

Private Sector Housing Enforcement Policy 2019

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1. Introduction

- 1.1. This policy is intended to provide guidance to officers, businesses, and members of the public on the circumstances where enforcement action will be pursued, and the principles and processes which will guide that enforcement action in the private housing sector, including with regard to Houses in Multiple Occupation (HMO).
- 1.2. This Policy covers the Council's general approach to enforcement and also specific approaches to the imposition of Fixed Penalties under the Smoke and Carbon Monoxide Alarms (England) Regulations 2015.
- 1.3. Although Swindon has some excellent landlords and letting agents, the Council has a vital role to play in tackling criminal, 'rogue' and irresponsible property managers and in preventing them from profiting from their non-compliance. In doing so, the Council aims to achieve as level a playing field as possible for all landlords and property managers.
- 1.4. Swindon Borough Council is committed to improving standards in private sector housing, ensuring as far as is possible that all private rented accommodation is well managed, properly maintained, safe and habitable.
- 1.5. Powers to improve owner occupied property are, in practice, more limited, but the Council will use enforcement powers here too, where necessary and appropriate to mitigate significant risk to occupiers or members of the public. This Policy is therefore tenure neutral to ensure that the condition of owner occupied dwellings does not significantly threaten the health, safety and well-being of owner-occupiers or members of the public.
- 1.6. Authorised Officers undertaking enforcement action in Swindon will be suitably authorised, qualified and experienced, and will have regard to this Policy, and to all applicable Statutory Guidance. Warranted Officers undertaking enforcement action will be suitably supervised by their senior officers and managers and supported by the Council's legal team.
- 1.7. The Council has statutory powers and duties to regulate private sector housing. These are assisted by the Housing Health and Safety Rating System (HHSRS) and the Mandatory Licensing of Houses in Multiple Occupation regime. The Council will use other non-housing-specific legislation where appropriate; such as Statutory Nuisance, Public Health and other provisions in order to protect occupiers and the public from significant risks in the most appropriate way.
- 1.8. In order to carry out its role in the private housing sector, the Council will request and demand information, carry out inspections, process licence applications, help bring empty properties back into use, encourage and promote good practice,

provide owners and landlords with advice and information, investigate potential offences and, where appropriate, take enforcement action; including the prosecution of offenders and the imposition of financial penalties. In all cases, Officers will seek to ensure that offenders do not profit from their non-compliance, and that as level a playing field as possible is provided in the sector.

2. Purpose of the Enforcement Policy

- 2.1** The purpose of the Private Sector Housing Enforcement Policy 2019 is to ensure that, as far as is possible:
- Tenants of private landlords and registered social landlords live in homes that are free from unacceptable hazards and risks to their health and safety;
 - The condition of owner occupied dwellings does not significantly threaten the health, safety and well-being of owner-occupiers or members of the public.
 - All Houses in Multiple Occupation are safe and well managed;
 - All licensable Houses in Multiple Occupation are licensed, and all licence conditions are complied with;
 - Empty properties do not become a nuisance to neighbouring properties, or cause public health or safety issues;
 - Privately owned property and land does not present a nuisance to other land owners, and does not directly or indirectly present an unacceptable risk to public health, safety or the environment; and
 - The Council meets its statutory obligations in relation to private housing.
- 2.2.** This Policy provides an overview of the broad principles and processes which the Council will seek to follow when taking action to ensure that all private sector housing in the borough is healthy, well managed and safe. It should be read in conjunction with its appendices, and with other relevant strategies, policies and guidance documents.

3. Principles of Good Enforcement

- 3.1.** When discharging its duties in relation to private sector housing, the Council will have regard to the principles of good enforcement set out in the following:
- Regulators Compliance Code
 - The Police and Criminal Evidence Act 1984 (as amended)
 - Criminal Procedures and Investigations Act 1996
 - Regulation of Investigatory Powers Act 2000
 - All Statutory Guidance in force at the time

3.2. Principles underpinning Enforcement Action.

The Council's enforcement activity will be:

Targeted: Enforcement action will target the properties and people that pose the greatest risk, including the owners and landlords that evade licensing and other regulation, and those whose properties cause a nuisance or put people's health and safety at risk.

Proportionate: Enforcement action will be proportionate and reflect the nature, scale and seriousness of any breach or non-compliance.

Fair and objective: Enforcement action will be based on the individual circumstances of the case, taking all available facts into account. Officers will carry out investigations with a balanced and open mind.

Transparent: Enforcement action will be undertaken in accordance with clearly defined policies and procedures that are readily available. All communications will be easy to understand, with clear reasons being given for any enforcement action taken.

