



PRCC.34 15/16

Prosperous Communities  
Committee

8 December 2015

**D**

**Subject: Housing Enforcement Policy Review**

Report by:

Chief Operating Officer

Contact Officer:

Andy Gray  
Housing and Communities Team Manager  
01427 675195  
Andy.gray@west-lindsey.gov.uk

Purpose / Summary:

To provide elected members with a reviewed and up to date enforcement policy that includes the relevant legislation amendments

**RECOMMENDATION(S):**

Elected Members are asked to:

- a) Note the report**
- b) Approve the housing enforcement policy**
- c) Approve the statement of principles in regards to the The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 as set out Appendix 2 (b)**
- d) Request that Corporate Policy and Resources Committee approve and RECOMMEND to Full Council the fees and charges as set out in Appendix 1 and within the policy at Appendix 2 (a)**

**IMPLICATIONS**

**Legal:** the amendments to the housing enforcement policy are in line with approved legislation. Further information on each specific element of the legislation can be found here [www.legislation.gov.uk](http://www.legislation.gov.uk) .

The monetary penalties within this enforcement policy can be appealed and challenged therefore the risk of increased legal costs is increased.

**Financial : FIN/92/16**

The amendments to the policy have the following financial impacts:

Mobile Homes Act 2013: the Council will be able to recover costs related to enforcement action that are above and beyond its fees policy for these sites.

Redress Schemes: the Council is able to issue a fine for non-compliance of up to £5000.

Smoke and Carbon Monoxide Alarms: the Council will be able to issue a penalty charge notice of up to £5000. The Council will also have to carry out remedial work at its own cost, prior to seeking recovery of the penalty charge notice.

These costs, fines and penalty charge notices will be recovered via the debtor process and in line with the enforcement policy.

**Staffing :** it is expected that work within the Mobile Homes Act 2013 and redress schemes will be resourced within the existing structure.

The level of resource required to ensure compliance with smoke and carbon monoxide alarm regulations is unknown. This will be monitored and further information brought to the relevant committees should additional resources be needed.

It is expected that an arrangement with Lincolnshire Fire and Rescue service for the installation of alarms will be formalised over the coming months across the County.

**Equality and Diversity including Human Rights :**

The policy has been through the initial Equality Impact Assessment process internally and at this stage it does not require a full impact assessment. The policy will be monitored and reviewed internally on a regular basis to ensure that it meets legislative requirements. Any reviews will be accompanied by the relevant equality impact assessment.

**Risk Assessment :**

Remedial Action : where remedial action is required, the Council will be required to fund the works and recover any monies via the debtor process or via formal prosecution. As per any cost recovery action this could be subject to appeal or challenge or non-payment.

Non compliance with legislation: by not making provision for these requirements within the policy the Council may be subject to challenge and may also fall short in regards to carrying out statutory duties.

**Climate Related Risks and Opportunities :**

Not applicable

**Title and Location of any Background Papers used in the preparation of this report:**

Not applicable

**Call in and Urgency:**

**Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?**

*i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)*

**Yes**

**No**

**Key Decision:**

*A matter which affects two or more wards, or has significant financial implications*

**Yes**

**No**

## **Housing Enforcement Policy Review**

### **1. Background**

The latest version of the Housing Enforcement Policy was approved by Full Council on the 27<sup>th</sup> January 2014. The policy has now been reviewed to include additional legislation and this report provides an overview of the key amendments that have been made. The policy will continue to be reviewed on a biannual basis or at such time that legislation is introduced or amended.

This policy, alongside the Corporate Enforcement Policy, outlines how the council will use appropriate enforcement powers to ensure that all owners comply with their statutory obligations and that the Council is fair in its decision making and takes the appropriate course of action.

## **2. Amendments**

There are three key pieces of legislation that are now reflected within the housing enforcement policy. These are the following:

- The Mobile Homes Act 2013
- Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

## **3. The Mobile Homes Act 2013**

- 3.1 The Caravan Sites and Control of Development Act 1960, as amended by the Mobile Homes Act 2013, authorises local authorities to serve enforcement notices and to carry out works in default to remedy breaches of site licence conditions
- 3.2 Where appropriate, the council will also seek to recover expenses incurred in carrying out enforcement action:
- In taking action following conviction of the site owner for failure to carry out actions required by a compliance notice; or
  - In taking emergency remedial action where there is an imminent risk of serious harm to any person on the site as a result of the site owner's failure to comply with licence conditions
  - Where a compliance notice is served and the owner does not comply, the Council can choose to prosecute the owner. If the prosecution is successful the council can then choose to complete works in default.
- 3.3 As part of the requirements of the Mobile Homes Act 2013, an annual inspection of each residential Mobile Home site is undertaken by the Council. The Council also has a fees and charges policy, which covers the costs of administering the requirements of the Mobile Homes Act 2013. The first annual round of inspections has brought about no enforcement issues.

