

BIRMINGHAM CITY COUNCIL
REGULATION AND ENFORCEMENT
ENFORCEMENT POLICY

1 INTRODUCTION

1.1 The Regulatory Enforcement and Sanctions Act 2008 established The Local Better Regulation Office (LBRO). Over time this has evolved into Office for Product Safety and Standards (OPSS) and works with local authorities and others to take forward its responsibilities, including Primary Authority and Better Business for All. It is part of the Department for Business and Trade. The Act also imposed upon Regulation and Enforcement a duty to:

- (a) have regard to any guidance given to a Local Authority by OPSS,
 - (b) a duty to comply with guidance where we are directed to do so by OPSS, and
 - (c) a duty to have regard to any list of enforcement priorities published by OPSS.
- We are committed to doing so.

1.2 The Regulators Code (RC) provides a set of principles for Regulators to consider.

- (a) Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
- (b) Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.
- (c) Regulators should base their regulatory activities on risk.
- (d) Regulators should share information about compliance and risk.
- (e) Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
- (f) Regulators should ensure that their approach to their regulatory activities is transparent.

1.3 Section 6 of the Regulators' Code sets out an expectation that local authorities will ensure that their approach to their regulatory activities is transparent. This means we will publish our policy on how we intend to deliver regulation and what those affected can expect. We believe that our enforcement policy is clear, concise, transparent and fit for purpose. Included in our enforcement policy is the way we will deal with issues and what those regulated can expect.

1.4 The RC indicates that it is for each local authority to determine an approach to service standards that will work best for those it regulates and itself.

1.5 This policy commits Birmingham City Council's Regulation and Enforcement Division to good enforcement practice with effective procedures and clear policies.

Regulation and Enforcement Division includes the Licensing Service (including pavement licensing and highways enforcement), Environmental Health, Private Rented Sector (including property licensing), Trading Standards, the hosted England Illegal Money Lending Team, the Regional Investigation Team and incorporates the enforcement actions of the Waste Enforcement Unit and Community Safety Team.

1.6 Regulation and Enforcement's Enforcement Policy has been prepared with regard to the current principal legislation and statutory guidance including:

- The Regulatory Enforcement and Sanctions Act 2008 (The RES Act).
- Co-ordination of Regulatory Enforcement (Enforcement Action) Order 2009 SI665/2009 (The CRE Enforcement Order).
- Co-ordination of Regulatory Enforcement (Procedure for References to RD) Order 2009 SI670/2009 (The CRE BRDO Order).
- Legislative and Regulatory Reform Act 2006 (LRRRA).
- Legislative and Regulatory Reform (Regulatory Functions) Order 2007 Regulators' Code (RC).

1.7 This Policy has also been prepared having regard to:

- The Enforcement Concordat: Good Practice Guide for England and Wales and the Principles of Good Enforcement: Standards; Openness; Helpfulness; Complaints; Proportionality and Consistency; the Human Rights Act 1988 and the Code for Crown Prosecutors.
- The LRRRA Part 2 requires us also to have regard to the Principles of Good Regulation. We recognise that our regulatory activities should be carried out in a way which is:
 - (a) proportionate
 - (b) accountable
 - (c) consistent
 - (d) transparent and
 - (e) targeted (to situations which need action) when we exercise a regulatory function which for local authorities includes: Environmental Health; Trading Standards (including the Regional Investigations Team and the England Illegal Money Lending Team); Private Rented Sector (including property licensing); Licensing including pavement licensing and highways enforcement; Community Safety and Waste enforcement. We have had regard to the RC in the preparation of this policy.

2 WHAT THIS POLICY IS FOR

- 1.8 Regulation and Enforcement's primary function is to achieve regulatory compliance in order to protect the public, legitimate business, the environment and groups such as consumers, workers and tenants. However, we reserve the right to take enforcement action in some cases after compliance has been achieved if it is in the public interest to do so.
- 1.9 We recognise that prevention is better than cure, but where it becomes necessary to take formal enforcement action against a business, or member of the public, we will do so. There are a wide range of tools available to us as an enforcement agency. The actions we may take include:
- (a) No action.
 - (b) Informal Action and Advice.
 - (c) Fixed Penalty Notices.
 - (d) Penalty Charge Notices.
 - (e) Formal Notice
 - (f) Formal Order.
 - (g) Forfeiture Proceedings.
 - (h) Seizure of goods/equipment.
 - (i) Injunctive Actions and other Civil Sanctions.
 - (j) Refusal/Suspension/Revocation of a licence.
 - (k) Simple Caution.
 - (l) Civil Penalty
 - (m) Prosecution.
 - (n) Proceeds of Crime Applications.
- 1.10 When considering enforcement action, Regulation and Enforcement will, where appropriate and where reasonably practicable, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach. However, it must also be noted that legal processes dictated by statute will be applied in many instances where contraventions of legislation have been detected. Further this paragraph does not apply where immediate action is required to prevent or respond to a potential breach/contravention or where to do so is likely to defeat the purpose of the proposed enforcement action.
- 1.11 If you are a business operating in more than one local authority and you have chosen to have a registered Primary Authority Partnership under the RES Act we will, where required, comply with the agreement provisions for enforcement and

notify your Primary Authority of the enforcement action we propose to take. We may under that Act also refer the matter to RD if appropriate.

- 1.12 This policy is intended to provide guidance for enforcement officers, businesses, consumers and the public.

3 SCOPE OF THE POLICY

- 3.1 This Policy, where appropriate, applies to the legislation delegated to Regulation and Enforcement and enforced by authorised officers with delegated enforcement powers. These delegated powers are listed and reproduced within the Council's constitution. These can be found at: [the City Councils Constitution](#)

- 3.2 'Enforcement' includes any criminal or civil action taken by enforcement officers aimed at ensuring that individuals or businesses comply with the law.

- 3.3 For the purposes of the RES Act the term 'enforcement action' has been given a general statutory definition, which is:

- (a) Action to source compliance with a restriction, requirement or condition in relation to a breach or supposed breach
- (b) Action taken in connection with imposing a sanction for an act or omission; and
- (c) Action taken in connection with a statutory remedy for an act or omission.

- 3.4 A list of specific 'enforcement actions' is provided in Section 2 of this Policy. These actions also apply to businesses or organisations registered with a Primary Authority. In these cases, if we are proposing to take action against you and that action is one of those listed then, unless one of the permitted exceptions applies, we will be required to contact your Primary Authority and give notice of the enforcement action we propose to take against you.

- 3.5 By this document Regulation and Enforcement intends to enable enforcement officers to interpret and apply relevant legal requirements and enforcement policies fairly and consistently between like-regulated entities in similar situations. Regulation and enforcement also aim to ensure that its own enforcement officers interpret and apply their legal requirements and enforcement policies consistently and fairly.

- 3.6 In certain circumstances we will seek to raise awareness and increase compliance levels by publicising unlawful trade practices or criminal activity. Where appropriate the results of specific court cases may also be published. Court results

are placed on our website on the Traders Prosecuted page, which can be found at: <https://www.birmingham.gov.uk/traders>

4 HOW TO OBTAIN A COPY OF THE POLICY OR MAKE COMMENTS

4.1 This Policy is available on the Birmingham City Council website at: [The Enforcement Policy](#)

If you would like a paper copy of the Policy and/or you would like to comment on the Policy, please contact us through one of the following means:

- (a) E-mailing EH@birmingham.gov.uk
- (b) Emailing tradingstandards@birmingham.gov.uk
- (c) Emailing licensing@birmingham.gov.uk
- (d) Emailing PRS@birmingham.gov.uk
- (e) Emailing pl@birmingham.gov.uk
- (f) Writing to the Director Regulation and Enforcement, Units 1-3 Ashted Lock Way, Birmingham. B7 4AZ
- (g) Telephoning 0121 303 6121.

