may take place after the initial response if felt to be necessary.

Officers who are deemed to be competent and authorised under specific legislation will investigate potential breaches of that legislation and take responsibility for managing the investigations and making decisions regarding enforcement action. As part of this process, they regularly consult with colleagues and managers to determine the best and most appropriate course of action to take. In relation to prosecutions, cases will be case reviewed during the investigation with an equally competent fellow officer or a manager before submitting it to the Council's Legal Services for further escalation.

3.1 The Office for Product Safety and Standards

The Service will also adhere to the guidance issued by the Office for Product Safety and Standards, although this will be balanced with the requirement to ensure full statutory compliance in all aspects of the Service's core work.

3.2 The Regulators' Code

The over-arching Council Enforcement Policy states the intention to adhere to the requirements of the Regulators' Code, and the Service will adhere and comply with these requirements, where appropriate. Where specific legislation presumes intervention outside of the Regulators Code, the duties set out in that legislation will take precedence. All officers within the Service fully understand and accept that where improvements are necessary, they can be achieved following a graduated approach ranging from offering advice and guidance, but may need to revert to enforcement, or direct prosecution in extreme cases if non-compliance is a regular aspect or the risks posed are sufficiently severe.

As the CEP over-arches this policy, the requirements of that referring to the Regulators' Code will take precedence, except where primary legislation requires statutory intervention to override the graduated approach set out within the Regulators' Code.

3.3 Police and Criminal Evidence Act, 1984 (PACE), the Human Rights Act, CPIA and the Code of Practice for Crown Prosecutors

The CEP states how officers of the Council will adhere to the requirements of these statutes giving fundamental rights to all, the Service will also adhere to the CEP for these requirements.

3.4 Regulation of Investigatory Powers Act 2000

As stated by the proceeding sections, the CEP also states the Councils expectation to adhere to the requirements of the Regulation of Investigatory Powers Act, 2000 (RIPA) when carrying out its statutory duties. Whilst it is unlikely that the work of the Service will need to use any of the provisions of this statute, if it does need to do so, it will adhere to the requirements of this act in full.

3.5 Primary Authority arrangements

The Primary Authority scheme was launched in 2009 by the Office for Product Safety and Standards under The Regulatory Enforcement Sanctions Act 2008. This is a means by which businesses can receive assured and tailored advice on how to comply with regulations through a single statutory and regulatory point of contact. Officers will comply with the requirements of this Act when considering interventions or enforcement action against any business or organisation that has a Primary Authority relationship.

3.6 Equality, diversity, and equal opportunities

The council is committed to treating all customers fairly and all enforcement decisions will be fair, independent, and objective, and the Service will fully adhere with this requirement.

3.7 Delegated powers and officer authorisation

All enforcement officers in the Service are provided with written records of delegation and authorisation. The delegations assign functions, powers, and duties of the Council to the officers, mainly within broad functional descriptions. It is consistent with the Council's Scheme of Delegation as incorporated within the Council's Constitution. Where necessary, the named officer will be authorised in accordance the specific statute.

The levels of delegated powers and officer authorisation is dependent on their experience, competency, qualifications, and designation held and determined by the managers of the Service.

3.8 Identification of officers

All enforcement officers in the Service are provided with written records of delegation and authorisation and are provided with a warrant card with photographic identification.

3.9 Recording activity and potential evidence, taking samples, documents, etc.

The Service is required to collect and retain information and evidential records to:

- Observe, obtain, or witness any material that could be considered relevant to any criminal or civil investigation,
- To secure evidence after witnessing events.

3.9.1 Pocket notebooks or other contemporaneous notes in form of inspection proformas or on-site records will be used at all times for the collection and retention of information. Where evidence pertinent to the investigation is collected, this will be in accordance with PACE.

3.9.2 Photographic, video, and other digital evidence will be obtained, secured, and retained, and if this is potentially to be used as evidence, it will be obtained, and retained in accordance with PACE and the Council's General Data Protection Regulation Policy.

3.10 Shared enforcement, information sharing with partners and data protection.

The Service will work with, and consult, other external agencies and Council Service as necessary where there is a shared role in enforcement. There may also be occasions when there is a need to work with other agencies by carrying out joint inspections. In such circumstances the Service may agree standards of cooperation such as Memoranda of Understanding, Joint Consultation Policies or similar.

In determining the most appropriate form of investigation and enforcement action, officers will have regard, so far as they are aware, to other potential or existing action other Council services or outside agencies are undertaking. This will be particularly important in the case of listed buildings and conservation areas which may restrict the use of the premises or the nature of works and could be linked to interventions the Service are considering.

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

Where the Service has a shared enforcement role with either another Council service or external authority, officers will liaise with the relevant party to ensure effective co-ordination and avoidance of inconsistencies.

3.11 Powers of entry and associated powers, obstruction, and warrants

Officers will be duly authorised to carry out certain activities in line with competence, assessment and or qualification. This includes, but not limited to:

3.12 Powers of Entry

The Service, through a wide range of legislation is provided with specific powers of entry. This is a power given to an authorised officer from the Council to enable that officer to perform their duties, to allow them to assess the levels of compliance associated with the premises. In this capacity, and subject to the provisions of the delegated power, premises may include businesses, vehicles, or land for specific purposes. Each statute permitting powers of entry specifies the scope and limitation of the power, and the Service will satisfy these limitations in each case. This might, for instance, include conducting a search, seizing relevant items, or collecting samples.

Powers of entry include enabling delegated and authorised officers to undertake inspections and investigations for a wide range of regulatory responsibilities including, but not limited to food safety, health and safety and environmental protection legislation, in addition to dealing with emergencies or searching for evidence during those investigations. Legislation will determine what officers are allowed to do once they have entered the premises (associated powers).

3.13 Powers of Seizure

The Service is also provided with extensive and specific powers of seizure, allowing for the seizure of such things, including goods, documents, items or anything else related to an investigation, which, if left unseized may adversely affect the investigation. These powers relate to specific legislation, which also specifies the conditions and limitations when those powers may be used. The Service will adhere to these requirements when it is exercising the use of these provisions.

Where any seized items are subject to any form of testing, the results of that testing will be made available to the person who had ownership of the goods, and this information may be used in relation to any enforcement action arising from that investigation.

The Service has processes and procedures in place to ensure that officers are competent, capable, and suitably qualified, and only those deemed to be such by the managers of the respective parts of the Service will be authorised to use this power.

As part of the assessment to enable officers to be authorised with this power, the Service will ensure our enforcement officers are equipped with the appropriate level of skills, competencies, and experience commensurate with the role and responsibilities and the support necessary to undertake their job effectively and efficiently. Continuing Professional Development (CPD), qualifications, training, and development to meet statutory codes of practice, HSE's Section 18 Standard or any other limiting criteria will be ensured for each authorised officer.

3.14 Obstruction of an Officer

Much of the legislation under which officers are authorised, there is an offence of obstructing an officer in the conduct of their duties. This can include failing to give appropriate assistance, providing false information, and stopping an Officer from conducting an inspection. Obstruction is taken very seriously, as it is the prevention of a person from doing their lawful duty. In such cases, formal action will be considered, including prosecution, if the person(s) does not take heed to being advised to desist (either verbally or in writing).

3.15 Seeking of Warrants

Although much of the legislation falling to the Service to enforce allows powers to be delegated to authorised officers, in certain specified instances, the authorised officer will also need a warrant issued by the courts to execute those powers. Where this requirement exists, such warrants will be sought from the court, and used in the execution of that power provided for in accordance with the enabling statute.

3.16 Service deployment assessments

The enforcement and regulatory activities undertaken by the Service are as a result of either formal inspection programmes, complaints received by the Service, matters of concern identified by officers of the Service whilst undertaking their duties or concerns raised by other agencies. Where appropriate, assessments are undertaken to guide the deployment of resources to facilitate the investigation, and to allow the Service to meet its statutory obligations. The following table highlights the source of the guidance for this assessment with regard to the inspections and investigations carried out by the Service for each statutory area of responsibility.

Area	Activity	Assessment Methodology
Anti-social Behaviour	Complaints of anti-social behaviour, and/or conduct/behaviour having a detrimental impact on the quality of life of those in the locality	Home Office Anti-social behaviour powers: Statutory guidance for frontline professionals
Food safety	Food premises proactive inspection programme	Food Standards Agency (FSA) Food Law Code of Practice England) FSA Food Law Practice Guidance Local procedures
	Inspections resulting from food complaints and food premises complaints from the public and/or employees	
Occupational health and safety	Health and safety proactive inspection and intervention programme	HSE Guidance and National Local Authority Enforcement Code
	Inspections resulting from RIDDOR notifications and workplace complaints from the public and/or employees	

Environmental protection and public health	Environmental permitting	DEFRA risk assessment methodology
	Rubbish and accumulations, vermin and other public health pests, statutory nuisance, noise from construction sites	Various pieces of national guidance and local risk assessment system
Housing enforcement	Housing disrepair in the rented and/owner occupied sector; and the protection of tenants.	HHSRS Enforcement Guidance HHSRS Operating Guidance MEES Guidance Electrical Safety Standards Guidance Smoke and Carbon Monoxide Guidance Renters' Rights Act Guidance for Local Authorities
	Non-licensable houses in multiple occupation	LACORS guidance HMO Amenities standards Local risk assessment system
	Empty homes	Empty homes Strategy Local risk assessment system
Private water supplies	Water sampling	DWI guidance Local risk assessment system

The recognised assessment principles are used where appropriate in deciding how to respond to and prioritise the work of the Service including responding to accident reports, infectious disease notifications, complaints, and notifications from other agencies.

