

Civil Penalties Enforcement Guidance and Procedure

Revised 2023

North Lincolnshire Council

Section 1 Introduction

North Lincolnshire is a fantastic place to live and is a home to just under 173,000 people, with the population expected to grow by a further 4,000 over the next 20 years.

Across North Lincolnshire, there are just under 77,000 homes situated across 86 settlements, ranging from the busy urban centre of Scunthorpe to the tranquil rural hamlets.

The Council Plan 2022 – 25 clearly sets out our Priorities for the people and place of North Lincolnshire.

PRIOIRTY: Keeping People safe and Well - To achieve a longer and better quality of life for our residents	
OUR INTENT	**OUR IMPACT**
Safeguarding and support everyone to live safely and independently within their families and communities.	• Improve energy efficiency of homes. • Ensure homes are free from hazards and provide a reasonable standard of living conditions. • Ensure vulnerable people are protected to live in a safe home.
Reduce health inequalities and promote wellbeing.	

North Lincolnshire Council operate a Civil Penalties Enforcement Model, under the Housing and Planning Act 2016.

This is an enforcement tool to enable us to deliver our Impact when we have absentee or criminal landlords.

This guidance and procedure are supplementary to the Council Plan, Strategies and Enforcement Policies.







Introduction - Housing Act 2004 Civil Penalty Offences

The Housing and Planning Act 2016 (" the 2016 Act") introduced amendments to the Housing Act 2004. Section 126 and Schedule 9 of the 2016 Act enables the Council to impose a civil penalty as an alternative to prosecution for specific offences under the 2004 Act.

Civil penalties are an alternative when a landlord fails to comply with:

- **Section 30** – failure to comply with an improvement notice
- **Section 72** – mandatory licensing of HMO
- **Section 95** – licensing under Part 3 of the Housing Act 2004
- **Section 139** – failure to comply with an overcrowding notice
- **Section 234** – breach of management regulations in respect of HMO

Introduction of the Electrical Safety Standards in the Private Rented Sector (England) Regulation 2020 Civil Penalties, is to ensure all landlords in the private rented sector do what good landlords already do: make sure the electrical installations in their rented properties are safe.

The Regulations require landlords to have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at least every 5 years. Landlords must provide a copy of the electrical safety report to their tenants, and if requested to their local authority.

Local housing authorities should have regard to any guidance issued by the Department of Levelling Up, Housing and Communities (DLUHC) when exercising their functions under the Regulations.

Non-statutory guidance was issued by the department in June 2020, namely: Guide for local authorities: electrical safety standards in the private rented sector, which is available online at:

www.gov.uk/government/publications/electrical-safety-standards-in-the-private-rented-sector-guidance-for-landlords-tenants-and-local-authorities/guide-for-local-authorities-electrical-safety-standards-in-the-private-rented-sector

NB Breach of a Prohibition Order is not one of the specified offences. Where a landlord breaches a Prohibition Order, the Council, if appropriate, will seek a rent repayment order in addition to prosecuting the landlord. Separate guidance is available on rent repayment orders.

Section 2 Civil Penalty Statutory Guidance

The government has laid out statutory guidance as to the process and the criteria that need to be considered when determining civil penalties. These are:

- level of culpability
- level of harm
- severity of the offence
- aggravating Factors
- mitigating Factors
- penalty to be fair and reasonable.
- penalty to be such as to be a deterrent and remove the gain derived through the failure to comply.
- Landlords Income (as appropriate)
- Financial gain from failure to comply.

The statutory guidance indicates that a council should ensure that the civil penalty acts as a punishment and a deterrent to future offending by the recipient or others, takes into account any previous patterns of offending, and ensures that no offender should benefit as a result of committing the offence.

The law allows a maximum civil penalty of £30k per offence. In determining the level of any penalty a council will have regard to local circumstances, the relevant local enforcement policy and the relevant Government guidance detailing the factors to take into account, as shown above.

The statutory guidance in the link below indicates that a Council should ensure that the civil penalty acts as a punishment, takes account of any previous patterns of offending and that no offender should benefit as a result of committing the offence.

assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697644/Civil_penalty_guidance.pdf#

Details are provided in Sections 3 & 4 of this guidance.

The overriding principle when considering civil penalties is that the landlord (as defined by the Housing Act 2004 as the owner, person having control or the licence holder) should not make any financial gain as a result of their failure to comply with the relevant legislation.