4.2 On request, this Policy will be made available on tape, in Braille or large type.

5 OUR APPROACH

5.1 Our principles are informed by a number of codes of practice and statute as well as the Regulators' Code (the Code), Enforcement Concordat and the Guidance of OPSS as to how to apply these documents.

5.2 We recognise that prevention is better than cure and our role, therefore, involves actively working with businesses to advise on and assist with compliance. However, where it becomes necessary to take formal enforcement action against a business, or individual, we will do so.

5.3 Where we consider that formal enforcement action is necessary, each case will be considered on its own merits.

5.4 However, there are general principles that apply to the way each case must be approached. These are set out in this Policy.

- 5.5 The approach of Regulation and Enforcement to the sanctions and penalties available to it will aim to:
- (a) Change the behaviour of the offender
 - (b) Change attitudes in society to offences which may not be serious in themselves, but which are widespread
 - (c) Eliminate any financial gain or benefit from non-compliance
 - (d) Be responsive and consider what is appropriate for the offender and regulatory issue which can include punishment and the public stigma that should be associated with a criminal conviction
 - (e) Be proportionate to the nature of the offence and the harm caused
 - (f) Restore the harm caused by regulatory non-compliance, where appropriate and
 - (g) Deter future non-compliance
 - (h) Comply with statutory requirements.
- 5.6 All enforcement decisions will be fair, independent and objective. They will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source.
- 5.7 Where possible, we will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss and its significance in making the decision to take formal action. This may include actual or potential harm or loss or the impact on the well-being of individuals or potential or actual harm to communities or the environment.
- 5.8 Where possible, we will endeavour to ensure that those regulated can seek advice from the service about potential non-compliance without automatically triggering enforcement action. Each matter will be considered on its own merits and will determine the action by the service.
- 5.9 Birmingham City Council is a public authority for the purposes of the Human Rights Act 1998. We will, therefore, apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 5.10 All enforcement activities, including investigations and formal actions, will always be conducted in compliance with the statutory powers of the officer and all other relevant legislation, including but not limited to the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996, the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000 and the Criminal Justice and Police Act 2001, and in accordance with any formal procedures and codes of

practice made under this legislation in so far as they relate to enforcement powers and responsibilities.

- 5.11 This Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Code. In certain instances, we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

6 NOTIFYING ALLEGED OFFENDERS

- 6.1 If we receive information (for example from a complainant) that may lead to formal enforcement action against a business or individual we will notify that business or individual as soon as is practicable of any intended enforcement action, unless this could impede an investigation or pose a safety risk to those concerned or the general public.
- 6.2 During the progression of enforcement investigations/actions, business proprietors or individuals and witnesses will be kept informed of progress. Confidentiality will be maintained and personal information about individuals will only be released to a Court when required and/or in accordance with the Data Protection Act 2018.

7 ENFORCEMENT ACTION

7.1 An Overview of the enforcement actions available

- 7.1.1 There are a large number of potential enforcement options. The level of the action taken varies from no action through to proceedings in Court. Examples of the main types of action that may be considered are shown below:

- (a) No action.
- (b) Informal Action and Advice.
- (c) Fixed Penalty Notices.
- (d) Penalty Charge Notices.
- (e) Formal Notice
- (f) Formal Order.
- (g) Forfeiture Proceedings.
- (h) Seizure or removal of goods/equipment.
- (i) Injunctive Actions and other Civil Sanctions.
- (j) Public Space Protection Order

- (k) Refusal/Suspension/Revocation of a licence (including with immediate effect).
- (l) Simple Caution.
- (m) Civil Penalty
- (n) Prosecution.
- (o) Proceeds of Crime Applications.

7.1.2 The order in which the enforcement actions are listed above is not necessarily in absolute order of escalating seriousness relative to each other. Regulation and Enforcement reserves the right to escalate its level of enforcement action, having regard to the criteria in paragraph 7.2 of this policy.

7.2 Deciding what level of action is appropriate

7.2.1 In assessing what enforcement action is necessary and proportionate, consideration will be given to, amongst other things:

- (a) The seriousness of the compliance failure.
- (b) The past and current performance of any business and/or individual concerned.
- (c) Any obstruction on the part of the offender.
- (d) The risks being controlled.
- (e) Statutory guidance.
- (f) Codes of Practice.
- (g) Any legal advice.
- (h) Policies and priorities of Government, Birmingham City Council and Birmingham City Council's Licensing and Public Protection Committee.
- (i) A person's age in relation to young people (termed 'juveniles') aged under 18.
- (j) The existence of a Primary Authority agreement.
- (k) Any duty of a local authority or statutory provisions

7.2.2 Certain enforcement action, such as the decision to Caution or pursue a civil penalty or to prosecute, is further and specifically informed by those matters set out below at paragraphs 7.14, 7.15 and 7.16.

7.2.3 The Risk Matrix in Appendix 1 to this policy will be used as a framework to support transparency and consistency of approach and decision making. For workplace health and safety, the Enforcement Management Model (EMM) is used to ensure that enforcement decisions are consistent.

7.2.4 Action is more likely to be taken if the following are of relevance:

- (a) Situations where it is evident that a vulnerable individual or vulnerable group has been exploited
- (b) Obstruction of authorised officers of the service in the lawful execution of their duties.
- (c) Offences involving deceptions, fraud or negligence.
- (d) Wilful disregard for the law.
- (e) Risk to public health /safety
- (f) Public nuisance
- (g) Categories of offences which create significant financial burden to the taxpayer or impact at a community-wide level or that undermine public/business confidence in the City.

7.3 An explanation of the enforcement action options

7.3.1 No Action

7.3.2 In certain circumstances, we may consider that no action is appropriate in the circumstances, such as where the offender is elderly and frail or is suffering from mental health issues or serious ill health, and formal action would seriously damage their wellbeing. In such cases we will advise the offender of the reasons for taking no action.

7.4 Informal Action and Advice

7.4.1 For minor breaches of the law we may give verbal or written advice. We will clearly identify any contraventions of the law and give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable and take into account the seriousness of the contravention and the implications of the non-compliance.

7.4.2 Sometimes we will advise offenders about 'good practice' but we will clearly distinguish between what they must do to comply with the law and what is advice only.

7.4.3 Failure to comply could result in an escalation of enforcement action.

7.5 Fixed Penalty Notices

7.5.1 Certain offences are subject to fixed penalty notices where prescribed by legislation. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may choose to administer a FPN on a first occasion, without issuing a warning. Failure to pay the FPN may lead to a prosecution.

7.6 Penalty Charge Notices

7.6.1 Penalty Charge Notices (PCN) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

7.7 **Failure to discharge a FPN and/ or a PCN**

7.7.1 A failure to pay a FPN or PCN is a material consideration for the purposes of deciding whether a prosecution will be taken or civil debt recovery commenced.

7.7.2 In order to maintain the integrity of this legislative regime and adherence to relevant statutory Codes of Practice, Regulation and Enforcement will consider an escalation of enforcement action. This will include consideration of a prosecution for the original offence under the primary legislation or consideration of civil action to recover the debt.