Consistent: Enforcement action will be undertaken by well-trained investigators, and the Director of Public Health will ensure consistency in the interpretation and enforcement of legislation, work with other regulatory agencies, and share and develop good practice where appropriate.

Accountable: Enforcement action will be undertaken in a responsible manner that has a clear purpose. Where appropriate, the Council will work closely with landlords, tenants and other stakeholders that have an interest in private sector housing

- 3.3. The Council will enforce the law efficiently and effectively without imposing unnecessary burdens on responsible owners, agents, and occupiers.
- 3.4. In doing so it will have regard to the local economy, intelligence, the role of inspections, compliance visits, advice and guidance and to the above principles underpinning enforcement activity.
- 3.5. Swindon Borough Council aims to help create neighbourhoods of choice: areas where people want to live, bring up their children and work. Maintaining healthy housing and attractive neighbourhoods will benefit the local economy.
- 3.6. The Council will use intelligence whenever it is available to inform its approach. Intelligence may inform any part of the Council's approach
- 3.7. The Council will undertake proactive property inspections, based on risk and intelligence, and also in response to complaints. It will ensure that its resources are targeted at the worst properties first including, for example, licensable Houses in

Multiple Occupation that are avoiding Mandatory HMO licensing, any House in Multiple Occupation which is failing to comply with Management Regulations, and, more broadly; any residential property which presents risk to occupiers or members of the public.

- 3.8. The Council will respond to residents' complaints about substandard, unsafe and problematic private housing, and adopt an escalating regulatory approach to enforcement.
- 3.9. The Council will provide general information, advice and guidance to make it easier for businesses to understand and meet their responsibilities. This will normally be done through the Council's website www.Swindon.gov.uk.
- 3.10. The Council will also provide advice and guidance to occupiers and will encourage them to attempt to resolve issues themselves using the means and powers available to them where practicable and where risks are not significant.

4. Publicity and Sharing of Evidence.

- 4.1. The Council will share intelligence and evidence secured in the ordinary course of business both internally and with other statutory enforcement bodies and with other relevant partners in accordance with any protocols in force, and our duties under the Crime & Disorder Act 1988, s.17.
- 4.2. The Council will endeavour, in all cases, to secure media coverage of hearings in the Courts where we are seeking the prosecution of offenders. The aim of this approach is to draw attention to the need to comply with the law and to deter noncompliance.
- 4.3. The Council will always seek to publicise offending and the punishment of such, in any way possible, as part of its role in deterring others from offending.

5. Decision Making

- 5.1. Enforcement action will be based on risk. Assessment of risk will be based on current legislation and specific guidance. Where applicable the Council will be guided by an assessment of hazards and risks using the Housing Health & Safety Rating System in the Housing Act 2004; as the statutory method of assessing risks in housing.
- 5.2. Enforcement Officers are required to make informed judgements, and will be suitably trained for this responsibility. They will decide on appropriate action after

considering the criteria within this Policy, guidance documents, and any other relevant written materials.

- 5.3. Where a departure from published policies or guidance is indicated or proposed, this will always be authorised by a Principal, or more senior officer and will be supported by a written and recorded rationale for that departure. Enforcement Officers will not pursue enforcement options outside of this and associated Policies without first obtaining written sign off from a more senior officer.
- 5.4. Where the investigating officer believes that formal legal action may be required, evidence will be properly collected and the case will be reviewed by more senior Officer(s) before the case proceeds.
- 5.5. Any person or entity subject to potential prosecution will be invited to an interview under caution, in accordance with the Police and Criminal Evidence Act 1984 provisions, prior to any final decision being made. Where those under investigation do not take up this offer; decisions will be made on the available evidence.

6. The Regulation of Private Sector Housing

6.1. Responding to complaints about poor housing conditions.

- 6.1.1. The Council will respond to complaints from tenants and other residents of private housing, prioritising complaints on the basis of an assessment of the risk and urgency of the issue.
- 6.1.2. For the majority of complaints the Council will expect tenants to have raised the issue in writing with their landlord or agent first. If they have been unsuccessful the tenant will need to provide documents that give evidence that this has been done, along with copies of tenancy or other agreements, before the Council will accept the case for investigation.
- 6.1.3. Advice will be given to assist complainants in helping themselves in this way. This step is critical to trigger protections against retaliatory eviction and to ensure that the Council has all of the relevant available information.
- 6.1.4. In some cases the apparent risk will be so significant and/or imminent that the Council will move straight to formal investigation and potential enforcement action where appropriate.
- 6.1.5. If enforcement action is necessary, the full range of available regulatory powers may be used to address and resolve any issue.