What is the burden of proof for a civil penalty

Before imposing a civil penalty on a person under the Housing Act 2004, the council must be satisfied beyond reasonable doubt that the person's conduct amounts to a relevant housing offence as defined by section 249A (2).

In determining whether there is sufficient evidence to secure a conviction, the Council will have regard to the North Lincolnshire Council Enforcement Policy and the Crown Prosecution Service Code for Crown Prosecutors, published by the Director of Public Prosecutions.

The council will consider:

- Does the Council have sufficient evidence to prove beyond reasonable doubt that the offence was committed by the landlord in question?
- Is the public interest properly served by imposing a Civil Penalty on the landlord in respect of the offence?
- Has the evidence been reviewed in line with the Councils Enforcement Policy and legal team.
- Are there any reasons why a prosecution may be more appropriate than a civil penalty? i.e., the offence is particularly serious, and the landlord has committed similar offences in the past and/or a banning order should be considered.

The Electrical Regulations do not create a criminal offence, but to impose a civil penalty the council must still be satisfied beyond reasonable doubt that the landlord has breached a duty under Section 72(3) of the Housing Act 2004.

Schedule 9 of the Housing and Planning Act 2016 sets out the process which must be followed when imposing a civil penalty.

Notice of Intent

Before imposing a civil penalty on a landlord, the Council must serve a 'notice of intent' on the landlord in question. This notice must be served within 6 months of the last day on which the Council has evidence of the offence occurring. This notice must contain the following information:

- The amount of the proposed civil penalty.
- The reasons for proposing to impose a civil penalty, and
- Information about the Landlord's right to make representations to the Council.



Representations

The person to whom the notice relates will be given 28 days to make written representation to the council about the proposal to impose a civil penalty. Representations can be against any part of the proposed course of action. All representations from landlords will be considered by an appropriate senior colleague.

Where a landlord challenges the amount of the civil penalty, it will be for the landlord to provide documentary evidence (e.g., tenancy agreements etc.) to show that the calculation of the penalty amount is incorrect. Where no such supporting evidence is provided, the representation against the amount will not be accepted.

Written responses will be provided to all representations made by the recipients of a notice of intent. No other parties have an automatic right to make representations but if any are received, they will be considered on a case-by-case basis and responded to where the Council considers it necessary.

Final Notice

Once the representation period has ended, the Council must decide, taking into consideration any representations that were made, whether to impose a civil penalty and the final amount of the civil penalty. The final amount of a civil penalty can be a lower amount than was proposed in the notice of intent, but it cannot be a greater amount.

The imposing of a civil penalty involves serving a final notice and this notice must contain the following information:

- The amount of the financial civil penalty
- The reasons for imposing the penalty.
- Information about how to pay the penalty.
- The period for payment of the penalty *payment must be 28 days from the day after issue of notice.
- Information about rights of appeal, and
- The consequences of failure to comply with the notice.

At any time, the Council may withdraw a notice of intent or a final notice or reduce the amount of a civil penalty. This is done by giving notice in writing to the person on whom the notice was served.

Where a civil penalty has been withdrawn, and there is a public interest in doing so, the Council can still pursue a prosecution against the landlord for the conduct for which the penalty was originally imposed. Each case will be considered on a case-by-case basis. (except where the civil penalty was proposed for a breach of duty under Regulation 3 of the "Electrical Regulations").

Appeals to the Tribunal

If a civil penalty is imposed on a landlord, that landlord can appeal to the First-tier Tribunal ("the Tribunal") against the decision to impose a penalty or the amount of the penalty. The Tribunal has the power to confirm, vary (increase or reduce) the size of the civil penalty imposed by the Council, or to cancel the civil penalty. Where an appeal has been made, this suspends the civil penalty until the appeal is determined or withdrawn.

Recovering an unpaid Civil Penalty

It is the policy of the Council to consider all legal options available for the collection of unpaid civil penalties and to pursue unpaid penalties in all cases through the county courts. Some of the orders available to the Council through the county courts are as follows:

- A Warrant of Control for amounts up to £5000.
- A Third-Party Debt Order.
- A Charging Order, and
- Bankruptcy or insolvency.

A certificate, signed by the Chief Finance Officer for the Council and stating that the amount due has not been received by the date of the certificate, will be accepted by the courts as conclusive evidence of the payment due.