7.8 **Formal Notice**

7.8.1 Certain legislation allows notices to be served requiring offenders/relevant persons to take specific actions or cease certain activities. Notices may require activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed will be reasonable, take into account the seriousness of the contravention, the implications of the non-compliance and the appeal period for that notice.

7.8.2 All notices issued will include details of any applicable appeals procedures.

7.8.3 Certain types of notice allow works to be carried out in default. This means that if a notice is not complied with [a breach of the notice] we may carry out any necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then commence recovery action, through the courts, if necessary, against the person/business served with the notice, for any costs we incur in carrying out the work. Notwithstanding the default power, non-compliance with notices may lead to a prosecution.

7.9 **Formal Order (Housing)**

7.9.1 The Housing Acts 1985 and 2004 and regulations made beneath them allows orders to be served in respect of private rented sector properties and in some cases, owner occupied premises (Housing Act 1985, Section 17).

7.9.2 Orders are made on the relevant person/s and may require them to either take specific actions, cease specific actions or give the local authority management control of the property.

7.9.3 All orders issued will include details of any applicable appeal rights and procedures.

7.9.4 Certain types of order allow the local authority or it's appointed agent to collect rents and/or recover the costs of management of the property (including repair, maintenance and other incurred costs).

7.10 **Forfeiture Proceedings**

7.10.1 This procedure may be used in conjunction with the seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem. In appropriate circumstances, we will make an application for forfeiture to the Magistrates Courts.

7.11 **Removal or Seizure**

7.11.1 Certain legislation enables authorised enforcement officers to remove or seize goods, equipment or documents, for example, unsafe food, sound equipment that is being used to cause a statutory noise nuisance, unsafe products or any goods that may be required as evidence for possible future court proceedings. When we remove or seize goods we will give the person from whom the goods are taken an appropriate receipt and details of any applicable appeals and/or property return procedures.

7.12 **Injunctive Actions and Other Civil Sanctions**

7.12.1 In certain circumstances, for example, where offenders are repeatedly found guilty of similar offences or where it is considered that injunctive action is the most appropriate course of enforcement, then such actions may be used to deal with offenders, dangerous circumstances, or consumer/environmental/public health detriment.

7.12.2 Action under the Enterprise Act 2002- proceedings may be brought where an individual or organisation has acted in breach of community or domestic legislation with the effect of harming the collective interests of consumers. In most circumstances action will be considered where there have been persistent breaches or where there is significant consumer detriment. Action can range from:

- (a) Informal undertakings.
- (b) Formal undertakings.
- (c) Interim Orders.
- (d) Court Orders.

(e) Contempt Proceedings.

7.12.3 In certain circumstances Community Protection Notices (CPN's) or Criminal Behaviour Orders (CBO's) can be issued and obtained in respect of anti-social behaviour.

7.12.4 Where the non-compliance under investigation amounts to anti-social behaviour such as persistent targeting of an individual or a group of individuals in a particular area, or activity that is deemed detrimental to quality of life, a CPN or CBO may be sought or issued to stop the activity.

7.13 Public Space Protection Orders

7.13.1 Public Space Protection Orders are used, following consultation, to prohibit certain activities within identified public places or requires specified things to be done by persons carrying on specified activities in that area. These orders are introduced if:

- (i) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality; and
- (ii) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

A PSPO provides for restrictions to be placed on behaviour that apply to everyone in that locality (with the possible use of exemptions). Breach of a PSPO without a reasonable excuse is an offence.

7.14 Suspension and Revocation of a Licence

7.14.1 **Hackney Carriage and Private Hire Drivers** – the grounds for refusing to renew a licence, or for suspending or revoking a licence, are based on whether the driver has:

- (i) Been convicted of an offence involving dishonesty, indecency, drugs or violence;
- (ii) Been convicted of an offence under the Local Government (Miscellaneous Provisions) Act 1976;
- (iii) Failed to comply with a requirement of the Local Government (Miscellaneous Provisions) Act 1976; or
- (iv) Any other reasonable cause.

7.14.2 A Hackney Carriage or Private Hire Drivers' licence may also be suspended or revoked with immediate effect if such a decision is deemed necessary in the interests of public safety. No conviction is required for this action to be taken. Matters will be considered on the Civil Standard of proof – on the balance of probability.

7.14.3 **Premises Licences (Licensing Act 2003)** – where a review of a Premises Licence is sought under Section 51 of the Act the options available to the Licensing and Public Protection Committee are:

- (a) Modification of the conditions of the Licence.
- (b) Exclusion of licensable activity from the scope of the Licence.
- (c) Removal of the Designated Premises Supervisor.
- (d) Suspension of the Licence for a period not exceeding three months.
- (e) Revocation of the Licence.
- (f) Issue of a Warning Letter.
- (g) No action.

7.14.4 **Premises Licences (Gambling Act 2005)** – where a review of a Premises Licence is sought under Section 202 of the Act, the options available to the Licensing and Public Protection Committee are:

- (a) Revocation of the Licence.
- (b) Suspension of the Licence for a specified period not exceeding three months.
- (c) Exclusion of a condition attached to the Licence, under Section 168, or removal or amendment of an exclusion.
- (d) Additions, removal or amendment of a condition under Section 169.

7.14.5 **General Licensing** – where there is a breach of condition of Licence or Permit, upon hearing evidence, the Licensing Committee has the power to suspend, revoke or refuse to renew the Licence/Permit subject to the provisions of the legislation.

7.14.6 **Correctional Training Courses** – where a driver of a hackney carriage or a private hire vehicle has committed an offence that would be considered suitable for disposal by way of administering a Simple Caution or a FPN, we may in appropriate circumstances offer the driver the opportunity of attending a correctional training course at the driver's expense as an alternative to receiving the Simple Caution or FPN. The acceptance of a training course will not be cited as a formal sanction by the Council in the event of future legal proceedings against the individual, but the circumstances of the offence would remain relevant in terms of the individual's fitness to hold a licence.

7.14.7 **Licence in respect of private rented sector property** - A licence may be varied where it is considered that there has been a change of circumstances since the licence was granted. A licence will be revoked following a change in ownership, death of the licence holder or by agreement with the licence holder if the property is no longer licensable.

7.14.8 A licence may be revoked if the licence holder or manager is no longer deemed to be a fit and proper person or there have been other serious breaches, or repeated breaches of licence conditions.

7.14.9 **Pavement Licence** - If the local authority by which a pavement licence is granted or deemed to be granted considers that the licence-holder has breached any condition of the licence, the authority may revoke the licence, or serve a notice on the licence-holder requiring the taking of such steps to remedy the breach as are specified in the notice within such time as is so specified.

7.14.10 If a licence-holder on whom a notice is served fails to comply with the notice, the local authority may revoke the notice, or take the steps itself and recover the costs of doing so from the licence-holder.

7.14.11 A local authority by which a pavement licence is granted or deemed to be granted may also revoke the licence if it considers that some or all of the part of the relevant highway to which the licence relates has become unsuitable for any purpose in relation to which the licence was granted or deemed to be granted, or as a result of the licence:

(i) there is a risk to public health or safety,

(ii) anti-social behaviour or public nuisance is being caused or risks being caused, or

(iii) the highway is being obstructed (other than by anything done by the licence-holder pursuant to the licence),

or anything material stated by the licence-holder in their application was false or misleading, or the licence-holder did not comply with the duty in section 2(5) of the Act.

7.15 **Simple Caution**

7.15.1 In appropriate circumstances, where a prosecution would otherwise be justified, a Simple Caution may be administered. Simple Cautions will be used in accordance with current Guidelines, including the Director's Guidance on Charging issued by the Director of Public Prosecutions under section 37A of the Police and Criminal Evidence Act 1984.

