

# Private Sector Housing Enforcement Policy

<b>Title:</b> Private Sector Housing Enforcement Policy	<b>Approved:</b> 22 <sup>nd</sup> November 2018	<b>Effective from:</b> 29 <sup>th</sup> November 2018	<b>Next review:</b> 29 <sup>th</sup> November 2020
<b>Version:</b> 1.0	<b>Author:</b> Mark Stuart		<b>Last review:</b> N/A
<b>Review Comments</b>			

## Aim

The aim of this policy is to secure effective compliance with legislation whilst minimising the burden to North Kesteven District Council ('the Council'), individuals, organisations and businesses.

The Council will seek to tackle poor private sector housing conditions, through the enforcement of minimum standards. The purpose and aim of this policy, is to outline how this will be accomplished utilising a graduated approach; the provision of advice and guidance, through to formal enforcement action.

This links to the NK plan, namely:-

### Our Homes

- Promote improvements in the condition of private sector properties.
- Deliver excellent housing services to all residents.
- Work with our partners to support their landlord role.

### Our Communities

- Work with partners to reduce the levels of fuel poverty within the district.
- Provide either directly or through partners, effective and efficient support services for our residents when needed.

### Our Council

- Deliver high quality, resilient, affordable services.

## Scope

This policy details the way the Council will deliver private sector housing enforcement, in line with the overarching aims and objectives, encompassed within the Corporate Enforcement Policy.

## Definitions

DASH	-	Decent and Safe Homes
EPC	-	Energy Performance Certificate
HHSRS	-	Housing Health and Safety Rating Scheme
HMO	-	House in Multiple Occupation

## Principles

The underlying principle of this policy is the provision of safe and healthy houses, through advice, information, and guidance to private sector tenants, landlords and interested parties. This will be provided in a number of formats, including but not limited to, newsletters, guides, local events etc. We will also uphold the statutory principles of enforcement, and ensure that our statutory duties and activities will be consistent; transparent; proportionate; accountable; and targeted.

## Supporting procedures

The Corporate Enforcement Policy is the overarching policy for all enforcement functions of the Council.

## Monitoring

This policy will be monitored at least annually, and more frequently if circumstances dictate.

## Consultation

Although there is no requirement to consult prior to approving this policy, the Council is committed to engaging with our service users. Accordingly, this policy has undergone public consultation for a 4 week period. It was emailed to all interested parties (landlords, agents, housing organisations), in addition to being published on the Council's website. A number of responses were received, and these have been considered when writing this report.

## Communication

The final approved version of this policy will be sent to all interested parties, and also publicised on the corporate website.

## Implementation

Upon approval of the final version, this policy will become active, and will be implemented accordingly.

## Policy Approval

This policy was approved by North Kesteven District Council on 22<sup>nd</sup> November 2018.

Signed:



Leader of the  
Council



Chief Executive

# **North Kesteven District Council Private Sector Housing Enforcement Policy**



## Contents

1. Introduction .....	5
2. Scope of the policy and service standards .....	5
3. Providing assistance, information and education .....	5
4. Accreditation .....	6
5. Housing Health and Safety Rating System .....	6
6. Outline of enforcement options .....	6
7. Power to charge for enforcement action .....	7
8. Additional charges .....	8
9. Non-compliance with notices .....	8
10. Enforcement .....	8
11. Civil penalties .....	9
12. Owner occupiers .....	9
13. Outline of the licensing of houses in multiple occupation .....	10
13.1. Licensing and the HHSRS .....	10
13.2. Unlicensed HMOs .....	11
13.3. Non-licensable HMOs .....	11
13.4. Management Orders .....	11
13.5. Selective licensing of other residential accommodation .....	12
13.6. Overcrowding .....	12
14. Rent Repayment Orders .....	12
15. Energy efficiency in private rented property .....	13
16. Smoke and carbon monoxide alarm regulations .....	14
17. Illegal eviction and harassment .....	14
18. Redress schemes for lettings agency and property management work .....	14
19. Empty Properties .....	15
20. Boarding up properties .....	15
21. Other enforcement powers .....	15
22. Powers of entry .....	16
23. Housing immigration – inspections and accommodation certificates .....	16
24. Delegated authority and competency of officers .....	16
25. Feedback and review of this policy .....	17
Appendix A - Civil Penalties .....	18
Appendix B – Smoke and CO alarm .....	23
Appendix C – Policy revisions .....	25

## 1. Introduction

Local authorities have powers and responsibilities to assess housing conditions and enforce minimum standards through a range of measures. North Kesteven District Council (“The Council”) will seek to tackle poor housing conditions using actions that are appropriate to individual situations. The purpose of this policy is to outline how the Council will work to improve private sector housing standards, by providing advice and guidance or, if necessary, by means of appropriate formal action to improve, repair, close or demolish dwellings that are not fit for purpose.

