



Housing Enforcement Policy

Housing and Environmental Enforcement

Contents

	Page(s)
• Background	3
• Definition of Terms	3
• Policy Statement	3
• Statutory Obligations	4
• Approach to Enforcement	4-5
• Enforcement Options	5
Informal Action	5-6
Formal Enforcement	6-7
Premises Inspections	7-8
Level of Enforcement using HHSRS	8-9
• Additional Information of Enforcement Options	9
Works in Default	9
Management Orders	9
The Recovery of Costs and Expenses	9
The Licensing of Houses in Multiple Occupation (HMO's)	10
Standards for Licensed HMO's	10-11
Empty Properties	12-13
Civil Penalties	13-14
Rent Repayment Orders	14-15
Banning Orders	15
Protection from Eviction and Harassment	15
Redress Schemes for Letting Agents and Property Managers	15
Smoke and Carbon Monoxide Requirements	16
Electrical Safety Standards	16-17
Energy Efficiency	17-18
• Arrangements to Implement the Policy	18
• Standards	18-19
• Feedback on our Service	19
• Links with Other Policies	19
Appendix A – Fees and Charges	20-21
Appendix B – Smoke and Carbon Monoxide Alarm Statement of Principles	22
Appendix C – Redress Schemes for Property Managers (Penalty Structure)	23
Appendix D – Energy Efficiency (Penalty Structure)	24-25
Appendix E – Legislation	26-27

1. Background

1.1 The Council aims to ensure that all residents of West Lindsey have a home that is safe, secure, dry and not overcrowded. This policy, alongside the Corporate Enforcement Policy and secondary policies such as the Banning Order policy and Civil Penalties policy, outlines how the Council will use appropriate enforcement powers to ensure that all owners comply with their statutory obligations.

2. Definition for the purpose of this Policy

Term	Meaning
Proportionality	Relating enforcement action to the risks posed by the condition or situation and the likely benefits achieved by compliance.
Consistency	Taking a similar approach in similar circumstances to achieve similar ends. Enforcement action will be similar regardless of the tenure and location.
Targeting	While ensuring we respond to any unsafe housing and nuisance, we will pro-actively use enforcement action in high risk situations of occupation, and areas with the highest level of unsafe, empty dwellings, disrepair and poverty.
Transparency	Helping all members of the community, who we come into contact with, to understand their rights and responsibilities.
Hazard, category 1	Defined in Section 2 of the Housing Act 2004. A deficiency which has been calculated under the Housing Health and Safety Rating System to be highly likely to cause serious harm.
Hazard, category 2	Defined in Section 2 of the Housing Act 2004. A deficiency which has been calculated under the Housing Health and Safety Rating System to be likely to cause harm.
Statutory Nuisance	Defined in Section 79 of the Environmental Protection Act 1990. A certain type of defect which is prejudicial to health and/or a nuisance.

3. Policy Statement

3.1 The Council will use all available and appropriate legislation to ensure that the housing stock in West Lindsey is safe, maintained in good repair and well managed. The Council will also use appropriate legislative powers to improve housing standards, reduce the impact of empty homes, and to ensure dwellings do not fall under the definition of a statutory nuisance. Where we take enforcement action to gain compliance with the law, it will be proportionate, consistent, targeted, transparent and in line with Statutory Obligations.

4. Statutory Obligations

- 4.1** The Council has a statutory duty to take action to remove Category 1 Hazards as per the Housing Health and Safety Rating System (HHSRS) and housing conditions that fall under the definition of a statutory nuisance. The Council must also run a licensing scheme for certain types of high risk houses in multiple occupation (HMO). The Council has an obligation to take action where they have grounds to believe a landlord is in breach of their duties in respect of electrical safety.
- 4.2** Various acts of Parliament also give the Council discretionary powers to resolve unsatisfactory conditions in houses, HMOs and flats, and to reduce the impact of long term empty properties. This policy summarises how the Council will satisfy its legal duties and responsibilities.
- 4.3** The Council is fully committed to being fair, independent and objective. In particular, all officers will serve the community equally and fairly, in accordance with our generic Equality Policy.
- 4.4** The Council's overall approach to enforcement is set out in the Corporate Enforcement Policy

5. Approach to Enforcement

- 5.1** In deciding the course of enforcement it will take, the Council will have regard to circumstances including, but not restricted to, those below:
- The statutory obligations of the Council
 - The seriousness of the offence
 - The general record of the offender
 - The consequences of non-compliance
 - The frequency of the offence
 - Public interest and concern
 - The likely effectiveness of the various enforcement options
 - Whether the landlord is a member of a private sector accreditation scheme
 - Whether grant funding has been paid to provide or repair the item or element concerned
 - The views of tenants and occupiers
 - The views of other organisations including the police, fire and rescue service, social services etc.
 - Whether the property needs to be licensed under a mandatory, additional or selective licensing scheme.
 - Whether empty homes have been identified as a local priority.
 - Whether the tenant has made a written request to the landlord for works to be completed and the landlord has failed to do so in a reasonable timescale
 - The effect on a tenant's security of tenure of serving a hazard awareness notice or improvement notice