7.15.2 A Simple Caution is an admission of guilt, but is not a form of sentence, nor is it a criminal conviction.

7.15.3 For a Simple Caution to be issued a number of criteria must be satisfied:

- (a) Sufficient evidence must be available to prove the case.
- (b) The offender must admit the offence.
- (c) It must be in the public interest to use a Simple Caution.
- (d) The offender must be 18 years or over.

7.15.4 We will also take into account whether the offender has received a simple caution within the last 2 years when determining whether a simple caution is appropriate for any subsequent offending.

7.15.5 If during the time the Simple Caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the Caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

7.15.6 The refusal of an offender to be cautioned does not preclude the matter being passed for prosecution. In fact, any such failure will be a material consideration when deciding whether the offender should then be prosecuted for that offence.

7.15.7 We take the view that offences of selling age restricted products to minors and other vulnerable persons have such a serious and adverse impact on the safety and wellbeing of the community that our presumption will always be to deal with them by way of formal action, meaning simple caution or prosecution and/or licence reviews. Where a sale of alcohol is made by someone who is not a personal licence holder, consideration will be given to administering a simple caution for a first offence.

7.15.8 Where a sale of alcohol is made by someone who is a personal licence holder, consideration will be given to dealing with the case by way of prosecution for a first offence. In every case we will consider the individual circumstances before making our decision.

7.16 **Civil Penalty**

7.16.1 The Housing and Planning Act 2016 section 126 and Schedule 9 amended the Housing Act 2004 and introduced the ability for Local Housing Authorities to allow financial penalties (civil penalties) of up to £30,000 per offence to be imposed as an alternative to prosecution. The policy applies to civil penalties under the following legislation:

- Section 30 Housing Act 2004 (failure to comply with an improvement notice);
- Section 72 Housing Act 2004 (offences in relation to licensing of Houses in Multiple Occupation);

- Section 95 Housing Act 2004 (offences in relation to licensing of houses under Part 3 of the Act);
- Section 139 Housing Act 2004 (failure to comply with an overcrowding notice);
- Section 234 Housing Act 2004 (failure to comply with management regulations in respect of a House in Multiple Occupation)
- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

7.16.2 Only one financial penalty may be imposed on a person in respect of the same offence, however, a civil penalty can be issued for each separate breach of the HMO Management Regulations.

7.16.3 In deciding to issue a civil penalty, the Council must satisfy itself that there would be a realistic prospect of a conviction, and that an offence has been committed beyond reasonable doubt. The Council will consult the evidential and public interest tests in the Crown Prosecution Service Code for Crown Prosecutors in making this decision. The Code can be viewed at [the Crown Prosecution Service Code for Crown Prosecutors](#)

7.16.4 The amount of the civil penalty will be determined according to the Council's Civil Penalty Charging Policy (Appendix 2). This charging policy was initially agreed by Cabinet on 22 January 2019 as an amendment of the "Enforcement Policy for the Regulation of Housing Standards in the Private Rented Sector and for the Licensing of Houses in Multiple Occupation" and an amended version approved by the Licensing and Public Protection Committee on the 26 June 2024.

7.16.5 The provisions of the Tenants Fees Act 2019 are applicable to landlords and property agents concerning displaying fees, prohibited fees, being members of a redress scheme and belonging to designated Client. The Act permits the imposition of financial penalties as an alternative to prosecution and requires the enforcing authority to have in place a policy to determine the level of such a penalty.

7.16.6 On the 7 September 2021 Cabinet agreed that Birmingham City Council would adopt the Bristol City Council's enforcement policy on deciding financial penalty amounts as instigated by the National Trading Standards Estate and Letting Agency Team. This policy can be found at :

<https://www.bristol.gov.uk/files/documents/4145-tenant-fees-act-penalty-notice-policy/file>

7.16.7 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (as amended) ("the Regulations") impose duties upon private sector landlords (as defined in the Regulations) in relation to the installation and maintenance in proper

working order of smoke and carbon monoxide alarms in premises which are occupied under a tenancy.

7.16.8 The Regulations also impose duties on the local housing authority to take action where it is satisfied that a landlord has failed to comply with one or more of those duties.

7.16.9 The Regulations permit the imposition of financial penalties if the landlord has not taken remedial action after the service of a notice and requires the enforcing authority to have in place a statement of principles to determine the level of such a penalty.

7.16.10 In June 2022 the Licensing and Public Protection Committee approved the Statement of Principles for determining financial penalties under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015. An amended version was approved by Licensing and Public Protection Committee on the 26 June 2024 to reflect changes introduced by the Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022. The statement can be found at:

<http://birmingham.gov.uk/regulatoryenforcementpolicy>

7.17 **Prosecution**

7.17.1 In circumstances where none of the other forms of enforcement action are considered appropriate or a defendant failed to comply with a notice issued or failed to pay a fixed penalty notice issued to them, a prosecution will be considered and may ensue.

7.17.2 When deciding whether to prosecute, Regulation and Enforcement applies the Code for Crown Prosecutors as issued by the Crown Prosecution Service and Director of Public Prosecutions.

7.17.3 The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. For a copy of the Code for Crown Prosecutors visit:

7.17.4 The Code for Crown Prosecutors has two stages: (i) the evidential stage; followed by (ii) the public interest stage. Regulation and Enforcement will only consider whether a prosecution is in the public interest after considering whether there is sufficient evidence to prosecute and being satisfied that there is a realistic prospect of conviction. However, there will be cases where it is clear, prior to reviewing all the evidence, that the public interest does not require a prosecution. In these instances, we may decide that the case should not proceed further.

7.17.5 The results of prosecution cases are a matter of public court record. Summaries of court case outcomes will be published on our website for a limited period of time at <http://www.birmingham.gov.uk/traders-prosecuted>

7.18 **Proceeds of Crime Act Applications**

7.18.1 Regulation and Enforcement either through its own Officers or in co-operation with the Police may make application under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender. The purpose of any such proceedings is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof.

8 **DECISIONS ON ENFORCEMENT ACTION**

8.1 Decisions about the most appropriate enforcement action to be taken are based upon those matters set out in Section 7 above.

8.2 Where appropriate, decisions about what enforcement action to take may involve consultation between:

- (a) Investigating Officer(s).
- (b) Senior managers from Regulation and Enforcement.
- (c) Birmingham City Council Solicitors.

8.3 The decision to prosecute a case will be taken by those with authority to do so in accordance with the Birmingham City Council Scheme of Delegations.

8.4 **Enforcement Policy – Appeals and Complaints**

8.4.1 **Appeals through the Council's Corporate Complaints Procedure.** The Council has a corporate comments, compliments and complaints procedure. The procedure can be view at:

https://www.birmingham.gov.uk/info/50172/comments_compliments_and_complaints)

8.4.2 The Council encourages any person who has a problem with a service they receive, due to a failure in the service, to report it. However, where a report is received from a person who is the subject of a law enforcement investigation or current/pending statutory action then the Corporate Policy will not normally be used. The reasons for this and examples of relevant circumstances include:

- **Ongoing law enforcement investigation or legal process has commenced.** In most situations law enforcement investigations fall under the requirements of the Police and Criminal Evidence Act 1984 (PACE). This imposes requirements on the circumstances in which the council can engage with a person who is suspected of committing an offence or who is the subject of current/pending law enforcement action. The Corporate Procedure cannot be used to attempt to override or circumvent PACE, for example to challenge elements of an investigation; the necessity for enforcement action; or an enforcement decision. If this is attempted, then the council's Corporate Procedure will normally be staid. The suspension would apply until law enforcement / legal proceedings stages are completed. The outcome of an investigation, including legal proceedings may render the basis of a complaint/report nullified, but a person's rights are not affected as the criminal justice system has processes to ensure fairness and equity, including appeals procedures. [The Council cannot provide advice on these and the aggrieved person would be required to explore these independently].
- **A complaint that has already been settled in another way.** This includes a determination by a Court or Tribunal service or other statutory regulator/arbitration/ombudsman service.