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

- 4.1 There is a legal requirement for all lettings agents and property managers in England to have joined a Government-approved redress scheme by 1 October 2014. This is as a result of the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014.
- 4.2 Where the Council is satisfied, on the balance of probabilities, that a person is involved in letting and management as a business and is not registered with a scheme, the Council will issue a fine.
- 4.3 The proposed fine will be based on the following principles:

- Warning letter issued and complied with in 14 days, prior to any Notice of Intent being served – No financial penalty
- Warning letter not complied with, single non-compliance – Notice of Intent served to issue £1000 fine
- Warning letter not complied with, more than one non-compliance – Notice of intent served to issue £2500 fine
- Warning letter not complied with, multiple and persistent non-compliance and/or complaints received about agents conduct – Notice of Intent served to issue £5000 fine.

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

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

4.4 The initial work undertaken by Officers suggests that the majority of agents are registered with a redress scheme. Should this element of the policy be approved further work will be undertaken to review all relevant agents within the district and fines will be issued where appropriate.

## **5. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

5.1 From the 1<sup>st</sup> of October 2015 Private sector landlords are required to ensure that at least one smoke alarm is installed on every storey of their rented property and that a carbon monoxide alarm is installed in any room containing a solid fuel burning appliance.

5.2 The Council now has a duty to serve notice on any landlords who are not complying with this requirement and request that they complete the relevant works. The Council is now also required to carry out the relevant remedial works within properties should a landlord not comply with the request.

5.3 Where a landlord has not complied with the Councils request and remedial works are required the Council will issue a civil penalty of up to £5,000. This charge seeks to recover the costs that have been incurred by the Council and in addition, gives the landlord a monetary penalty.

5.4 The level of civil penalty that will be issued is shown in appendix 1. In summary:

- Should a landlord fail to comply with an initial request the Council will impose a penalty of £1000. This will be made up of £500 officer costs, £300 contractor costs and a £200 monetary penalty

- This fine will then be increased depending on the landlords previous convictions or offences in relation to this order or the Housing Act and the type or condition of the property in which the offence has been committed.
  - It is proposed that the maximum fine that can be imposed is around £4,600. This will be issued where a landlord committing the offence fulfils all of the criteria shown within appendix 1.
- 5.5 The Council is also required to publish a statement of principles in regards to this particular order which explains how the level of civil penalty has determined. This statement of principles is shown within the revised housing enforcement policy (as appendix B) in appendix 2 of this report.
- 5.6 It is likely that the introduction of this legislation will lead to increased enforcement activity within the Housing and Communities Team. Any increase will need to be closely monitored to ensure the necessary capacity is in place to deal with it. Should additional capacity be required, this will be requested within a future committee report.

## **6. Recommendations**

Elected members are asked to :

- a) Note the report
- b) Approve the housing enforcement policy
- c) Approve the statement of principles in regards to the The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 as set out Appendix 2 (b)
- d) Request that Policy and Resources Committee approve and RECOMMENDED to Full Council the fees and charges as set out in Appendix 1 and within the policy at Appendix 2 (a)