- 5.2** Enforcement decisions must be consistent, balanced, and fair and relate to common standards to protect public health and safety, economic wellbeing or the environment. Each case is unique and must be considered on its own merits.
- 5.3** Officers taking any action will distinguish between legal requirements and matters which are recommended as good practice.
- 5.4** In cases where a high risk to tenants or visitors has been identified, the Council will in most circumstances work formally through the service of relevant statutory notices or orders to discharge their duty to act. Exceptions to this may arise where the case officer considers that the hazard can be dealt with more effectively through informal means.
- 5.5** Where a lower risk has been identified, the Council will retain the power to act where they have the legislative ability to do so. In the case of hazards determined under the Housing Health and Safety Rating System (HHSRS), the Council is able to exercise its power to deal with Category 2 hazards in cases where they are deemed to be significant and scored at either a 'D' or an 'E' under that system, or may consider an alternative informal approach.

6. Enforcement Options

6.1 Informal Action

- 6.1.1** Informal action in respect of lower risks may include the offering of advice; verbal warning and requests for action; written correspondence or the removal of the landlord from an accreditation scheme.

The circumstances in which informal action may be appropriate include:

- Where informal action has resulted in compliance in the past
- Where the owner is likely to comply
- Where non-compliance will not result in a significant risk to occupiers or the public, or the violation is of a minor technical nature
- Where the Council considers that informal action will be more effective than formal action

- 6.1.2** Any informal written documents asking owners to comply with legal requirements will:

- Contain all the information needed to understand what work is required and why the work is necessary;
- Show the law which has been broken, or which would be broken if action was not taken, and measures that will satisfy the legal requirements, and explain that the owner may choose other ways to achieve the same effect;
- Clearly show any recommendations of good practice, to show that they are not a legal requirement

- 6.1.3** If informal methods of enforcement are unsuccessful, formal action will be taken where the Council has the power to do so.

6.2 Formal Enforcement

6.2.1 Formal action may include:

Action under the provisions of Part 1 of the Housing Act 2004 to:

- Serve an improvement notice under sections 11 and/or 12
- Serve a suspended improvement notice under section 14
- Make a prohibition order under sections 20 and/or 21
- Make a suspended prohibition order under section 23
- Serve a hazard awareness notice in accordance with sections 28 and/or 29
- Take emergency remedial action under section 40
- Make an emergency prohibition order under section 43
- Make a demolition order under section 46

6.2.2 Other formal action available may be in the form of;

- The refusal to grant or the revocation of a licence under Parts 2 & 3 of the Housing Act 2004. All matters relating to selective licensing under Part 3 of the Housing Act 2004 and the factors affecting decisions to grant a licence or otherwise will be laid out in the designation of any scheme that is made.
- The making of management orders under Part 4 of the Housing Act 2004
- The making of orders under the provisions of the Housing Act 1985, as amended
- The service of an abatement notice under the Environmental Protection Act 1990
- The service of Statutory Notices under the provisions of other legislation, including but not limited to the Prevention of Damage by Pests Act 1949 and the Local Government (Miscellaneous Provisions) Act 1982
- The making of a Compulsory Purchase Order under the Housing Act 1985 or other legislation
- Works in default of completion by an owner, agent, person responsible, manager or occupier
- Simple caution
- Prosecution
- Issuing of financial penalties
- Publication of offences, where appropriate
- The application to make a Banning Order, or Rent Repayment Order.
- The addition on to the Rogue Landlord Database
- The service of remedial notices under the provisions of various regulations, including but not limited to the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 and the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

6.2.3 Demolition and Compulsory Purchase Orders will only be made by decision of the relevant Council Committee.

6.3 Premises Inspections

6.3.1 The Council keep the housing conditions in the district under review, with a view to identifying any action which may be required. In line with this, the Council will conduct inspections on premises, where it is appropriate to do so.

6.3.2 Circumstances in which it may be appropriate for an officer to inspect include the following:

- Where the Council have information to indicate there may be a high level risk to the occupiers of a property
- Where the Council believe an offence has been committed and an inspection is necessary as part of an investigation
- To determine whether a property requires a licence under Part 2 or 3 of the Housing Act 2004
- As part of a proactive inspection regime , or targeted inspections where a landlord has failed to meet their obligations at other properties
- To ensure private rented sector properties comply with housing legislation
- To determine whether a statutory nuisance exists at the premises

6.3.3 The Council is unlikely to inspect in reactive disrepair cases where deficiencies contributing to a lower level of risk have been reported, and in such cases is likely to liaise with the landlord and occupier without conducting an inspection. If the reported issues deteriorate, or no action is taken by the landlord to address the hazards, the case officer will consider whether it is appropriate to conduct an inspection.

