

**SLOUGH BOROUGH COUNCIL
HOUSING REGULATION
ENFORCEMENT POLICY**

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Slough Borough Council- Housing Regulation

Enforcement Policy

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1. Introduction

1.1. This policy sets out the Council's principles for exercising its duties as a Housing Authority in relation to the following functions:

- The Housing Act 1985
- The Housing Act 2004
- The Environmental Protection Act 1990
- The Public Health Act 1936
- The Local Government [Miscellaneous Provisions] Act 1976 and 1982
- The Housing and Planning Act 2016
- Tenants Fees Act 2019

1.2. In devising this this policy, reference has been made to the following documents:

- Regulators' Code
- Housing Act 2004
- HHSRS Operating Guidance (ODPM, 2006)
- HHSRS Enforcement Guidance(ODPM, 2006)
- Local Government (Miscellaneous Provisions) Act 1976
- Police and Criminal Evidence Act 1984
- Police and Criminal Evidence Act 1984, Codes of Practice
- Crown Prosecution Service: The Code for Crown Prosecutors (CPS, 2000)
- Criminal Procedure and Investigations Act 1996 and Home Office Code of practice
- Human Rights Act 1998
- Regulatory Reform (Fire Safety) Order 2005
- Regulation of Investigatory Powers Act 2000
- Data Protection Act 1998
- Home Office Circular 30/2005 (Cautions)
- Housing Renewal (Financial Assistance) Policy 2008
- Protection from Eviction Act 1977
- Proceeds of Crime Act 2002
- Banning Orders under the Housing and Planning Act 2016 (Guidance for Local Housing Authorities)
- Rent Repayment Orders under the Housing and Planning Act 2016 (Guidance for Local Housing Authorities)
- Publicising Sentencing Outcomes

1.3. This Policy should be read in conjunction with Slough Borough Council's Regulatory and Enforcement Policy which sets out the general principles underpinning the

Council's Enforcement activities. A copy can be found at <https://www.slough.gov.uk/strategies-plans-policies/regulatory-services-enforcement-policy>.

1.4. All officers involved in regulation or enforcement in Slough Borough Council are expected to make their enforcement decisions in line with Paragraph 8 of the Regulatory and Enforcement Policy. The Housing Regulation Enforcement policy is designed to supplement the, Regulatory and Enforcement policy and officers who make regulatory decisions relating to private sector housing in Slough are required to consider both policies when making their decisions.

1.5. The term 'landlord' in this policy should be interpreted broadly to include letting agents, managing agents and any other person involved in letting of residential property, whether or not they are also the legal owner of the property.

2. Aims and Objectives of this Policy

2.1. The Council aims to protect public health and safety, improve property conditions and management, and deter crime and anti-social behaviour; whilst recognising the needs of local business.

2.2. The objective of this policy is to ensure that in the discharge of its regulatory functions relating to private sector housing, the Council is robust but fair, transparent and consistent. The policy seeks to communicate to the public and those being regulated what they can expect from Council staff undertaking enforcement duties relating to non- social housing.

3. General Principles of Enforcement

3.1. In deciding whether to commence criminal proceedings for a criminal offence the housing regulation team will use the guidance set out in the Code of Practice published by the Crown Prosecution Service (pursuant to Section 10 of the

Prosecution of Offences Act 1985) which is a public declaration under which its own service will exercise its functions

- 3.2. In line with the Regulators Code we will take an intelligence led approach and endeavour to use available data to profile levels of risk across the borough and will target resources where the risk to the public is greatest.
- 3.3. The Council expects landlords to understand their legal obligations and familiarise themselves with any local requirements that apply in their area. The Council does not accept ignorance of legal requirements as an excuse for failing to comply.
- 3.4. The Council expects landlords to manage and maintain their properties proactively and to carry out necessary repairs without the need for Council intervention.
- 3.5. Except in an emergency situation, private tenants who have not contacted their landlord to give them an opportunity to address disrepair or other problems shall be directed to do so. The Council may request evidence that this has been carried out before they will take any further action. Whilst the Council is empowered to take enforcement action against a Registered Social Landlord it will only do so in exceptional circumstances. For example, where there is a statutory requirement to act.
- 3.6. Owner occupiers will generally be forwarded to alternative schemes for assistance or encouraged to take their own action. However, the Council may decide to act in relation to an owner occupied property where there is a significant risk of harm or where the occupants are particularly vulnerable.
- 3.7. The Housing Regulation Team will, where possible, work jointly with other departments of the Council that have regulatory powers. In particular, we will where possible, work in harmony with those Council departments responsible for Trading Standards, Planning and Building control, anti-social behaviour and nuisance, public health and safeguarding; however some conflict between regulatory regimes may be unavoidable.

4. Authorisation of officers and powers of entry

- 4.1. Slough Borough Council is committed to ensuring that all officers are competent to carry out their functions in a professional way. Only Officers deemed to be competent will be authorised to carry out formal action under the Council's scheme of delegations.
- 4.2. Under the Housing Act 2004 and other legislative provisions, Council Officers have the power to enter premises in order to perform the Council's statutory functions. In certain circumstances Authorised Officers will have the power to enter land or

property without giving notice to interested parties. However, to force entry they will generally require a warrant to be granted by a Magistrate following an application to the Magistrates' Court.

- 4.3.** Officers will clearly identify themselves using Council issued Identification and where required will produce their authorisation when discharging the Council's enforcement functions.

5. Assessing property conditions

- 5.1.** Part 1 of The Housing Act 2004 requires that the Council keep housing conditions within its area under review. It also requires that where the Council considers it appropriate to inspect a residential dwelling in the borough with a view to determining whether hazards exist on the premises; it must arrange the inspection.
- 5.2.** Officers inspect and assess property conditions for a number of different reasons but often inspections are carried out in response to complaints from tenants about their landlord's failure to repair and maintain their property. Other reasons might include a referral from another department within the Council, for example Social Services; a referral from another agency for example Thames Valley Police or Royal Berkshire Fire and Rescue Service; or where the Council believe an offence has been committed on the premises under the Housing Act 2004.
- 5.3.** When responding to complaints about a landlord's failure to repair, the Council will request evidence that the tenant has notified their landlord, in writing, about the disrepair in the property. The Council reserves the right to delay undertaking an inspection of a property where the tenant is unable to demonstrate that they have given their landlord reasonable time to complete the necessary work.
- 5.4.** The Council may in the first instance invite the occupant to undertake a video call or provide photographs of the alleged deficiencies. Where the risk is deemed to be low, the Council may simply write to the landlord requesting that they address the deficiencies.
- 5.5.** Where a physical inspection is deemed necessary one will be arranged. In line with Section 239 of the Housing Act 2004, both the owner and occupiers of the property will generally be given at least 24 hours' notice of the intended inspection. However, there are instances where notice may not be given i.e. where officers believe an offence may have been committed under the Housing Act 2004 e.g. the property requires a licence but doesn't have one.