## Appendix 1:

<b>Example Breakdown of Smoke and Carbon Monoxide Alarm Regulations 2015 Enforcement Costs</b>				
		<b>Officer</b>		<b>Manager</b>
<b>Task</b>	<b>Estimated Time (hours)</b>	<b>£49.00</b>	<b>Time (mins)</b>	<b>£59.00</b>
General admin, ensuring notice and procedures are in place and up to date	0.5	£24.50		
Issuing of informal letter	0.25	£12.25		
Receipt of initial complaint	0.25	£12.25		
Investigatory work	1	£49.00		
Issuing of remedial notice	1.5	£73.50	0.25	£14.75
Checking compliance with remedial notice, including site inspection	2	£98.00		
Arranging for contractor to visit and carry out work	1	£49.00		
Arranging for contractor payment	0.5	£24.50		
Preparing and serving of a Penalty Charge Notice	2	£98.00	0.5	£29.50
Debtor liaison for collection of Penalty Charge Notice	0.5	£24.50		
<i>Sub - total (to be charged in all cases)</i>	9.5	£465.50	0.75	£44.25
		<b>Total Officer Costs</b>		<b>£509.75</b>
<b>Cost of contractor to fit alarm (costs cannot be directly recovered must be via PCN)</b>				
Contractor labour cost		£100.00		
Smoke Alarm installation or repair cost (average estimate)		£150.00		
Carbon Monoxide Alarm installation or repair cost (per alarm)		£50.00		
<b>Total Contractor Cost</b>				<b>£300.00</b>
<b>Monetary Penalty</b>				
The failure on the landlords behalf to complete the required works within the period given.		£200		
Previous unspent conviction or WID specifically in relation to the owners role as a landlord		£1,000		
Previous remedial action under Smoke Alarm and CO legislation or by the Fire and Rescue Service		£1,000		
<i>The type or condition of property in which the offence has been committed</i>				
each additional storey above or below ground level (e.g. 2 storey house is an additional £100)		£100		
no clear direct means of escape		£500		
Increased risk of ignition or spread of fire (e.g. poor electrics, open fires etc)		£500		
People identified in the Lacors Fire Safety Guidance 2009 as high risk including elderly, disabled, drug or alcohol dependant and children		£500		
<b>Total Monetary Penalty</b>				<b>£3,800</b>
<b>Total Maximum Fine</b>				<b>£4,609.75</b>

# Housing Enforcement Policy



## **Strategic Growth Service - Housing Enforcement Policy**

### **1. Background**

The Council aims to ensure that all citizens of West Lindsey have a home that is safe, secure, dry and not overcrowded. We recognise that a thriving housing market is essential for us to achieve this aim, and will support the majority of landlords and property owners who co-operate with us. This policy, alongside the Corporate Enforcement Policy, outlines how the council will use appropriate enforcement powers to ensure that all owners comply with their statutory obligations.

### **2. Definition for the purpose of the Policy**

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

### **3. Policy Statement**

The Council will use all available and appropriate legislation to ensure that the housing stock in West Lindsey is safe, maintained in good repair and well

managed. The Council will also use appropriate legislative powers to improve housing standards, reduce the impact of empty homes, and to ensure dwellings are not a statutory nuisance.

Where we take enforcement action to gain compliance with the law, it will be proportionate, consistent, targeted and transparent.

#### **4. Statutory Obligations**

The Council has a statutory duty to take action to remove Category 1 Hazards as per the Housing Health and Safety Rating System (HHSRS) and conditions that are a statutory nuisance in dwellings. The Council must also run a licensing scheme for certain types of high risk houses in multiple occupation (HMO). Various acts of Parliament also give the Council discretionary powers to resolve unsatisfactory conditions in houses, HMOs and flats, and to reduce the impact of long term empty properties. This policy summarises how the Council will satisfy its legal duties and responsibilities.

The Council is fully committed to being fair, independent and objective. In particular, all officers will serve the community equally and fairly, in accordance with our generic Equality Policy.

The Council is a public authority for the Human Rights Act 1998 and will apply the principles of the European Convention on Human Rights under the Act.

#### **5. Policy Implementation**

Enforcement options

In deciding the course of enforcement it will take, the Council will have regard to circumstances including, but not restricted to, those below:

- The statutory obligations of the Council
- The seriousness of the offence
- The general record of the offender
- The consequences of non-compliance
- The frequency of the offence
- Public interest and concern
- The likely effectiveness of the various enforcement options
- Whether the landlord is a member of a private sector accreditation scheme.
- Whether grant funding has been paid to provide or repair the item or element concerned
- The views of tenants and occupiers
- The views of other organisations including the police, fire and rescue service, social services etc.

- Whether the property needs to be licensed under a mandatory, additional or selective licensing scheme.
- Whether empty homes have been identified as a local priority.
- Whether the tenant has made a written request to the landlord for works to be completed and the landlord has failed to do so in a reasonable timescale
- The effect on a tenant's security of tenure of serving a hazard awareness notice or improvement notice

## 5.1 Informal Action

Informal action may include:

- Offering advice
- Verbal warning and requests for action
- Written correspondence
- The removal of the landlord from an accreditation scheme

The circumstances in which informal action may be appropriate include:

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

Where action must be taken to deal with a Category 1 Hazard, or conditions are prejudicial to health as defined by Section 79(1) of the Environmental Protection Act 1990, the Council will not be limited to informal enforcement methods.