6.3.4 Where the landlord of a property is a Registered Social Landlord (RSL) and is improving their stock to make it decent, the Council will not conduct inspections unless it has a statutory duty to do so. In most cases, the Council will liaise with the RSL to make them aware of reported problems and seek assurance that the relevant actions have or will be taken.

6.3.5 Prior to taking formal action under Part 1 of the Housing Act 2004, property owners and occupiers will be given 24 hours' notice of the Council's intention to carry out an inspection. Notable exceptions to this include:

- Where the Council believes it may be required to use Emergency Powers in respect of a hazard which exists at a property.
- Where giving prior notice of an inspection would defeat the purpose of entry, and a warrant for entry is therefore required.

6.3.6 In cases where officers are investigating specific offences they will not give prior notice to the owner in most cases, unless they have a statutory duty to do so.

6.3.7 Officers conducting inspections are able to take equipment to take measurements and photographs, and samples of any articles and substances where necessary. Officers are also able to make recordings and may wear body worn cameras, the use of this equipment is governed by the Body Worn Cameras Policy.

6.3.8 Officers conducting inspections are also able to take other persons with them where necessary, including additional officers or staff from appropriate third party agencies.

6.4 Level of Enforcement using HHSRS

6.4.1 The Council assesses each hazard based on the risk to a potential occupant in the most vulnerable group for that hazard under the Housing Health and Safety Rating System. However, in deciding what action to take about identified hazards, the Council will have regard to the following:

- The current occupiers
- Regular visitors
- How often the tenants or occupants change
- The risk of excluding vulnerable groups of people from the private rented sector or owner occupation
- The size, type and location of the property
- The likelihood that there will be a deterioration of conditions in the next twelve month period.

6.4.2 Where a suspended order or notice is served, the situation will be reviewed on a regular basis depending on the risk the hazard presents. In all cases the suspended order or notice will be reviewed at least once a year.

6.4.3 In determining what course of action to take, including whether to vary or revoke an improvement notice or prohibition order the Council will have regard to matters including, but not restricted to, the following:

- The views of the person receiving the notice (the recipient)
- The views of tenants
- The views of Fire and Rescue Service, where appropriate
- The risk that the hazard presents
- How confident officers are that the recipient will respond
- The amount, quality and speed of completion of any works taken to deal with deficiencies and hazards specified in the notice or order

- Whether the recipient has previously complied with informal and formal actions
- The cost of any works compared to the benefit that they give
- Any more unexpected works which become clear during the course of remedial works

7. Additional Information on Enforcement Action

7.1 Works in Default

- 7.1.1** Where there is a failure to comply with a Statutory Notice the Council may, if it is in the interest of the tenants or others, carry out any outstanding works in default. Where there is a statutory duty to undertake works in default, they will be carried out.
- 7.1.2** The Council will recharge the cost of carrying out such works with the Council's costs and officer time included, and if necessary recover these as a charge against the property or through the Council's recovery services. This could include enforced sale of the property to recover a Local Land Charge under the Law of Property Act 1925 where this is considered to be in the public interest.

7.2 Management Orders

- 7.2.1** The Council may make a Management Order under the provisions of Part 4 of the Housing Act 2004, relating to licensable properties as defined by Parts 2 & 3 or long term empty dwellings. It may apply to the First Tier Tribunal (Property Chamber) for an interim management order in other prescribed circumstances.
- 7.2.2** When Management Orders are used, the Council effectively takes over management of the HMO, house or flat. They will normally only be used as a last resort and if no other enforcement power is effective.
- 7.2.3** The Officer must discuss considering a Management Order with the Chief Operating Officer, or equivalent post, or their duly appointed representative. Only the Chief Operating Officer, or equivalent post in line with the Constitution can make the decision to make a Management Order.

7.3 The Recovery of Costs and Expenses

- 7.3.1** The Council will charge for notices and orders served where they have a statutory power to do so, particularly in respect of those served under Part

1 of the Housing Act 2004.¹ Charges are based on the cost to the Council of determining the most appropriate course of action, drafting and serving the notices. Action taken by the council to recover costs and expenses will be in accordance with the legislative provisions of the relevant Acts. Appendix A provides a list of chargeable items.

7.4 The Licensing of Houses in Multiple Occupation

7.4.1 A House in Multiple Occupation (HMO), is defined in the Housing Act 2004 as a building, or part of a building, that:

- is occupied by more than one household who share or lack a bathroom, toilet or kitchen;
- is occupied by more than one household and which is a converted building - but not entirely self-contained flats (whether or not some amenities are shared or lacking) , or
- is converted self-contained flats, but does not meet as a minimum standard the requirements of the 1991 Building Regulation and at least one third of the flats are occupied under short tenancies.