6.2. The Housing, Health and Safety Rating System (HHSRS).

6.2.1. The HHSRS is set out in Part 1 of the Housing Act 2004, and is the prescribed method of assessing hazards and risk in dwellings. It is the method of assessing how likely it is that the condition of a property will cause an unacceptable hazard to the health of the occupant(s), their visitors, or members of the public. There are two categories of possible hazards under the scheme:

- Category 1 (bands A, B, C) hazards represent a serious danger to health and the Council has a duty to take appropriate action to deal with these. An example of a Category 1 hazard might be a defective electrical system presenting a risk of electrocution, or a lack of sufficient heating system in a habitable room, for instance.
- Category 2 (bands D, E, F, G, H, I, J) hazards represent a lesser danger and, although it has no duty to take action, the Council has a power to require the reduction of Category 2 hazards. An example of a Category 2 hazard might be the presence of dampness and mould in a bathroom, or minor overcrowding in a property.

6.2.2. In the great majority of cases the Council will ultimately take enforcement action against all Category 1 Hazards in accordance with its duty.

The higher the Category 2 hazard score the more likely that formal enforcement action will be pursued.

Where multiple Category 2 Hazards exist it is more likely that enforcement action will be taken.

Where Category 2 Hazards exist alongside Category 1 Hazards it is more likely that enforcement action will be taken to also remedy the lower category (2) risks.

6.3. Pre-formal enforcement.

6.3.1. In some cases the Council may follow a pre-formal process in which it will seek to work with landlords and agents to reduce hazards. This will only be followed where the responsible person is willing to undertake to complete all required works quickly, as required, where that route is expected to provide a quicker resolution than formal action.

6.3.2. In all cases where that undertaking cannot be obtained quickly and/or works do not start or complete by the agreed dates, formal enforcement will be commenced without delay and a charge will be made to cover all costs of that enforcement.

- 6.3.3. When dealing with property owners or managers for whom there is any history of non-compliance with relevant requirements, no pre-formal process will be entered into and the Council may move directly to formal enforcement.

6.4. Formal Notices

- 6.4.1. In many cases the service of a Notice is the principal way of bringing issues or potential offences to the formal attention of owners, agents and occupiers. It is often the first step in the formal enforcement process.
- 6.4.2. The service of a Formal Notice triggers obligations on those who receive them. Failing to meet those obligations triggers criminal liability and a number of potential further stages and sanctions highlighted later in this document.
- 6.4.3. The Council will always serve a Formal Notice where it has a duty to do so. In situations where it has a power to do so the exercise of that power will be based on risks presented to occupiers and others and the track record of the responsible person(s).
- 6.4.4. Many Notices also trigger an 'enforcement charge' to reimburse the Council its expenditure in serving such a notice.

6.5. Enforcement Charges.

- 6.5.1. Where available to the Council charges will always be made for formal enforcement action that it takes. The charge levied will be calculated on a case by case basis taking into account the time taken and any other costs borne, for example for contractors or consultancy services.

6.6. Works in Default.

- 6.6.1. The Council will always seek to avoid actions that may encourage owners, landlords and agents to be non-compliant, such as carrying out costly works in default where it may be difficult for the Council to recover all of its costs.
- 6.6.2. Such works will however be an option where it is possible to recover and secure the full costs, including overhead costs, and the risks presented justify it.

6.7. Overcrowding.

- 6.7.1. Overcrowding is often a problematic issue to resolve because, unlike other hazards, there is sometimes little that the landlord can do to resolve the problem unless the tenant has moved other people into the accommodation since the start of the tenancy.

- 6.7.2. In all cases where the Statutory Overcrowding Standard, the legal minimum, is breached enforcement action will be instigated compelling owners and/or managers to remedy the issue. Where overcrowding is not to the level of breaching the Statutory Overcrowding Standard the Council will be guided by an assessment of the risks using the Housing Health and Safety Rating System.
- 6.7.3. Where enforcement is pursued and where appropriate, reducing occupation may, at times, be achieved through natural wastage over time.

6.8. Empty Properties.

- 6.8.1. There is a high demand for accommodation in Swindon. As well as being a wasted source of housing empty properties can be an eyesore, can damage adjoining properties, blight neighbourhoods and attract anti-social behaviour.
- 6.8.2. The Council will identify, risk assess and prioritise long-term, problematic and nuisance empty properties using the full range of informal and formal action open to them (including enforced sales, management orders, and compulsory purchase) and where appropriate to bring them back into use.
- 6.8.3. Where the condition of empty properties gives rise to risk to members of the public enforcement action will be taken as with any other premises in accordance with this Policy and any guidance in force at the time.