Officers taking any action will distinguish between legal requirements and matters which are recommended as good practice.

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

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

If informal methods of enforcement are unsuccessful, formal action will be taken.

## **5.2 Formal Enforcement**

Formal action may include:

- Action under the provisions of Part 1 of the Housing Act 2004 to:
  - Serve an improvement notice under section 11
  - Serve a suspended improvement notice under section 14
  - Make a prohibition order under section 20
  - Make a suspended prohibition order under section 23
  - Serve a hazard awareness notice in accordance with section 28
  - Take emergency remedial action under section 40 or
  - Make an emergency prohibition order under section 43;
- The refusal to grant or the revocation of a licence under Parts 2 & 3 of the Housing Act 2004. All matters relating to selective licensing under Part 3 of the Housing Act 2004 and the factors affecting decisions to grant a licence or otherwise will be laid out in the designation of any scheme that is made.
- The making of management orders under Part 4 of the Housing Act 2004
- The making of orders under the provisions of the Housing Act 1985, as amended
- The service of an abatement notice under the Environmental Protection Act 1990
- The service of Statutory Notices under the provisions of other legislation, including but not limited to the Prevention of Damage by Pests Act 1949 and the Local Government (Miscellaneous Provisions) Act 1982
- The making of a Compulsory Purchase Order under the Housing Act 1985 or other legislation
- Works in default of completion by an owner, agent, person responsible, manager or occupier
- Simple caution
- Prosecution

### **Statutory Notices and Orders**

The Council will normally serve Statutory Notices or Orders where:

- Conditions are present which are a Category 1 Hazard
- Conditions are present which are a Category 2 Hazard of Band D & E

- Conditions are prejudicial to health or a nuisance
- Officers are not confident that the recipient will respond
- Where breach of a statutory requirement is evident
- The owner has previously not complied with informal actions
- Standards are poor and managers are not aware of statutory requirements
- Though the council intends to prosecute, it also needs to take effective action quickly to remedy serious or deteriorating conditions
- A property, whether occupied or not, is having a detrimental impact on the neighbourhood
- Conditions are so severe that they justify immediate action.
- Where a breach of a site licence or condition is found

Demolition, Compulsory Purchase and Prohibition Orders will only be made by decision of the Council. The decision to make Emergency Prohibition Orders will only be taken by the Chief Operating Officer, or equivalent post in line with the Constitution.

### **Level of Enforcement**

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

- The current occupiers
- Regular visitors
- How often the tenants or occupants change
- The risk of excluding vulnerable groups of people from the private rented sector or owner occupation.
- The size, type and location of the property.

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

The Council will consider all requests to vary or revoke an improvement notice or prohibition order having regard to matters including, but not restricted to, the following:

- The views of the person receiving the notice (the recipient)
- The views of tenants
- The views of Lincolnshire Fire and Rescue Service, where appropriate
- The risk that the hazard presents

- How confident officers are that the recipient will respond
- The amount, quality and speed of completion of any works taken to deal with deficiencies and hazards specified in the notice or order
- Whether the recipient has previously complied with informal and formal actions
- The cost of any works compared to the benefit that they give
- Any more unexpected works which become clear during the course of remedial works

### **Simple Caution**

A simple caution may be considered where the criteria for a prosecution are satisfied, but where the offence is a first time offence of a less serious nature, having regard to Home Office Circular 18/94.

Only an appropriately authorised senior manager may issue a simple caution, with the agreement of the Chief Operating Officer, or equivalent post in line with the Constitution.

When a person turns down the offer of a simple caution, the Council will need to consider taking alternative enforcement action. In the vast majority of cases this will mean a prosecution.

### **Prosecution**

Prosecution will, in general, only be taken against those persons or organisations that allow, or are responsible for, a serious or obvious breach of the law, who do not comply with the requirements of a Statutory Notice or Order, or who deliberately try to get in the way of an officer of the Council.

The decision to prosecute will have regard to the guidance contained in the Code for Crown Prosecutors and a prosecution will only go ahead if there is enough evidence to make conviction likely, and if such a prosecution will be in the public interest. Before recommending prosecution the relevant officer shall consult the Chief Operating Officer, or equivalent post in line with the Constitution.