4.0 The range of enforcement and regulatory sanctions

- 4.1 The core part of the Council's CEP sets out the general enforcement options, ranging from no action, up to prosecution or a similar level sanction, including the use of this higher response as the first action where the circumstance justifies it or where the legislation requires this. The Service follows this approach, whilst taking a number of statute specific factors into consideration when deciding what enforcement response is appropriate in each case.
- 4.2 Whilst the statute-specific options available to the Service fall within the range covered by the CEP, those measures include:
- No action – due to no breaches being present,
 - Informal action – offering either verbal and/or in written advice or recommendations to achieve compliance with best practice or industry standard, and that no public risk is identified,
 - Formal action – this will be taken in accordance with the requirements of each enabling statute and aims to address matters posing a risk to the public or non-compliance. This may include the use of enforcement notices,

statute-specific orders, works in default, penalty charges, forfeiture, seizure, injunctions, proceeds of crime applications, prosecution or other similar responses permissible under the appropriate statute. Where formal action is taken, the Service will seek to recover all and any costs associated with the action subject to the decision of the deciding judiciary as well as imposing any financial penalty as permitted by the enabling statute.

- The Service will also have due regard to the development and legal changes to the scope of statutes whereupon legal decisions, e.g., caselaw, change the provisions or use of statute, and thus enabling the Service to use other non-core environmental health legislation to benefit our communities, e.g., The Crime and Policing Act, 2014, and the extensions of the use of Community Protection Warnings and Orders.

4.3 As stated and where appropriate, the Service follows the principles as set out in the Regulator's Code, including adhering to a graduated approach for enforcement. Where legislation falls outside the Code, the enforcement approach will follow the specific duties required under that legislation rather than that highlighted in the Regulators Code. In general, the Service seeks to enforce with a lower sanction for less serious, one-off offences, escalating to higher sanctions for serious and/or repeat offences, potentially including prosecution or another higher-level sanctions as the Service's first course of action in extreme cases, i.e., those posing very serious risks, those perpetrated by repeat offenders or where there is a history of disregard and non-compliance such that public safety is put at a high risk. Within such cases, the Service will retain the provision to escalate sanctions and use those measures it deems most likely to be effective whilst remaining within the relevant statutory framework and the over-arching principles of the Regulators' Code. Each case will be considered on its own merits having regard to all relevant factors. In every case, the appropriate enforcement option is carefully considered and approved in line with the Council's scheme of delegation before such interventions are made.

4.4 The Service will have due consideration to the requirements of each statute it regulates and enforces in respect to the requirements imposed on its officers when they become aware of a breach of that statute. The respective Acts may impose either a power to act, or a duty to do so. The former allows a greater degree of discretion to enable a satisfactory resolution, whereas the latter states the nature of intervention which has to be followed, and tends to require the service of an enforcement notice as the first level of response.

4.5 Charges associated with civil penalty notices are detailed in a separate Fees and Charges Policy and will be updated as appropriate.

5.0 **Reviewing the policy**

5.1 This Environmental Health Enforcement Policy, which is Appendix B of the CEP, will be reviewed on a regular basis, and in any event, at least every five years, to ensure it reflects good practice, national guidance, codes of practice, and changes in legislation and caselaw.

5.2 In addition, should the Service receive any feedback regarding this policy from any source, this too will feed into the review.

5.3 Responses to formal complaints investigations may also be considered to ensure good practice and compliance with this policy, and where changes in the way our

communities interact with the Service are seen, these may also be considered as part of that review.

- 5.3 Officers are trained and familiar with the Council's Employee Personal Conflicts of Interest Policy to ensure that any conflicts of interest that occur between an officer's official duties and their personal/private interests do not impact the Service or the implementation of this policy. Managers will monitor officer's adherence to the Employee Personal Conflicts of Interest Policy and act to ensure no such conflicts occur.
- 5.4 Environmental health legislation is continually being introduced, repealed, and amended; case law guidance and approved codes of practice are also regularly updated. Amendments and further appendices/annexes may be added to this policy to reflect any such changes and ensure that officers receive appropriate delegated powers and authorisations and follow best practice.

6.0 Anti-social Behaviour

The Anti-social Behaviour Crime and Policing Act 2014 can be used in addition to or in place of a number of core functions that fall unto the Service to regulate or enforce. The powers contained in this Act allow the Service to deal quickly with a number of issues as they arise to ensure the best results for victims and the wider public.

6.1 Relevant powers contained in this Act include:

- Civil Injunctions,
- Criminal Behaviour Orders,
- Community Protection Warnings/Notices
- Public Spaces Protection Orders,
- Closure Powers.

The Service will consider the use of these powers where expediated action is required and/or to replace or strengthen enforcement action taken under other specific environmental health legislation.

7.0 Food Safety

7.1 Scope

This policy covers food safety enforcement as one of the key intervention areas that fall under the remit of the Service and considers all aspects of food hygiene regulation including enforcement and prosecution. In addition to the policy being influenced by new statute and caselaw, the national regulator also directs food hygiene regulation, including by issuing guidance and objectives. These include the Food Standards Agency (FSA), which is the National Regulator, via the Framework Agreement on Local Authority Food Law Enforcement' and the Food Law Code of Practice (England) (FLCoP) issued under section 40 of the Food Safety Act 1990, the Department of Health (DoH), Depart for Food, Environment and Rural Affairs (Defra) and subject to the nature of their expectations or guidance, this policy will reflect their objectives..

The response by officers authorised to regulate food safety mirrors those of the Regulators' Code and follows the accepted hierarchy of enforcement with responses ranging from no action required up to and including immediate prosecution as each case requires, and allows the known previous history of those involved to be factored into any decision-making process, in accordance with the FLCoP.

7.1.1 Where appropriate this part of the Policy will be read in conjunction with the Occupational Health and Safety Enforcement Policy (see part 7.) of this policy below as this too is carried out by the same officers.

7.2 Officer Competency

The competency of officers specialising in food safety shall follow the guidance in the FLCoP and other guidance issued from time to time by the national regulator or other recognised bodies.

7.2.1 Only officers qualified and deemed to be competent and experienced under the Food Safety Act, 1990, and the associated Regulations and codes of practice specific to this provision made under this Act will be authorised. An authorised officer will be duly considered authorised to enforce all aspects of food safety law unless other specific requirements exceed this, and their authorisation is restricted.

7.2.2 In the event of enforcement being require, enforcement notices will only be signed by officers authorised to do so, and the officer must have witnessed the contravention first hand and be satisfied that it constitutes a breach of the food safety legislation before they sign the notice.

7.2.3 Hygiene Emergency Prohibition Notices shall be signed only by officers who, in addition to other requirements permitting them to be authorised, shall have at least two years post qualification experience in food safety matters, are currently involved in food law enforcement and who are properly trained, competent, and duly authorised. The officer will ensure a second opinion is obtained from a fellow duly authorised officer prior to the notice being issued.

7.2.4 The Council recognises and affirms the importance of achieving and maintaining consistency in their approach to making all decisions which concern food safety enforcement action, including prosecution. To achieve and maintain consistency, it is important that the guidance in statutory Codes of Practice, other recognised and relevant guidance and advice offered through any relevant Primary Authority is always considered and followed where appropriate.

7.2.5 In premises where the Council are the proprietor of a food business any breaches of the law must be brought, without undue delay, to the attention of the relevant Service Director. In all other aspects, such food premises will be dealt with no differently from any other in the district.

7.2.6 Where the Council is considering taking enforcement action which is not consistent with current guidance not subject of guidance, or where the guidance appears to be contradictory, the matter shall be brought to the attention of the Hertfordshire and Bedfordshire Food Liaison Group and where consensus cannot be reached to the FSA via the Food Focus Group.

7.3 The use of formal enforcement tools

FORMAL ACTION

7.3.1 Whilst the requirements of this section still mirror those of the CEP and the general provisions of the Environmental Health enforcement policy, for clarity, should any

food safety enforcement be undertaken, these are the consideration food enforcement officers will apply.

- 7.3.2 Before formal action is taken, it is acknowledged that officers will have made every reasonable step to advise and encourage the person responsible to comply with their requirements, but that such informal action has been shown to be ineffective. Equally, as part of the review of the case, prior to commencing formal action the officer will also be able to discuss the case with a fellow authorised officer or team manager to confirm the appropriateness of the action.

In circumstances of public safety or there is an imminent risk, the officer shall consider enforcement or even prosecution as being the most suitable first intervention, and this policy provides for this action.

STATUTORY FOOD ENFORCEMENT NOTICES AND RELATED PROCEDURES

- 7.3.3 In relation to the following formal actions:

- Hygiene Improvement Notice
- Hygiene Emergency Prohibition Notice
- Voluntary (closure) procedure
- Emergency prohibition procedures
- Seizure and detention of food
- Voluntary (surrender of food) procedures
- Remedial Actions Notices
- The use of other relevant legislation, for example Community Protection Warnings, Community Protection Notices and Criminal Behaviour Orders pursuant to the Anti-social Behaviour, Crime and Policing Act 2014

Consideration regarding these provisions will be given to the guidance in the FLCoP. Other relevant guidance will also be considered as well as the site specific and case specific factors.

PROSECUTION

- 7.3.4 The Service, and the Council recognises that the following are circumstances which are likely to warrant prosecution:

- The alleged offence involves an obvious breach of the law such that the public health, safety or well-being is or has been put at risk.
- The alleged offence involves a failure by the suspected offender to correct an identified serious potential risk to food safety, having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer.
- The offence involves a failure to comply in full or in part with the requirements of a statutory notice.
- There is a history of similar offences, related to risk to public health.
- Inspectors have been intentionally obstructed in the lawful course of their duties.