6.9. Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

- 6.9.1. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 require that all rented properties must be fitted with a working smoke alarm on each level of the premises at the start of each tenancy.
- 6.9.2. In addition where any room contains a solid fuel appliance, that room must also be fitted with a working Carbon Monoxide alarm at the start of each tenancy.
- 6.9.3. Where the Local Authority has reasonable grounds to believe that these requirements are not met; they must serve a Remedial Notice on the landlord requiring that they be provided. If the landlord does not comply with the Notice, the Local Authority must carry out works in default of that Notice to provide or maintain the detectors and may levy a penalty charge.
- 6.9.4. The penalty charge acts to reimburse the Local Authority for undertaking those works and also as a punitive penalty for non-compliance.
- 6.9.5. The Local Authority must publish a Statement of Principles on which it will base the penalty charge. Swindon Borough Council's Statement of Principles is contained in the Smoke and Carbon Monoxide Regulations Policy attached to this document as Appendix A.

- 6.9.6. The Council will in all cases impose a Penalty Charge, in accordance with the attached Policy, where a Remedial Notice under this provision is not complied with.

6.10. Civil Penalties

- 6.10.1. Civil Penalties are an alternative disposal method to a prosecution. A Local Authority may choose to impose a Civil Penalty for any qualifying offence instead of prosecuting the responsible person.
- 6.10.2. When deciding to apply a Civil Penalty, the Council must be satisfied that there is sufficient admissible and reliable evidence that an offence has been committed by an identifiable individual, or individuals, or a company and that there would be a realistic prospect of conviction were the matter to be prosecuted in the courts. The standard of proof is 'beyond reasonable doubt', the criminal standard.
- 6.10.3. Revenue received from Civil Penalties is ring-fenced to support further housing enforcement work.
- 6.10.4. Where the Council is satisfied that a relevant offence has been committed, Civil Penalties will, in most cases, be the primary consideration of the Council.
- 6.10.5. There will however be circumstances where a Simple Caution and/or Prosecution remains the most appropriate course of action, even where an option to impose a Civil Penalty exists. The higher the culpability of the offender, the worse the offender's track record, and/or the higher the risk of harm presented the more likely that prosecution will be pursued.
- 6.10.6. Any decision to apply a Civil Penalty will be fully considered at a case conference attended by a Principal Environmental Health Officer, The Service Manager and another manager in the Council's structure (or personnel of comparable seniority and expertise). A recommendation will then be made by the Service Manager to the Council's legal team.
- 6.10.7. If a Civil Penalty is deemed appropriate the Council will fully adhere to the process as set out in the Housing and Planning Act 2016, Part 2, Rogue Landlords and Property agents in England.
- 6.10.8. In all cases the decision to impose a Civil Penalty and the quantum of that penalty will be made in consultation with the Council's legal team and with reference to Statutory Guidance.
- 6.10.9. As an absolute minimum in determining the level of Civil Penalty, the Council will ensure that the Penalty removes any financial benefit the offender may have obtained as a result of committing the offence. The guiding principle will be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

- 6.10.10. Statutory Guidance on Civil Penalties may be viewed here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/697644/Civil_penalty_guidance.pdf

6.11. Simple Cautions

- 6.11.1. Where someone has committed an offence or offences and fully accepts responsibility for the offence(s), Officers may offer a Simple Caution where the circumstances suit a Simple Caution rather than a Prosecution.

- 6.11.2. Simple Cautions will be considered where:

The defendant has admitted their guilt; and
The defendant is aged 18 or over; and
The defendant agrees to be given a Simple Caution; and
Civil Penalties are not appropriate or cannot be applied; and
The Public Interest is best served in this way.

- 6.11.3. If the defendant agrees to receive a Simple Caution, the Council will always seek to recover the costs of the investigation as part of the Simple Caution process.

- 6.11.4. If the defendant does not agree to receive a Simple Caution, they will be prosecuted.

- 6.11.5 In all cases where a Simple Caution is considered in disposal, a prosecution file will be prepared and consultation will take place with the Council's legal team. All decisions to offer a Simple Caution will be authorised by the legal team.

6.12. Prosecution

- 6.12.1. When deciding to prosecute, the Council must be satisfied that there is sufficient, admissible and reliable evidence that an offence has been committed by an identifiable individual, or individuals, or company and that there is a realistic prospect of conviction. The burden of proof is 'beyond reasonable doubt', the criminal standard.

- 6.12.2. A decision must also be made as to whether a prosecution would be in the public interest. Where there is evidence, Officers will consider prosecution and as part of their investigation, they will take into account, amongst other things, the following:

1. Any reasonable explanation provided by the individual or company
2. Evidence that the individual or company intends to prevent any

recurrence of the problem

3. An individual's state of health

4. The offender's attitude to the offence

6.12.3. Any decision to prosecute will be considered initially by the Principal Environmental Health Officer or the Service Manager. If a prosecution is deemed appropriate the case will be referred to the Council's Legal Officers for review and processing.