Circumstances where prosecution is more appropriate than all other forms of action include, but are not exclusively, where:

- There is obvious disregard for the law or the requirements of a Statutory Notice or Order
- Breaking the law gives a financial advantage, or makes the law-abiding worse off than those who disregard the law
- Someone seems to have carelessly paid no attention to the health and safety of persons likely to be affected

- There have been repeated breaches of law in an organisation or several of its branches, and it appears that the person responsible does not seem willing or able to deal effectively with these
- A particular type of offence is widespread in an area
- A serious incident has happened because of a substantial breaking of the law
- A particular failure to comply has serious public harm
- It may be in the public interest to test how a court understands a particular part of legislation
- Someone has deliberately stopped officers carrying out their lawful duties. Where officers are assaulted, the Council will seek prosecution of the offenders
- False information has been supplied, or there has been an intention to deceive
- Having examined all the circumstances, it is considered reasonable to do so

### **Works in default**

Where there is a failure to comply with a Statutory Notice the Council may, if it is in the interest of the tenants or others, carry out any outstanding works in default.

Where there is a statutory duty to undertake works in default, they will be carried out.

The Council will recharge the cost of carrying out such works with the Council's costs and officer time included, and if necessary recover these as a charge against the property or through the Council's recovery services. This could include enforced sale of the property to recover a Local Land Charge under the Law of Property Act 1925 where this is considered to be in the public interest.

### **Management Orders**

The Council may make a Management Order under the provisions of Part 4 of the Housing Act 2004, relating to licensable properties as defined by Parts 2 & 3 or long term empty dwellings. It may apply to the First Tier Tribunal (Property Chamber) for an interim management order in other prescribed circumstances.

When Management Orders are used, the Council effectively takes over management of the HMO, house or flat. They will normally only be used as a last resort and if no other enforcement power is effective.

The Officer must discuss considering a Management Order with the Chief Operating Officer, or equivalent post, or their duly appointed

representative. Only the Chief Operating Officer, or equivalent post in line with the Constitution can make the decision to make a Management Order.

### **5.3 The Recovery of Costs and Expenses**

The Council reserves the right, in appropriate circumstances, to charge and recover its reasonable costs in taking the most appropriate course of action, as allowed under Sections 49 and 50 of the Housing Act 2004. Costs and expenses will also be recovered where permitted in other legislation.

The Council will normally charge where:

- A formal notice is required to remove a serious threat to health and safety, unless the threat arose because of circumstances outside the control of the person receiving the notice, order or action, and/or
- There is evidence that the person receiving the notice has failed to comply before with the requirements of the Housing Acts or other housing related legislation, and/or
- The person has not taken adequate action in response to the Council's informal requests to take action or do works.

The charges made will be based on the cost to the council of taking the enforcement action.

If a House in Multiple Occupation requires a licence under Part 2 of the Housing Act 2004, a fee will be charged when the licence is determined.

See appendix A for a list of chargeable items. The council will if necessary recover these as a charge against the property or through the Council's recovery services.

Any change from this policy must be exceptional and agreed, in advance, by the appropriate Lead Officer. However, the Council will not normally charge a fee where it serves a Hazard Awareness Notice.

## **6. The Licensing of Houses in Multiple Occupation**

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

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

The building is occupied by more than one household:



- as their only or main residence
- as a refuge for people escaping domestic violence
- by students during term time, or
- For other purposes prescribed by the government.

A household is:

- A family (including single people, couples and same sex couples)
- Other relationships, such as fostering, carers and domestic staff.

## **6.1 HMO Licence Applications**

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

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

An application for a HMO licence under Part 2 of the Housing Act 2004 must be made in writing on a form supplied by West Lindsey District Council, or online on the council's website, and must be accompanied by specified documents.

The council may serve a Temporary Exemption Notice where a person having control of, or managing, a licensable HMO notifies the council of their intention to take steps to make the property no longer a licensable HMO.

## **6.2 Standards for Licenced HMOs.**

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

- The house is reasonably suitable for occupation by the number of persons and households specified in the application or the licence
- The licence holder is a fit and proper person and is the most appropriate person to hold the licence, which will usually be the person having control
- The manager of the house is the person having control of the house or their agent or employee, and is a fit and proper person
- The management arrangements for the house are satisfactory.