Where a Charging Order has been made, and the amount of the order is over £500, the Council can consider applying for an Order for Sale against the property or asset in question. When considering which properties to apply for a Charging Order against, the Council can consider all properties owned by the landlord and not just the property to which the offence relates.

Where the civil penalty was appealed and the Council has a tribunal decision, confirming or varying the penalty, the decision will be automatically registered on the Register of Judgments, Orders and Fines, once accepted by the county court. Inclusion on this Register may make it more difficult for the Landlord to get financial credit.

Income from Civil Penalties

Any income from Civil Penalties is retained by the local housing authority which imposed the penalty. The Council must spend any income from Civil Penalties on its enforcement functions in relation to the private rented sector. Further details can be found in The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017 [Statutory Instrument 367 (2017).

Other consequences of having a Civil Penalty imposed.

Where a civil penalty has been imposed on a landlord, this will form a part of our consideration when reviewing licence applications for properties in which they have involvement. This includes licences under Part 2 or Part 3 of the Housing Act 2004.

Whilst a civil penalty will not automatically preclude us from granting a licence where such persons are involved, the reasons for imposing the penalty and the extent of the person's involvement in the property will be considered.

Where a landlord has two civil penalties imposed on them in a 12-month period, each for a banning order offence*, the Council will include their details on the Database of Rogue Landlords and Property Agents.

*"Banning order offence" means an offence of a description specified in Regulations made by the Secretary of State under Section 14(3) of the Housing and Planning Act 2016 (The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017).

The Totality Principle

Where a landlord has committed multiple offences, and a civil penalty could be imposed for each one, consideration should be given to whether it is just and proportionate to impose a penalty for each offence.

When calculating the penalty amounts for multiple offences, there will inevitably be a cumulative effect and care should be taken to ensure that the total amount being imposed is just and proportionate to the offences involved.

Having regard to the above considerations, a decision should be made about whether a civil penalty should be imposed for each offence and, if not, which offences should be pursued. Where a single more serious offence can be considered to encompass several other less serious offences, this is the offence that will normally be considered for the civil penalty. Deciding not to impose a civil penalty for some of the offences does not mean that other enforcement options, such as issuing a simple caution, cannot be pursued for those offences.

Recording of the decision

A record of each decision and the reasons for the financial penalty will to be made by an officer and how the amount of the penalty was obtained and the reasons for imposing it.



Section 3 Determining the level of civil penalties

This stage considers the landlord's culpability for the offence and the seriousness of harm risked to the tenants or visitors to the property, as stated in Section 143 (1) Criminal Justice Act 2003.

Harm includes actual harm caused as well as risk of harm. In order to set the level of the civil penalty the following will be considered by the council:

Step 1: Culpability

Table 1 sets out the four levels of culpability that will be considered: each level has accompanying examples of the behaviours that could constitute that particular level. The behaviour of the landlord should be compared to this table to determine the appropriate level of culpability. This exercise will be repeated for each offence that is being considered as the landlord's culpability may vary between offences.

Table 1 - Levels of Culpability	
Very high	• Deliberate breach of or flagrant disregard for the law
High	• Offender fell far short of their legal duties, for example, by: - failing to put in place measures that are recognised legal requirements or Regulations. - ignoring warnings raised by the local Council, tenants or others. - failing to make appropriate changes after being made aware of risks, breaches or offences. - allowing risks, breaches, or offences to continue over a long period of time • Serious and/or systemic failure by the person or organisation to comply with legal duties.
Medium	• Offender fell short of their legal duties in a manner that falls between descriptions in 'high' and 'low' culpability categories. • Systems were in place to manage risk or comply with legal duties, but these were not sufficiently adhered to or implemented.
Low	• Offender did not fall far short of their legal duties, for example, because: - significant efforts were made to address the risk, breaches, or offences, although they were inadequate on this occasion. - they have offered a reasonable defence for why they were unaware of the risk, breach, or offence. • Failings were minor and occurred as an isolated incident

When assessing culpability, we consider all the evidence gathered as part of the investigation into the offence and identify any aggravating or mitigating factors which may be relevant to the assessment of culpability.