6.12.4. Prosecutions will be brought without unavoidable delay. To ensure fair and consistent decisions in relation to prosecutions, any decision to prosecute will take into account the Code for Crown Prosecutors.

6.13. Rent Repayment Orders

6.13.1. A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent.

6.13.2. The Housing Act 2004 introduced Rent Repayment Orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed.

6.13.3. Rent repayment orders have now been extended through the Housing and Planning Act 2016 to cover a wider range of offences, described below.

- Failure to comply with an Improvement Notice (Housing Act 2004, s.30)
- Failure to comply with a Prohibition Order (Housing Act 2004, s.32)
- Breach of a Banning Order made under the Housing and Planning Act 2016, s.21
- Using violence to secure entry to a property (Criminal Law Act 1977, s.6)
- Illegal eviction or harassment of the occupiers of a property (Protection from Eviction Act 1977, s.1)

6.13.4. Rent repayment orders are an additional penalty over and above any other sanction and can be granted to either the tenant or the local housing authority. If the tenant paid the rent themselves then the rent must be repaid to the tenant.

6.13.5. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority. If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent should be repaid on an equivalent pro-rata basis

- 6.13.6. A rent repayment order can be made against a landlord who has received a civil penalty in respect of an offence, but only at a time when there is no prospect of the landlord appealing against that penalty.
- 6.13.7. Income received from Rent Repayment Orders awarded to the Council is ring-fenced to be used to support further enforcement action, and the Council must consider applying for a rent repayment order after a person is the subject of a successful civil penalty or prosecution.
- 6.13.8. For every relevant offence the Council will consider applying for a Rent Repayment Order against the offender. Where the amount of rent received while offending was ongoing is high and/or the level of harm risked was significant the Council will in most cases apply for a Rent Repayment Order.
- 6.13.9. The Council may also offer advice, guidance and support to assist tenants to apply for a rent repayment order if the tenant has paid the rent themselves.
- 6.13.10. Statutory Guidance on Rent Repayment Orders may be viewed here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606654/Rent_Repayment_Orders_guidance.pdf

6.14. Banning Orders and the Rogue Landlords Database

- 6.14.1. A number of housing offences and a greater number of other offences, trigger potential liability to a Banning Order.
- 6.14.2. In every case where a housing Banning Order Offence has been committed the Council will consider applying for a Banning Order and will publicise that decision. The Council will more often decide to apply for a Banning Order the more serious the offence is.
- 6.14.3. Where the Council becomes aware of a landlord or agent being convicted of a non-housing Banning Order Offence it will always consider applying for a Banning Order.
- 6.14.4. The complete list of offences that may trigger liability to a Banning Order may be viewed in the Statutory Guidance on the topic, here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/697643/Banning_order_guidance.pdf
- 6.14.5. In all cases where the statutory conditions are met the Council will apply to enter the landlord or agent's details on the Rogue Landlords Database.

- 6.14.6. At present the statutory conditions allowing such an application to be made are:

The person has been convicted of a banning order offence and the offence was committed at a time when the person was a residential landlord or a property agent; or

The person has, within a period of 12 months, received two or more financial penalties in respect of a banning order offence.

- 6.14.7. Statutory Guidance on the Rogue Landlords Database may be viewed here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/697637/Database_of_rogue_landlords_statutory_guidance.pdf

7. Houses in Multiple Occupation (HMOs).

- 7.1.** In Swindon there are several hundred Houses in Multiple Occupation: properties that are occupied by 3 or more persons who form more than one household and that share facilities.
- 7.2.** HMOs present greater risks to occupiers than single family homes and the conditions, facilities, amenities and management are regulated. Some HMOs are also subject to HMO licensing under the national mandatory scheme.
- 7.3.** Swindon has formally adopted minimum space and amenity standards for Houses in Multiple Occupation in its area. These standards represent what is considered minimum acceptable provision of space and amenities in each type of HMO. For Licensed HMOs these standards are mandatory and will always be enforced. These standards will inform how many occupiers a HMO is licensed to house.
- 7.4.** For HMOs which are not subject to Licensing these standards function as strong guidance on what is expected to be provided as a minimum. A modicum of discretion will only be exercised where equivalent amenity provision exists which may not match the standards precisely.
- 7.5.** The Council's HMO Space and Amenity Standards will be reviewed periodically to ensure that they reflect best practice and take account of the Council's aspirations for the provision of housing in its area.
- 7.6.** Additional Enforcement Options for Houses in Multiple Occupation (HMOs)
- 7.6.1.** In all cases and at all times the Council expects full voluntary compliance with all regulatory provisions applying to Houses in Multiple Occupancy and their management.