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

- The requirements of the Housing Act 2004 Part 2 and any Statutory Instruments made under it, including:
- The prescribed standards for the provision of bathrooms, WCs, kitchens and laundry amenities.

- Any contravention of the law by the applicant, proposed licence holder or manager.
- Whether any persons involved in the management of the HMO are competent, fit and proper, and whether the management structures and financial arrangements are adequate

The council may impose licence conditions:

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

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

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

An HMO licence may be varied or revoked:

- with the agreement of the licence holder,
- where there has been a breach of the licence conditions
- where the licence holder or manager is no longer considered to be a fit and proper person
- where the building ceases to be an HMO, or
- where the council would not then issue a licence for the HMO if an application were made at that time, due to structural reasons.

## **7. The Mobile Homes Act 2013**

The Caravan Sites and Control of Development Act 1960, as amended by the Mobile Homes Act 2013, authorises local authorities to serve enforcement notices and to carry out works in default to remedy breaches of site licence conditions.

Where appropriate, the council will also seek to recover expenses incurred in carrying out enforcement action:

- In taking action following conviction of the site owner for failure to carry out actions required by a compliance notice; or
- In taking emergency remedial action where there is an imminent risk of serious harm to any person on the site as a result of the site owner's failure to comply with licence conditions

Where a compliance notice is served and the owner does not comply, the Council can choose to prosecute the owner. If the prosecution is successful the council can then choose to complete works in default.

The charges relating to the recovery of these expenses are detailed in appendix A.

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

There is a legal requirement for all lettings agents and property managers in England to have joined a Government-approved redress scheme by 1 October 2014. This is as a result of the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014. Where the Council is satisfied, on the balance of probabilities, that a person is involved in letting and management as a business and is not registered with a scheme, the Council will issue a fine. The proposed fine in regards to this order is detailed in Appendix C.

## **9. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

Private sector landlords are required to ensure that at least one smoke alarm is installed on every storey of their rented property and that a carbon monoxide alarm is installed in any room containing a solid fuel burning appliance.

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

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

The Council will issue a remedial notice in all cases of non-compliance and the landlord must comply with the notice within 28 days. If they do not, the Council will carry out the remedial action (where the occupier consents) to ensure the requirements in the regulations are met.

Where the landlord has no previous history of non-compliance, officers will consider the use of informal negotiation with the landlord to ensure that their obligations are met.

The Council will issue a civil penalty of up to £5,000 where a remedial notice is served and has issued a statement of principles for its Penalty Charge Notice, which is shown in appendix B.

## **10. Arrangements to Implement the Policy**

Officers implementing this policy will have regard to current national guidelines and local circumstances. Enforcement will only be undertaken by authorised officers. Only competent and suitably qualified and experienced officers will be so authorised, and their authority will reflect their competence, qualities and experience.

## **11. Standards**

West Lindsey District Council has customer service standards. In matters relating to housing enforcement, officers will:

- Respond to all urgent requests for service within 2 working days
- Acknowledge all non-urgent requests for service within 2 working days
- Respond to all non urgent requests for service within 10 working days
- Give tenants and occupiers clear advice about the extent of any action which the Council is able to take, and provide copies of any notices sent to the landlords
- Advise landlords and property owners of their legal responsibilities and, if the Council is taking enforcement action, advise exactly what is expected of them and any right of appeal
- Provide a courteous and helpful service
- Deal with any complaints in accordance with the complaints procedure available from the council's website or a member of staff.
- West Lindsey District Council is committed to equal opportunities and undertakes to deal with all sections of the community with fairness and equity

### **11.1 Openness**

We will provide information and advice in plain language on the legislation that we enforce and distribute this as widely as possible.

We will be open about how we work, consulting stakeholders.

### **11.2 Professionalism**

All our officers will identify themselves by name and will show proof of identity.

All members of the Private Sector Housing Team will maintain the highest standards of professional integrity and probity at all times. We will carry out our duties with honesty and respect for all sections of the community.

### **11.3 Complaints about the service**

We provide a well-publicised, effective and timely complaints procedure which is easily accessible to tenants, the public, landlords and agents.

In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely timescale involved.

### **11.4 Desirable Outcome**

The purpose of the Housing Enforcement Policy is to ensure the effective compliance with housing and public health legislation having regard, where

appropriate, to risk, while at the same time assisting owner occupiers, landlords, managing agents and tenants to meet their obligations.