7.4.2 Part 2 of The Housing Act 2004 requires **the following types of HMO to be licensed:**

- occupied by five or more people in more than one household, who
- share amenities such as bathrooms, toilets and cooking facilities, and
- rent or other consideration is payable

7.4.3 An application for a HMO licence under Part 2 of the Housing Act 2004 must be made in writing on a form supplied by West Lindsey District Council, or online on the council's website, and must be accompanied by specified documents. The council may serve a Temporary Exemption Notice where a person having control of, or managing, a licensable HMO notifies the council of their intention to take steps to make the property no longer a licensable HMO.

7.5 Standards for Licenced HMOs

7.5.1 Prior to licensing a house in multiple occupation, the local housing authority must be satisfied that:

- The house is reasonably suitable for occupation by the number of persons and households specified in the application or the licence;

¹ With the exception of hazard awareness notices, which do not carry a fee.

- The licence holder is a fit and proper person and is the most appropriate person to hold the licence, which will usually be the person having control;
- The manager of the house is the person having control of the house or their agent or employee, and is a fit and proper person;
- The management arrangements for the house are satisfactory.

7.5.2 When deciding whether to grant or refuse a licence, the council will have regard to:

- The requirements of the Housing Act 2004 Part 2 and any Statutory Instruments made under it, including:
- The prescribed standards for the provision of bathrooms, WCs, kitchens and laundry amenities.
- Any contravention of the law by the applicant, proposed licence holder or manager
- Whether any persons involved in the management of the HMO are competent, fit and proper, and whether the management structures and financial arrangements are adequate

7.5.3 The Council may impose licence conditions:

- Where they are mandatory under Schedule 4 of the Housing Act 2004
- To control the use or occupation of the HMO or certain parts of it
- To secure the provision and maintenance of amenities to ensure that the HMO is reasonably suitable for the numbers of households and persons in the licence
- To ensure satisfactory management of the HMO and management of antisocial behaviour.

7.5.4 A HMO licence will usually be granted for a period of five years, however a shorter duration may be granted, having regard to the matters above and any concerns that a Category 1 or Category 2 hazard may be present under the Housing Health and Safety Rating System.

7.5.5 An inspection and assessment of the HMO will be made under the Housing Health and Safety Rating System during the licence term, and the Council will use its enforcement powers under Part 1 of the Housing Act 2004 and Section 5 of this policy to deal with any deficiencies or hazards found.

7.5.6 An HMO licence may be varied or revoked:

- with the agreement of the licence holder,
- where there has been a breach of the licence conditions
- where the licence holder or manager is no longer considered to be a fit and proper person

- where the building ceases to be an HMO, or
- where the council would not then issue a licence for the HMO if an application were made at that time, due to structural reasons.

7.5.7 The Council has produced separate Houses in Multiple Occupation Standards, which provides further information for landlords of the criteria that will need to be met to operate HMO's in the District.

7.6 Empty Properties

7.6.1 The Council recognises the effect long-term empty properties have on an area by attracting anti-social behaviour and having a negative impact on the local community and values of neighbouring properties. Empty properties are also a wasted resource, reducing the supply of housing in the local area.

7.6.2 The Council seeks to balance incentive-based measures such as grants available under the Housing Assistance Policy and Long Term Empty Property council tax charges with the enforcement options outlined in this policy, in order to bring empty properties in the district back into use.

7.6.3 Engagement and voluntary compliance from empty property owners will initially be sought, and the Council will engage with owners to try and find agreeable solutions. However, where there is inadequate cooperation or engagement from the owners of long term and/or problematic empty properties, the Council will use appropriate powers to achieve a satisfactory outcome, and has a range of enforcement options available:

- **Empty Dwelling Management Order (EDMO)** – Part 4 of the Housing Act 2004 gives the Council powers to bring empty properties back into use through the making of Empty Dwelling Management Orders, which allow the Council to acquire management and use the property to meet local needs for a period of 7 years, with the costs recovered through rental income.
- **Compulsory Purchase Order (CPO)** – The Council is able to use CPO powers in circumstances where there appears to be no other prospect of a suitable property being brought back into use. Properties which are subject to a CPO will be sold on and subsequently monitored, to ensure they are brought back into use.
- **Enforced Sale** – section 103 of the Law of Property Act 1925 allows the Council to exercise a power of sale in respect of outstanding debt secured by a legal charge – for example, where expenses have been incurred where the Council has conducted works in default of a notice at a property. If the debt remains outstanding, the Council has the power to sell the property and recover the debt from the proceeds.

7.6.4 Alongside measures to bring empty properties back into use, the Council also has additional powers to limit the impact empty properties can have on the local area:

- **Local Government (Miscellaneous Provisions) Act 1982** – Power to undertake works necessary to secure an empty property (s.29)
- **Environmental Protection Act 1990** – Power to serve a notice requiring the owner to take steps to secure a property, or allow the Council to board it up in an emergency (s.80)
- **Building Act 1984** - Power to serve a notice requiring the owner to take steps to secure a property, or allow the Council to board it up in an emergency (s.78)
- **Prevention of Damage by Pests Act 1949** – Power to serve notice to require an owner to take steps to clear the land of vermin or remove waste likely to attract vermin (s.2 - s.7)
- **Town and Country Planning Act 1990** – Power to serve notice to require an owner to remedy unsightly land or external appearance of a property (s.215)

7.6.5 Officers will consider the most appropriate enforcement option on a case by case basis, with regard given to: local need; effectiveness; cost efficiency; impact of the affected property, and; the level of cooperation of the property owner.