- 7.6.2. In addition to the enforcement options described elsewhere in this document the Council has further powers to ensure that adequate standards are met and maintained in HMOs.
- 7.6.3. The additional enforcement powers available in relation to HMOs are:
- HMO Management Regulations
 - Interim Management Orders
 - Final Management Orders

7.7. HMO Management Regulations

- 7.7.1. All Houses in Multiple Occupation, whether licensable or not, are subject to the 'Management Regulations'.
- 7.7.2. The Management of Houses in Multiple Occupation (England) Regulations 2006 function as a code of practice for good management of HMOs and the Council expects full compliance with them at all times.
- 7.7.3. Breach of a Management Regulation is a strict liability offence and each individual breach of a Management Regulation is a separate and specific offence. It is not uncommon to find large numbers of individual breaches in a poorly managed HMO.
- 7.7.4. The Council will treat each proven breach of a Management Regulation as it would any other offence covered by this Policy.

7.8. HMO Licensing.

- 7.8.1. The HMO licensing regime includes arrangements for assessing the suitability of the premises for the number of occupants, including the adequacy of the amenities. Swindon's HMO Standards dictate what is considered necessary for the proposed number of occupants at all times. The provided level of space and amenities dictate the maximum occupation permitted under the HMO Licence.
- 7.8.2. HMO Licensing also provides for the assessment of the fitness of a person to be the licence holder and the potential management arrangements of the premises. Where the Council considers the proposed HMO Manager not to be a Fit and Proper person the Council will not issue a Licence to that person. Where existing Licensees become unfit or improper through their conduct their Licence will be revoked.
- 7.8.3. The Council will always issue the Licence to the most appropriate person. In the great majority of situations this will be the freeholder or leaseholder of the building as the person having most control over it and its occupants.

- 7.8.4. The Licence holder may nominate others to manage the HMO on their behalf day to day but, as the Licence Holder, will bear the greatest regulatory risk in ensuring that all requirements are met.
- 7.8.5. It is a criminal offence if a person controlling or managing any HMO does not have the required licence. Failure to comply with any condition attached to a licence is also an offence. The Council will consider all available enforcement options when dealing with unlicensed HMOs and breaches of the licence conditions.
- 7.8.6. The Council will vigorously pursue anyone who is controlling or managing a licensable HMO without a licence and where appropriate will prosecute them accordingly.
- 7.8.7. Where a non-licensable HMO is being badly managed and/or is in a poor state of repair, the Council will deal with non-compliance using the full range of available enforcement options as appropriate to the level of risk and the seriousness of the non-compliance.
- 7.8.8. At present there are no declared Additional or Selective Licensing schemes in Swindon. Where a need for such arises in the future the Council will review whether to declare such a scheme.

7.9. Interim Management Orders

- 7.9.1. If the Council is satisfied that there is no reasonable prospect of a licensable HMO being licensed (with appropriate conditions) in the near future, or if it is necessary to protect the health, safety or welfare of the occupiers of the property or properties in the vicinity, it must make an Interim Management Order in respect of the HMO.
- 7.9.2. The Council may delegate the management of the HMO to another agency or partner.
- 7.9.3. There are provisions to vary, revoke and appeal against an Interim Management Order. An Interim Management Order will be in force for 12 months or until an HMO licence is granted if this happens within 12 months.
- 7.9.4. An Interim Management Order allows the Council to manage the property with many of the rights of a landlord, including the right to collect rent and to use that rent to pay for work to the property.
- 7.9.5. The Council will follow all available Statutory Guidance in making an Interim Management Order.

7.10. Final Management Orders

- 7.10.1. If the Council is satisfied (on the expiry of the Interim Management Order) that the HMO still requires a licence but it is still not able to grant the HMO a licence, it must make a Final Management Order.
- 7.10.2. A Final Management Order is similar to an Interim Management Order in that there are provisions to vary, revoke and appeal against a Final Management Order, the Council may delegate the Management of the HMO to another agency or partner, and the Council continues to manage the property with many of the rights of the landlord. However, it must review the arrangements from time to time.

8. Options to Regulate and Ensure Compliance

The following table contains some examples of situations where different types of action may be taken. Decisions are always made, however, on a case-by-case basis.