The Council recognises the importance of the private rented housing sector in providing valuable good quality accommodation and meeting housing need. The Council recognises that the majority of landlords maintain their properties to a good standard, however there are some who neglect their responsibilities and put their tenants at risk due to the poor condition of their properties. Substandard housing can have a profound impact on mental and physical health of its occupants, and poorly maintained property also negatively impacts on its surrounding neighbourhood<sup>1</sup>

The Council’s primary role is to educate and advise owners, landlords and agents on the standards they are expected to meet in their properties, to seek to assist tenants in understanding their rights and responsibilities, and to encourage dialogue between parties to resolve issues amicably and without recourse to formal action.

## 2. Scope of the policy and service standards

This policy details the way the Council will deliver private sector housing enforcement under respective legislation and what landlords and tenants can expect from the service.

The Corporate Enforcement Policy<sup>2</sup> is the overarching policy for all enforcement functions of the Council. The Private Sector Housing Enforcement Policy covers specific functions in more detail but will at all times meet the overall aims and objectives of the Corporate Enforcement Policy.

Revisions to this policy and relevant dates are at Appendix C.

## 3. Providing assistance, information and education

The Council will work with our service users to help them comply with all relevant regulatory requirements before considering formal enforcement action. The Council will provide clear, accessible advice and guidance and provide contact details where

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<sup>1</sup> *The District Authority Contribution to Public Health* (Kings Fund, 2015).

<sup>2</sup> <https://www.n-kesteven.gov.uk/your-council/how-the-council-works/key-plans-strategies-andhttps://www.n-kesteven.gov.uk/your-council/how-the-council-works/key-plans-strategies-and-policies/policies/enforcement/policies/policies/enforcement/>

further information is required. Information will be provided in a range of formats such as newsletters, guides, local events and on the Council's website<sup>3</sup>.

#### **4. Accreditation**

The Council will support and work closely with DASH (Decent and Safe Homes) landlord accreditation scheme<sup>4</sup> and will actively encourage landlords to join the scheme. The scheme provides a number of industry relevant benefits including landlord newsletters, training, events, and guidance, so helping the Council to achieve the aim in section 3 above.

#### **5. Housing Health and Safety Rating System**

Assessment of housing standards shall be in accordance with the Housing Health and Safety Rating System (HHSRS)<sup>5</sup>. This is a risk based assessment which rates the extent of hazards to health and safety.

The underlying principle of HHSRS is that any residential premises should provide a safe and healthy environment for any potential occupier or visitor. An assessment of a dwelling will involve a physical survey that will include the identification and rating of hazards in the building. The technical guidance for the system includes a wealth of statistical information on the various hazards. The application of the system will result in a score which will be the basis of the Council's action to deal with the hazards identified.

Where a category 1 hazard exists (high risk of likely occurrence within the next 12 months resulting in harm) the Council has a duty to take enforcement action relating to the hazard.

Where a category 2 hazard exists (above average risk of a likely occurrence within the next 12 months resulting in harm) the Council has a discretionary power to take enforcement action. The Council will use this power in situations where there is a permanent and persistent risk to the health, safety and/or comfort of the occupiers, where the vulnerability of residents is a particular factor which needs to be considered or the number or extent of hazards are such that cumulatively, action to formally secure improvements are warranted.

#### **6. Outline of enforcement options**

The Council will start from the position of working with our service users to help them comply with their regulatory requirements. Subsequently the Housing Act 2004 ("the Act") gives housing enforcement authorities options to formally secure improvements. This will be on the basis of the principles set out in the Corporate Enforcement Policy. Enforcement can be affected by:

- Service of an improvement notice requiring remedial works in accordance with section 11 and/or section 12 of the Act.

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<sup>3</sup> [www.n-kesteven.gov.uk/SafeAsHouses](http://www.n-kesteven.gov.uk/SafeAsHouses)

<sup>4</sup> [www.dashservices.org.uk](http://www.dashservices.org.uk)

<sup>5</sup> Housing Act 2004, Part 1: Housing Conditions

- Making a prohibition order, preventing the use of the whole or part of a dwelling or restricting the number or class of permitted occupants in accordance with section 20 and/or section 21 of the Act.
- Suspension of either of the above until such time as directed in the order.
- Service of a hazard awareness notice in accordance with section 28 and/or section 29 of the Act.
- Making a demolition order<sup>6</sup> in accordance with section 265 of the Housing Act 1985.
- Declaring a clearance area<sup>7</sup> in accordance with section 289 of the Housing Act 1985.
- Taking emergency remedial action<sup>8</sup> under section 40 of the Act.
- Service of an emergency prohibition order<sup>9</sup> under section 43 of the Act.

## **7. Power to charge for enforcement action**

The Council will make a reasonable charge as specified in section 49 of the Act, to recover certain administrative and other expenses incurred in taking enforcement action and any annual review of a notice where applicable.

Proposed indicative charges for 2018/19 will be £356, plus any additional costs incurred where the works are carried out. Any annual review of a notice where applied will be £89.