7.7 Civil Penalties

7.7.1 The Housing and Planning Act 2016 makes provision for the Council to seek to impose a penalty as an alternative to prosecution. The offences within the act where a civil penalty can be imposed are:

- Failing to comply with an improvement notice under section 30
- Offences relating to the licensing of a house in multiple occupation under section 72
- Offences relating to licensing of a house under Part 3 (selective licensing) under section 95
- Offences relating to the contravention of overcrowding notices (section 139)
- Failure to comply with the Management of Houses in Multiple Occupation (England) Regulations 2006 in respect of HMOs (section 234)

7.7.2 The same criminal standard of proof is required to impose a civil penalty as it would be in a prosecution. This means that prior to taking formal action, the Council will be satisfied that if the case were to be prosecuted, there would be a realistic prospect of conviction, having regard to the Crown Prosecution's Service Code for Crown Prosecutors.

7.7.3 The West Lindsey District Council Civil Penalties Policy will be used to inform the decisions that the Council will make in regards to determining whether to issue a civil penalty as an alternative to prosecution, and what level of penalty would be appropriate.

7.7.4 A civil penalty will not be applied if a person has already been convicted of that offence or where criminal proceedings have already been instigated. Income received from a civil penalty will be used to maintain the Council's statutory functions in relation to the private rented housing sector.

7.8 Rent Repayment Orders

7.8.1 The Housing and Planning Act 2016 confers power on the Council to make an application to the First-Tier Tribunal for a rent repayment order where a landlord has committed one of the following offences:

- Failure to obtain a property licence for a House in Multiple Occupation (section 72(1) of the Housing Act 2004)
- Failure to obtain a property licence for a house in a designated Selective Licensing area (section 95(1) of the Housing Act 2004)
- Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004)
- Failure to comply with a Prohibition Order (section 32 of the Housing Act 2004)
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016
- Using violence to secure entry to a property (section 6 of the Criminal Law Act 1977)
- Illegal eviction or harassment of occupiers of a property (section 1 of the Protection from Eviction Act 1977)

7.8.2 A rent repayment order will require the landlord to repay an amount of rent paid by the tenant, or pay the Council an amount in respect of a relevant award of Universal Credit or Housing Benefit paid over the course of the offence.

7.8.3 In circumstances where the Council considers that they are able to evidence that a relevant offence has been committed to the criminal standard of proof, they will consider application for a rent repayment order where they are eligible. The Council may also help a tenant apply for a rent repayment order where legislation permits.

7.8.4 The Council's approach to rent repayment orders is on a case by case basis and is in line with the specific guidance produced in relation to this.

7.9 Banning Orders

7.9.1 The Housing and Planning Act 2016 enables the Council to apply to the First tier Tribunal to import a banning order on a landlord or managing agent, following conviction for a 'banning order offence', which will prevent their continued operation within the private rented sector for a specified length of time.

7.9.2 The Council's Banning Order policy outlines the factors which will be considered in determining whether to make an application for a banning order, and in making a recommendation to the Tribunal as to the length of time a banning order should be imposed for.

7.10 Protection from Eviction and Harassment

7.10.1 Where the Council has reason to believe that an illegal eviction is or has taken place, we will act accordingly to investigate the potential offence and take any necessary enforcement action under the Protection from Eviction Act 1977. Where an accusation of harassment is made, under the same Act, the Council will seek to investigate this to determine whether an offence has been committed. Where an offence is established to the requisite standard, the appropriate enforcement action will be taken.

8. Other Obligations

8.1 Redress Schemes for Letting Agents and Property Managers

8.1.1 Under the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014, there is a legal requirement for all lettings agents and property managers in England are a member of a Government-approved redress scheme. Where the Council is satisfied that a person is involved in lettings and management as a business and is not registered with a scheme, the Council may issue a fine.

8.1.2 The proposed fine in regards to this order is detailed in Appendix B.

8.2 Smoke and Carbon Monoxide Requirements

8.2.1 The Smoke and Carbon Monoxide (England) Regulations 2015 require that private sector landlords ensure that at least one smoke alarm is installed on every storey of their rented property and that a carbon monoxide alarm is installed in any room containing a solid fuel burning appliance. This is the minimum standard for private rented sector properties and the Council may require additional measures under other legislative provisions, such as Part 1 of the Housing Act 2004, or the conditions of a licence granted under Part 2 or Part 3 of the same Act.