Aggravating factors could include:

- Previous convictions for similar offence/s, having regard to the time elapsed since the conviction.
- Motivated by financial gain.
- Obstruction of the investigation
- Deliberate concealment of the activity/evidence
- Number of items of non-compliance – greater the number the greater the potential aggravating factor
- Record of letting substandard accommodation i.e., record of having to take enforcement action previously whether complied with or not.
- Record of poor management/ inadequate management provision
- Lack of a tenancy agreement/rent paid in cash.
- Evidence of threating behaviour/harassment of the tenant.

Information below provides further guidance regarding when it is appropriate to consider past enforcement action taken against the landlord.

Mitigating factors could include:

- Cooperation with the investigation e.g., turns up for the PACE interview.
- Voluntary steps taken to address issues e.g., submits a prompt licence application.
- Willingness to undertake training.
- Level of tenant culpability
- Willingness to join recognised landlord accreditation scheme.
- Evidence of health reasons preventing reasonable compliance – mental health, unforeseen health issues, emergency health concerns
- Vulnerable individual(s) (owners not tenants) where their vulnerability is linked to the commission of the offence.
- Good character ie no previous convictions and / or exemplary conduct

Using these factors, consider each category of culpability in the table 1 and identify the one that the landlord's behaviour falls within; where a landlord's behaviour could meet more than one of the categories, choose the highest one of those met.

Step 2: Level of Harm

The seriousness of harm risked is split into three levels, A, B and C. Examples of the Housing Health and Safety Rating System Classes of Harm Outcomes are detailed on page 47-48 of the Housing Health and Safety Rating System Operating Guidance published by the office of the deputy prime Minister (2006).

Housing health and safety rating system (HHSRS) operating guidance: housing inspections and assessment of hazards - GOV.UK (www.gov.uk)

The harm risked by the offence should be compared to the table to determine the appropriate level. This exercise will be repeated for each offence that is being considered as the seriousness of harm risked can vary between offences.

When using the table to determine the appropriate level, consideration should be given to the worst possible harm outcomes that could reasonably occur as a result of the landlord committing the offence. This means that even if some harm has already come to tenants or visitors to the property, consideration should still be given to whether there was the potential for even greater harm to have occurred.

Level A	**Housing Act 2004 Offences** The seriousness of harm risked would meet the guidance for Class I and II harm outcomes in the Housing Health and Safety Rating System
Level B	**Housing Act 2004 Offences** The seriousness of harm risked would meet the guidance for Class III and Class IV harm outcomes in the 'Housing Health and Safety Rating System.
Level C	**Housing Act 2004 Offences** All other cases not falling within Level A or Level B (e.g. where an offence occurred but the level of harm to the tenants or visitors does not meet the descriptions for Level A or Level B).

Step 3: Penalty Levels

Using the already determined level of culpability and the seriousness of harm risked, find the appropriate penalty level (1 – 5+) in Table 3 (below).

Seriousness of Culpabilty				
Very high				
Harm Risked	**Very high**	**High**	**Medium**	**Low**
Level A	5+	5	4	3
Level B	5	4	3	2
Level C	4	3	2	1

Table 4 - Penalty Band	
Penalty level	**Penalty Band**
1	£600 - £1,200
2	£1,200 - £3,000
3	£3,000 - £6,000
4	£6,000 - £15,000
5/5+	£15,000 - £30,000

Step 4: Penalty Bands

Compare the penalty level from Step 3 to table 4 and this will give the penalty band for the offence. This penalty band determines both the starting amount and the upper limit for the penalty calculation.



Section 4 Considering the landlord's income and track record

The Landlord's Finances

IMPORTANT: although the Council will not normally consider carrying out a full financial investigation where the offence falls within penalty bands 1 to 4, the Council does reserve the right to do so where it considers it reasonable and proportionate to the circumstances.

For penalties that fall within bands 5 and 5+, a financial investigation of the landlord will be usually carried out and all sources of income received by the landlord can be considered as 'relevant income' for the purpose calculating the civil penalty. Specifically, the average weekly income of the landlord for the 12 months preceding the date of the offence will be used.

For penalties that fall within bands 1 to 4, the landlord's income will still be considered but the 'relevant income' will normally be limited to the income that the landlord received in relation to the property where the offence occurred.

For property owners, this will be the weekly rental income, as declared on the tenancy agreements, for the property where offence occurred and at the time the offence occurred.