- 7.3.5 Prior to any prosecution, the authorised officer, must be satisfied that there is relevant, admissible and reliable evidence that an offence has been committed by an identifiable person / company; this forms the Evidential Test. In addition, the officer must also be assured that the prosecution is in the Public Interest, and without both these criteria

being met, the prosecution shall not proceed. As part of confirming this threshold, the officer may seek assistance and guidance from competent colleagues or officers in the Council's Legal Services team.

7.3.6 The following guidance criteria are some of the factors that it may be relevant to have regard to when considering the instigation of legal proceedings.

- The seriousness of the alleged offences.
- The previous history of the party concerned.
- The likelihood of the defendant being able to establish a due diligence defence.
- The availability of any important witnesses and their willingness to co-operate.
- The willingness of the party to prevent a recurrence of the problem.
- The probable public benefit of a prosecution and the importance of the case.
- Whether other action (Simple Cautioning, improvement notices) will be more appropriate or effective.

SIMPLE CAUTIONS

7.3.7 In certain circumstances when legal proceedings are being considered, the Council may consider offering to discharge the matter by way of a Simple Caution. The procedure adopted and the form and content of the caution will be in accordance with relevant guidance. Any internal guidance will also be considered.

8.0 Occupational Health and Safety

8.1 Scope

8.1.1 This section of this policy covers occupational health and safety (OHS) enforcement as one of the key intervention areas that fall under the remit of the Service and as such, will consider all aspects of the law that fall to this Local Authority to regulate and enforce. In addition to the policy being influenced by new statute and caselaw, the national regulator also directs OHS regulation, including by issuing guidance and objectives. The national regulator is the Health and Safety Executive (HSE), working with the Local Authority and Safety Unit (LASU) and the HSE and Local Authority Unit (HELA) to interpret and apply the Health and Safety at Work, etc., Act, 1974 (this Act) and the Regulations and guidance issued under this legislation. In addition, the other over-arching requirements of the CEP also apply, and these too will be considered in regulating this statute.

8.1.2 Where appropriate this part of the Policy will be read in conjunction with the Food Safety Policy (see part 6.) of this policy as this regulation is carried out by the same officers.

8.1.3 Unlike all other regulation and enforcement carried out where it is this Council who is the enforcing agency and officers are authorised to act on behalf of the Council, under this Act, it is the officer who has the direct delegation and authorisation. To comply with this, officers appointed to the role of enforcing this Act will first be deemed competent by the Service in accordance with the guidance and requirements provided for by the HSE.

8.1.4 The Council will ensure that officers deemed to be suitably qualified, competent and who have sufficient experience under are appointed under Section 19 of this Act are

authorised to initiate enforcement action, in accordance with HSE guidance, currently set out in LAC 22/8.

8.1.5 To ensure the competency of authorised officers is maintained, the Service will identify and make provision to ensure its officers receive suitable training and guidance, and that targeted interventions are developed, implemented and carried out, in accordance with the enforcement allocations provided by the HSE and Local Authority Circular (LAC) 67/2 which identifies and targets those work sectors most at risk of poor OHS.

8.2 Other relevant considerations

8.2.1 The Council recognises and affirms the importance of achieving and maintaining consistency in delivering the enforcement of OHS regulation and enforcement. To achieve and maintain this consistency, authorised officers will have due consideration to this Act, the Regulations made thereunder and the Codes of Practice, guidance and Approved Industry Standards applicable to the business sectors that fall to Local Authorities to enforce.

8.2.2 Officers will also have due regard to the relevant Primary Authority and will consider the guidance and instruction issued in relation to this agreement as part of any intervention or enforcement.

8.2.3 Where the authorised officer is considering taking enforcement action which is not consistent with the allocation Regulations or LAC 67/2, the officer will raise the matter with the Hertfordshire and Bedfordshire Health and Safety Liaison Group or the HSE to clarify the necessity of the intervention, and on occasion, seek approval from the HSE to act. It is recognised that as OHS regulation is shared by the HSE and Local Councils the allocation is not always absolute, so this provision to clarify roles forms an essential part of regulating this Act.

8.3 The use of formal enforcement tools

8.3.1 As part of the requirement for authorised officers to take action under this Act, the officer shall have due consideration initially to ensure that there is or is likely to be a breach of this Act and the provisions made thereunder, that the business sector where the enforcement is required falls unto them to enforce, and that the requirements of the HSE Enforcement Management Model has been reviewed and followed. Once these considerations have been fulfilled, the choices for action are:

- To take no action.
- To give verbal or written advice.
- To take informal action.
- To use statutory notices.
- To use Simple Cautions where local policy dictates.
- To prosecute.
- To use other relevant provisions of legislation, for example to seize or destroy unsafe items, plant, or equipment.
- Or a combination thereof.

8.3.3 Compliance shall be sought following the accepted graduated response accepted by the Council in the CEP and expected under the Regulators' Code. Only in the more serious instances or where repeated poor or non-compliance is found should formal enforcement through improvement or prohibition notices be considered. Prosecutions should be reserved for the most serious offences which either result or could have resulted in serious injury or ill health or which represent a blatant disregard by

employers, employees or others of their responsibilities under health, safety, or welfare legislation.

- 8.3.4 Investigations into serious workplace accidents, substantial near-misses or fatalities that occur in workplaces allocated to this authority will be given the utmost priority. Although a lead officer will be designated to carry out the investigation, a competent and equally authorised support officer will also be identified to act as support, but to also undertake interim case reviews during the investigation. Subject to the risks posed by the breach, or seriousness of the injury, the officer may seek to prosecute the business as the first level of response, although this will still be subject to the thresholds of the evidential and public interest tests applicable to the case.

In cases where a workplace fatality has occurred, whilst the authorised officer shall still investigate the matter under the requirements of this Act, the investigation is likely to intervene with the Coroner, and although the investigation should proceed as normal, the officer will have to consider this additional duty, and the impact of liaising with the family of the deceased. Where necessary, both the Service and the Council will support the officer throughout this duty. In addition to determining the appropriate level of enforcement in such cases, the officer will have to present their evidence and investigation report to the Coroner and due to the prioritisation of this legislation, this response may have to be the initial formal response required of the officer.

FORMAL ACTION

- 8.4 Any enforcement action will be directed against duty holders responsible for the breach. This may be employers in relation to employees or others; the self-employed; owners of premises; suppliers of equipment; designers of equipment or clients of projects; or employees themselves. Where there are several duty holders enforcement authorities may take action against more than one.

STATUTORY NOTICES

- 8.5.1 The enabling Act clearly sets out the full requirements for the authorised officer should they need to take enforcement action, including the types of notices that may be used and when, whether immediate prosecution may be used, the nature of the information that needs to be provided in relation to the breaches and to whom, the provision of information about lodging an appeal against such a notice, and the scope of the supplementary information that must also be provided or made available as a result. The Service will fulfil this obligation and adhere to these requirements when circumstances arise that warrant such an intervention. Within this section, only a summary of the key points of this requirement will be presented below.
- 8.5.2 Before formal enforcement action is taken, officers will adhere to the requirements of the CEP and offer a graduated response to hopefully achieve compliance by providing the duty holder an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or environmental protection, or to prevent evidence being destroyed).
- 8.5.3 Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.
- 8.5.4 An Improvement Notice will be issued only when the officer is of the opinion that there is or has been a contravention of one or more of the relevant statutory provisions at the time of the visit in circumstances that make it likely that the contravention will

continue, and that allowing a period of reasonable time to improve the situation will not endanger anyone.

- 8.5.5 Prohibition Notices can be issued to have an immediate or deferred effect, and will be used to render a dangerous occurrence, or risk of occurrence safe. Due to the urgency of the risk required to be present to warrant this notice, it is unlikely that a deferred notice will be served although this Act does allow for such measures if they are considered appropriate. The Notice will only be served if the officer is of the opinion that there is, or will be a risk of serious personal injury.
- 8.5.6 Should notices be served, this Act requires supplementary information about the recipients' rights of appeal to an Employment Tribunal against formal action to be served in writing and clearly setting out the provisions as to how to lodge such an appeal. The authorised officer will adhere to this requirement.

The officer will also provide employees or their representatives with certain information about matters of serious concern affecting their health, safety, and welfare; such information may be given orally, or in writing.

When notices are served, a second copy must be provided for the attention of employees or their representatives so that they too are kept informed of risks that may affect their OHS.

- 8.5.7 Subject to the nature and severity of the risk posed, an authorised officer may consider both the service of notices and prosecution, albeit in the following circumstances:
- (i) Where a situation is so hazardous that even when a prohibition notice is served, the severity and scale of the risk also warrants immediate prosecution, and,
 - (ii) if a prosecution is taken due to the circumstance of an accident, in which case notices may also be used to improve the safety.

In these situations, the information for the prosecution should allow for any appeal period to pass, or any associated appeal to be heard, except where the matter is to remedy matters of immediate risk.

- 8.5.8 Non-compliance with a served Notice will normally result in prosecution.

PROSECUTION

- 8.6 This Act makes provision for those responsible for breaches to be prosecuted, and where there is sufficient evidence and a public interest to do so, and at least one of the following conditions apply, prosecution is likely to be the outcome of the investigation. The conditions are:
- Where there is a death or serious injury as a result of a breach of the legislation,
 - Where there is a blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial and others are placed at a disadvantage or in danger as a result,
 - When there appears to have been reckless disregard for the health and safety of work people or others,
 - Where there have been repeated breaches in an establishment, or in various branches of a business, and it appears that management is neither

- willing nor structured to deal adequately with these,
- Where a particular type of breach of statute is prevalent in a business sector and it is commonly known that compliance is expected,
 - Where non-compliance is substantial and poses a high level of risk,
 - Where a particular breach has caused serious public alarm,
 - Where there are persistent poor standards for control of health hazards.
 - Where there has been failure to comply with an improvement or prohibition notice or a repetition of a breach that was subject to a Simple Caution.
 - Where the authorised officer has been intentionally obstructed in the lawful course of their duties.
 - Where officers are assaulted, enforcing authorities will seek police assistance with a view to seeking prosecution of offenders.