- 5.6.** Following a physical inspection of the property, officers will undertake an assessment using the Housing Health and Safety Rating System (HHSRS). The HHSRS is a risk based assessment tool which categorises 29 common hazards into Category 1 hazards (highest risk) and Category 2 hazards. In carrying out an assessment under this system, Authorised Officers of the Council will follow the Operating Guidance published by the UK government a copy of which is available at: <https://www.gov.uk/government/publications/housing-health-and-safety-rating-system-guidance-for-landlords-and-property-related-professionals>
- 5.7.** In cases where a category 1 hazard is identified the Council have a duty to take one of the courses of action set out in Part 1 of the Housing Act 2004. The Council must take the most appropriate course of action, taking into account all relevant circumstances as set out in the Housing Health and Safety Rating System Enforcement Guidance (ODPM, 2006), a copy of which can be accessed here: <https://www.gov.uk/government/publications/housing-health-and-safety-rating-system-enforcement-guidance-housing-conditions>
- 5.8.** In cases where category 2 hazards are identified the Council has the discretion to take one of the courses of action set out in Part 1 of the Housing Act 2004.
- 5.9.** The various courses of action available to the Council to deal with Category 1 and Category 2 hazards are explained in more detail in Section 6.

6. Enforcement Action

There are several types of action that can be taken in relation to any given case, and in some instances, different action may be necessary at different stages of the regulatory process. Outlined below are the main enforcement options available to officers, and regardless of the circumstances, officers will always record the reasons for their choice of action and communicate those reasons to all those affected.

6.1. No action

- 6.1.1. The following are examples of circumstances where it may be appropriate to take no action:
- Where there is insufficient evidence to support formal proceedings.
 - Where the non-compliance or failures do not pose a risk of harm to persons, the environment or the community.
 - Where taking action would be disproportionate and where there is a clear public interest case against taking formal action.
 - Where the responsible person has a reasonable excuse.

- Where a tenant or occupant of a property has unreasonably refused access to the property for work to be completed.

6.2. Informal Action

6.2.1. Where an inspection of a property is undertaken, whether in response to a complaint or proactively, and only minor deficiencies are identified the Council may choose to provide written or verbal advice to the responsible person.

6.2.2. Where more substantial deficiencies are identified the Council may write to the responsible person specifying works that should be completed, giving a timescale for completion. In their correspondence the Council will differentiate between what is required by law and what is good practice. The Council will also communicate the consequences should the informal action not achieve the improvements required.

6.2.3. The use of informal action prior to enforcement is discretionary and the Council reserves the right to take formal action immediately if it deems appropriate.

6.2.4. Where Housing Regulation Officers are repeatedly identifying the same or similar deficiencies or hazards in properties which are owned or managed by the same person or persons; they may dispense with the informal stage and move directly to one or more of the enforcement options below.

6.3. Formal Action (Statutory Notices and Orders)

6.3.1. There are a range of enforcement options available to Housing Regulation Officers to deal with hazards in residential properties and officers will choose the most appropriate course of action having regard to the Council's Regulatory Services and Enforcement Policy and the HHSRS Enforcement Guidance.

6.3.2. Notices and orders issued by the Council will be served in accordance with the requirements of the relevant legislation and statutory guidance. The person on whom the notice or order is served will be informed of the reason for the enforcement action, any rights to appeal, and of the consequences of failing to comply with the requirements of the Notice or Order.

6.3.3. Appeals against notices and orders under the Housing Act 2004 should be made to the First Tier Tribunal (Property Chamber). In the case of Abatement Notices under the Environmental Protection Act 1990 appeals are made to the Magistrates Court. The details of the relevant Regional First Tier Tribunal are listed on page 33

6.3.4. The following is a summary of the main enforcement options available to the Council to deal with poor property conditions:

- **Hazard Awareness Notices (HAN)** are notices that are designed to draw attention to the existence of a hazard and to recommend a course of remedial action. However HANs do not require any further action by the person issued with the notice. HANs can be issued in response to Category 1 or Category 2 hazards. Officers may choose to issue a HAN where the hazard identified does not pose a serious risk, or where they have confidence that the person issued with the HAN will carry out the required remedial action. Officers may also choose to issue a HAN where the hazard is relatively minor and where occupants of the property containing the hazard unreasonably obstruct the completion of the works, or express for some other reason that they do not wish for the works to be completed.
- **Improvement Notices** require the recipient(s) of the notice to carry out work to address hazards within a specified timescale. They can be issued on the owner of the premises or the person having control; depending on the circumstances. Improvement Notices can be used to address either Category 1 or Category 2 hazards. Improvement Notices will be issued by officers where, given the circumstances of the case it is reasonably practicable for the works to be completed and there is a lack of confidence that informal action will achieve compliance; or where warnings or advice have already been given but have been ignored.
- **Prohibition Orders and Emergency Prohibition Orders** prohibit the use of dwellings for a particular purpose. They can also be used to restrict the use of a dwelling to a particular type of person. For example the Order might prohibit the dwelling being used by a person in the vulnerable age group as defined by the HHSRS. Prohibition orders can be used to deal with Category 1 or Category 2 hazards and will generally only be used where the work required to remediate the hazards cannot reasonably be completed with the occupants in situ and where no alternative to the issuing of the Prohibition order can be found. Emergency Prohibition

Orders have the same effect as Prohibition Orders, however they come into force immediately and can only be used to deal with Category 1 Hazards that pose a significant and imminent risk of harm. As the effect of making a Prohibition Order or an Emergency Prohibition Order may be to make the occupants of the property homeless, the Council will, with the occupants consent share their details with other departments including our Housing Needs department who are best placed to provide housing advice.