8.4.3 Who will investigate if a complaint or challenge is made?

- If a complaint is made through a criminal justice system route, such as an appeal or contested trial this will be dealt with by the relevant statutory process at court.
- If a complaint is made through the Council's Corporate Procedure, in the first instance the relevant Investigating Officer from Regulation and Enforcement, potentially with their line manager will consider and make a determination. (The exception to this is where a complaint is made about a specific Investigating Officer. If this applies the Investigating Officers line manager or other manager within Regulation and Enforcement will make a determination. (This process will be applied for complaints about alleged officer misconduct or where a request is made for an officer to be removed from an investigation). Following investigation, the complainant/requestor will be advised on any proposed course of action. Complaints/challenges will not ordinarily lead to cessation of a criminal investigation or legal proceedings. If a complaint is made about the manager who is overseeing an investigation this will be considered by a manager within Regulation and Enforcement of equivalent or more senior grade who has not had direct involvement in the relevant investigation or enforcement decision.

8.5 Enforcement of Waste Crime

- 8.5.1 The mission statement for the Regulation and Enforcement Division is "Fair Regulation for All – achieving a safe, healthy, clean, green and fair trading city for residents, businesses and visitors". This reflects the Council's priority of "Birmingham is a great city to live in."
- 8.5.2 Amongst many steps to achieve a cleaner city a team exists to specifically tackle aspects of waste crime. In order to ensure the activities of this team are as effective as possible, the legislation around illegally dumped waste must be strictly enforced. Not all waste crime offending will directly trigger the usual threshold guide for legal proceedings to be commenced, as set out in the Matrix (Appendix 1). However, given the community-wide impact of the problem (outlined at Paragraph 7.2.4) waste offences may be prosecuted, in appropriate circumstances where the threshold is not met, in order to secure deterrent or punitive action which is, considered to be, in the public interest. Any matters which are dealt with in this manner will still have the usual legal protections afforded and will still be subject to the code for crown prosecutors.

9 PRIMARY AUTHORITY PARTNERSHIP SCHEME AND ITS ENFORCEMENT PROVISIONS

- 9.1 When we have come to the decision to take enforcement action against you and:
- (a) You are a business operating in more than one Local Authority and you have chosen to have a registered Primary Authority Partnership under the RES Act; and
 - (b) The enforcement action we propose to take is covered by the definition of enforcement action for the purposes of Part 2 of the RES Act.

We will, where required to do so by that Act, comply with the agreement provisions for enforcement and notify your Primary Authority of the action we propose to take.

- 9.2 Your Primary Authority has the right to object to our proposed action in which circumstances either they or we may refer the matter to BRDO.

10 LIAISON WITH OTHER REGULATORY BODIES AND ENFORCEMENT AGENCIES

- 10.1 In addition to the duties imposed upon us by the RES Act in respect of co-operating and working with Primary Authorities and RD, we will, where appropriate, co-operate and co-ordinate with any relevant regulatory body and/or enforcement agency to maximise the effectiveness of any enforcement.
- 10.2 Where an enforcement matter affects a wide geographical area beyond the City boundaries or involves enforcement by one or more other local authorities or organisations, where appropriate all relevant authorities and organisations will be

informed of the matter as soon as possible and all enforcement activity co-ordinated with them.

- 10.3 Regulation and enforcement will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including:
- (a) Government Agencies.
 - (b) Police Forces.
 - (c) Fire Authorities.
 - (d) Statutory Undertakers.
 - (e) Other Local Authorities.
 - (f) Other internal Council Departments

11 CONSIDERING THE VIEWS OF THOSE AFFECTED BY OFFENCES

- 11.1 Regulation and Enforcement undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test, the consequences for those affected by the offence, and any views expressed by those affected will, where appropriate, be taken into account when making enforcement decisions.

12 PROTECTION OF HUMAN RIGHTS

- 12.1 This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

13 REVIEW OF THE ENFORCEMENT POLICY

- 13.1 This Policy will be reviewed within a three year period or sooner if amendments are necessary. A copy of this Policy is available at:

<http://birmingham.gov.uk/regulatoryenforcementpolicy>

14 Appendices

Appendix 1 – Enforcement Policy Risk Matrix

Appendix 2 – Civil Penalties Charging Policy

Appendix 3 – Equality Assessment

APPENDIX 1

RISK MATRIX FOR REGULATION AND ENFORCEMENT - ENFORCEMENT POLICY

<u>REGULATION AND ENFORCEMENT ACTIVITY</u>	<u>ACTIVITY</u>	<u>SCORE</u>
Does the activity involve breaches of criminal legislation?	YES – continue to matrix.	
	NO – then this matrix is not an appropriate method for decision making in relation to the matter.	

People are safe and their wellbeing and safety are assured	No safety or health and wellbeing implications.	0
	Limited possibility of risk to safety and wellbeing.	1
	A high probability that illness or injury will occur or has occurred. Any injuries or illness should be restricted in nature (i.e. not require hospital treatment).	2
	Death, illness, injury (requiring hospital treatment for more than three days sickness absence from work) or has occurred or is likely to occur.	3
Direct or indirect economic implications to legitimate businesses	No implications for legitimate businesses.	0
	Limited consequences to a very small number of legitimate businesses.	1
	A large part of the legitimate business sector will be affected, for example all of those in a particular geographic area or businesses supplying a particular market.	2

People are safe and their wellbeing and safety are assured	No safety or health and wellbeing implications.	0
	Limited possibility of risk to safety and wellbeing.	1
	All of the legitimate business sector will be affected.	3
Direct or indirect economic implications to consumers or the wider public	No economic loss to consumers or the wider public.	0
	The economic loss was very small (or was likely to be very small) or to a small group of individuals and the amount of economic loss was very small (or was likely to be very small).	1
	The economic loss was restricted (or was likely to be restricted) to a group of individuals and the amount of economic loss was limited (or was likely to be limited).	2
	Higher level of economic loss to an individual or the economic loss or the probability of such or the amount of economic loss could have potentially affected a higher number of consumers or the wider public.	3
Reputation (risk to the local authorities' reputation) in taking no action	No reputational risk.	0
	Low reputational risk.	1
	Medium reputational risk.	2
	High reputational risk.	3
Likelihood that the infringing activity could have been easily ascertained (for example: the size of the business may be a factor when making this assessment or	Very difficult to ascertain.	0

People are safe and their wellbeing and safety are assured	No safety or health and wellbeing implications.	0
	Limited possibility of risk to safety and wellbeing.	1
using a reasonable test; the persons should have known it was wrong or information could be readily discovered online.		
	Difficult to ascertain.	1
	Could be ascertained with a limited amount of activity on behalf of the business.	2
	Easy to ascertain even with limited knowledge of the subject area.	3
Has the defendant taken reasonable precautions and due diligence in the circumstances to prevent the activity from occurring?	Not applicable.	0
	High level of precautions, training and systems in place and followed the systems.	1
	Some precautions and systems in place and followed but not comprehensive.	2
	No training and systems in place or followed.	3
What is the history of the defendant in relation to regulatory compliance? (The local or national position of a defendant can be taken if appropriate.	Not applicable.	0