8.2.2 The Council will accept the following evidence of a lack of relevant alarm as reasonable grounds of a breach:

- Inspection by a Council officer
- Confirmation from a relevant professional
- Provision of photographic evidence

8.2.3 With regard to the Enforcement Options and Council's approach to enforcement set out in section 6, the Council has the power to issue a remedial notice in cases of non-compliance, where the matter is not otherwise addressed by alternative action under Part 1 of the Housing Act 2004 or relevant licence conditions, and the landlord must comply with the notice within 28 days. If they do not, the council will carry out remedial action (where the occupier consents) to ensure the requirements in the regulations are met.

8.2.4 The Council will issue a civil penalty of up to £5,000 where a remedial notice is served and has not been complied with, and has set out a statement of principles for its Penalty Charge Notice (PCN), which is shown in Appendix C.

8.3 Electrical Safety Standards

8.3.1 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 require that landlords ensure the electrical installations in private rented sector properties are safe for continued use, and carry out periodic testing to evidence this.

8.3.2 The Regulations apply to all new relevant tenancies from 1st July 2020, and all existing tenancies from 1st April 2021, and require that landlords carry out electrical testing no more than every five years and provide copies to tenants and to the Council on request.

8.3.3 Where the Council believes that a landlord has breached their duties under the Regulations, they may do one, or a combination of, the following:

- Serve a remedial notice on the landlord, requiring them to take action in respect of the breach
- Carry out urgent remedial action where a report indicates it is required
- Carry out remedial action where a landlord is in breach of a remedial notice
- Issue a financial penalty of up to £30,000 in respect of a breach of the Regulations.

8.3.4 The West Lindsey District Council Civil Penalties Policy will be used to inform the decisions that the Council will make in regards to determining whether to issue a financial penalty and what level of penalty would be appropriate.

8.4 Energy Efficiency

8.4.1 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 establish a minimum standard for domestic privately rented property, subject to certain requirements and exemptions:

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

8.4.2 Where a landlord wishes to continue letting property which is sub-standard, they will need to ensure that energy efficiency improvements are made which raise the EPC rating to a minimum of E. Under prescribed circumstances within the Regulations, the landlord may claim an exemption from prohibition on letting a sub-standard property. Where a valid exemption applies the landlord must register the exemption on the national Private Rented Sector Exemptions Register.

8.4.3 The minimum standard will apply to any domestic privately rented property which is legally required to have an EPC and which is let on certain tenancy types. Landlords of property for which an EPC is not a legal requirement are not bound by the prohibition on letting sub-standard property.

8.4.4 The Council will check that properties in the district falling within the scope of the Regulations meet minimum levels of energy efficiency.

- 8.4.5** Formal action taken by the Council may include service of a compliance notice for further information or requiring remedial action, a financial penalty notice and/or a publication penalty where a breach of the Regulations has been established.
- 8.4.6** The Council have outlined the maximum penalties available per breach, and the considerations which will be taken into account in setting the level of penalty in Appendix D.
- 8.4.7** The Council will have regard to guidance in the application of this legislation, the penalty amount and the publication of the penalty.

9. Arrangements to Implement the Policy

- 9.1** Officers implementing this policy will have regard to current national guidelines and local circumstances. At times of national crisis, such as a public health emergency, temporary regulations may come into force which may impact how local authorities carry out their housing enforcement functions, and impose changes which will supersede this policy. In such circumstances, where contrary guidance is issued, the Council will integrate current advice into their working practices.
- 9.2** Customers will be notified of the impact any such temporary regulations have on the Council's housing enforcement functions and where appropriate, provided a link to the relevant guidance.
- 9.3** Enforcement will only be undertaken by authorised officers. Only competent and suitably qualified and experienced officers will be so authorised, and their authority will reflect their competence, qualities and experience.

10. Standards

- 10.1** West Lindsey District Council aims to deliver a quality service. In matters relating to housing enforcement, officers will:
- Respond to all urgent requests for service within 2 working days
 - Acknowledge all non-urgent requests for service within 2 working days
 - Respond to all non-urgent requests for service within 10 working days
 - Give tenants and occupiers clear advice about the extent of any action which the Council is able to take, and provide copies of any notices sent to the landlords as specified in the appropriate legislation

- Advise landlords and property owners of their legal responsibilities and, if the Council is taking enforcement action, advise exactly what is expected of them and any right of appeal

11. Feedback on our service

- 11.1** The Council encourages and welcomes feedback on its services. If you wish to provide feedback you can do so by visiting:
www.west-lindsey.gov.uk/feedback

12. Links with Other Policies

- 12.1** This policy has been considered alongside the following;
- The Housing Assistance Policy;
 - The Corporate Enforcement Policy;
 - The West Lindsey Housing Strategy;
 - The Banning Order Policy
 - The Civil Penalties Policy
 - Houses in Multiple Occupation Standards

Appendix A – Fees and Charges

The Council will calculate a charge to the recipient of a notice as a consequence of taking Enforcement Action, or the applicant of a HMO licence, using the table below. These charges have been calculated taking account of officer time, mileage, photocopying, printing and postage or service costs. The increasing cost of a notice where there are multiple hazards, or determining a licence of a larger HMO, reflects the extra work and complexity of dealing with these cases.