- **Emergency Remedial Action (ERA)** involves the Council using its own contractors to carry out the work required to remove an imminent risk to the occupants of a residential property. ERA can only be taken by the Council where they are satisfied of the existence of a Category 1 Hazard which poses a significant and imminent risk of harm AND where it is practical and safe to carry out the works required to remediate the hazard. Prior to commencing ERA the Council are required to give reasonable notice of intended entry to carry out the work to the occupiers. The Council is then required to give notice of the work to all interested parties (e.g. landlord, owner, mortgage lender, occupiers) within 7 days. The Council will seek to recover all expenses incurred in carrying out ERA in the same way it would for works in default following non-compliance with an improvement notice (see paragraph 6.5 below).

6.4. Statutory Nuisance Abatement Notices (issued under S80 of the Environmental Protection Act 1990)

6.4.1. It may on occasion be appropriate to use legislation other than the Housing Act 2004 for achieving improvements in residential dwellings, particularly in cases where a deficiency in one dwelling is having a detrimental impact on a neighbouring dwelling e.g. a water leak occurring in one flat but damaging another. Officers may use the Environmental Protection Act 1990 to deal other matters that may be prejudicial to health including defective boilers, pest infestations or drainage issues. Officers are obliged to issue an Abatement Notice if they are satisfied of the existence of Statutory Nuisance.

6.5. Works in Default

6.5.1. Where a notice requiring works has not been complied with within the specified timescale, the Council may itself undertake those works and do whatever is required by the notice. In most cases works in default will only be undertaken following the expiry of the Notice. However, in the case of Improvement Notices issued under Sections 11 and 12 of the Housing Act 2004 the Council may, with the agreement of the recipient of the notice, execute the works required by the

notice in advance of its expiry, but the work must be done at the expense of the notice recipient.

6.5.2. Works in default will be considered as an option in most cases of non-compliance with a statutory notice. The factors that will be considered in deciding whether to carry out works include but are not limited to:

- The risk posed to the occupants from the deficiencies
- The practicability of carrying out the work while the property is occupied
- Cost of the work
- The views of the occupant

6.5.3. In most circumstances a person will be given notice of the Council's intention to carry out works in their default. In many cases it will be an offence for any person to obstruct the Council or any of its contractors in carrying out works in default.

6.5.4. In the majority of cases the Council will seek to recover the complete cost of the works and all additional expenses from the person(s) subject to the enforcement action, in accordance with the relevant statutory provisions. The Council will serve a demand for payment notice on the person(s) from whom it is entitled to recover costs, which will specify the amount it is seeking to recover. The Council will clearly specify where there is a right of appeal to a demand for payment and the timescales for making such an appeal.

6.5.5. Where the person on which a notice was served fails to pay expenses incurred by the Council for default works, it will pursue the matter through the County Court which may result in further costs to the recipient of the notice. Also, the Council may consider serving a Recovery Notice on the tenant under Part 3, Paragraph 12, Schedule 3 of the Housing Act 2004, requiring all rent be paid to the Council until the costs incurred by the Council in carrying out the work have been recovered.

6.5.6. Until such time expenses for works in default undertaken in accordance with the Housing Act 2004 are recovered by the Council, they shall be a Local Land Charge. The expenses will attract interest at a rate of 8% per annum. The Council may pursue the outstanding sum as if the charge were a mortgage, for purposes of enforcing the charge and in line with the provisions of the Law of Property Act 1925. The Council has 12 years to enforce the local land charge.

6.5.7. It should be noted that the decision to undertake works in default does not exclude the option of also undertaking a prosecution or issuing a civil penalty.

6.6. Recovering costs relating to enforcement action under Part 1 of the Housing Act 2004

6.6.1. The Housing Act 2004 allows the Authority to recover certain expenses incurred in relation to enforcement action under the Housing Act 2004. Section 49 of the Housing Act 2004 sets out specifically the expenses that can be recovered.

6.6.2. When calculating the expenses incurred by the Council in taking relevant enforcement action, the Council will consider the time taken by officers in completing relevant tasks, administrative costs like printing and postage, travel costs and any costs incurred by the Council in employing experts to assist in drafting technical requirements. Officers will keep records of such calculations and make them available on request.

6.6.3. The charge will be accompanied by a 'demand for payment' notice which will set out the amount due and the timescale for payment.

6.6.4. Where there is a power to charge for enforcement action the Council will generally do so, however the Council reserves the right to waive the charge in exceptional circumstances.

6.6.5. Where payment of the expenses is not received, and no appeal is brought within 28 days of the demand for payment, the outstanding expenses will be registered as a Local Land Charge until the sum is paid. The Council may pursue the outstanding sum as if the charge were a mortgage, for purposes of enforcing the charge and in line with the provisions of the Law of Property Act 1925. The Council has 12 years to enforce the local land charge.

6.6.6. The recovery of costs incurred by the Council in undertaking Works in Default are dealt with separately in section 6.5 of this policy.

6.7. Simple Cautions

6.7.1. A simple caution is a mid-point between prosecuting and not pressing charges at all. A simple caution may be used to influence any future decision on whether or not to prosecute should the individual, organisation or business offend again and it may be referred to in any subsequent court proceedings. Subject to relevant data protection requirements the Council reserves the right to share information

regarding simple cautions with other Local Authorities where the information may be relevant to the Authorities' regulatory functions.

6.7.2. Simple Cautions may also be referred to in subsequent court proceedings as rebuttal evidence should the defendant assert good character and will be relevant to any penalty made after a finding of guilt in any such future proceedings. It is therefore vital that the offender gives their informed consent to being cautioned.

6.7.3. The Council will consider a simple caution where there is sufficient evidence to prosecute but:

- the offending did not result in actual or potential harm to residents or the community;
- where the offender has admitted the offence and made the effort to address their non-compliance;
- The offender has fully cooperated with the investigation; and
- There are factors weighing against prosecution or a civil financial penalty e.g. the offender suffers from serious ill health, the offender is a carer for someone who suffers with serious ill health.