People are safe and their wellbeing and safety are assured	No safety or health and wellbeing implications.	0
	Limited possibility of risk to safety and wellbeing.	1
Considerations of ‘culpability’ and ‘harm’ may be necessary where there has been or would not likely be any local authority history of compliance assessment)		
	The defendant has a good history of proactive work with the Local Authority to achieve compliance in its sector. Previous engagement has found no issues. (Considerations where culpability and/or harm are ‘low’).	1
	Previous engagement has found issues, however, these have been rectified within a reasonable time frame. (Considerations where culpability and/or harm are ‘medium’).	2
	The defendant has a poor history of Local Authority engagement and/or previous instructions have been disregarded and/or a high level of non-compliance has been found on previous engagement. (Considerations where culpability and/or harm are ‘high’).	3
Aggravating features (i.e. length of time activity has been happening for; was the activity purposely covert etc.; was the victim vulnerable; was an attempt made to obstruct an investigation)	Not applicable.	0
	Low level of aggravating features.	1
	Some level of aggravating features, however, limited by time or amount of aggravation.	2

People are safe and their wellbeing and safety are assured	No safety or health and wellbeing implications.	0
	Limited possibility of risk to safety and wellbeing.	1
	Higher level of aggravation.	3
<u>KEY</u>	<u>ASSESSMENT</u>	<u>SCORE RATING</u>
3 – high risk	If an activity results in three or more level HIGH RISK scores then formal action should be considered.	Score 12 and above.
2 – medium risk	Consider informal / lower tier action.	Score 2 to 11.
1 – low risk	No action.	Score 1.

The Risk Matrix will be used as a framework to support transparency and consistency of approach and decision making. (For workplace health and safety the Enforcement Management Model (EMM) is used to ensure that enforcement decisions are consistent).

Where the score falls between 2 and 11 and the investigating officer believes the matter should be referred for formal proceedings the case must be reviewed by the operations manager and/or Heads of Service and a record of the decision will be retained.

Where the score is 12 and above and the investigating officer believes the matter should not be referred for formal proceedings the case must be reviewed by the operations manager and/or Heads of Service and a record of the decision will be retained.

Institution of criminal proceedings will only be formally recommended to the relevant Council Director where the Council's Legal Services or Head of Service within Regulation and Enforcement have authorised progression.

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APPENDIX 2

Birmingham City Council Civil Penalty Charging Policy - Private Rented Sector

1. Determining the amount of a penalty charge

1.1 This policy sets out the methodology that Birmingham City Council will apply in exercising its powers under the Housing and Planning Act 2016 to impose a civil penalty on a landlord and/or occupier. The Council reserves the right to review this document from time to time in accordance with legislative changes, and tribunal updates and guidance.

2. Legal powers

2.1 Section 126 and Schedule 9 of the Housing and Planning Act 2016 introduced civil penalties for certain housing offences under the Housing Act 2004 ('the Act').

2.2 Civil penalties enable local authorities to issue financial penalties of up to a maximum of £30,000 per offence against landlords (defined as either the owner or manager of a privately rented property within this policy) and who commit the offences set out below. The law also allows the Council to issue civil penalties against occupiers of Houses of Multiple Occupation (HMO) where they have failed to comply with specific regulations.

Offence	Relevant legislation
Failure to comply with an improvement notice	Section 30 Housing Act 2004
Offences in relation to licensing of Houses in Multiple Occupation under Part 2 of the Housing Act 2004	Section 72 Housing Act 2004
Offences in relation to licensing of houses under Part 3 of the Housing Act 2004	Section 95 Housing Act 2004
Offences of contravention of an overcrowding notice	Section 139 Housing Act 2004
Failure to comply with management regulations in respect of Houses in Multiple Occupation	Section 234 Housing Act 2004

- 2.3 Authorised officers may issue a civil penalty where any of these regulations are found to have been breached. The pursuance of a civil penalty does not prevent the Council from taking emergency remedial action under section 40 Housing Act 2004.
- 2.4 The Council will give the person a notice of its proposal (Notice of Intent) to impose a financial penalty. The Notice of Intent will set out:
- the amount of the proposed financial penalty.
 - the reasons for proposing to impose the penalty.
 - information about the right of the landlord to make representations within 28 days from when the notice was given.
- 2.5 The Council will only accept representations in writing. These may be made by email or in hard copy form. Where these representations refer to other documents in support, it is the landlord's responsibility to provide documentary evidence to support their case.
- 2.5 At the end of the period of representation, the Council will decide whether to impose a penalty and the penalty amount. If the Council decides to impose the penalty, the person will receive a final notice requiring that the penalty be paid within 28 days.
- 2.6 Income received from a civil penalty will be retained by the Council authority to further its functions in relation to their enforcement activities covering the private rented sector.

3. Main principles for issuing a penalty charge

- 3.1 The main principles for issuing a penalty charge are to:
- lower the risk to the tenants' health and safety and well-being
 - promote compliance of landlords in the private rented sector
 - eliminate any financial gain or benefit from non-compliance
 - educate landlords on the associated risks of non-compliance
 - be proportionate to the nature of the breach of legislation and the risk posed
 - aim to prevent future non-compliance

4. Main principles which will be taken into account when setting penalty charge levels

- 4.1 The Council will require the landlord to pay a civil penalty when it is satisfied it has evidence of non-compliance and the breach allows the Council to so. This will be determined using the following principles:

- The seriousness of the offence
- The culpability and track record of the offender
- The harm caused to the tenant/s
- Punishment of the offender
- Deterring the offender from repeating the offence
- Deterring others from committing similar offences
- Removing any financial benefit the offender may have obtained as a result of committing the offence.

5. Level of penalty charge

- 5.1 The Council has the power to impose a civil penalty charge of up to £30,000 for each offence. The maximum amount will be reserved for the very worst offences. The actual amount levied in any particular case will reflect the seriousness of the offence, as well as taking into account the landlord's previous record of offending.
- 5.2 The table below details the starting level of a civil penalty for offences ranging from moderate to very severe.

Seriousness of the offence	Starting level
Mild	£2500
Moderate	£7500
Serious	£12500
Very serious	£17500
Severe	£22500

- 5.3 The Council has the right at any time to withdraw a Notice of Intent or Final Notice and reduce the amount specified in a Notice of Intent or Final Notice.

6. Imposing a civil penalty

- 6.1 The Council must be satisfied there is sufficient evidence to provide a realistic prospect of conviction against the landlord and that the public interest will be served by imposing a civil penalty.
- 6.2 The following questions will be considered:
- Does the Council have sufficient evidence to prove beyond reasonable doubt that the offence was committed by the landlord in question?
 - Is the public interest properly served by imposing a civil penalty on the landlord in respect of the offence?
 - Has the evidence been reviewed by a relevant Service Manager or above?

- Are there any reasons why a prosecution may be more appropriate than a civil penalty?

6.3 If the offence is particularly serious and the landlord has committed similar offences in the past, a banning order will be considered as an alternative to a civil penalty.

7. Setting civil penalties

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

7.2 When calculating the civil penalty amounts for multiple offences, there will be an inevitable cumulative effect. Care will be taken to ensure the total amount being imposed is just and proportionate to the offences involved.

7.3 Ultimately the level of penalty will be such that the offender does not benefit as a result of committing an offence.