Where suspended notices are served, the full charge will be liable on breach of the notice. Where more than one notice is served at the same property, the first notice will be charged at full rate and each subsequent notice charged at a reduced amount of £178. Additional costs may also be payable if external specialist advice is needed, e.g. a structural report, or works in default are carried out. All charges will be subject to an annual review. Details of current charges are given on the website<sup>10</sup>. Enforcement action which will incur a charge are deemed to be:

- Serving an improvement notice
- Serving a prohibition order
- Notice of emergency remedial action
- Serving an emergency prohibition order
- Making a demolition order

The Council will charge for taking enforcement action unless there are extenuating circumstances. Where this occurs the Head of Environment and Public Protection

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<sup>6</sup> Only in respect of Category 1 hazards

<sup>7</sup> Only in respect of Category 1 hazards

<sup>8</sup> Only in respect of Category 1 hazards

<sup>9</sup> Only in respect of Category 1 hazards

<sup>10</sup> <https://www.n-kesteven.gov.uk/residents/housing/help-for-private-renters-and-owners/safe-as-houses/landlords/housing-standards/enforcement-action/>

will make the final decision. All requests for this consideration should be put in writing and a response will be given within 21 calendar days of receipt.

On appeal of any such notice, the charge will be suspended pending the outcome of the appeal. If the notice is upheld, charges will be pursued.

## **8. Additional charges**

Should works in default be carried out, the Council will endeavour to ensure that the cost of works are reasonable and recovered from the relevant person. The costs will be in addition to the administrative and any other relevant expenses.

When the Council carries out work in default, an invoice requesting payment for the work will be sent to the appropriate person. If this is not paid within the required period the matter will be pursued through our corporate debt recovery processes and may result in County Court action.

## **9. Non-compliance with notices**

If a notice is complied with, no further action will be necessary. However if the notice is not complied with the Council will consider the following options:

- Prosecution
- Civil penalty
- Carrying out the works in default
- A combination of the above
- Administering a simple caution
- Granting of additional time for compliance. This will only be for extenuating circumstances and must be requested and formally agreed with the Council. Determination of the most appropriate course of action will be in accordance with this policy and the Corporate Enforcement Policy.

## **10. Enforcement**

Where enforcement action is considered necessary, and in deciding the course of enforcement to take, the Council will have regard to circumstances including, but not restricted to, those listed below:

- The statutory obligations of the Council
- The seriousness of the offence committed
- The consequences of non-compliance
- The level of culpability of the offender
- The track record of the offender
- The likely effectiveness of the various enforcement options
- Whether the enforcement option is a proportionate response



- Public interest and concern
- The views of other relevant service departments within the Council
- The views of other organisations such as the Police and Fire and Rescue.

## 11. Civil penalties

The Housing and Planning Act 2016<sup>11</sup> has amended the Act to introduce the ability for the Council to seek to impose a civil penalty as an alternative to prosecution. The offences within the Act where a civil penalty can be imposed are: □ Failing to comply with an improvement notice under section 30

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

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, the Council will be satisfied that if the case were to be prosecuted, there would be a realistic prospect of conviction, having regard to the Crown Prosecution's Service Code for Crown Prosecutors<sup>12</sup>. When making the decision to issue a civil penalty as an alternative to prosecution, and what level of penalty would be appropriate, the Council will make that determination in line with the guidance at Appendix A.

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

## 12. Owner occupiers

In the case of notices or orders served upon owner occupiers there will be no charge made unless the matter in respect of which the action is taken is affecting an adjoining property or endangering public safety and the person concerned has failed to take appropriate action.

Where a charge is being considered for action against an owner occupier, hardship factors will be taken into consideration and payment of the fee may be considered at the discretion of the Head of Environment and Public Protection.

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<sup>11</sup> Housing and Planning Act 2016, Part 2: Rogue landlords and property agents in England

<sup>12</sup> <https://www.cps.gov.uk/publication/code-crown-prosecutors>

### **13. Outline of the licensing of houses in multiple occupation**

The Act provides a mandatory system of licensing for all houses in multiple occupation (HMOs)<sup>13</sup> of three or more storeys and five or more occupants who constitute more than one household. This policy sets out how the Council will licence relevant HMOs and how enforcement powers available to the Council will be used to ensure the health, safety and welfare of occupants.

To be eligible for licensing, the HMO must be reasonably suitable for occupation by the number of persons permitted under the licence and having regard to the minimum prescribed standards of amenities and facilities. These include the number, type and quality of shared bathrooms, toilets and cooking facilities. Adopted standards will be advertised and communicated to landlords and agents. The Council may also attach additional conditions to a licence to ensure the HMO is suitable for occupation. The licence holder must also be a fit and proper person. Controlling or managing an HMO which ought to be licensed, but is not licensed, without a reasonable excuse for doing so, is a criminal offence and the Council will take action as detailed above.

The administration of licensing HMOs in the district is currently delegated to South Kesteven District Council, however the final decisions on all licensing matters affecting premises within the district will rest with the Council.