6.7.4. Offences which the Council consider present a low or no risk of harm to residents or the community, and therefore may justify the issuing of a simple caution (assuming the other criteria are met) are:

- Offences under sections 72 and 95 of the Housing Act 2004; operating an HMO or Part 3 House which requires licence without a licence.
- Offences under Section 235 of the Housing Act 2004 or Section 16 of the Local Government (Miscellaneous Provisions) Act 1976; relating to furnishing the Council with information.
- Breaches of Regulation 3 of the Management of HMOs (England) Regulations 2006; failing to provide information to occupiers of an HMO with certain information.

6.7.5. However if these offences are accompanied by other more serious offences which confer a risk of harm it is unlikely that a simple caution will be appropriate, even for the lesser offences.

6.7.6. Persons with previous cautions, penalties or convictions for related offences are unlikely to respond positively to a further caution and therefore simple cautions will not be appropriate in these cases.

6.7.7. The process of issuing Simple Cautions is set out in Paragraph 8.4 of the Council's Regulatory and Enforcement Policy.

6.8. Prosecutions

6.8.1. The housing regulation team investigates a range of criminal offences for which prosecution is a possible sanction. Offences include but are not limited to:

- Failing to comply with an Improvement Notice (Section 30 of the Housing Act 2004)
- Failing to comply with a Prohibition Order (Section 32 of the Housing Act 2004)
- Operating an HMO which is required to be licensed, without a licence (Section 72 of the Housing Act 2004)
- Failing to comply with conditions of an HMO or Part 3 licence (Sections 72 and 95 Housing Act 2004)
- Operating a Part 3 House which is required to be licensed without a licence (Section 95 of the Housing Act 2004)
- Failing to comply with HMO management regulations (section 254 of the Housing Act 2004)
- Breach of a Banning Order (Section 21 of the Housing and Planning Act 2016)
- Failing to Comply with an Abatement Notice issued under Section 80 of the Environmental Protection Act 1990 (Section 81 of the Environmental Protection Act 1990)

6.8.2. In deciding whether to take a prosecution in relation to any offence deemed to have been committed under any relevant legislation, officers must consider the following, in accordance with the Code for Crown Prosecutors:

- The Evidential test: is there sufficient and reliable evidence that an offence has been committed
- Public interest test
- Whether there is a realistic prospect of conviction
- Reasonable excuse

6.8.3. In all instances, an officer's decision to proceed with a prosecution must be approved by the Housing Regulation Manager and Group Manager, taking into account legal advice as appropriate.

6.9. Civil Penalties

6.9.1. The Housing and Planning Act 2016 introduced a new power to issue financial penalties as an alternative to prosecution for certain offences under the Housing

Act 2004. The Maximum penalty that can be issued for an offence is £30,000. Slough Borough Council has devised a protocol which sets out the offences that may attract a Civil Financial Penalty, the process the Council will follow in deciding whether or not to issue a civil penalty and the level at which any penalty will be set. The protocol is attached as **Appendix A**

6.9.2. In addition, The Council is empowered to issue Civil Financial penalties in response to breaches of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020. The protocol in **Appendix A** will also be used to determine the level of penalty to be applied for breaches of these regulations.

6.10. Rent Repayment Orders (RRO)

6.10.1. The Council can apply to the First Tier Tribunal for a rent repayment order (RRO) where a landlord has committed a relevant offence (as set out in Section 40 of the Housing and Planning Act 2016 <https://www.legislation.gov.uk/ukpga/2016/22/section/40#section-40-4>) to recover housing benefit or universal credit paid in respect of a tenancy for up to 12 months.

6.10.2. The Council may make this application irrespective of whether the landlord has been convicted of one of the relevant offences. However, the First Tier Tribunal must be satisfied beyond reasonable doubt that an offence has been committed. Therefore the Council must be satisfied that there is a realistic prospect of conviction before making an RRO application.

6.10.3. The Council is obliged to *consider* applying for a rent repayment order where a landlord has been convicted of a relevant offence and that offence was committed on or after 06th April 2017; and the offence took place in their area.

6.10.4. Factors that will be considered when deciding whether or not to apply for an RRO; and the amount they will seek to recover include but are not limited to:

- The amount of universal credit or housing benefit paid to the landlord
- Risk of harm associated with the offending
- The impact of the offending on the occupants of the property and the wider community
- Conduct of the landlord
- History of offending
- Culpability of the offender
- Financial circumstances of the offender
- Will the RRO deter the offender or others from committing further offences

- What other actions have been/ will be taken in relation to the offences e.g. financial penalties

6.10.5. Where tenants are considering making an application for an RRO the Council may provide advice and signpost tenants to support services that might assist them in making their application. However there is no statutory duty on the Council to support a tenant's claim and the Council does not currently provide a discretionary Tenancy Relations Service.

6.11. Banning Orders

6.11.1. The Housing and Planning Act 2016 introduced a new power for Local Authorities to apply to the First Tier Tribunal for a banning order where a relevant offence has been committed. Relevant offences include: failure to comply with an Improvement Notice or Prohibition Order, offences relating to the licensing of HMOs and fire safety offences.

6.11.2. A Banning Order prohibits a person or entity from letting a house, engaging in letting agency work or engaging in property management work in England for the period specified in the order. Banning Orders must be made for a minimum of 12 months but there is no statutory maximum duration.

6.11.3. Banning orders are applied for by the Council but made by the First Tier Tribunal.

6.11.4. In deciding whether to apply for a banning order the Local Authority will have regard to the Statutory Guidance issued by the Secretary of State. A copy of the guidance can be found at <https://www.gov.uk/government/publications/banning-orders-for-landlords-and-property-agents-under-the-housing-and-planning-act-2016>

6.11.5. It is expected that applications for banning orders will be made only in relation to the most serious offences and/or where the offender has a history of committing similar offences.