All fees are exclusive of VAT and interest may be charged where applicable.

Item	Basic Fee	Increments	Maximum
Mandatory HMO licence application	£825 for up to five units / bedrooms	£50 per additional unit	n/a
Mandatory HMO licence renewal	£700 for up to five units / bedrooms	£50 per additional unit	n/a
Improvement Notice	£350		n/a
Emergency Remedial Action Notice (plus cost of works – see below)	Cost of works, plus officer time	n/a	n/a
Prohibition Order	£350	n/a	n/a
Emergency Prohibition Order	£350	n/a	n/a
Demolition Order	£350	n/a	n/a
Immigration Procedure Inspection	£70 per inspection		n/a
Mobile Homes Act 2013 – Compliance Notice	Hourly rate of relevant officers with on costs plus work in default costs of works	n/a	n/a
Mobile Homes Act 2014 – Emergency Remedial Action Notice	Hourly rate of relevant officers with on costs plus work in default cost of works	n/a	n/a
Civil Penalty - Housing and Planning Act 2016	Up to £30,000	See separate policy	£30,000
Financial Penalty - Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020	Up to £30,000	See separate policy	£30,000
Penalty Charge Notice (Smoke and Carbon Monoxide Alarm (England) Regulations 2015)	Up to £5,000. Issued as fine following non-compliance with Remedial Notice and subsequent remedial works		
Monetary Penalty - Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014)	Up to £5,000. See Appendix C	n/a	£5,000

Financial Penalty – The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015	As specified by s.40 of those regulations		£5,000
Works in default of any legislation or emergency remedial action	Cost of work plus hourly rate of officer with on costs	n/a	n/a
Selective Licensing Fee (Gainsborough South West Ward)	WLDC - £375 CO-Reg - £120		

Appendix B

Smoke and Carbon Monoxide Alarm Statement of Principles

This statement of principles is in relation to the “*The Smoke and Carbon Monoxide Alarm (England) Regulations 2015*”, which can be found here

<http://www.legislation.gov.uk/id/uksi/2015/1693>

The Penalty Charge Notice (PCN) recognises the failure on the landlord’s part to comply with legislation. In determining the PCN amount the following has been taken into consideration:

- The administrative and professional costs incurred by the local authority in regards to the remedial works, the serving of formal notices, any informal steps taken and in determining reasonable grounds.
- The costs incurred by the local authority in completing the relevant remedial works required
- The failure on the landlords behalf to complete the required works within the period given.
- Previous unspent conviction or WID specifically in relation to the owners role as a landlord
- Previous remedial action under Smoke Alarm and CO legislation or by the Fire and Rescue Service
- The type or condition of property in which the offence has been committed
- The risk of harm relating to the specific case

Payment of the Penalty Charge

- A landlord issued with a PCN is required to pay it within a specified period. This period will be confirmed on the PCN and will take into consideration the level of fine that has been applied. This period will usually be 28 days. Should the payment of the PCN for a first offence under this legislation be made within 14 days of its issue, the fine will be reduced by £200.
- If a landlord does not agree with the PCN issued they must apply to the local authority to review this, in writing, within 14 days of issue. The local authority will then confirm whether to confirm, vary or withdraw the notice and will serve a notice of decision on the landlord.
- If the local authority confirms or varies a PCN, it will inform the landlord that they can appeal to the First-tier tribunal.

Appendix C

Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014

To ensure the effectiveness of the requirement for lettings and property management agents to belong to a redress scheme, there must be a process for ensuring compliance and a fair and effective penalty where the requirement is not met.

The enforcement authority can impose a fine of up to £5,000 where it is satisfied, on the balance of probability, that someone is engaged in letting or management work without being a member of a redress scheme.

The two Government-approved redress schemes are:

- Property Redress Scheme (www.theprs.co.uk)
- The Property Ombudsman (www.tpos.co.uk)

The agreed level of fine will be based on the following principles:

- Single instance of non-compliance – Notice of Intent served to issue £1000 fine
- More than one non-compliance and/or complaint received about agents conduct – Notice of intent served to issue £2500 fine
- Multiple and persistent non-compliance and/or complaints received about agents conduct – Notice of Intent served to issue £5000 fine.

Each fine will be calculated on a case by case basis and regards will be given to:

- The previous conduct of the agent
- The number of persons affected by the breach
- The risk of harm from poor management of the properties
- The turnover/scale of the business

The Council will consider any representations made by the lettings agent or property manager during the 28 day period following the notice of intention to issue a fine, prior to making a determination as to (a) whether to impose a fine, and (b) the level of fine, if one is to be imposed.