The decision to prosecute in the above cases does not preclude the issue of notices as well.

PROSECUTION WITHOUT PRIOR WARNING

- 8.7 As a general rule a person or a company should be given a reasonable opportunity to comply with the law, although in some circumstances the authorised officer does have the power to prosecute without giving prior warning. Examples of such circumstances include the more serious matters identified in the previous section.

PROSECUTION FOLLOWING AN ACCIDENT

- 8.8.1 Seriousness of the contravention is the prime consideration in deciding whether to take a prosecution following an accident rather than the seriousness of the injury or accident. The extent to which management was responsible for the circumstances which led to the accident, and whether the employer had been previously warned of a similar infringement, are also relevant. An important consideration is what those responsible could have done to avoid the breach in the absence of an accident, or whether the accident was the acceptance that safety was not previously considered. Whilst the nature or severity of an accident is not the prime concern to initiate prosecution, the evidence it provides will contribute to the prosecution case.

In cases where a fatality has occurred, and there is a possibility of a charge of manslaughter being made, such cases must be referred to the Crown Prosecution Service.

- 8.8.2 In all cases where a fatality has occurred, the authorised officer will have due regard to the 'Work Related Death Protocol' (WRDP), and will, where necessary, work in close cooperation with the HSE, and the blue light services involved in the case. Whilst the WRDP will identify which authority will have primacy for the investigation, the HSE, all Local Authorities and all blue light agencies have signed up to it, and should work cooperatively to reach a conclusion. Where officers are requested to assist or provide information under this agreement, in general it is expected that they will do this.

SIMPLE CAUTIONS

- 8.9 In certain circumstances when legal proceedings are being considered, the authorised officer may consider offering to discharge the matter by way of a Simple Caution. The procedure adopted and the form and content of the caution will be in accordance with relevant guidance. Any internal guidance will also be considered.

9.0 Environmental Protection and Public Health

9.1 Scope

9.1.1 The Service undertakes regulatory duties including the following environmental protection matters:

- Noise nuisance arising from both domestic and commercial premises (including noise/vibration from construction sites) and equipment or vehicles in the street.
- Air pollution control, including smoke, odour, and dust statutory nuisances.
- Other statutory nuisances e.g., excess artificial light, insects, premises in such a state as to be prejudicial to health or a nuisance.
- Permitting of industrial processes having the potential to release harmful pollutants to the air.
- Enforcement of controls over contaminated land, to ensure that contaminants do not interfere with human health, animal/plant health or the built environment, and to assess whether contaminants are likely to affect rivers, aquifers, or other controlled water courses.
- Local Air Quality Management (LAQM) duties as regards the Environment Act 1995.
- Smoke Control Areas as designated by the Clean Air Act 1993
- Control of dark and black smoke.
- Investigation and abatement of public health nuisances relating to housing, businesses, and land.
- Investigation and enforcement of defective drains, private sewers, cess pits, septic tanks, and sewage treatment plants.
- Investigation and elimination of pests and vermin infesting land, premises and persons as may be appropriate.
- Anti-social behaviour associated with core environmental health functions.
- Subject to statutory amendments, additional matters may also fall to the Service to regulate, or some of the above provisions may be removed.

9.1.2 This section of the Environmental Health Enforcement Policy provides specific guidance on regulatory activities associated with environmental protection and public health.

9.2 Other relevant considerations

9.2.1 Regard will be had to statutory guidance, and any other relevant guidance or good practice documentation considered to be relevant to a particular enforcement situation.

9.3 The use of formal enforcement tools

9.3.1 The general principals relating to enforcement decision making in relation to pollution control activities are as outlined in the core section of the Council's CEP and in the introduction to the Environmental Health Enforcement Policy in Annex 2 of that document.

ENFORCEMENT ACTIVITY RELATING TO STATUTORY NUISANCES

- 9.3.2 Abatement notices can be an effective and quick method of securing compliance with the requirements of the Environmental Protection Act 1990 (EPA) in that they require problems to be rectified without the potential delays and uncertainty of going to Court.
- 9.3.3 The EPA requires local authorities to investigate complaints of statutory nuisance, it is for the authority to decide whether a statutory nuisance exists, is likely to occur or reoccur. Under Section 80 of the EPA, once satisfied that there is a statutory nuisance, a local authority must serve an abatement notice.
- 9.3.4 On the rare occasions when abatement notices are breached the legislation provides for a number of enforcement sanctions. Paragraphs 8.3.5 onwards indicate the likely response of the Service in such circumstances, although the Council reserves the right to consider the use of all enforcement mechanisms in accordance with the principles outlined in this Policy and permitted in the EPA.

SEIZURE OF NOISE MAKING EQUIPMENT FROM DOMESTIC PREMISES

- 9.3.5 Where the requirements of the notice are not carried out, in many instances the Council is empowered to do whatever is necessary to abate the nuisance. This can include the seizure of noise making equipment.
- 9.3.6 In domestic settings the Council is likely to favour the seizure of noise-making equipment for the first evidenced breach of an abatement notice as this is likely to offer rapid relief to those adversely affected by the noise in question. Furthermore, this intervention is likely to be a more cost-effective approach than formal prosecution.
- 9.3.7 If appropriate, the Council will seek a warrant from a Magistrate authorising entry to premises, if necessary, by force, to facilitate seizure of noise making equipment. The Council will seek to recover the full costs associated with the seizure of noise making equipment.

FORFEITURE OF NOISE MAKING EQUIPMENT

- 9.3.8 If, after noise making equipment has been returned to the recipient of the abatement notice or a successful prosecution has taken place, further breaches are witnessed, the Council is likely to repeat the seizure of equipment and seek permission from a Magistrates' Court for its permanent forfeiture.

ENFORCEMENT ACTIVITY RELATING TO CONSTRUCTION SITE NOISE

- 9.3.9 A certain amount of noise (including vibration) is inherent in most types of construction and building operations, which can rarely be completely prevented. However, noise from construction and demolition sites can be very disturbing.
- 9.3.10 The Service will work with the Council's Planning Service, and where it is practicable to do so, will seek noise limits to be imposed on demolition or construction work, either by time, see 8.3.12, below, or via noise limits. These powers are available under the Control of Pollution Act 1974 (COPA) as well as the EPA. Contractors can apply for a 'prior consent' under COPA which sets out allowable working hours and noise limits – the Council encourages the use of prior consents since they represent a proactive method of pollution control.
- 9.3.11 Where circumstances prevail, the Service can serve a notice imposing requirements as to how construction works should be carried out so as to minimise noise and

disturbance. The notice can cover controls such as working hours and noise limits; failure to comply with a notice may result in a prosecution being taken.

9.3.12 Whilst each construction site is different (and will be assessed as such) the generally acceptable hours for noisy work within populated areas of North Hertfordshire are:

Monday to Friday	08:00-18:00
Saturdays	08:00-13:00
Sundays and Bank Holidays	At no time

9.3.13 For particularly noisy work, e.g., piling, and de-watering, it may be necessary for authorised officers to further restrict these times.

9.3.14 However, the Service recognises that some operations, for safety or practical reasons, cannot always be undertaken within the above time restrictions. Operations outside of the above hours may, however, be agreed by the Council if it can be demonstrated that the works cannot be carried out at any other time and that items of plant and equipment are operated and maintained so that their use causes the minimum amount of noise.

9.3.15 Sometimes, emergency works have to be undertaken, e.g., the repair to a burst water main. In such circumstances the normal daytime hours of operation would not apply, and the work would be allowed to take place as soon as possible, which if undertaken at night, may cause some noise disturbance, although this is likely to be permitted under the legislation.

9.3.16 Also, works on main roads would normally be undertaken outside peak traffic times in order to minimise additional congestion. In such circumstances evening and night-time working may be permitted. Noise would, however, still be required to be kept to as low a level as reasonably practicable.

ENFORCEMENT ACTIVITY RELATING TO PERMITTED PROCESSES

9.4.1 Regulation 23 of the Pollution Prevention and Control Regulations 2000 (PPC) places a duty on local authorities to take the necessary action to ensure that permit conditions (as defined) are complied with. The Council recognises that the appropriate regulation of organisations covered by the PPC pollution control regime is necessary in order to protect local communities, amenities and the wider environment. As such, the following type of offences will be considered for enforcement action under this provision:

- Operating without a permit,
- Failure to comply with a condition,
- Failure to notify a relevant change in operation,
- Failure to supply without reasonable excuse information requested under the regulations,
- Making false or misleading statements,
- Making false entries in any record,
- Forgery and deception in relation to documents,
- Failure to comply with a court order,
- Obstruction of Council officers in carrying out their duties.

9.4.2 If, in the opinion of authorised officers of the Council, the operation of the installation (or part of an installation) poses an imminent risk of serious pollution, the Service will serve a suspension notice, forcing the cessation of the activity, unless it intends to carry out the works in default to control the risk under regulation 26. If this is the preferred option, the Service will have the provision to recover all reasonable costs incurred, but does potentially become liable for future breaches if the intervention is inadequate or of a poor standard.

PROSECUTION

9.4.3 The Authority recognises that the following examples are circumstances which are likely to warrant prosecution, although this is not an exhaustive list:

- The alleged offence involves an obvious breach of the law such that the public health is at risk, there has been a serious adverse environment impact or serious nuisance caused,
- The offence involves a failure to comply in full or in part with the requirements of a statutory notice,
- There is a history of similar offences either at the site, or at other sites owned and operated by the permit-holder.