For property agents, the relevant income will be any fees they received for the management of the property, as stated on the management contract between the agent and the other parties to the contract. Where the fees include VAT or any other charges, the gross amount of the fees will be used.

Take the penalty band, as determined in Section 3, and compare it to Table 5: this will state what can be considered as relevant weekly income for the offence. Comparison of the penalty band to table 6, shows the % of weekly income to be considered.

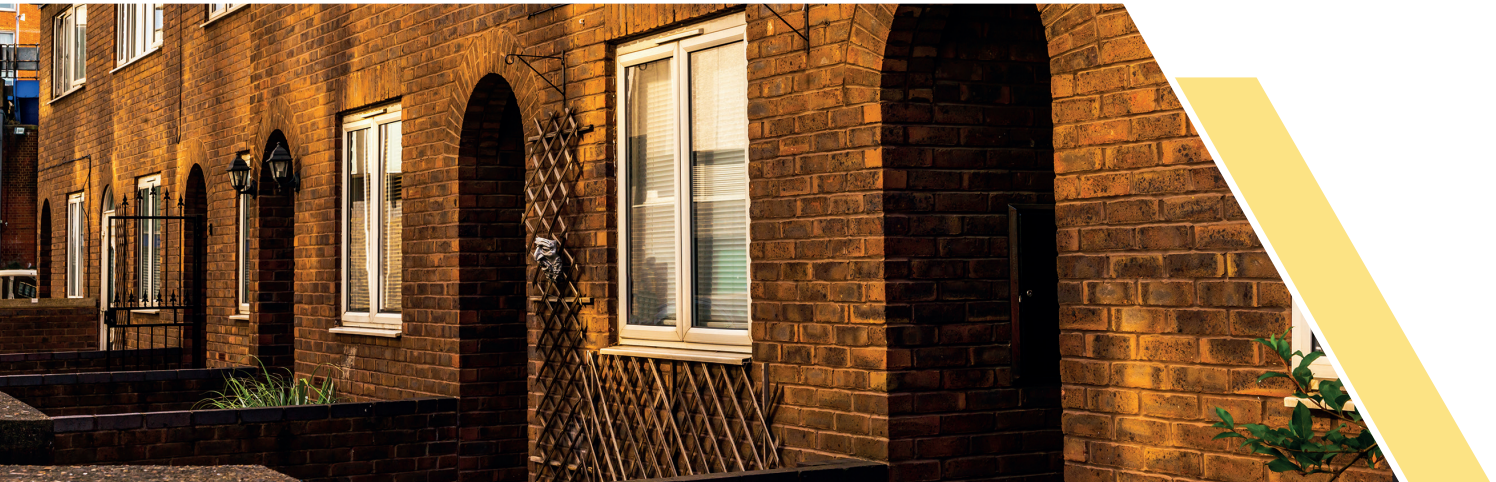


Table 5 - Defining relevant weekly income	
Penalty level	**Relevant Weekly Income**
1	Gross rental income or management fees for the property where the offence occurred
2	
3	
4	
5/5+	All income for the offender (Carry out a financial assessment)

Table 6 - % of relevant weekly income	
Penalty level	**% of Relevant Weekly Income**
1	50% of relevant weekly income
2	100% of relevant weekly income
3	150% of relevant weekly income
4	250% of relevant weekly income
5	400% of relevant weekly income
5+	600% of relevant weekly income

In cases where the landlord is not forthcoming with this information or documentation, an estimate of the average weekly income will be used instead, and it will be for the landlord to make representations against this estimated figure if they deem it to be too high.

IMPORTANT - the Council will not normally consider a landlord's assets but does reserve the right to consider assets in any cases where the Council considers it reasonable and proportionate to do so. Each of these cases will be dealt with on a case-by-case basis.



The Landlord's track record

A higher penalty will be appropriate where the landlord has a history of failing to comply with their obligations; as such, the track record of the landlord will be an important factor in determining the final amount of the civil penalty that is imposed. Below are questions that must be asked for each landlord that will receive a civil penalty.

IMPORTANT - question 1 refers to all relevant notices served during the two years: this means that where the offence is failure to comply with an improvement notice, that notice should also be included in the answer to the question.