6.11.6. The following matters will be taken into account when deciding whether to apply for a Banning Order:

- Seriousness of the offence
- Previous convictions or entries onto the rogue landlord database

The Local Authority will also consider what impact making the banning order will have on anyone affected by the Order, including;

- Harm caused to the tenant
- Punishment of the offender
- Deter the offender from committing the same offence
- Deter others from committing the same offence
-

6.12. Rogue Landlord Database

- 6.12.1. The Rogue Landlord database was introduced by the Housing and Planning Act 2016 and provides a means for Local Authorities to keep track of known rogues, particularly where they operate across local authority boundaries.
- 6.12.2. Where a person or body is subject to a banning order the Council **MUST** enter their details on the Rogue Landlord Database. The entry will remain on the database until the banning order expires or is revoked.
- 6.12.3. The Council **MAY** enter a person's or organisation's details on the database where they have been convicted of a banning order offence or received two civil penalties in the previous 12 months.
- 6.12.4. Statutory guidance available at: [Database of rogue landlords and property agents guidance \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/444444/database-of-rogue-landlords-and-property-agents-guidance.pdf) stipulates that the Local Authority must consider certain criteria when deciding whether to make an entry on the database and in deciding the length of time the entry will remain in the database.
- 6.12.5. The Council will *consider* making an entry in the Database in every case of a conviction for a banning order offence or where 2 civil penalties have been issued in 12 months.
- 6.12.6. Prior to an entry being made on the database the investigating officer will discuss the proposal with colleagues at a regular enforcement panel meeting. The proposal to make an entry must be agreed by a second housing regulation officer before being presented to the housing regulation manager for approval.
- 6.12.7. The Council will issue a Decision Notice on the subject prior to the entry being made on the database and will comply with all statutory requirements in issuing the notice.
- 6.12.8. There is a right of appeal to a Decision Notice relating to an entry on the Rogue Landlord Database. All appeals must be made to the First Tier Tribunal Property Chamber who may confirm, vary or cancel the decisions notice. The time limit for an appeal to be made is 21 days.

6.12.9. The minimum duration for any entry made by the Council will be 2 years as required by the Housing and Planning Act 2016. The Council has not set a maximum duration for any entry into the database, however the Council will ensure the duration is reasonable in the circumstances and proportionate to the offending

6.12.10. The Council will have regard to the following criteria in making decisions relating to the Rogue Landlord database:

- The severity of the offence- The more serious the offence the more likely the Council will make an entry into the database. Serious offences are those that pose a risk of harm to residents or the community. However, multiple less serious offences that cumulatively pose a significant risk to the health and well-being of residents or the community will also make an entry on the database more likely. The duration of time the information remains on the database will increase with the increasing risk posed by the offending, the persistence of the offending and the number of offences.
- Mitigating factors- the Council consider relevant mitigating factors may include but are not limited to physical or mental health problems or bereavement. Where Mitigating factors are present the Council will consider whether they outweigh the public interest in making an entry into the database. The presence of relevant mitigating factors may not automatically deter the Council from making an entry, instead the Council may make an entry but reduce the amount of time the information remains on the database. The Council may request evidence from the offender if they assert the presence of relevant mitigating factors.
- Culpability– the Council will determine the level of culpability on a case by case basis however the Council generally expects professional letting agents and large portfolio landlords to have a detailed understanding of their legal obligations and consequently the degree to which they are culpable for any offending will generally be deemed high. Furthermore such businesses are more likely to operate across local authority boundaries and consequently, there is likely to be a significant public interest in making an entry into the database where the offender is a professional agent or holds a large property portfolio (generally 6 or more properties). A higher degree of culpability will also be assumed where the offender has been the subject of an intervention or received advice from the Council in the past. For example, if the Council has issued an informal schedule of works or written to the offender about legal requirements in the past, there will be a strong justification for making an entry in the Database. Generally the higher the perceived culpability, the longer the entry will remain on the database.

- The Council must consider to what extent an entry on the database would act as a deterrent to further offending by both the offender themselves and others. Entry onto the database is likely to act as a significant deterrent to those operating across local authority boundaries as their information will become available to other Councils. An entry on the database is likely to act as a particular deterrent to those who operate licensed properties as they are subject to 'fit and proper' person checks prior to their licence application being determined. However, the entering of an offender's information into the database will not be reserved for those operating across boundaries and the Council will consider each case on its merit.

7. Licensing of Houses in Multiple Occupation (HMOs) and other Houses

7.1. The Council has further powers to ensure adequate standards in HMOs and other houses are met and maintained. The Housing Act 2004 introduced a mandatory scheme to licence HMOs and Slough Borough Council has also introduced two discretionary schemes.

7.2. Mandatory Licensing

7.2.1. Mandatory licensing applies only to larger HMOs occupied by five or more people, comprising two or more households. The mandatory scheme applies in Slough as it does across the rest of England. All persons operating HMOs that meet this prescribed description must ensure an application is made for a mandatory HMO licence.

7.3. Discretionary Licensing Schemes

7.3.1. On 18th March 2019 Slough Borough Council introduced two discretionary Licensing Schemes:

- A borough wide *Additional Licensing Scheme* under Section 56 of the Housing Act 2004; which requires ALL HMOs (properties with three or more occupants, comprising two or more households, with shared kitchens bathrooms or toilet facilities) and
- A *Selective Licensing Scheme* under Section 80 of the Housing Act 2004; which requires all rented accommodation within a designated area to be licensed.

7.3.2. The discretionary schemes will run for a minimum of 5 years. If the schemes are to be continued beyond 5 years, further approval will be required. Further

information concerning these schemes can be found on our website <https://www.slough.gov.uk/licences-permits/property-licensing-1/2>

7.3.3. The licensing regime provides procedures to assess the fitness of a proposed licence holder, the adequacy of the management arrangements and suitability of the property for the number of occupants; including the provision of relevant and adequate equipment and facilities at the property.

7.3.4. Before granting a licence the Local Authority must be satisfied that the proposed licence holder and manager are 'fit and proper' and that the management arrangements for the property are satisfactory. The Council's Licensing Decisions Policy sets out in detail the matters the Council will consider in determining licence applications and reviewing existing Licences. **Persons subject to a banning order are prohibited from holding licence.**

7.3.5. Licences will normally be granted for five years. However, the Council may reduce the length of the licence in certain circumstances, such as:

- to remove any advantage over those licence holders who applied at the appropriate time; or
- where the property has not been satisfactorily managed; or
- Where the proposed licence holder has a history of non-compliance with relevant legal provisions, but the non-compliance was not serious enough to warrant a licence being refused.

7.3.6. It is the responsibility of any person having control of or managing a property in Slough to ascertain whether or not they are required to apply for a Licence under any one of the Schemes. A person commits an offence if they operate a property that ought to be licensed without one.