9.4.4 The Officer, must be satisfied that there is relevant, admissible substantial and reliable evidence that an offence has been committed by an identifiable person / company, and that it is in the public interest that a prosecution should follow.

9.4.5 Legal proceedings may be taken in conjunction with other sanctions such as works in default accompanied by enforcement action for the recovery of costs.

10.0 Housing Standards and Protection of Tenants

10.1 Scope

10.1.1 The Service has regulatory responsibilities with regard to housing including having due regard for the following:

- Regulating standards of repair, amenity and safety in the rented sector and dealing with housing hazards in owner/occupied premises,
- Ensuring vacant properties do not pose any statutory issues in the neighbourhood and aiming to bring them back into occupation in conjunction with the Service's Empty Homes Strategy,
- Regulating standards of management, repair, amenity and safety in houses in multiple occupation,
- Inspection of bed and breakfast establishments and any private accommodation used for the temporary housing of homeless people and asylum seekers as appropriate,
- Investigating and enforcing against the illegal eviction and harassment of tenants.

10.1.2 The purpose of this part of the policy is to outline the Council's approach to securing compliance with the law in relation to housing disrepair. The Council will aim to minimise the burden on landlords and owner/occupiers, but due regard shall be given to the safety and living standards of the occupants, and in particular, the policy outlines the extent to which the Council will intervene to make use of the powers in Part 1 of the Housing Act 2004 relating to the Housing Health and Safety Rating System (HHSRS). It sets out what owners, landlords, their agents and tenants can expect from

officers. This provision should be read alongside the Housing Authority Enforcement Policy and the Civil Penalties Policy, which describe the approach to the Renters' Right Act 2025 and the amendments to related legislation including the Protection Against Eviction Act 1977.

10.1.3 In considering the most appropriate course of action, the Service will have regard to the extent of control that an occupier, landlord or owner-occupier has over works required to the dwelling. Although it tends to be the owner's responsibility to carry out works to reduce or eliminate hazards, action will be considered against whoever is deemed to be responsible for the remedial work.

10.1.4 In most cases, owner-occupiers will not be required to carry out works to their own home, and a Hazard Awareness Notice is likely to be the most appropriate action. However, in certain circumstances such as where an imminent risk of serious harm to occupants or others, or where the property condition could affect the health and safety of people outside the housing, the service may issue undertake the appropriate enforcement action in accordance with the statute.

10.2 Other relevant considerations

10.2.1 Regard will be had to statutory guidance, and any other relevant guidance or good practice documentation considered to be relevant to a particular enforcement situation.

10.2.2 Regard will be had to the Council's Housing Strategy 2024-2029, and the area in which the Environmental Health Service can contribute, , namely:

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- Ensuring high standards of housing,
- Preventing and managing homelessness.

10.2.3 Whilst the Council has still to formerly consider how best it will implement the Empty Homes Strategy, the service will have regard for the key principles, namely:

- To gather relevant, accurate and current information about empty homes in the district wherever practicable,
- To try to raise awareness of empty homes and return empty homes back into use through all available and appropriate means in the district,
- To aim to reduce the number of empty homes and return empty homes back into use through all available and appropriate means. Specific measures include:
 - Support and the provision of advice,
 - A transparent, graduated approach from assistance to enforcement,
 - Targeted appropriate action,
 - Consideration of funding initiatives,
 - Council Tax Premiums on empty homes,
 - Enforcement to tackle specific problems and where voluntary re-occupation is not achieved.

10.2.4 Signing of formal notices will be undertaken in line with the Council's scheme of delegation.

10.2.5 Where legislation requires a statement of principles these are added as an annex to Appendix B Environmental Health:

Annex 1: The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 as amended by The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022

Annex 2: Statement of principles to determine the amount of a penalty charge for a breach of minimum energy efficiency standards (MEES) with respect to domestic privately rented property

10.3 Identifying the need for action

10.3.1 Where the Council considers it appropriate to inspect premises to determine whether a hazard exists, it must do so.

10.3.2 In accordance with section 239 of the Housing Act 2004 at least 24 hours' notice will normally be given to owners (if known) and occupiers (if any) if access to the property is required, although if either party invite the officer, due consideration will be had to this, and an acceptance is likely. As full an inspection as is reasonably possible will be carried out to establish the nature and extent of hazards in the dwelling, and an accurate record will be kept of the inspection.

10.3.3 The Service will respond to requests for assistance concerning unsatisfactory housing conditions and tenancy issues. In the first instance for most cases, tenant(s) are expected to take their own action to resolve the problem. This should be in the form of a written complaint to their landlord, allowing them sufficient time to respond. Where tenant(s) approach the Service with a complaint, we will ask to see a copy of any such correspondence prior to initiating action.

10.3.4 Where a tenant has not be able to resolve the matter their landlord or in where there is imminent risk we will accept an enquiry or referral, the level of intervention by Council Officers will be decided having regard to:

- The vulnerability of any occupant,
- The effect that the problem has on the occupants, neighbourhoods, or the surrounding area,
- The relevant legislation, particularly whether there is a duty to investigate certain matters and enforce to achieve compliance, and,
- Any relevant history of the owners, neighbours, tenancy, or landlord, particularly the landlords' history of carrying out repairs either informally or following the service of a notice.

10.3.5 The Council is generally not able to respond to complaints from leaseholders about their lease or tenure.

10.3.6 Any leaseholder enquiries should be directed to:

The Leasehold Advisory Service
Fleetbank House, 2-6 Salisbury Square,
London, EC4Y 8JX
Telephone: 020 7832 2500
<http://www.lease-advice.org>

10.3.7 The Service may carry out pro-active inspections of HMOs, and take appropriate action to ensure compliance with the relevant legislation and the Council's standards.

10.3.8 Such inspection programmes will be subject to available resources and for the following purposes:

- An assessment of risk to the occupants,
- Inspection of HMOs to assess for hazards under the HHSRS,
- Inspection of HMOs for compliance with the HMO Management Regulations,
- Surveys to identify licensable HMOs,
- Inspection of private sector homes and hostels that are funded, supported or procured for use by the Council, to ensure compliance with relevant standards,
- Inspection of property portfolios in the ownership or management of any landlord where serious concerns over management standards have been identified in any one of the properties in the portfolio, and,
- Inspection of multi-occupied properties owned or managed by Registered Providers or public sector organisations such as the NHS, Police, Probation Service, etc. Although such properties are exempt from the definition of an HMO, action may still be taken with respect to hazards identified under the HHSRS. It is appropriate that such properties should meet equivalent standards to those in the private sector.

10.4 The use of formal enforcement tools

10.4.1 The general principles guiding enforcement decisions in relation to housing matters are as set out in the core section of the Council's CEP but should be read alongside the Housing Standards and Protection of Tenants Section of this policy, the Housing Authority Enforcement Policy and Civil Penalty Policy.

10.4.2 Where enforcement or other statutory instrument allows, the Council may undertake works in default as well as or in place of taking other enforcement action. Where works in default are undertaken, the Council will seek to recover the cost of undertaking such works, as outlined in the core section of the Council's Enforcement Policy. To this effect, a charge against the property may be placed which will then be considered further should any debt recovery provisions be considered.

10.5 Statutory Notices

10.5.1 The Council has a range of options for service of statutory notices under different legislation. Under some provisions, the Council has a duty to serve an enforcement notice. Under other provisions, it is acceptable for the Council to take an informal approach first, but should then take enforcement action within a reasonable period, subject to the particular guidance and depending on the circumstances, where the informal approach has not achieve compliance.

10.5.2 In other cases, there is a power to serve a notice with the aim of resolving a particular situation. This power will be exercised in accordance with the general principles set out in the Council's core policy and the Environmental Health Enforcement Policy.

10.5.3 In the case of Category 1 hazards which pose a serious and imminent risk of harm to the occupier(s) or members of the public and as defined by the HHSRS, then an informal approach is not appropriate. However, if contact can be made with the person responsible, and a written assurance is given that remedial action will be taken within an acceptable period, then, subject to the agreement of a senior

officer, it may be acceptable to withhold action for that period. If however, the informal agreement is not upheld, enforced remedial action will ensue.

10.5.4 Certain notices, orders and charges are required to be registered as a local land charge and whilst the matter is outstanding, these will be disclosed to any prospective purchaser making a local land search.

10.5.5 Section 49 of the Housing Act 2004 gives local authorities the power to make a reasonable charge as a means of recovering certain expenses incurred in:

- Serving an improvement notice,
- Making a prohibition order,
- Serving a hazard awareness notice,
- Taking emergency remedial action,
- Making an emergency prohibition order,
- Making a demolition order,
- Reviewing a suspended improvement notice,
- Reviewing a suspended prohibition order.

10.5.6 It is the Council's policy to levy an appropriate charge in all situations where the above notices are served, except for a HAN served on owner-occupiers, unless there are extenuating circumstances. However, particularly for HAN, matters such as the gravity of the hazard, response to informal requests for action, and previous non-compliance will be taken into account when deciding whether to charge. The charge will reflect the costs incurred by the Authority in undertaking the inspection and preparing and serving the relevant notice.

10.5.7 The Council publishes its standard charge for serving Housing Act notices in its annual fees and charges summary. In addition to the standard charge, reasonable expenses may include specialist support, such as testing of electrical installations and the recovery of these will also be sought. The Environmental Health Manager has discretion to waive or reduce the charge if there are exceptional or extenuating circumstances.