Table 1: Some Regulation and Enforcement Options

Type of Action	Example Circumstances
Powers of Entry (including Warrants for Forced Entry)	<ul style="list-style-type: none"> Where it is necessary to carry out a statutory duty or power Where necessary for the investigation of an offence Where it is necessary to protect the health and safety of any person, or the environment, without undue delay Where necessary to prevent the obstruction of Officers in their work
Powers to Require Information and/or Documents	<ul style="list-style-type: none"> Where it is necessary to carry out a statutory duty or power Where necessary for the investigation of an offence Where necessary to prevent the obstruction of Officers in their work Where required or empowered under any relevant provision
No Action	<ul style="list-style-type: none"> Where formal action is not appropriate <p>Customers may be directed to other sources of advice and support</p>
Informal Action & Advice (Includes verbal or written advice, and undertakings)	<ul style="list-style-type: none"> Where appropriate to attempt informal remedy Where non-compliance is minor, or hazards less serious, or the responsible person is expected to comply Officers may seek an undertaking (pre-formal process) to complete works, within a short timescale, if appropriate
Service Of Notice(s) or Order(s) (Requiring repairs, or actions, to gain or regain compliance)	<ul style="list-style-type: none"> Where a person refuses or fails to carry out works through the pre-formal process Where there is a lack of confidence or there is positive intelligence that the responsible individual or

	<p>company will not respond to a pre-formal approach</p> <ul style="list-style-type: none"> • Where there is significant risk to the health, safety and wellbeing of a household or a member of the public (for example; dangerous gas or electrical services, no heating in the winter, no hot water for personal hygiene or to wash and prepare food safely, or similar risks) • Where standards are poor and the responsible individual or company shows little or no awareness of the management regulations or other statutory requirements • Where the person has a history of non-compliance with the Council and/or other relevant regulators, where this is known • Where the person has a record of criminal convictions for failure to comply with the housing requirements (which may include housing management) • Where it is necessary to safeguard and protect the occupiers' or member of the public's future health and safety.
Emergency Remedial Action or Emergency Prohibition Order	<ul style="list-style-type: none"> • Where there is an imminent risk of serious harm to the health and/or safety of any occupier, their visitors, or members of the public. • Where immediate or urgent action is required to mitigate that risk, either by the carrying out of emergency works, or by immediately prohibiting the use or occupation.
Works in Default	<ul style="list-style-type: none"> • Where works to address a serious hazard have not been started or completed as required by a Notice or Order. • Where it is practicable for the Council to do so and there is a realistic chance of securing or recovering full costs.
Revocation Of HMO Licence	<ul style="list-style-type: none"> • Where the manager is not a 'fit & proper person' • Where there are serious breaches of

	the Licence Conditions and/or Management Regulations
Civil Penalties	<ul style="list-style-type: none"> • Where an individual or company has endangered the health, safety or wellbeing of occupiers, visitors or members of the general public • Where an individual or company has deliberately, negligently or persistently breached their legal obligations, especially where the economic advantages of breaking the law are substantial and/or those businesses that do comply with the law are disadvantaged as a result. • Where an individual or company has deliberately or persistently ignored written warnings or formal notices / orders or no reasonable progress has been made in relation to the carrying out of the requirements • Where the alternative means of achieving compliance (works in default, for example) are considered inappropriate or not practicable • Where the defendant has assaulted or obstructed an Officer in the course of their duties, or provided false or misleading information.
Simple Caution	<ul style="list-style-type: none"> • Where the offence is less serious and the person who has committed the offence has admitted their guilt • A simple caution may be offered instead of a Civil Penalty or Prosecution in appropriate cases. • Providing that the offender agrees to reimburse the Council all of its costs in investigating the matter before, or at the time, that the caution is given.
Prosecution	<ul style="list-style-type: none"> • Where the offence in question cannot be disposed of through a Civil Penalty • Where an individual or company has endangered the health, safety or wellbeing of occupiers, visitors or members of the general public • Where the property or person is also subject to prosecution by another

	<p>partner agency for connected issues, such as Trading Standards or Wiltshire Fire & Rescue, Police etc.</p> <ul style="list-style-type: none"> • Where an individual or company has deliberately, negligently or persistently breached their legal obligations, especially where the economic advantages of breaking the law are substantial and, compared to them, those businesses that comply with the law are disadvantaged • Where an individual or company has deliberately or persistently ignored written warnings or formal notices/orders or no reasonable progress has been made in relation to the carrying out of the requirements; • Where the alternative means of achieving compliance (works in default, for example) are considered inappropriate • Where a simple caution is considered inappropriate or the defendant has refused to accept a simple caution; and/or • Where the defendant has assaulted or obstructed an Officer in the course of their duties or provided false information.
Rent Repayment Order	<ul style="list-style-type: none"> • Where Housing Benefit or Universal Credit has been paid to a landlord across the time when the offences have been committed • Where the sums paid to the landlord may be significant • We may also assist tenants to obtain Rent Repayment Orders if successful in obtaining an Order themselves

Private Sector Housing Enforcement Policy

APPENDIX A

Smoke and Carbon Monoxide Regulations Policy

Smoke and Carbon Monoxide Alarm (England) Regulations 2015

The scope of this document

Regulation 13 of the regulations requires the Council to prepare and publish a Statement of Principles to follow in determining the amount of a penalty charge.