Appendix D

Energy Efficiency (Private Rented Sector) (England and Wales) Regulations 2015

In circumstances where the Council is satisfied that a landlord has breached the Regulations, they are able to serve a financial penalty up to 18 months after a believed breach – including in cases where a person is no longer the landlord for the affected property.

The maximum penalties which can be imposed in respect of a breach are outlined below:

Breach		Maximum Penalty
(a)	Renting out a non-compliant property	If breach period is less than three months, the Council may impose a financial penalty of up to £2,000
		If the breach period is three months or more, the Council may impose a financial penalty of up to £4,000
(b)	Registering false or misleading information on the PRS Exemptions Register	The Council may impose a financial penalty of up to £1,000
(c)	Failure to comply with a compliance notice	The Council may impose a financial penalty of up to £2,000

The Council is able to impose multiple penalties in respect of a combination of breaches between rows (a), (b) and (c) but cannot impose two penalties on a landlord in respect of renting out the same non-compliant property for the two different lengths of time outlined in row (a). Where multiple penalties are imposed in respect of the same property, the total amount of the financial penalty may not be more than £5,000.

The Council will consider the severity of the offence, and the level of culpability in the offence having been committed in determining the appropriate level of penalty.

When determining the level of severity, the Council will consider:

- The harm, or potential for harm: i.e. the relative danger that persons have been exposed to, number of occupants, vulnerable occupants, identifiable risks to health or psychological distress
- The discrepancy between the legal requirement and the circumstances arising from the breach: i.e. where there is a significant shortfall between the prescribed standard and the achieved standard on an EPC

When determining the level of culpability the Council will consider:

- The track record of the offender: i.e. previous enforcement activity/historic involvement with the landlord
- The landlord's mind set in breaching the Regulations: i.e. evidence that the landlord was aware of their responsibilities or knowingly provided incorrect information in connection with exemptions under the Regulations

The below table provides a guide as to how these factors are weighed in calculating the final level of penalty:

	Low Severity	High Severity
Low Culpability	50%	75%
High Culpability	75%	100%

The percentages outlined are in relation to the proportion of the maximum financial penalty available for the relevant breach.

A person issued with a penalty notice has the right to request a review of the notice. This must be made in writing to the Council within one calendar month of the penalty notice having been served. Requests for review received after the prescribed time will be considered at the Council's discretion.

Where the Council has established a breach of the Regulations, they may also impose a publication penalty alongside, or as an alternative to, a financial penalty. This will involve publishing:

- the landlords name (where it is a company);
- details of the breach;
- the address in relation to which the breach occurred; and
- the amount of any financial penalty imposed

In making the decision to impose a publication penalty, and if one is to be imposed the length of time the information will be published for, the Council will consider the severity and culpability of the breach, as outlined above. Consideration will also be given to the Ministry of Justice guidance in respect of publishing sentencing outcomes.

Appendix E - References

Legislation

- Housing Act 1985
- Housing Act 2004
- Environmental Protection Act 1990
- Landlord and Tenant Act 1972
- Local Government (Miscellaneous Provisions) Act 1976
- Local Government (Miscellaneous Provisions) Act 1982
- Housing Act 1996
- Housing Grants, Construction and Regeneration Act 1996
- Local Government and Housing Act 1989
- Building Act 1984
- Defective Premises Act 1976
- Public Health Act 1936
- Public Health Act 1961
- Protection from Eviction Act 1977
- Prevention of Damage by Pests Act 1949
- Law of Property Act 1925
- Town and Country Planning Act 1990
- Acquisition of Land Act 1981
- The Caravan Sites and Control of Development Act 1960, as amended by the Mobile Homes Act 2013
- The Energy Act 2013
- The Housing and Planning Act 2016

Regulations and Orders

- The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) 2006
- The Management of HMO (England) Regulations 2006
- The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007
- The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006, amended 2012
- The Housing (Interim Management Orders) (Prescribed Circumstances) (England) Order 2006
- Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004, SI No. 2595
- The Construction (Design and Management) Regulations 2007
- The Housing Health and Safety Rating System (England) Regulations 2005

- Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014.
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015
- The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

Circulars and Guidance

- Housing Health and Safety Rating System Enforcement Guidance: Housing Act 2004 Part 1 - housing conditions
- Housing Health and Safety Rating System Operating Guidance: Housing Act 2004 - guidance about inspections and assessment of hazards given under section 9, DCLG 2006
- Examples to Support the Housing Health and Safety Rating System V2, ODPM March 2004
- Lacors Housing - Fire Safety, Guidance on fire safety provisions for certain types of existing housing, July 2008
- Compulsory Purchase and the Crichel Down Rules, ODPM Circular 6/2004
- Civil Penalties Guidance : <https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>
- <https://www.gov.uk/government/publications/the-private-rented-property-minimum-standard-landlord-guidance-documents>
- Rent Repayment Orders under the Housing and Planning Act 2016
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606654/Rent_Repayment_Orders_guidance.pdf
- Guidance for landlords and Local Authorities on the minimum level of energy efficiency required to let domestic property under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015