10.6 Housing Act 2004 Category 1 and 2 Hazards

10.6.1 The Housing Act 2004 puts local authorities under a duty to take appropriate action in relation to a Category 1 hazard found under the Housing Health and Safety Rating System (HHSRS). In such cases the authority must take the most appropriate of the following courses of action:

- To serve an Improvement Notice,
- To make a Prohibition Order,
- To serve a Hazard Awareness Notice,
- To make a Demolition Order in accordance with s265 of the Housing Act 1985,
- To declare a clearance area in accordance with s289 of the 1985 Act,
- To serve an Emergency Remedial Action notice,
- To make an Emergency Prohibition Order.

10.6.2 Only one of the above courses of action can be taken at any one time (except for emergency measures). It is for the local authority to decide which course of action is the best in the circumstances, and the basis of this decision must be provided with each notice served in the format of a "Statement of Reasons". The views of the

manager and occupier of the property should, if possible, be considered in the decision-making process.

- 10.6.3 Where there are concerns about a vulnerable person, the appropriate agencies should be consulted to help make a decision regarding the appropriate enforcement action.
- 10.6.4 The Fire Authority must be consulted where a fire hazard exists in a House in Multiple Occupation (HMO) or in any common parts of a building containing one or more flats.
- 10.6.5 Local authorities have similar powers to deal with Category 2 hazards as those listed in 10.6 above, except that they cannot use the emergency measures but can make a Demolition Order, and declare a clearance area, but only in circumstances prescribed in the Regulations. In deciding whether to take action to address Category 2 hazards (where action is discretionary) the following factors should be considered:
- Where the owner is being asked to deal with 'Category 1' hazards the 'Category 2' hazards should be dealt with at the same time where they materially affect the comfort of the occupying tenant, or they cause the property to be in serious disrepair,
 - Multiple hazards may be found which on their own are not too serious but in combination present a more serious situation than one single 'Category 1' hazard,
 - If the hazard relates to fire safety the Fire Authority should be consulted and the appropriate action taken based on their recommendations,
 - If the hazard or combination of hazards materially affects the comfort of the occupying tenant or causes property to be in serious disrepair the appropriate enforcement action should be taken.
- 10.6.6 Generally, Category 2 hazards will only be dealt with when the necessary circumstances as defined in the legislation are met. If such thresholds are not met, any intervention may only be advisory unless authorised by the Environmental Protection & Housing Manager or Environmental Health Manager.
- 10.6.7 Where formal action is required, an Improvement Notice will provide the most appropriate action for most Category 1 hazards; repair or renewal is generally cost effective because of the high value of property in North Herts. However, Prohibition Orders may be required on part or all of a dwelling where there is imminent risk of serious harm, e.g., to reduce overcrowding, or where there is inadequate natural lighting or there is no protected means of escape in case of fire from the top floor.
- 10.6.8 Where an Emergency Prohibition Order is served, the Council will, if necessary, take all reasonable steps to help the occupants find other accommodation when the tenants are not able to make their own arrangements.
- 10.6.9 Emergency Remedial Action will be considered where there is a Category 1 hazard under the Housing Act 2004 and there is imminent risk of serious harm.

10.7 Tenure

- 10.7.1 In considering the most appropriate course of action, the Council will have regard to the extent of control that an occupier has over works required to the dwelling. It is usually the owner's responsibility to carry out works to reduce or eliminate

hazards. Action can be taken against an owner-occupier but as owner-occupiers have control over any hazards in the home and tenants in the main do not, most enforcement action will involve requiring a private landlord or Registered Provider of Social Housing (Housing Association) to carry out works.

- 10.7.2 Where the Service has identified hazards and the Housing Association has a programme of works to make their stock decent, the officer will liaise with the landlord over any works necessary to deal with Category 1 and 2 hazards in advance of the planned improvements. In particular, with the Space and Crowding hazard, account will be taken of the availability of suitable alternative accommodation and the priority given for alternative accommodation for tenants living in overcrowded conditions which are the subject of a Category 1 or high Category 2 hazard.
- 10.7.3 With owner/occupied premises, in most cases they will not be required to carry out works to their own home, and a Hazard Awareness Notice is more likely to be the most appropriate action. If the premises is in such a state as to be prejudicial to health or a nuisance as defined by the EPA, enforcement action in the form of an abatement notice may be required.
- 10.7.4 However, the Council may in certain circumstances require works to be carried out, or to use Emergency Remedial Action, or serve an Emergency Prohibition Order, in respect of an owner-occupied dwelling. This is likely to be where there is an imminent risk of serious harm to the occupiers themselves or to others, or where the condition of the dwelling is such that it may adversely affect the health and safety of others outside the household. This may be because of a serious, dangerous deficiency at the property, or for example to carry out fire precaution works to a flat on a long leasehold in a block in multiple occupation.
- 10.7.5 An Improvement Notice or Prohibition Order may be suspended until a time or event specified, and in some cases, of any tenure, may be more appropriate than a Hazard Awareness Notice. Typically, the event will be a change of occupancy. For example, an Improvement Notice may be suspended at the wishes of an elderly occupier who does not want the disturbance of extensive works, or where a member of the vulnerable age group is not present. The notice might require an owner to notify the Council of a change of occupancy to ensure that the notice can be reviewed.
- 10.8 Level to which Hazards are to be Improved
- 10.8.1 Where an improvement notice is served, the Council will generally require works to prevent a recurrence of the hazard within five years.
- 10.8.2 Section 11 of the Housing Act 2004 requires only that where there is a Category 1 hazard, the works specified must reduce the hazard to a Category 2. However, the Council will generally seek to specify works which, whilst not necessarily achieving the ideal, will achieve a significant reduction in the hazard level, if possible, to the national average or below if the national average is D or above.
- 10.8.3 The Council will try to ensure that any works required to mitigate a hazard are carried out to a standard that prevents building elements deteriorating.
- 10.9 Vacation of a Property following Statutory Action

10.9.1 In general, the following action will be taken, according to the circumstances:

- When a property becomes vacant following the service of an Improvement Notice relating to Category 1 hazards and the Notice has not been complied with;
- If the landlord confirms in writing that s/he intends to use the house for their own or their own family's use, then the Improvement Notice may be suspended until so occupied, when it will be revoked and replaced by a Hazard Awareness Notice,
- If the landlord fails to give any indication regarding his/her future proposals for the property, or if it appears that the property is likely to remain vacant, then the Improvement Notice will continue to be enforced, since the operation of an Improvement Notice is not dependent upon tenure,
- Where a landlord gives an undertaking, in writing, that the required remedial work will be completed prior to any new tenant moving in, then the Improvement Notice may be suspended until the house is reoccupied, or some other stated date. The situation will be reviewed every six months. However, this decision will be reached on a case-by-case basis, and particularly if retaliatory eviction is suspected, the Notice may continue to be enforced,
- Where the property becomes vacant following the service of an Improvement Notice relating to Category 2 hazards, the notice will be revoked and replaced by a Hazard Awareness Notice. Suspension of the Notice, as in the case for Category 1 hazards, may be appropriate where it appears that there is a likelihood that the property will be re-let

10.10 Prosecution

10.10.1 The Authority recognises that the following are circumstances which are likely to warrant prosecution under this provision. The following are examples of such circumstances but this is not an exhaustive list.

- The alleged offence involves an obvious breach of the law such that the public health, safety or well-being is or has been put at risk.
- The offence involves a failure to comply in full or in part with the requirements of a statutory notice.
- There is a history of similar offences relating to housing conditions.

10.10.2 Prosecution will be considered as the most appropriate course of action in the most severe cases.

10.10.3 The greater the harm caused to, and the vulnerability of the occupants, the more likely it is that a prosecution is required. Consideration will also be given to whether an Officer has been threatened, assaulted, or obstructed in the course of their duties. Where such an offence has occurred, the Council will also seek police assistance with a view to prosecution of offenders.

10.10.4 Consideration will also be given to whether the suspect is, or was at the time of the offence, suffering from any significant mental or physical ill health, as in some circumstances this may mean that it is less likely that a prosecution is required. When having regard to the offender's health, the Council will also consider how serious the offence was, whether it is likely to be repeated, and the need to safeguard the public.

10.10.5 The Officer, must be satisfied that there is relevant, admissible substantial and reliable evidence that an offence has been committed by an identifiable person / company.

10.10.6 Where notices are not complied with, the Council will normally use its powers to prosecute or to carry out works in default, reclaiming any costs duly accrued; administration costs to cover officer time and council costs will be added to the works cost. Prosecution will generally be the preferred initial option, unless the Environmental Protection & Housing Manager or Environmental Health Manager considers that there is an urgent need for the works to be carried out to protect the health and safety of the tenant.

10.11 Other Legislation

10.11.1 Whilst the Housing Act 2004 is the predominant legislation governing housing regulation and the enforcement of conditions in England there is significant other legislation both in force, and in use and available for officers in the Service according to the particular circumstances and their professional judgement.

10.11.2 Where other legislation carries regulatory and enforcement powers, the general prosecution and default policy detailed in the CEP and this policy will be applicable. The legislation currently still available includes:

- Public Health Act 1936, Section 45
- Prevention from Damage by Pests Act 1949, Section 4
- Public Health Act 1961, Section 17
- Building Act 1984, Section 59
- Building Act 1984, Section 64
- Building Act 1984, Section 70
- Building Act 1984, Section 76
- Environmental Protection Act 1990 (EPA) Section 80 Abatement Notice
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
-
- The Energy Efficiency (Private Rented Property) (England and Wales) Regs 2015 (also known as MEES)

10.12 Banning Orders

Part 2, Chapter 2 of the Housing and Planning Act 2016 permits a Council to apply for a Banning Order against a person who has been convicted of one or more of the relevant offences as prescribed in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018. This provision will be used where appropriate and in consideration of the provisions of this Act. If this provision is to be used, this section should be read alongside the Housing Authority Enforcement Policy, which sets out the approach to Banning Orders.