7.3.7. A person also commits an offence if they fail to comply with any condition of the Licence or if they allow the property to be occupied by a greater number than is permitted by the Licence.

7.3.8. Where evidence of any offence relating to Licensing is identified the Council may take one or more of the courses of action described in Section 6 of this policy. Each case will be considered on its own merit and decisions will be taken in line with all relevant legislation and statutory guidance.

7.3.9. In response to any contravention of a Licence condition(s) the Local Authority may decide to reconsider the assessment of a Landlord as 'fit and proper'. Any Landlord found not to be fit and proper may have their Licence varied or revoked and may be considered as not fit and proper in relation to any future applications. The Local Authority will consider whether it is appropriate to inform other Local Authorities if such a decision is taken.

8. Interim and Final Management Orders

8.1. Part 4 of the Housing Act 2004 gives Councils powers to make Interim and Final Management Orders in respect of privately rented properties in their jurisdiction. Where properties ought to be licensed but aren't, and there is no realistic prospect of a licence being granted, the Council is obliged to make an Order. However the Council also has discretionary powers to make Special Interim Management Orders (SIMOs) in respect of properties that are not required to be licensed. Such orders are subject to an approval process at the First Tier Tribunal (Property Chamber).

8.2. Interim Management Orders

8.2.1. The Council is obliged to make an IMO where: a property ought to be licensed but isn't and there is no reasonable prospect of a licence being granted; a licence is going to be revoked and there is no realistic prospect of a new licence being granted in the near future or; where a property is being let in breach of a Banning Order. The Council's licensing Decision Policy found in Appendix B sets out in detail the matters considered relevant to the granting or refusal of licences; and to the review of existing licences.

8.2.2. Where the Council is minded to refuse to grant, or minded to revoke a licence it will first seek to engage with the proposed licence holder/ licence holder to identify a suitable alternative fit and proper person to have control. The Council will only resort to making an IMO where it has been unable to agree with the person having control, suitable alternative management arrangements; and there is no reasonable prospect of them being agreed in the near future. The Council's Licensing Decisions Policy sets out in detail the criteria for determining whether someone is suitable to hold an HMO or Selective Licence.

8.2.3. IMOs are a temporary measure designed to allow time for a more permanent management solution to be found and therefore cease to have effect after 12 months, unless they are revoked earlier. The Local Authority can revoke an IMO when: the property ceases to require a licence; the banning orders ceases to have effect; satisfactory management arrangements have been agreed and the Council intends to issue a licence.

8.2.4. An IMO gives the Council most of the rights and responsibilities of the landlord including the right to possession (subject to the rights of the existing occupants). The Council is permitted to collect rent and to spend the receipts to cover expenditure incurred by them in carrying out the role of 'landlord'. If there is any surplus income at the expiry of the IMO, this is passed to the landlord.

- 8.2.5. An IMO gives the Council the authority to create new tenancies subject to the owner of the property giving their consent.
- 8.2.6. On making an IMO the Council will take any action necessary to ensure the safety and wellbeing of the occupants and those in the vicinity of the property. This may include but is not limited to tenancy action, or the carrying out of works to the property.
- 8.2.7. In order to ensure the proper management of any property subject to an IMO, the Council may employ a suitably qualified and competent person or agent to manage a property on their behalf.
- 8.2.8. An IMO is a local land charge and the Council will be entitled to recover any costs they incur in excess of the rent receipts when the IMO expires.
- 8.2.9. In making an IMO, and at all times while the IMO is operative, the Council will comply with the provisions of the Housing Act 2004, particularly schedule 6; as well as all associated regulations.

8.3. Final Interim Management Orders

- 8.3.1. The Council must make an application to the First Tier Tribunal for an FMO where, on the expiry of an IMO, a property still requires a licence but there is no prospect of a licence being granted.
- 8.3.2. If agreed by the First Tier Tribunal an FMO will generally be made for 5 years, however the order may specify an earlier expiry date, where for example the owner has provided evidence that the property is to be sold.
- 8.3.3. If the circumstances that justified the making of the FMO still exist when it expires, i.e. that the property requires a licence but there is no prospect of one being granted, the Council will be duty bound to make a further FMO application.
- 8.3.4. In making the FMO the Council will comply with the process prescribed in schedule 6 to the Housing Act 2004 and will explain to all relevant parties, in full, its reasons for making the order. The Council will consider, any relevant, representations made in relation to a proposed order; and in accordance with the requirements of section 115 of the Housing Act 2004, will periodically review any

FMO in order to determine whether there is any justification for variation or revocation.

8.3.5. The effect of an FMO is similar to that of an IMO in that the Council takes over management of the property and can use rent receipts to cover their costs. However, under Section 119 of the Housing Act 2004 the Council must develop and implement a 'Management Scheme' detailing how the Council proposes to manage the property. If the Council fails to follow its own Management Scheme the landlord or a relevant 3rd party can apply to the First Tier Tribunal to make an order to ensure the Council complies with the plan. The First Tier Tribunal may also revoke the FMO if it deems appropriate. The Management Scheme is divided into 2 parts and must contain the following information:

8.3.6. Part 1- Financial Matters covering:

- Carrying out works
- Estimates of expenditure to be incurred
- Amounts of rent to be sought
- Amounts and provision of compensation to effected persons
- Payments to the landlord
- Financial arrangements with the landlord when the FMO ends

8.3.7. Part 2:

- Steps to be taken to ensure occupiers comply with their obligations e.g. tenancy management arrangements
- Description of any repairs

8.3.8. In order to ensure the proper management of any property subject to an FMO, the Council may employ a suitably qualified and competent person or agent to manage a property on their behalf.

8.4. Special Interim Management Orders (SIMOS) for non- licensable single household properties

8.4.1. In limited circumstances the Council may consider the use of Special Interim Management Orders to deal with non-licensable, single household properties where the property is the source of persistent anti-social behaviour. The Council considers this measure to be a last resort to be used when other tools to tackle anti-social behaviour have failed to elicit improvements and where the landlord is persistently refusing to take appropriate action. For example, where a temporary closure order has been made under the ASB Crime and Policing Act 2016 but on its expiry there is a recurrence of criminal or anti-social behaviour.

8.4.2. Where the Council is considering making a SIMO it will inform the landlord in writing to give them an opportunity to make representations and to find an alternative solution.