#### **13.1. Licensing and the HHSRS**

The HHSRS does not need to be considered before a licence is issued. The issue of a licence does not imply that housing standards are acceptable and that no subsequent enforcement action will be taken to secure standards in health, safety or amenity of that property. If the Council becomes aware of potential hazards during the licensing process, action will be taken at the earliest opportunity as detailed in this policy.

The licence will specify the conditions that the licensee must meet. A breach of conditions may result in the licence being withdrawn. The operation of an HMO in contravention of a licensing requirement is an offence.

The Council will consider whether any licence applicant is a 'fit and proper person' as required by the Act. Landlords applying for an HMO licence will be required to declare that they have no unspent convictions for relevant offences. The Council may investigate suspected breaches of this declaration. Written evidence in support of the declaration may be sought from the applicant where the Council has reasonable suspicion that an unspent conviction exists or in the case of particular property uses such as that provided for vulnerable adults. Where the Council has evidence that a landlord is no longer a fit and proper person, licence(s) will be revoked.

A licence fee will be charged to cover the administrative costs. The fee will be reviewed annually.

Enforcement of housing and management standards of all HNMOs (including nonlicensable HMOs) will be in accordance with this policy.

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<sup>13</sup> Housing Act 2004, Part 2: Licensing of houses in multiple occupation

The Council will consider alternative works proposed by the responsible person for the property (as defined by legislation) where these will achieve the same end as those required by the Council.

### **13.2. Unlicensed HMOs**

When an HMO is brought to the attention of the Council it will investigate whether the property should be licensed.

It is an offence for properties with three or more storeys and five or more persons in more than one household that is required to have a licence, to operate without a licence. Where such premises are found, the owner/person having control will be invited to submit a valid licence application within 28 calendar days. All practical steps will be taken to assist the owner of the property to satisfy the licensing requirements except in the case of deliberate, repeat or persistent contravention where formal action will be pursued.

Licences will only be issued following receipt of a valid application, a verification visit to the premises and satisfactory fit and proper person checks.

### **13.3. Non-licensable HMOs**

HMOs that do not require a licence are still subject to legislation governing how they are managed and standards that must be met. These type of properties can include houses made into bedsits and common areas of flats. All non-licensed HMOs known to the Council will be regularly inspected having regard to the management regulations<sup>14</sup>. The frequency of inspections will be on the basis of an assessment of risk, taking into account such factors as property type and condition, number of households within the property, heating type, amenities, fire precautions, and confidence in management. The inspection frequency will be dependent on risk.

The regulations set out the expected standards of management in relation to providing information, standards of accommodation, safety measures and waste disposal facilities. The Council will inspect properties and carry out actions to ensure that HMO management standards are maintained.

### **13.4. Management Orders**

If a property should be licensed, but there is no reasonable prospect of granting a licence, the Council may apply a Management Order. The Council will make an order where the health and safety condition as described in the Act<sup>15</sup> is met.

The Council may consider using the same power to take over the management of an empty property or properties in order to bring them back into use. Management orders may also be made on properties where anti-social behaviour is occurring. Management orders will result in the Council (or an appointed agent) operating as if it were the landlord, including collecting rents, forming tenancies, carrying out

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<sup>14</sup> The Management of Houses in Multiple Occupation (England) Regulations 2006 and The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007.

<sup>15</sup> Housing Act 2004, Part 4, Chapter 1: Interim management orders: making and operation of orders, S.104

improvements and repairs and other related management matters depending on the order granted. Relevant costs are recoverable.

The following orders are available:

□ An interim management order

- A final management order
- A special interim management order
- An interim or final empty dwelling management order

All orders can be varied or revoked in accordance with the provisions of the Act where determined necessary by the Council.

### **13.5. Selective licensing of other residential accommodation**

Part 2 of the Act also gives a power for local authorities to introduce additional licensing of other HMOs as the local authority deems appropriate. In addition, under Part 3 of the Act, local authorities can introduce selective licensing to deal with particular issues in its area as the local authority deems necessary or desirable.

At the time of writing there are no additional or selective licensing requirements in place in the district. The introduction of any such schemes will only take place following, and in accordance with, the necessary consultations.

### **13.6. Overcrowding**

The Act provides local authorities with power to investigate complaints in respect of overcrowded living conditions of any HMO where no interim or final management order is in force and it is not required to be licenced under Part 2<sup>16</sup>. Such complaints may be received from private sector tenants, third parties concerned about children or vulnerable adults living in overcrowded conditions, or where overcrowded conditions are legitimately impacting on a neighbours' health, safety or welfare.

Council officers will liaise as necessary where enforcement action could likely result in a family having to move out of their home, to mitigate the impact of any subsequent action.