10.12.1 The Council *may* make an entry in the National Database of 'Rogue Landlords and Letting agents' if a person has been convicted of a Banning Order offence, or if they have received a financial penalty in respect of a Banning Order offence at least twice within a period of 12 months. When considering if this is an appropriate course of action the Council will have regard to any guidance issued by the Government. The Council *must* make an entry to record a Banning Order made following an application by the Council.

10.12.2 Prior to making an entry on the database, the Council will issue the person with a decision notice, specifying the period for which the entry will be maintained.

10.13 Rent Repayment Orders

Part 2 of the Housing and Planning Act 2016 permits the Council to seek a Rent Repayment Order at the First Tier Tribunal Property Chamber to require the landlord of the property where the offence(s) has been committed to refund rent to the tenants or the Council. Section 48 of the Housing and Planning Act 2016 places a duty on the Council to consider applying for Rent Repayment Orders. This provision will be used where appropriate and in consideration of this Act. If this provision is to be used, this section should be read alongside the Housing Authority Enforcement Policy, which sets out the approach to Rent Repayment Orders.

10.14 Restoration of Supplies

10.14.1 Section 33 of the Local Government (Miscellaneous Provisions) Act 1976, as amended by the Local Government and Housing Act 1989, gives Local Authorities the discretionary power to reconnect gas, electricity or water supplies upon the written request of a tenant, where they are satisfied that they are likely to be or have been disconnected as a result of the landlord's failure to pay his/her account.

10.14.2 The local authority may recover the cost (normally the reconnection fee and first invoice to the statutory undertaker) by collecting rent after having served Notice on the occupiers as a civil debt or as a charge against the property.

10.14.3 This is viewed as an emergency approach to deal with an immediate problem, and will only be considered where the households affected contain a person or persons deemed to be at risk, e.g., elderly, person(s) with disabilities, or those who would otherwise be considered as being vulnerable.

10.14.4 If none of the households fall within the 'at risk' groups, they will normally be advised to become the registered consumer. In the case of an HMO, the Management Regulations may be used to require the provision of individual supplies.

10.15 Renters Right Act 2025

10.15.1 Section 107 of the Renters' Rights Act 2025 places a duty on Local Authorities to enforce the Landlord Legislation within their area. The Landlord Legislation comprises :

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

The Housing Authority Enforcement Policy sets out the principles the Service will apply when enforcing these duties, as well as those arising under Part 1 of the Housing Act 2004. As these duties fall outside of the scope of the Regulators Code, the Service is permitted to take formal enforcement action as a first step, rather than adopting the graduated approach described in the CEP.

10.15.2 The Renters' Rights Act has also introduced new investigatory powers relating to the collection of information and the entry of premises. The Services

approach to exercising these powers is set out in the Housing Authority Enforcement Policy.

10.16 Civil Penalties

10.16.1 The Local Authority has the power to impose civil penalties under the Renters' Rights Act 2025, Housing Act 2004 and other housing legislation. These powers are detailed in the dedicated policy '*Civil Penalties Policy for proceedings under the Renters' Right Act 2025 and other housing legislation*'. This policy should be read alongside Appendix B of the CEP and the Housing Authority Enforcement Policy.

11. Anti-social Behaviour, Crime and Policing Act 2014

Community Protection Notices

11.1 The Community Protection Notice can be used to deal with, ongoing problems or nuisances which are having a detrimental effect on a community's quality of life by targeting those responsible. These can be issued to an individual or body (business, organisation etc) if their conduct is having a detrimental effect on the quality of life of those in the locality, that the conduct is persistent and continuing and that the conduct is unreasonable.

There are a number of processes that need to have been undertaken before a Community Protection Notice is issued. The Service may choose to write to the individual/body to inform that the Community Protection Notice process may be followed if the behaviour does not improve. Should this not have the desired impact then the team must:

- Inspect/monitor reports they have received, or the relevant team has received in relation to the behaviour,
- Issue an official Community Protection Warning which is a requirement of the Act before a Community Protection Notice is issued,
- If the behaviour continues, issue a Community Protection Notice specifying the conduct to be stopped or action to be taken
- Monitor the behaviour of the offender after the Community Protection Notice is served

Legislation and formal enforcement if deemed appropriate

11.2 The Community Protection Notice is covered in sections 43 to 58 of the Anti-social Behaviour, Crime and Policing Act 2014. The legal test to allow the use of this power is that the behaviour has to:

- Have a detrimental effect on the quality of life of those in the locality
- Be of a persistent or continuing nature; and
- be unreasonable.

Breach of legislation is a Criminal Offence

A fixed penalty notice can be issued of up to £100 if appropriate.

12 Drinking Water Quality

12.1 Scope

12.1.1 Local authorities have a general duty under the Water Industry Act 1991 to keep themselves informed about the wholesomeness and sufficiency of water supplies provided to premises in their area, including every private supply to any such premises. Local authorities have specific remedial powers in relation to private water supplies. The Service is responsible for fulfilling the Council's duties and powers in respect of drinking water quality matters.

12.2 Other relevant considerations

12.2.1 Regard will be had to guidance from the Drinking Water Inspectorate and the UK Health Security Agency in fulfilling the Council's roles.

12.2.2 Signing of formal notices will be undertaken in line with the Council's scheme of delegation.

12.3 The use of formal enforcement tools

12.3.1 The general principles relating to enforcement decision making in relation to water quality activities are as outlined in the core section of the Council's enforcement policy, the Private Water Supplies (England) Regulations 2016 and in the introduction to the Environmental Health Enforcement Policy. However, the criticality of safe drinking water is paramount to public health and this will be the significant factor in deciding the appropriate course of action in any particular situation.

12.3.2 Many of private water supplies in North Hertfordshire are domestic supplies, often serving single properties. In such instances, the Council's preferred approach is to address issues informally except where there is a specific requirement to take a formal approach.

12.3.3 In relation to domestic private water systems supplying more than one household and those defined as commercial supplies, the Council is more likely to take a formal approach, but every case will be judged on its merits, having regard to the public health circumstances and the requirements of the legislation.

12.3.4 If any private water supply is not deemed to be wholesome or any domestic supply is not deemed to have a supply that is wholesome and sufficient, the Council may serve a notice stating its reasons and the remedial steps that it believes are required, giving a suitable time period for compliance. If the notice is breached, the Council may undertake works in default. Whether the Council chooses to do so will depend on the circumstances of the case. Where the Council decides to undertake works in default, it will seek to recover its full costs, unless there are exceptional reasons not to do so.

12.3.5 If any private supply of water intended for human consumption constitutes a potential danger to human health, the Council must serve a notice stating the grounds for serving the notice and the remedial action required. Failure to comply with the notice is an offence and the Council may consider prosecution proceedings in accordance with its normal procedure for such matters.

12.3.6 The Council will normally seek to recover its full costs in fulfilling its duties under this section where it is empowered to do so, unless there are exceptional circumstances.

13 Stray Dogs

13.1 Scope

13.1.1 The Council has a duty under the Environmental Protection Act 1990 to deal with stray dogs in the district. Any stray dogs on public land must, if practicable, be seized and detained. Attempts must be made to advise the owner of the dog that the dog has been seized. Where any dog has been detained for seven clear days without the dog being claimed and the Council's expenses having been paid in full, the Council may dispose of the dog.

13.2 Regulations made in 2014 under the Animal Welfare Act 2006 made it mandatory from 6th April 2016 for dog owners to microchip any dog over 8 weeks old.

13.3 The use of formal enforcement tools

The Council may:

- Serve on the keeper of a dog which is not microchipped a notice requiring the keeper to have the dog microchipped within 21 days,
- Where the keeper of a dog has failed to comply with a notice under paragraph (a), without the consent of the keeper (i) arrange for the dog to be microchipped; and (ii) recover from the keeper the cost of doing so,
- Take possession of a dog without the consent of the keeper for the purpose of checking whether it is microchipped or for the purpose of microchipping it in accordance with the above.

13.4 The Council's policy in relation to microchipping is to encourage voluntary compliance. Formal action will normally only be considered in the case of repeat offences. The Council will incentivise dog owners to have their dogs microchipped in setting fees for handling stray dogs.

13.5 The Council will normally seek to recover its full costs in fulfilling its duties under this section where it is empowered to do so, unless there are exceptional circumstances.

14. Governance

This policy sets out how the Council meets its obligations under the Act(s). This policy will be reviewed periodically to ensure that it fully meets the requirements of the law. Reviews will be undertaken by the senior officers of the Environmental Health Team and where amendments are required, and in accordance with the provisions of the Council's Constitution, the decision to authorise a revised policy will be delegated to the Director – Regulatory in consultation with the Executive Member for Regulatory, with the decision being recorded as a Delegated Decision in due course.

Annex 1: To Appendix B Environmental Health

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 as amended by The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022

North Herts Council's Statement of Principles – 2024 revision

Introduction

This statement sets out the principles that North Herts Council (the Council) will apply in exercising its powers under the Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022 (“the Regulations”).

The Regulations came into force on 1 October 2022 extending the Smoke and Carbon Monoxide Alarm (England) Regulations 2015, made pursuant to the Housing Act 2004 and the Energy Act 2013.

Purpose

The Council is required under the Regulations to prepare and publish a Statement of Principles which it must follow when determining the amount of a penalty charge.

The Council may revise its statement of principles at any time, but where it does so, it must publish the revised statement.

When deciding on the amount to be applied as a penalty charge, the Council will have regard to the statement of principles in force at the time the breach occurred.