8.0 Determining the Civil Penalty amount

8.1 This process is broken down into six stages:

- Stage 1 determines the seriousness of the offence to identify a starting level of the penalty.
- Stage 2 determines aggravating factors such as culpability and the track record of the offender.
- Stage 3 determines whether there are any mitigating factors to reduce the penalty.
- Stage 4 considers the financial benefit gained by committing the offence and takes this into account.
- Stage 5 provides how much may be added to the penalty amount for licensing offences as a result of the landlord's income.
- Stage 6 reviews the penalty amount to ensure it is proportionate – the total amount at this stage cannot go above £30,000.

9. Stages to be completed when deciding the amount of a financial penalty under the Housing Act 2004

9.1 Stage 1 - Failure to comply with an Improvement Notice - Section 30 of the Housing Act 2004

9.1.1 The maximum Court fine following prosecution that can be levied for failure to comply with an Improvement Notice is unlimited.

9.1.2 An Improvement Notice served under Part 1 Housing Act 2004 specifies repairs/improvements that the landlord should carry out in order to address one or more identified Category 1 and/or Category 2 hazards in a property.

9.1.3 Category 1 hazards are the most serious hazards, judged to have the highest risk of harm to the occupiers. The Council has a duty under section 5 of the Housing Act 2004 to take appropriate action where a dwelling is found to have one or more Category 1 hazards present.

9.1.4 In most cases, the service of an Improvement Notice will have followed an informal stage, where the landlord had been given the opportunity to carry out improvements without the need for formal action. In such cases, an identified failure to comply with an Improvement Notice will represent a continued failure on the part of the landlord to deal appropriately with one or more significant hazards affecting the occupier/s of the property.

9.1.5 The Council views the offence of failing to comply with the requirements of an Improvement Notice as a significant issue, exposing the occupier/s of a dwelling to one or more significant hazards.

9.1.6 The seriousness of the offence is viewed by the Council as being a serious offence, attracting a financial penalty with a starting level of £12500.

9.1.7 Where an Improvement Notice has been served for five or more hazards and the landlord has failed to carry out all remedial action required, the Council will view this a very serious matter, attracting a starting penalty of £17500.

9.2 Stage 1 - Failure to license offences.

9.2.1 Failure to license an HMO - Section 72(1) of the Housing Act 2004.

9.2.1.1 The maximum Court fine following prosecution that can be levied for failure to license a House of Multiple Occupation (HMO) or Part 3 House is unlimited.

- 9.2.1.2 Under Part 2 Housing Act 2004, it is an offence to operate an HMO without a licence. The Council has two HMO licensing schemes, mandatory and an additional scheme. The mandatory scheme applies to HMOs occupied by 5 or more persons and such HMOs will require an HMO licence.
- 9.2.1.3 The Council has exercised the power under Section 56 Housing Act 2004 and designated the whole of the city as an Area for Additional Licensing. The designation came into force on the 5th June 2023 and will expire on the 4th June 2028 unless the Council revokes the scheme under section 60 of the Act. Through the additional licensing scheme the Council aims to improve the management of this type of housing.
- 9.2.1.4 The additional scheme applies to HMOs in the city occupied by three or more persons forming two or more households sharing one or more basic amenities, such as a WC or kitchen. It also includes all self-contained flats falling under the definition of Section 257 HMOs.
- 9.2.1.5 HMO licensing was introduced to allow local authorities to regulate standards and conditions in high risk, multiply occupied residential premises. Through the property licence regime, local authorities ensure that the HMO has sufficient kitchens, baths/showers and WCs and place a limit on the number of persons permitted to occupy it and the licence holder is required to comply with a set of licence conditions.
- 9.2.1.6 The Council views the offence of failing to license a mandatory HMO as a significant failing. Licensing was introduced by the Government in order to regulate management, conditions, standards and safety in the properties considered to represent the highest risk to tenants as regards such matters as fire safety and overcrowding. This seriousness of the offence is viewed by the Council as being a severe matter, attracting a financial penalty with a starting level of £22500.
- 9.2.1.7 Due to lower occupancy levels within properties falling under the additional HMO licensing designation, the Council views the offence of failing to license as a lesser, but very serious offence, attracting a civil penalty with a starting level of £17500.
- 9.2.2. **Failure to license a property under the Council's selective licensing scheme – Section 95(1) of the Housing Act 2004.**
- 9.2.2.1 The Council has exercised their powers under Section 80 Housing Act 2004 and has designated 25 wards of the city as an Area for Selective Licensing which came into force on the 5th June 2023 and will expire on the 4th June 2028 unless the Council revokes the scheme under section 84 of the Housing Act 2004.

Through the Selective Licensing scheme, the Council aims to reduce crime and deprivation.

9.2.2.2 The Council would view the offence of failing to ensure that a rented home was licensed under its selective licensing scheme as a significant issue, meaning that the tenants and wider community are not protected by the additional regulatory controls afforded by licensing.

9.2.2.3 This seriousness of the offence is viewed by the Council as being a serious matter, attracting a financial penalty with a starting level of £12500.

9.3. Stage 1- Breach of licence conditions – Sections 72(3) and 95(2) Housing Act 2004

9.3.1 The maximum Court fine following prosecution that can be levied for failure to comply with a licence condition is unlimited.

9.3.2 All property licences impose a set of conditions on the licence holder. These conditions impose a variety of obligations relating to the letting, management and condition of the property including, but not limited to:

- The provision of documentation regarding energy performance certificates, fire detection, emergency lighting, gas installations and electric installations.
- Installing and maintaining smoke alarms
- Notification of legal proceedings, contraventions and other relevant information that may affect a fit and proper person status.
- Obtaining tenant references, providing written tenancy agreements, carrying out inventories, providing rent statements, and protecting deposits.
- Notifying the Council in any specified changes in circumstances.
- Carrying out specified measures to prevent or address crime and anti-social behaviour.
- Ensuring suitable provision is made for the storage of refuse and recycling.
- Carrying out works that were a condition of the granted licence.
- Providing details of emergency arrangements.

9.3.3 It is important that the manager of a licensed property complies with all licence

conditions, but the Council recognises that a failure to comply with certain licence conditions is likely to have a much bigger impact on the safety and comfort of residents than others.

9.3.4 The table below sets out the starting point of civil penalty for failure to comply with the licensing conditions of the three property licensing schemes in operation in the city.

Conditions relating to:	Starting Level		
	Selective Licensing	Additional Licensing	Mandatory Licensing
The provision of smoke alarms and/or other fire detection measures and emergency lighting	£12500	£17500	£22500
The provision of carbon monoxide alarms where required	£12500	£17500	£22500
The provision of a Gas Safety Certificate where required	£12500	£17500	£22500
Safety of electrical appliances or installation	£12500	£17500	£22500
Furniture and furnishings	£12500	£17500	£22500
Crime and/or anti-social behaviour	£7500	£12500	£17500
Occupancy levels and rooms sizes	£7500	£17500	£22500
Tenant references	£2500	£2500	£2500*
Refuse and recycling	£2500	£7500	£12500
Security	£7500	£7500	£7500
Change of circumstances	£7500	£12500	£17500
Provision of information/documents on demand	£7500	£12500	£17500
Provision of documentation to tenants	£2500	£2500	£2500

*see 9.3.5

9.3.5 The requirement on the licence holder to demand references is not part of the Council's current mandatory licence conditions. Should this requirement be adopted in the future the civil penalty starting point will be £2500.