## **14. Rent Repayment Orders**

The Housing and Planning Act 2016 confers power on the First-Tier Tribunal to make a rent repayment order<sup>17</sup> where a landlord has committed one of the following offences:

- Have been prosecuted for operating an unlicensed HMO;
- Have failed to comply with an improvement notice;
- Has failed to comply with a prohibition order;
- Is in breach of a banning order;
- Has used violence to secure entry to a property; or

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<sup>16</sup> Housing Act 2004, Part 4, Chapter 3: Overcrowding Notices.

<sup>17</sup> Housing and Planning Act 2016, Part 2, Chapter 4: Rent Repayment Orders.

- Illegal eviction or harassment of the occupiers

A rent repayment order will require the landlord to repay an amount of rent paid by the tenant or pay the Council an amount in respect of a relevant award of Universal Credit paid.

If a person is convicted of an offence as a consequence of action brought by the Council, application for a rent repayment order will be considered. The Council may also help a tenant to apply for a rent repayment order where legislation permits.

## 15. Energy efficiency in private rented property

Energy efficiency regulations<sup>18</sup> (“the Regulations”) establish a minimum standard for domestic privately rented property, subject to certain requirements and exemptions:

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

Where a landlord wishes to continue letting property which is sub-standard, they will need to ensure that energy efficiency improvements are made which raise the EPC rating to a minimum of E.

Under prescribed circumstances within the Regulations, the landlord may claim an exemption from prohibition on letting a sub-standard property. Where a valid exemption applies the landlord must register the exemption on the national Private Rented Sector Exemptions Register.

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

The Council will:

- Check that properties in the district falling within the scope of the Regulations meet minimum levels of energy efficiency.
- Issue a compliance notice requesting information where it appears that a property has been let in breach of the Regulations.
- Serve a penalty notice where satisfied that the landlord is, or has in the past 18 months, been in breach of the requirement to comply with a compliance notice or has provided false or misleading information on the exemptions register.

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<sup>18</sup> Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.

The Council will have regard to guidance<sup>19</sup> in the application of this legislation, the penalty amount and the publication of the penalty.

## **16. Smoke and carbon monoxide alarm regulations**

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 require landlords of private rented accommodation to:

- Have at least one smoke alarm installed on every storey of their rental property which is used as living accommodation, and
- Have a carbon monoxide alarm in any room used as living accommodation which contains a solid fuel burning appliance.
- Ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

This policy gives specific consideration in relation to the above legislation, and Appendix B provides a statement of principles that the Council will apply in exercising its powers to require a relevant landlord to pay a financial penalty, which it will follow when determining the amount of a penalty charge.

## **17. Illegal eviction and harassment**

The Council will consider action under the Protection from Eviction Act 1977 which makes it an offence to:

- Do acts likely to interfere with the peace or comfort of a tenant or anyone living with them;
- Persistently withdraw or withhold services for which the tenant has a reasonable need to live in the premises as a home; or
- Unlawfully deprive or attempt to deprive the residential occupier of any premises they occupy or any part thereof.

For any tenancies started on or after 1<sup>st</sup> October 2015<sup>20</sup> where a tenant makes a genuine complaint about the condition of their property that has not been addressed by their landlord, the Council will inspect and may serve a notice requiring works to be carried out, following which, for a period of six months, a section 21 notice requiring vacant possession may be deemed invalid.

The Council will both support tenants and deal with landlords and agents where these issues arise.

## **18. Redress schemes for lettings agency and property management work**

All letting agents and property managers must belong to one of two Government approved schemes:

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<sup>19</sup> <https://www.gov.uk/government/publications/the-private-rented-property-minimum-standard-landlord><https://www.gov.uk/government/publications/the-private-rented-property-minimum-standard-landlord-guidance-documents>[guidance-documents](https://www.gov.uk/government/publications/the-private-rented-property-minimum-standard-landlord-guidance-documents)

<sup>20</sup> Introduced by the Deregulation Act 2015

- Property Redress Scheme ([www.theprs.co.uk](http://www.theprs.co.uk))
- The Property Ombudsman ([www.tpos.co.uk](http://www.tpos.co.uk))

The Council will take action<sup>21</sup> where it is satisfied that, on the balance of probability, someone is engaged in letting or management work and is required to be a member of a redress scheme but has not joined.

The Council may impose further penalties if a lettings agent or property manager continues to fail to join a redress scheme despite having previously had a penalty imposed. There is no limit to the number of penalties that may be imposed on an individual lettings agent or property manager and further penalties may be applied if they continue to be in breach of the legislation.

## 19. Empty Properties

Where a residential property is found empty, the Council's Empty Homes Policy will apply<sup>22</sup>. Owners of empty dwellings will be encouraged to bring them back in to use through a range of informal action but where this is not successful then enforcement will be considered to address the problems and bring the property back into use. Examples of such powers include the use of empty dwelling management orders<sup>23</sup>, compulsory purchase orders<sup>24</sup>, and enforced sale<sup>25</sup>.