The duties

The regulations impose the following duties on ‘a relevant landlord’ of ‘a specified tenancy’ of residential premises, to ensure that:

- a smoke alarm is installed on each storey of the premises where there is living accommodation (for these purposes living accommodation includes bathrooms and lavatories);
- a carbon monoxide alarm is installed in any room of the premises which is used wholly or partly as living accommodation, and which contains a fixed combustion appliance other than a gas cooker;
- that at the start of any new tenancy, checks are made by the landlord, or someone acting on his behalf, that the alarm(s) serving the premises is/are in proper working order; and
- where, following a report by a tenant or their representative to the landlord, a prescribed alarm is found not to be in proper working order, the alarm is repaired or replaced. Both the determination (following a report) as to whether the alarm is in proper working order, and any required repair or replacement must be carried out by or on behalf of the landlord as soon as reasonably practicable.

A ‘relevant landlord’ is defined as ‘the immediate landlord in respect of a specified tenancy’.

A ‘specified tenancy’ is a tenancy, licence, lease, sub-lease or sub-tenancy of residential premises which grants one or more persons the right to occupy all or part of the premises as their only or main residence in return for the payment of rent. The Schedule to the Regulations (as amended) excludes certain categories of letting arrangement where the accommodation is shared with the landlord or falls outside of the traditional private rented sector.

Exclusions from the requirements

The following are exempt from the regulations:

- Properties subject to Part 2 or Part 3 licensing under the Housing Act 2004 (i.e. as licensable Houses in Multiple Occupation);
- Accommodation shared with a landlord or landlord's family;
- Long leases: leases which grant a right of occupation for 7 years or more without a break clause;
- Student halls of residence, hostels and refuges, care homes, hospitals and hospices, certain other accommodation relating to healthcare provision, and low cost ownership homes, (as other legislation applies).

Enforcement

Where the Council has reasonable grounds for believing that a landlord is in breach of one or more of the above duties, we have a duty to serve that person with a Remedial Notice within 21 days detailing the actions that must be taken to comply with the Regulations.

For the purposes of this provision, 'reasonable grounds' may include being informed by a tenant, letting agent or officer that the required alarms are not installed. The regulations do not require that the Council enter the property or prove non-compliance in order to issue a Remedial Notice, however, the Council will aim to visit such properties to confirm that the required works have not been undertaken.

Remedial Notice

The Council must serve the notice on the relevant landlord in a method prescribed by the Regulations¹, and as such the Remedial Notice must:

- specify the premises;
- specify the duty being failed;
- specify the remedial action the Council considers should be taken;
- require the landlord to take that action within 28 days beginning with the date the notice is served;
- explain that the landlord is entitled to make written representations against the notice within that 28 day compliance period;
- specify to whom any representations against the notice may be sent;
- explain the effect of regulations 6, 7 and 8, including the maximum penalty charge which the Council may impose.

Written Representations

Where written representations are made, the Council will consider these representations within 28 days and the remedial notice will be suspended until the Council informs the landlord in writing of the outcome of the consideration.

A landlord will not be taken to be in breach of the duty to comply with the remedial notice if they can show they have taken all reasonable steps to comply with the notice. If the landlord is prevented from entering the property by a tenant or an occupier of the property, they will not

¹

considered to be in breach simply by reason of failing to take legal proceedings to secure entry.

If a landlord faced with access issues can demonstrate that they have made several access attempts at reasonable times and attempted to work with the tenant to find a solution, they will be viewed as having taken all reasonable steps to comply.

Landlords may provide evidence such as dated photographs, confirmations by the tenant; installation and inventory records when making their written representations.

The Council will review the case and decide if the landlord is in breach, by judging on a balance of probabilities. A **Review Notice** will be issued with a decision to confirm, vary or withdraw the notice, within seven days of the expiry of the original period for making representations (28 days).

Where the Council decides that a landlord is in breach and confirms or varies the remedial notice, the suspension ceases to have effect and the landlord will have a further 21 days to comply with the remedial notice.

If after the 28 days the landlord has not complied and cannot show they have taken all reasonable steps to do so, the Council must decide if the landlord is in breach by judging on a balance of probabilities. If a tenant informs the Council that no remedial action has been taken it is reasonable for the Council to be satisfied, on the balance of probabilities, that the landlord is in breach.

Remedial Action

Where the Council is satisfied on the balance of probabilities that a landlord has not taken the remedial action specified in the Notice, within the timescale stipulated in that document, the Council will:

- Arrange (where the occupier consents) to undertake the remedial action specified in the Notice within 28 days (regulation 7); and
- Require the landlord to pay a penalty charge of such amount as the authority may determine but which must not exceed £5000 (regulation 8).

The Council will not be taken to be in breach of the duty where it can show it has taken all reasonable steps to comply. Where an authorised person is prevented from entering a property by a landlord or tenant, they will not be considered to be in breach simply by reason of failing to take legal action to secure entry.

The Council cannot recover the cost of carrying out any remedial works; collection of a civil penalty is the only method of recovery.

Penalty Charge

If the Council is satisfied, on the balance of probabilities, that a landlord has not complied with a remedial notice they may require the landlord to pay a penalty charge of up to £5,000. Where the Council intends to impose a penalty, it must give written notice of its intention to do so – a 'penalty charge notice'. The level of penalty imposed will be in line with this statement of principles.

The penalty charge notice (PCN) must be served within 6 weeks of the landlords' failure to comply with the remedial notice.

It must set out certain required information as prescribed by the Regulations.² As such, the Penalty Charge Notice must state:

- the reasons for the penalty charge;
- the premises to which the penalty charge relates;
- the number and type of alarms (if any) which an authorised person has installed;
- the amount of the penalty charge;
- that the landlord is required, within the specified period, to pay the penalty charge or request a review;
- how payment of the penalty charge must be made; and
- the person to whom, and the address (including if appropriate any email address) to which, a notice requesting a review may be sent and to which any representations relating to the review may be addressed.

The purpose of imposing a financial penalty

The primary purpose of the Council exercising its regulatory power is to promote and protect the public interest.

The primary aims of financial penalties are to:

- lower the risk to tenants' health and safety;
- eliminate any financial gain or benefit from non-compliance with the regulations;
- reimburse the costs incurred by the Council in arranging remedial action in default of the landlord;
- change the behaviour of the landlord and deter future non-compliance;
- penalise the landlord for not installing alarms in line with the Regulations and after being required to do so, under notice;
- proportionately address potential harm outcomes, the nature of the breach, and the cost benefit to comply with these legal requirements.

Criteria for determining the penalty charge

The Regulations state the amount of the penalty charge must not exceed £5,000.

	Payment period	Penalty Charge
First Offence	28 days	£2500
	Early repayment option within 14 days	£1250
Second and subsequent offences	28 days	£5000

Early Payment Option

The Council has discretion to offer an early payment reduction where payment is made within 14 days. The Council will offer an early payment reduction of 50% to the landlord where it is the landlord's first offence. Each landlord is only entitled to one early payment reduction regardless of number of properties.

Review and Appeals in relation to a Penalty Charge Notice (PCN)

Review

If a landlord does not agree with the penalty charge notice, they can make a request in writing to the Council for it to be reviewed. This request must be made within 28 days from the date on which the Penalty Charge Notice is served.

Information on how to request a review will be included in the PCN and is explained at the end of this statement.

If the Council receives a request for a review, the Council must consider any representations made by the landlord and decide whether to confirm, vary or withdraw the PCN. The Council must serve a **Notice of Decision** on the landlord, as to whether to confirm, vary or withdraw the notice.

The Council in making its decision will consider the following:

1. Whether the facts of the matter supported the service of the PCN.
2. Whether the decision was correct having regard to the relevant laws.
3. The amount of the penalty charge was reasonable having regard to any mitigating, aggravating or other circumstances submitted with the request for review. Adjustments to the penalty charge will be in steps of £100, including to increase, subject to the maximum penalty charge being capped at £5,000.
4. Whether the early payment reduction has already been offered.
5. That there must be a significant factor to make an adjustment.

Where the Council decides to confirm or vary a penalty charge notice, it must inform the landlord that they can appeal to the First-tier Tribunal.

Appeals (First-tier Tribunal)

A Landlord who has requested a review of a PCN and has been served with a decision notice confirming or varying the PCN, may appeal to the First-tier Tribunal (General Regulatory Chamber) against the Council's decision. Appeals should be made within 28 days from the date of the decision notice served by the Council.

Appeals can be made on the grounds that:

- a) the decision of the Council to vary or confirm the penalty charge notice was based on a factual error;
- b) the decision was wrong in law;
- c) the amount of the penalty charge is unreasonable;
- d) the decision was unreasonable for any other reason.

The operation of the PCN is suspended until the appeal is finally determined or withdrawn. The tribunal may quash, confirm or vary the PCN, but may not increase the amount of the penalty charge.

Any notice served on a landlord under the regulations may be amended, or revoked in writing at any time.

Communications

All communications for representations made against the Remedial Notice or the Penalty Charge Notice are to be sent in writing to:

Environmental Health Manager,
Council Offices,
Gernon Road,
Letchworth Garden City,
SG6 3JF

OR

Can be emailed to env.health@north-herts.gov.uk

The [Smoke and Carbon Monoxide Alarm \(Amendment\) Regulations 2022: guidance for landlords and tenants - GOV.UK \(www.gov.uk\)](#) provides further information including guidance on the type of alarms and where they need to be located.

Annex 2: To Appendix B Environmental Health

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

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

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

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

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

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

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

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

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

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

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

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

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

- Where the landlord is not an individual, the landlord’s name
- Details of the breach of these Regulations in respect of which the penalty notice has been issued
- The address of the property in relation to which the breach has occurred, and
- The amount of any financial penalty imposed.

The Council will impose the following financial penalties:

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

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