8.4.3. SIMOs must be approved by the First Tier Tribunal and in the event an application for a SIMO is made by the Council it will be accompanied by a draft order which may be approved with or without modifications, or refused by the FTT. SIMOs have the same effect as IMOs and expire after 12 months if they are not revoked earlier. At the expiry of the SIMO the Council has discretion to apply for a FMO. The Council will only apply to the FTT to make an FMO for a non-licensable property where the evidence indicates there is a high likelihood of a recurrence of the problems that led to the making of the SIMO.

8.4.4. During the term of the SIMO the Council will engage with the landlord and attempt to find alternative management arrangements for the property so that the making of an FMO can be avoided if possible.

9. Management Regulations for HMOs

9.1. Management Regulations made under the Housing Act 2004 impose duties on landlords and managers of HMOs (whether or not subject to licensing). Any breach of these regulations is a criminal offence under section 234 of the Housing Act 2004 and the Council may prosecute or issue a civil penalty in response to a breach.

9.2. The duties include:

- The duty to display managers contact details in the common parts of the HMO
- The duty to periodically test the gas and electrical installations and to maintain them in a safe condition
- The duty to take safety measures including measures to reduce the risk associated with fire
- The duty to keep common parts including bathrooms and kitchens in good clean, decorative repair and working order
- The duty to provide adequate facilities for the storage of waste

9.3. The Management regulations also impose requirements on the occupiers of HMOs to, amongst other things; conduct themselves in a way that does not frustrate the manager in the performance of their duties; take care not to cause damage to the property, provide information the manager may need to perform their duties and comply with the instructions of the manager in respect of the means of escape from the building or in the use of any firefighting equipment.

9.4. There are no notice serving powers under the Management Regulations but the Council can prosecute for breach of the regulations or issue a financial penalty as an alternative to prosecution.

9.5. The Council is more likely to take formal action in relation to management regulations where there are multiple breaches and the breaches confer a risk of harm to the occupants or those in the vicinity. Other factors that will be considered include, but are not limited to any history of offending by the person having control or managing the property, and any reasonable excuse the landlord may put forward.

10. **Smoke and Carbon Monoxide Alarm Regulations 2015**

10.1. These regulations require Private sector landlords to have at least one smoke alarm installed on every floor of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire, wood burning stove). After that, the landlord must make sure the alarms are in working order at the start of each new tenancy.

10.2. As required by the regulations Slough Borough Council *must* issue a Remedial Notice where it identifies any breaches of the above regulations. In cases of non-compliance, the Local Authority will carry out works in default to install appropriate alarms and will charge the landlord all reasonable costs incurred in doing so.

10.3. The Local Authority may also issue a financial penalty charge of up to £5,000 for non-compliance with a remedial action notice. There is a 6 week time limit on the service of any financial penalty. In deciding whether to issue a financial penalty, we follow all relevant statutory guidance and have regard to the 'Statement of Principles' which are attached in **Appendix B**.

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

11.1. These regulations impose on the landlords of privately rented properties a number of duties relating to the safety of the electrical installations in their property. The duties are as follows:

- Ensure national standards for electrical safety are met. These are set out in the 18th edition of the 'Wiring Regulations', which are published as British Standard 7671.

- Ensure the electrical installations in their rented properties are inspected and tested by a qualified and competent person at an interval of at least every 5 years.
- Obtain a report from the person conducting the inspection and test which gives the results and sets a date for the next inspection and test.
- Supply a copy of this report to the existing tenant within 28 days of the inspection and test.
- Supply a copy of this report to a new tenant before they occupy the premises.
- Supply a copy of this report to any prospective tenant within 28 days of receiving a request for the report.
- Supply the local authority with a copy of this report within 7 days of receiving a request for a copy.
- Retain a copy of the report to give to the inspector and tester who will undertake the next inspection and test.
- Where the report shows that remedial or further investigative work is necessary, complete this work within 28 days or any shorter period if specified as necessary in the report.
- Supply written confirmation of the completion of the remedial works from the electrician to the tenant and the local authority within 28 days of completion of the works.

11.2. Where the Council identifies breaches of any of the duties but there is no urgent work required in the property, they **MUST** issue a remedial action notice within 21 days. The Notice will specify the nature of the breach and the action required to remedy it. The recipient of the notice has 21 days to make representations in relation to the Notice and the Council will clearly specify where such representations should be submitted. The Council must consider the representation and respond in writing within 7 days. The effect of the remedial notice is suspended until the Council provides a response. The Council may confirm or withdraw the remedial notice.

11.3. Any representation made by the landlord regarding lack of cooperation from tenants should be accompanied by evidence for example, copies of written notices given to tenants regarding access.

11.4. If the recipient of the remedial notice fails to comply with its requirements, the Council may, with the consent of the tenants carry out remedial work specified in the notice. The Council is more likely to take this discretionary action where there is a significant risk to the occupants of the property or where the property is occupied by particularly vulnerable individual's e.g. young children. The Council reserves the right to take no remedial action if the risk of harm arising from the breach is deemed to be low.

- 11.5.** In instances where a report issued by an authorised person indicates urgent remedial action is required the Council may, with the consent of the tenants carry out the work at any time. The Council will only take this action where they are satisfied that the occupants of the dwelling, or other residents are at imminent risk of significant harm. If such a course of action is taken the Council will comply with the notice requirements in regulation 10, however there is no requirement to give advance notice to the landlord in the case of urgent work.
- 11.6.** The Council will communicate with all interested parties the reasons for taking its chosen course of action and if remedial action is to be undertaken the Council will comply with the notice requirements set out in Regulation 6 of the regulations.
- 11.7.** There is a right of appeal if the Council give notice of their intention to carry out remedial action. Any appeal must be made to First Tier Tribunal (Property Chamber) within 28 days beginning with the day notice is given. The Grounds of appeal are that all reasonable steps had been taken to comply with the remedial notice, or reasonable progress had been made towards compliance with the remedial notice.
- 11.8.** As with works in default carried out under other legislation, the Council is entitled to recover costs incurred in carrying out remedial action and urgent remedial action. The Council will issue a demand for payment of expenses and in the absence of an appeal the demand will become payable within 21 days beginning with the day the notice is served. The Council will seek to recover any unpaid expenses through the civil court, including any interest.
- 11.9.** Where the Council is satisfied that a landlord has breached one or more of the legal duties set out in the regulations it can issue a financial penalty of up to £30,000. The Council will apply its Regulatory Services Enforcement Policy, this policy, and the Council's Civil Penalties Policy in determining whether to issue a penalty and the level of penalty.