Table 7 – Weightings

Category	Weighting
Category 1 (Least serious)	1
Category 2 (Moderately Serious)	5
Category 3 (Very Serious)	10
Category 3 (Very Serious)	20

Each of the questions will be placed into one of four categories, based on the seriousness of the offence or enforcement action to which the question refers. Each category of question is given a weighting that increases with the seriousness of the category. Table 7 shows the four categories and the weighting which is applied to each one.



Any questions where the answer is 'no' will have a weighting of zero but 'yes' answers will accrue the weighting for that question.

For those questions where the number of occasions is relevant, the total weighting for a 'yes' answer will be the weighting for that question multiplied by the number of occasions. Table 8 below shows the category which each of the questions falls within and the subsequent weighting that is applied as a result.

Table 8 - Questions & Weightingss

Questions1	Weighting for a 'Yes' answer	Multiplied by the number of occasions?
Has the landlord had any relevant1 notices, under Part 1 of the Housing Act 2004, served on them in the last 2 years?	1	Yes
Has the landlord had any civil penalties imposed on them in the last 2 years?	5	Yes
Has the landlord accepted any cautions for relevant1 offences in the last 2 years?	10	Yes
Has the landlord been sent a letter, in the last 2 years, which advises them of the relevant duties under the Housing Act 2004?	5	No
Has the landlord owned or managed a property where the term of an existing licence for the property, under the Housing Act 2004, was reduced due to enforcement action or significant concerns, in the last 2 years?	5	No
Has the landlord breached any relevant2 notices, which resulted in works in default being carried out, in the last 2 years?	10	Yes
Has the landlord owned or managed a property where a licence for the property, under the Housing Act 2004, was revoked due to enforcement action or significant concerns, in the last 2 years?	10	No
Has the landlord been prosecuted for any relevant3 offences in the last 2 years?	20	Yes
Has the landlord owned or managed a property which was subject to an interim or final management order under the Housing Act 2004 in the last 2 years?	20	No
Has the landlord been the subject of a banning order under the Housing and Planning Act 2016 in the last 2 years?	20	No

1 any action under Part 1 other than a 'hazard awareness' notice or a 'clearance area'. 2 any notices served under any legislation relating to housing, public health or environmental health. 3 any unspent convictions relating to any provision of any enactment relating to housing, public health, environmental health or landlord and tenant law which led to civil or criminal proceedings resulting in a judgement being made against the offender.

Table 9 - % Increase				
Score	**%**		**Score**	**%**
0	0%		**21**	55%
1	5%		**23**	60%
3	10%		**25**	45%
5	15%		**27**	70%
7	20%		**29**	75%
9	25%		**31**	80%
11	30%		**33**	85%
13	35%		**35**	90%
15	40%		**37**	95%
17	45%		**39+**	100%

Once all the questions have been answered, the weighting for each is totalled and compared to Table 9: this gives the percentage increase that will be applied to the penalty amount. The increase will be a percentage of the starting amount for the penalty band that the offence falls within e.g., the total score for the questions is 23 and so the corresponding percentage increase in Table 9 will be 60%.

IMPORTANT - the penalty calculation will never be increased past the upper limit of the penalty band: however, where the landlord has a history of non-compliance, it is appropriate to factor this into your assessment of their overall culpability. This could affect your initial assessment of the appropriate penalty level and lead to a higher penalty band being used as the starting point.







Final Penalty

To get the amount of the penalty calculation requires addition of :

- The starting amount for the penalty band
- The landlords finance figure
- The landlords track record figure

If this total amount is less than the upper limit for the penalty band, then this is the amount that will be used.

However, if the amount calculated is greater than the upper limit for the penalty band, then the upper limit will be used instead.

The Council will need to be able to prove that financial benefit was obtained before it can be included in the civil penalty calculation. However, where it can be proven, the amount obtained should be added to the penalty calculation and this will give the final civil penalty amount that will be imposed on the landlord.

IMPORTANT - where the landlord has obtained financial benefit in the form of rental income and this full amount has been added to the total penalty, it will be appropriate to take this into consideration when deciding whether to pursue a Rent Repayment Order.

Section 5 The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (MEES)

Introduction

This Guidance document sets out how North Lincolnshire Council (henceforth "the Council") will deliver interventions under The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (henceforth "the Regulations") in relation to financial penalties.

The Regulations are designed to tackle the least energy-efficient properties; currently those banded F or G on their Energy Performance Certificate (EPC). The Regulations establish a minimum standard for both domestic and non-domestic privately rented property.