## 20. Boarding up properties

The Council has powers to board up properties that are insecure after all efforts have been made to contact and work with the owner, to make the property safe and correct any hazards found in the properties. When deemed appropriate to do so, the Council will consider taking such action<sup>26</sup> and will detail works required and the reason(s) why, e.g. prevention of unauthorised entry. The Council will look to recover expenses reasonably incurred where such works are undertaken.

## 21. Other enforcement powers

The Council will consider the use of statutory powers to deal with various housing issues, including statutory nuisance, dangerous structures, filthy and verminous premises, defective drainage and, specifically, the Antisocial Behaviour, Crime and Policing Act 2014 on a case-by-case basis in accordance with legislation, approved guidance and codes of practice etc., and in accordance with the Corporate Enforcement Policy and Enforcement Service Standards.

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<sup>21</sup> The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014, s.8

<sup>22</sup> Available at <https://www.n-kesteven.gov.uk/residents/housing/strategies-policies-and-service>  
<https://www.n-kesteven.gov.uk/residents/housing/strategies-policies-and-service-standards/empty-homes-policy/standards/empty-homes-policy/>

<sup>23</sup> Housing Act 2004, Part 4: Additional control provisions in relation to residential accommodation.

<sup>24</sup> Housing Act 1985, Part II: Provision of housing accommodation.

<sup>25</sup> Law of Property Act 1925, Part I: General Principles as to Legal Estates, Equitable Interests and Powers.

<sup>26</sup> Local Government (Miscellaneous Provisions) Act 1982, s.29

## 22. Powers of entry

Entry to a property is usually required to enable authorised officers to carry out statutory functions. Apart from in emergency situations, or where otherwise deemed counterproductive, the Council will make an appointment in the first instance and will give 24 hours' notice to the occupants and owners of the intention to inspect the property.

Powers of entry allow an officer, at any reasonable time, to enter a property to carry out an inspection and gather evidence, take someone with them, take appropriate equipment or materials and take any measurements, photographs, recordings and samples as necessary. In some cases, powers of entry will be used to carry out works.

The Council will exercise its statutory powers to gain entry without giving prior notice to investigate an alleged offence or to carry out a statutory duty where it is necessary to protect the health and safety of any person or to protect the environment without avoidable delay. Application will be made to a Magistrates Court for a warrant to enter the premises if necessary.

## 23. Housing immigration – inspections and accommodation certificates

When an immigration application is made to come to the UK, one of the documents that must be provided is a letter confirming:

- The property the applicant intends to live in has been inspected
- The property is of an acceptable for occupation
- The property will not become overcrowded if they live there

As this is not a statutory function, the Council will provide this service taking into consideration other operational demands. A fee will be payable in advance for the inspection and the letter<sup>27</sup>. The current fee is charged is given on our website and will be subject to annual review.

## 24. Delegated authority and competency of officers

All officers involved with the enforcement of legislation covered by this policy will be competent to perform their duties in accordance with the legislation and agreed internal procedures and will carry out continuous professional development to do so.

The Council has delegated the authority to serve notices under various Acts, including the Housing Act 2004, to the Head of Environment and Public Protection who has in turn delegated the service of some of these directly to enforcement officers. All notices will be served having regard to this delegation scheme.

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<sup>27</sup> <https://www.n-kesteven.gov.uk/residents/housing/help-for-private-renters-and-owners/safe-as-houses/tenants/immigration/houses/tenants/immigration/>



## 25. Feedback and review of this policy

This policy will be reviewed from time to time and refreshed should any changes in legislation or relevant codes of practice or guidance require it to be updated. The Council will publish this and our service standards on our website and welcomes and will respond to any comments on the content of the policy at any time. This policy and any updates or changes to it will be ratified in accordance with our constitution and changes will be listed in Appendix C.

Details of our general service standards and what you can expect from our officers can be found on our website. If an alleged offender is being prosecuted or subject to formal legal action then in most cases the court process has its own channels for legally challenging the action of the Council or the outcome, through a court appeal.

If a matter has not yet reached court or in any other case where a person is dissatisfied, see our Customer Feedback Policy for further advice on how to proceed<sup>28</sup>.

You can contact the Council by the following means:

**Address:** North Kesteven District Council Offices, Kesteven Street, Sleaford, Lincolnshire, NG34 7EF

**Email:** [safeashouses@n-kesteven.gov.uk](mailto:safeashouses@n-kesteven.gov.uk)

**Telephone:** 01529 414155

**Website:** [www.n-kesteven.gov.uk/safeashouses](http://www.n-kesteven.gov.uk/safeashouses)

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<sup>28</sup> See <https://www.n-kesteven.gov.uk/your-council/customer-feedback/>

## Appendix A - Civil Penalties

Prior to taking formal action against a relevant person, consideration will be given to current enforcement policies and the two stage test contained in the Code for Crown Prosecutors:

- The evidential test: that there is sufficient evidence to provide a realistic prospect of a conviction for each offence, having regard to any potential defence.
- The public interest test: that it is in the public interest to pursue legal sanction and what sanction would be the most appropriate given the circumstances.