12. Empty properties

12.1. What is a 'long term empty property'

Long term empty properties are those that have been empty for at least 6 months The Council recognises that long term empty properties represent a missed opportunity to provide much needed housing for the residents of Slough. The Council wishes to encourage those responsible for long-term empty properties to bring them back into

occupation. There are several options available to officers to deal with long-term empty properties, including:

- Empty Dwelling Management Orders (EDMOs)
- Enforced sale
- Compulsory Purchase Orders

12.1.1. The Council will adopt the most appropriate course of action in each circumstance and will usually endeavour to engage with the property owner before taking any action.

12.1.2. The Council may choose to take no action if the property is in a good state of repair and is not a source of nuisance or risk. The Council will generally only resort to enforcement action if the property poses a risk to public health or safety; or if it is causing a nuisance. For example, if the property is subject to unauthorised entry and there is an accumulation of waste.

12.1.3. The council will generally reserve the use of EDMOs and Compulsory Purchase Orders for cases where the property owner has persistently failed to cooperate or where the empty property is causing an imminent and significant nuisance or risk to the public.

13. Minimum Energy Efficiency Standards for Private Rented Dwellings

13.1. The Minimum Energy Efficiency Standard (MEES) Regulations prohibits the letting of relevant properties that have an Energy Performance Certificate rating of F or G, unless they have registered a valid exemption. Relevant properties are those that are required to have an EPC.

13.2. The Council regularly utilises domestic EPCs when assessing hazards such as excess cold and damp and mould in privately rented accommodation, however the Council has not to date carried out any enforcement of the MEES regulations.

13.3. The Council recognises the importance of MEES regulations to tackling fuel poverty and reducing carbon emissions and therefore the Council will develop a specific policy and protocol on this matter in due course.

14. Illegal Eviction and Harassment

14.1. The Protection from Eviction Act 1977 makes it a criminal offence to evict a tenant without first obtaining a court order under most types of tenancies. It is also an offence to harass a tenant with the intention of depriving them of their home.

14.2. In consultation with legal services we will consider legal proceedings against landlords who do not comply with this legislation. Landlords who unlawfully evict or harass their tenants are unlikely to be deemed fit and proper for the purposes of Licensing under the Housing Act 2004.

14.3. It will not be necessary for a landlord to have been convicted of the offence of unlawful harassment or eviction for the Council to consider their actions relevant in assessing whether or not they are 'fit and proper' for the purposes of Licensing, However, the Council must be satisfied that there would be a realistic prospect of conviction in the event proceedings were initiated.

15. Publicising Sentencing Outcomes

15.1. In 2011 the Home Office produced guidance for public authorities regarding publicising information (including via the internet) about individual sentencing outcomes within the current legal framework. In general verdicts and sentences in criminal cases are given out in open court and are a matter of public record.

15.2. The guidance states that there should be a presumption in favour of the police, local authorities and other relevant criminal justice agencies publicising outcomes of criminal cases and basic personal information about convicted offenders so as to:

- Reassure the public;
- Increase trust and confidence in the Criminal Justice System (CJS);
- Improve the effectiveness of the CJS;
- Discourage offending and/or re-offending.

15.3. The service will work with the relevant communications and legal teams to ensure that we comply with this guidance.

16. Proceeds of Crime (PoCA)

16.1. The Proceeds of Crime Act 2002 allows the courts to deprive perpetrators of criminal offences of any proceeds they have accrued as a result of their criminal activity.

16.2. The service will use this legislation where appropriate and in consultation with legal services.

17. Other General Legislation

17.1. Officers in the Housing Regulation Team are empowered to use various other pieces of legislation to deal with specific issues related to property conditions. Officers will always use the most appropriate legislation in line with Government Guidance.

18. Referral to Other Regulatory Bodies

18.1. The Regulatory Reform Fire Safety Order (2005) provides for the joint enforcement of fire safety in certain buildings such as blocks of flats and HMOs. The Local Authority has committed to adhering to the Draft Memorandum of Understanding between Royal Berkshire Fire and Rescue Service and Berkshire Local Authorities which sets out which agency will take the lead in specific circumstances.

18.2. Where it is necessary i.e. in the case of a wider regulatory interest, relevant information will be referred to other regulatory bodies' e.g. the Health and Safety Executive in the case of gas safety within residential private sector dwellings, and the Fire Authority in the case of high risk HMOs

18.3. Subject to the appropriate subject access or disclosure request and in line with General Data Protection Regulations and guidance, information may be shared with other regulatory agencies such as Thames Valley Police, HMRC and Home Office Immigration Enforcement

19. Complaints Policy

- 19.1.** We are committed to providing ready access to those wishing to appeal or complain about enforcement action, in accordance with the Council's corporate complaints procedure.
- 19.2.** All appeals in relation to enforcement action taken should be made via the statutory appeals process outlined in the relevant legislation.
- 19.3.** Complaints about the conduct of officers should be made via the Council's corporate complaints procedure. For more information and details of how you can make complaint, please follow the link below:
<http://www.slough.gov.uk/council/complaints-and-feedback/complaints-procedure.aspx>

20. Publicity and Review Arrangements.

- 20.1.** The enforcement policy and associated policies and protocols will be readily available via the Council's website.
- 20.2.** The policy shall be reviewed after 12 months and every 2 years thereafter. Where amendment to the policy are appropriate they will be made, subject to the appropriate corporate approval process.

21. Contact details for relevant First Tier Tribunal (Property Chamber)

Slough falls within the Jurisdiction of the Eastern Region of the Property Chamber. Details can be found below or at: <https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber>

Cambridge County Court
197 East Road
Cambridge
CB1 1BA
United Kingdom

Email: rpeastern@justice.gov.uk

Telephone: 01223 841 524
Fax: 01264 785 129

Appendix A	Protocol for issuing Civil Penalties
Appendix B	Smoke and Carbon Monoxide Alarm Regulations 2015 'Statement of Principles'

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