## **12. Links with Other Policies**

This policy has links to;

- The Housing Assistance Policy (Regulatory Reform Order)
- The Corporate Enforcement Policy
- The Equality Policy

## **13. Evaluation**

This policy will be reviewed every year and at the time of any significant change of circumstances, changes to legislation, and local needs identified through consultation processes.

The Council will consult with residents, owners, agents and other interested parties affected by our service, so we can draw up clear standards regarding the level of service, performance to be provided and the development of this policy.

## **14. References**

### **Legislation**

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

### **Regulations and Orders**

- The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) 2006
- The Management of HMO (England) Regulations 2006
- The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007
- The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006, amended 2012
- The Housing (Interim Management Orders) (Prescribed Circumstances) (England) Order 2006
- Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004, SI No. 2595
- The Construction (Design and Management) Regulations 2007
- The Housing Health and Safety Rating System (England) Regulations 2005
- Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014.
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

### **Circulars and Guidance**

- Housing Health and Safety Rating System Enforcement Guidance: Housing Act 2004 Part 1 - housing conditions
- Housing Health and Safety Rating System Operating Guidance: Housing Act 2004 - guidance about inspections and assessment of hazards given under section 9, DCLG 2006
- Examples to Support the Housing Health and Safety Rating System V2, ODPM March 2004
- Lacors Housing - Fire Safety, Guidance on fire safety provisions for certain types of existing housing, July 2008
- Compulsory Purchase and the Crichel Down Rules, ODPM Circular 6/2004

## Appendix A

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

Officer actions for each notice will be fully documented.  
All fees are exclusive of VAT and interest may be charged where applicable.

Item	Basic Fee	Increments	Maximum
Mandatory HMO licence application	£450 for up to five units / bedrooms	£10 per additional unit	n/a
Mandatory HMO licence renewal	£450 for up to five units / bedrooms	£10 per additional unit	n/a
Hazard Awareness Notice	None		Nil
Improvement Notice	£150 for one hazard	£50 per additional hazard	£450
Emergency Remedial Action Notice (plus cost of works – see below)	£150 for one hazard	£50 per additional hazard	£450
Prohibition Order	£150 for one hazard	£50 per additional hazard	£450
Emergency Prohibition Order	£150 for one hazard	£50 per additional hazard	£450
Demolition Order	£150 for one hazard	£50 per additional hazard	£450
<b>NEW</b> *Immigration Procedure Inspection	£65 per inspection	Re-issue or duplication of letter £11.50	n/a
<b>NEW</b> *Mobile Homes Act 2013 – Compliance Notice	Hourly rate of relevant officers with on costs	n/a	n/a

	plus work in default costs of works		
<b>NEW*</b> Mobile Homes Act 2014 – Emergency Remedial Action Notice	Hourly rate of relevant officers with on costs plus work in default cost of works	n/a	n/a
<b>NEW*</b> Penalty Charge Notice (Smoke and Carbon Monoxide Alarm (England) Regulations 2015)	Up to £5,000. Issued as fine following non-compliance with Remedial Notice and subsequent remedial works		
<b>NEW*</b> Notice of Intent (Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014)	Up to £5,000. See appendix C	n/a	n/a
Works in default of any legislation or emergency remedial action	Cost of work plus hourly rate of officer with on costs	n/a	n/a



## **Appendix B**

### **Smoke and Carbon Monoxide Alarm Statement of Principles,**

This statement of principles is in relation to the “*The Smoke and Carbon Monoxide Alarm (England) Regulations 2015*”, which can be found here <http://www.legislation.gov.uk/id/uksi/2015/1693>

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

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

### **Payment of the Penalty Charge**

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

- If the local authority confirms or varies a PCN, it will inform the landlord that they can appeal to the First-tier tribunal.

## Appendix C

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

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

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

The three Government-approved redress schemes are:

- Ombudsman Services Property ([www.ombudsman.org/property.html](http://www.ombudsman.org/property.html))
- 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 agreed level of fine will be based on the following principles:

- Warning letter issued and complied within 14 days, prior to any Notice of Intent being served – No financial penalty
- Warning letter not complied with, single non-compliance – Notice of Intent served to issue £1000 fine
- Warning letter not complied with, more than one non-compliance – Notice of intent served to issue £2500 fine
- Warning letter not complied with, multiple and persistent non-compliance and/or complaints received about agents conduct – Notice of Intent served to issue £5000 fine.

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

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