At the conclusion of this decision making process, the Council may determine that one of the following outcomes is most appropriate:

- Pursue a prosecution for the offence(s)
- Impose a civil penalty
- Apply a simple caution
- Gather additional evidence so that it can be further considered
- Find resolution using informal methods
- Take no further action

If the Council decide that the imposition of a civil penalty is the most appropriate course of action, then the Council will determine the level of penalty based on the cumulative sum of penalties for each offence, plus the sum of penalties for any additional offences, plus a level of penalty determined by an impact scoring matrix, as shown in table 1.

**Table 1: Civil penalty level for Housing Act 2004 offences** (Column 1 + column 2 + column 3 = column 4).

<b>1</b>	<b>2</b>	<b>3</b>		<b>4</b>
<b>Offence specific penalties</b>	<b>Further penalties (if any)</b>	<b>Table 3 impact matrix score</b>	<b>Level of penalty</b>	<b>Cumulative total</b>
<i>Total for each penalty shown in Table 2, column A</i>	Total for each penalty shown in <b>Table 2, columns B and / or C</b>	60 - 110	£1,000	Level of civil penalty to be applied (maximum £30,000)
		120 - 170	£5,000	
		180 - 230	£10,000	
		240	£20,000	

**Table 2: Offence specific penalty and other penalties**

Section	Penalty imposed for: Column A	A amount	Penalty imposed where: Column B	B amount	Penalty imposed Column CC where:	amount
<b>s.30</b>	Non-compliance with improvement notice.	<b>£500</b>	There are 2 or more category 1 hazards.	<b>£2,000</b>	Where there are 3 or more high scoring category 2 hazards. <sup>29</sup>	<b>£1,000</b>
<b>s.72</b>	Failure to obtain a property licence.	<b>£10,000</b>	The licence holder/manager permits more persons or households to occupy than authorised by the licence.	<b>£2,000</b>	The HMO is licenced under this section and there is a breach of licence conditions (penalty per breach).	<b>£1,000</b>
<b>s.95</b>	Failure to obtain a property licence. <sup>30</sup>	<b>£3,000</b>	The HMO is licenced under this section and there is a breach of licence conditions (penalty per breach).	<b>£1,000</b>		
<b>s.139</b>	Non-compliance with an overcrowding notice.	<b>£500</b>	Penalty added for every person the property is overcrowded by.	<b>£200</b>		

<sup>29</sup> A high scoring category 2 hazard is defined as a hazard achieving a score rating of D or E under the HHSRS

<sup>30</sup> NKDC does not operate an additional property licensing scheme. The implementation of such a scheme will be in accordance with local policy and statutory requirement

<b>s.234</b>	Failure to comply with management regulations in respect of HMOs (penalty per breach).	<b>£500</b>				
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Private Sector Housing Enforcement Policy

**Table 3: Impacts scoring matrix**

Answer each of the questions 1 – 5 below and apply the score shown in the column header.

<b>Score</b>	<b>10</b>	<b>20</b>	<b>30</b>	<b>40</b>
<b>1</b> <b>Severity of harm or potential harm caused x 2 (the relevant column score is double)</b>	<b>Low</b> No harm caused. Potential harm unchanged in HHSRS assessment. Previous/current occupant not in vulnerable category.	<b>Moderate</b> Moderate level health risk(s) to relevant persons. Previous/current occupant in vulnerable category.	<b>High</b> High level health risk(s) to relevant persons. Potential harm outcome increased in HHSRS assessment. Previous/current occupant in vulnerable category. Occupants affected frequently or by occasional high impact occurrences.	<b>Severe</b> High level of health risk(s) to relevant persons. Previous/current occupant in vulnerable category. Multiple occupants at risk. Potential harm outcome increase in HHSRS assessment. Occupants are severely and/or continually effected.
<b>2</b> <b>Number of properties owned/managed</b>	1-2	3-4	5-8	8+
<b>3</b> <b>Enforcement history</b>	No previous enforcement history.	1 previous enforcement notice served. Moderate severity.	1 or more enforcement notice served previously. Moderate to large severity.	Serial offender. Multiple enforcement notices served previously. Moderate to large severity.

4	<b>Removal of financial incentive</b>	Little or no income received	Low income received	Moderate income received	High income received
5	<b>Deterrence and prevention</b>	High confidence that penalty will deter repeat offence.	Medium confidence that penalty will deter repeat offence.	Low confidence that penalty will deter repeat offence.	No confidence that penalty will deter repeat offence.

### Table 3 guidance

The principle aim of imposing a financial penalty on landlords and or agents is to help prevent the exposure of tenants to health risks as a consequence of poor housing conditions which are in the control of their landlord or agent. It is for this reason a weighted score has been applied to the severity of harm outcome (question 1).

The number of properties owned by the landlord or managed by the agent will be indicative of their culpability in respect of the offence. It is assumed that a person owning, managing or letting properties is aware of any legal responsibilities or obligations.