The Council may revise its statement of principles and, where it does so, must publish the revised statement.

Where a penalty charge is to be imposed, the Council must have regard to the statement of principles published and in place at the time when the breach in question occurred, when determining the amount of the penalty charge.

This document sets out the legal framework, and the principles which the Council will take into account and apply when exercising its powers under regulation 8 of the regulations.

This document contains the Statement of Principles required under the Regulations, for the assessment of the Financial Penalty which will be imposed in various circumstances.

The legal framework

The Regulations require landlords of certain premises to:

1. Install smoke alarms on each floor of their rented property, and
2. Install a Carbon Monoxide alarm in each room where there is a solid fuel burning appliance, and
3. Carry out checks to ensure that all alarms are present and in working order at the start of each new tenancy.

Where non-compliance with the duties is identified; the Local Housing Authority must, within 21 days, serve a Remedial Notice (*the Notice*) (Regulation 5), on the landlord; requiring that all non-compliance is remedied within 28 days.

In the event that the landlord fails to fully comply with the Remedial Notice within the time for compliance, the Local Authority has a duty to carry out the required remedial works, within a further 28 days.

The Regulations, exempts the landlord or the Local Authority from being in breach of their duties where an occupying tenant refuses to allow access for remedial works to be carried out.

Regulation 8 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 provides that the Council may require the landlord to pay a penalty charge if the Council is satisfied, on the balance of probabilities, that the landlord on whom it has served a Remedial Notice (*the Notice*) has failed to take the remedial action specified in the notice within the period specified, and has not taken all reasonable steps to do so.

Procedural matters

The Regulations require that six weeks from the time at which the council is satisfied that there has been a failure to comply with a Remedial Notice the council must serve a Penalty Charge Notice setting out:

1. the reasons for imposing the penalty charge;
2. the premises to which the penalty charge relates;
3. the number and type of prescribed alarms (if any) installed at the premises in default of the landlord;
4. the amount of the penalty charge;
5. the obligation to pay that penalty charge or to give written notice of a request to review the penalty charge;
6. how payment of the charge must be made; and
7. the name and address of the person to whom notice requesting a review may be sent.

Where the landlord makes a written request within the specified time for the Penalty Charge to be reviewed, the Local Authority must review that decision and serve a further Decision Notice informing the landlord of its final decision.

A landlord may then appeal to the First-Tier Tribunal against the Council's review decision.

The purpose of imposing a financial penalty

The primary aims of financial penalties are to:

- Change the behaviour of the landlord.
- Eliminate any financial gain or benefit arising out of non-compliance with the regulations.
- Be proportionate to the nature of the breach of the regulations and the potential harm outcomes.
- Aim to deter future non-compliance.
- Reimburse the costs incurred by the Council in undertaking works in default.

Statement of Principles

This statement sets out the principles that the Swindon Borough Council (*the Council*) will apply in exercising its powers to require a relevant landlord (*the landlord*) to pay a Penalty Charge.

If, on the balance of probabilities, the landlord has failed to take the remedial action specified in the notice within the period specified, and/or has not taken all reasonable steps to comply with the duty, a penalty charge will be considered appropriate in all circumstances.

Criteria for determining the quantum of a financial penalty

Regulation 8(2) states the amount of the penalty charge must not exceed £5,000.

The penalty charge comprises two parts, a punitive element for failure to comply with the absolute requirement to comply with a remedial notice (subject to any representation made by a landlord to the council) and a cost element relating to the works carried out by the Council.

The period within which the penalty charge is payable is 30 days beginning with the day on which the penalty charge notice is served. The Council has discretion to specify that, if a landlord pays the penalty charge within 14 days; a reduction in the penalty charge may be applied (an 'early payment').

The Council may also exercise a similar discretion where the landlord gives written notice, within 14 days, to the Council that the landlord wishes the authority to review the penalty charge notice.

Swindon Borough Council will, as a matter of course, exercise the discretion to reduce the penalty charge in relation to an 'early payment' if paid in full within the specified 14 day period.

The Penalty Charge

For a first offence the penalty charge will be half of the maximum permissible charge (£2500 at 01/03/2018), and an early payment will attract a discount of 50%, reducing the charge for charges paid in full within 14 days.

For a second offence, committed by the same landlord or property manager, the penalty charge will be 75% of the maximum (£3750 at 01/03/2018), and no early payment discount will apply.

For third and subsequent offences committed by the same landlord or property manager, the penalty charge will be the maximum permissible (£5,000 at 01/03/2018), and no early payment discount will apply.