Housing Standards officers are authorised to check for different forms of non-compliance within the Regulations including:

- Whether the property is sub-standard and let in breach of Regulation 23.
- Where the landlord has registered any false or misleading information on the Government's "National Private Rented Sector Exemptions Register" or has failed to comply with a compliance notice.

The Department for Business Energy and Industrial Strategy have produced guidance published in 2017 and updated in April 2020; 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.

The Council has had regard to the above guidance and North Lincolnshire Council's Operations Enforcement Policy and under arching Housing Standards Enforcement Policy when preparing this Guidance.





Enforcement

The Council will utilise available data and resources to establish 'sub-standard' properties as described by the Regulations (currently EPC band F & G).

This will include utilising powers under the Energy Performance of Buildings (England and Wales) Regulations 2012 (as amended) to ensure that EPCs are valid and in place where appropriate.

Landlords who rent 'sub-standard' properties (currently EPC band F & G) that do not meet the minimum energy efficiency standard and who have no history of regulatory housing complaints, the Council may, after consideration of the individual circumstances and the Council's Enforcement Policies, offer advice on how the standards can be met. The landlord would be given appropriate time to make the necessary changes. If they then failed to make sufficient progress, enforcement action would in most circumstances be the next step.

In circumstances where a landlord has a history of not complying with housing related regulatory requirements, the Council will consider whether an informal approach is appropriate, having regard to its Enforcement Policies, and if not will take immediate formal action.

The Council has discretion to serve a Compliance Notice to request information from the landlord that will help to decide whether there has been a breach. The Council will serve a Penalty Notice where a landlord fails to comply with the Compliance Notice.

The Council will check the National Private Rented Sector (PRS) Exemptions Register and if it believes a landlord has registered false or misleading information it will consider serving a Penalty Notice.

If offences under the Regulations are identified, the Council will serve a Penalty Notice to the values set out in Table 1 below.

Under Regulation 39 the Local Authority may publish some details of the landlord's breach on a publicly accessible part of the National PRS Exemptions Register. The Council will place the information on the Register at the appropriate time, for a minimum of 12 months.

The Landlord has the right to ask for a Penalty Notice to be reviewed under Regulation 42.

Any request for a review must be submitted to the Council within 21 days of the Penalty Notice being served.

Table 1

Energy Efficiency Regulations		
Penalty		
Renting out a non-compliant property	Less than three months in breach	£2000 and Publication penalty
	Three months or more in breach	£4000 and Publication penalty
Providing false or misleading information on the Exemption register	£1000 and Publication penalty	
Failing to comply with a compliance notice	£2000 and publication penalty	

*These penalties are applied to each property where there is a breach up to a maximum of £5000 per property.

**Publication penalty – some of the details of the financial penalties are published on the publicly accessible part of the PRS Exemption Register.

Recovery of financial penalty

If a landlord does not pay a financial penalty imposed on them, the Council will seek to recover the money through the courts. However, it will not do this during the following:

- the review period stipulated on the notice,
- while reviewing their decision,
- the period in which the landlord could appeal to the First-tier Tribunal, or
- while there is an ongoing tribunal appeal.

Changes to Legislation/guidance

The current energy crisis/climate emergency will inevitably lead to further changes to legislation/guidance and national and local targets. Consequently, homeowners, landlords and managing agents will be expected to identify their responsibilities and respond appropriately to the latest legislation/guidance. For example, the likely change to the minimum EPC banding for private rented accommodation to band C by 2025.

Section 6 Rent Repayment Orders

In deciding whether to apply for an RRO a local housing authority must have regard to the Statutory RRO Guidance for local housing authorities, published by the Government in April 2017 issued under section 41 of the Housing and Planning Act 2016.

assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/606654/Rent_Repayment_Orders_guidance.pdf

Discretionary powers

A tenant or local authority may apply for an RRO against a person who has committed a relevant offence in the authority's area but has not been convicted (Section 41 Housing and Planning Act 2016). This could include, for example, where the Council has imposed financial penalties instead of prosecution, where a person has admitted the offence and accepted a caution, or a conviction has not yet been secured.

A local housing authority may help a tenant apply for an RRO; for example, by helping the tenant to apply, by conducting proceedings, or by providing advice. (Section 49 Housing Act 2016) Appendix 1.