In consideration of enforcement history, cases which were closed within the previous 7 years will be used in determination of this question.

The term 'serial offender' will be applied at the discretion of the Council in consideration of the overall number of property enforcement-related issues brought to the attention of the Council in respect of the person/company over the previous 7 years. Issues believed by the Council to be false or malicious will not be taken into account.

The investigation of a relevant person's/company's financial means will involve using all investigatory powers available to the Council and will take into consideration all assets including personal assets both within and outside of the district.

In determination of the confidence level that the penalty will act as a deterrent, this will be to deter both the relevant person/company and other persons in the business of letting properties in the area from causing offences under the Act. Council records and First-tier Tribunal cases will be considered and a written justification retained on our record for future reference.

A person in a vulnerable category is defined as someone who forms part of a vulnerable group under the HHSRS relating to the hazard(s) present in the property, or an occupant or group of occupants considered by the Council to be at particular risk of harm that the offender ought to have regard to.

The class of harm/health risks is defined as a physical or mental illness or injury that corresponds to one of the four classes of harm under Schedule 2 of the Housing Health and Safety Rating System (England) Regulations 2005. These four classes of harm will be used in consideration of both the actual or potential severity of harm and justification of that calculation in respect of the scoring matrix and will be held within the Council's records.

The financial circumstances of an individual/company will enable the Council to both determine the ability of the relevant person/company to pay the penalty and ensure the level of the penalty will act as a deterrent against the occurrence of future offences. In calculation of an offender's income level, the national average gross income level will be considered a moderate income, and 10% increments above/below will determine their level of income for the purpose of the scoring matrix. If the Council has insufficient information to make a determination of the financial circumstances of the offender, it may make such a determination as it thinks fit. Where an offender can demonstrate that their income is less than £400 per week by providing sufficient documented evidence of their income, the overall financial penalty will be reduced by 50%, subject to the discretion of the Council.

## **Appendix B – Smoke and CO alarm**

### **Legislative background**

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force on 1st October 2015 and introduced the following duties for “relevant landlords” when premises are occupied under a “specified tenancy”:

- a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation; and
- a carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and
- checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

Where the Council has reasonable grounds to believe that a relevant landlord is in breach of one or more of these duties, the Council will serve a remedial notice on the landlord. Reasonable grounds include evidence from an officer of the Council, Lincolnshire Fire and Rescue, Lincolnshire Police etc. The Council will take a staged approach, in line with our Corporate Enforcement Policy, giving the landlord 7 days to comply where there is no history of non-compliance. If there is a history of non-compliance or compliance is not achieved within 7 days a remedial notice will be served.

Where a remedial notice has been served and the Council is satisfied on the balance of probabilities that the landlord on whom a remedial notice was served has failed to take the remedial action specified in the notice within the specified period, the Council will (where the occupier consents) arrange for the remedial action to be undertaken and will require the landlord to pay a penalty charge.

### **Principles followed in determining the amount of Penalty Charge**

The purpose is to protect the safety of residents in rented accommodation. Where legislation is not complied with the financial penalty aims to:

- Change the behaviour of the landlord and deter future non-compliance;
- Eliminate any financial gain associated with non-compliance;
- Be proportionate (giving consideration to seriousness, past performance; risk and relevant government guidance); and
- Reimburse the Council for costs incurred in enforcement.

### **Penalty Charge**

The Regulations allow a civil penalty of up to £5,000 to be imposed on landlords who fail to comply with a remedial notice. Having regard to proportionality and the Corporate Enforcement Policy, a lesser penalty will be merited on the occasion of a first offence and that prompt payment of the penalty on that first occasion should attract a reduced penalty in recognition of early admission of liability.

However, repeat offences shall attract a higher penalty in view of an offenders continuing disregard for the legal requirements and tenant safety.

The level of penalty covers the cost of all works in default, officer costs, inspections and administration, and on a basic cost recovery basis. In addition to this an appropriate and proportionate penalty fine will be levied.

### **Level of Penalty Charge**

	<b>Penalty charge</b>	<b>Discount for payment within 14 days</b>
First Offence	£700	£200
Second Offence	£2500	None
Third and Subsequent Offences	£5000	None

### **Recovery of Penalty Charge**

The Council may recover the penalty charge as laid out in the Regulations on the order of a Court, as if payable under a Court Order.

### **Appeals in relation to a penalty charge notice**

The landlord may request in writing, in a period that must not be less than 28 days beginning with the day on which the penalty notice was served, that the Council review the penalty charge notice. The Council will consider any representation and decide whether to confirm, vary or withdraw the penalty charge notice. This review will be carried out by the Head of Environment and Public Protection. In the event of an appeal the penalty notice will be suspended until such time the matter has been reviewed.

A landlord who is served with a notice confirming or varying a penalty charge notice may appeal to the First Tier Tribunal against the Council's decision.



**Appendix C – Policy revisions**

	Date	Revisions
Final Version		n/a
Revision A	2023	Fundamental review of this policy