9.4 Stage 1 - Failure to Comply with 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

- 9.4.1 The maximum Court fine following prosecution that can be levied for failure to comply with each individual regulation is unlimited.
- 9.4.2 The Management of Houses in Multiple Occupation (England) Regulations 2006 impose duties on the persons managing HMOs in respect of:
- Providing information to occupiers (Regulation 3)
 - Taking safety measures, including fire safety measures (Regulation 4)
 - Maintaining the water supply and drainage (Regulation 5)
 - Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected (Regulation 6)
 - Maintaining common parts (Regulation 7)
 - Maintaining living accommodation (Regulation 8)
 - Providing sufficient waste disposal facilities (Regulation 9)
- 9.4.3 The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 impose duties on the persons managing HMOs as defined by Section 257 Housing Act 2004 in respect of:
- Providing information to occupiers (Regulation 4)
 - Taking safety measures, including fire safety measures (Regulation 5)
 - Maintaining the water supply and drainage (Regulation 6)
 - Supplying and maintaining gas and electricity, including having these services/appliances regularly inspected (Regulation 7)
 - Maintaining common parts (Regulation 8)
 - Maintaining living accommodation (Regulation 9)
 - Providing sufficient waste disposal facilities (Regulation 10)
- 9.4.4 The Council will consider any duty imposed by the Regulations to maintain or keep in repair as requiring a standard of maintenance or repair that is reasonable in the circumstances, taking account of the age, character and prospective life of the house and the locality in which it is situated.
- 9.4.5 It is important that the manager of an HMO complies with all regulations, but the Council recognises that a failure to comply with certain regulations is likely to have a much bigger impact on the safety and comfort of residents than others.
- 9.4.6 The table below sets out the starting point of civil penalty for failure to comply with each of the regulations with properties falling under the additional and mandatory HMO licensing schemes.

Regulation	Starting Level	
	Additional Licensing	Mandatory Licensing
Failure to comply with the duty of manager to provide information to occupier	£2500	£2500
Duty of manager to take safety measures	£17500	£22500
Duty of manager to maintain water supply and drainage	£17500	£22500
Duty of manager to supply and maintain gas and electricity	£17500	£22500
Duty of manager to maintain common parts, fixtures, fittings and appliances	£12500	£17500
Duty of manager to maintain living accommodation	£12500	£17500
Duty to provide waste disposal facilities	£12500	£17500
Duty of occupiers of HMOs (see 9.4.7)	£2500	£2500

9.5 Stage 1- Regulation 10 of The Management of Houses in Multiple Occupation (England) Regulations 2006 and Regulation 11 of The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 place a duty on an occupier of the HMO to:

- (a) conduct themselves in a way that will not hinder or frustrate the manager in the performance of their duties;
- (b) allow the manager, for any purpose connected with the carrying out of any duty imposed on him by the Regulations, at all reasonable times to enter any living accommodation or other place occupied by that person;
- (c) provide the manager, at their request, with such information as he may reasonably require for the purpose of carrying out any such duty;
- (d) take reasonable care to avoid causing damage to anything which the manager is under a duty to supply, maintain or repair under these Regulations;
- (e) store and dispose of litter in accordance with the arrangements made by the manager, and

- (f) comply with the reasonable instructions of the manager in respect of any means of escape from fire, the prevention of fire and the use of fire equipment.

9.5.1 A civil penalty against an occupier of an HMO will only be considered where the landlord has exhausted all available options open to them. As occupiers of HMOs are potentially deprived and/or vulnerable, the Council will consider the likely impact of a civil penalty on that person. Factors which may be considered include the occupier's mental health and wellbeing, and financial means.

9.6 Stage 1 - Failure to Comply with an Overcrowding Notice – Section 139 of the Housing Act 2004

9.6.1 The maximum Court fine following prosecution that can be levied for failure to comply with an Overcrowding Notice is unlimited.

9.6.2 Section 139 Housing Act 2004 allows the Council to serve an Overcrowding Notice in respect of an HMO that is not required to be licensed under Part 2 Housing Act 2004. At the present time in Birmingham there a city-wide additional licensing scheme for smaller HMOs and therefore all HMOs are required to be licensed. The notice specifies, on a room-by-room basis, the maximum number of persons allowed to occupy each room as sleeping accommodation or that the room is not considered suitable for that purpose. The Council would view the offence of failing to comply with the requirements of an Overcrowding Notice as a significant matter, exposing the tenant/s of an HMO to unacceptably cramped living conditions. The offence is viewed by the Council as being a very serious matter, attracting a financial penalty with a starting level of £17500.

9.7 Stage 1 - Failure to Comply with a Banning Order - Section 21 of the Housing And Planning Act 2016

9.7.1 The maximum Court fine that can be levied for failure to comply with a Banning Order following prosecution is unlimited. In addition, the Court can also impose a prison sentence for up to 51 weeks.

9.7.2 The Housing and Planning Act 2016 includes provisions and processes for a person to be banned from being involved, for a specified period, in one or more of the following activities:

- Letting housing
- Engaging in letting agency work
- Engaging in property management work

9.7.3 Banning Orders are reserved for what are recognised as being the most serious housing-related offences. In the event that the Council was satisfied that the

offence of breaching a Banning Order had occurred, this would normally be the subject of prosecution proceedings. Where it was determined that a civil penalty would be appropriate in respect of a breach of a Banning Order, this would normally be set at the maximum level of £30,000 to reflect the severity of the offence.

9.8 Stage 1 - Failure to Comply with Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

9.8.1 Where a local housing authority is satisfied, beyond reasonable doubt, that a private landlord has breached a duty under Section 3, the authority may impose a financial penalty (or more than one penalty in the event of a continuing failure) under Section 11 in respect of the breach. A financial penalty may be of such amount as the authority imposing it determines; but must not exceed £30,000.

9.8.2 Failure to comply with the electrical safety regulations is viewed by the council as a serious matter and the starting point is set to £12,500 to reflect this.

10. Stage 2 – Aggravating factors

10.1 Statutory aggravating factors.

10.1.1 The table below provides details of the statutory aggravating factors which must be taken into account when determining the amount of the civil penalty.

Factor	Percentage addition to starting penalty
Previous convictions, having regard to: <ul style="list-style-type: none"> a) the nature of the offence to which the conviction relates and its relevance to the current offence and b) the time that has elapsed since the previous conviction 	20%

10.2 Other aggravating factors.

10.2.1 The table below shows the aggravating factors which may be applied to the civil penalty and the amount by which the penalty will be increased if applicable.

Factor	Percentage addition to starting penalty
Deliberate intent when committing the offence. Examples of intent would include <ol style="list-style-type: none"> 1. knowledge that the offending was taking place 2. failing to stop committing the offence after relevant correspondence was sent by the Council 3. Failing to have adequate management systems in place to prevent such offences being committed and/or to have been notified of such offences being committed. 	10%
Evidence of wider community impact.	10%
Obstruction of justice. This may include a failure to comply with a section 16 Local Government (Miscellaneous Provisions) Act 1976 notice, failing to comply with a s.235 Housing Act 2004 notice, or failing to provide a substantive response to a letter of alleged offence.	10%
Established historical record of providing substandard accommodation, or poor property management in the past 12 months.	10%
Landlord is a large portfolio holder (5 or more properties, and/or 2 or more HMOs) or a managing agent	20%

10.2.2 The Council recognises that there are a myriad of aggravating factors that may not fall into the categories in the table at 10.2.1. The Council has discretion to apply further additions to reflect other aggravating factors that have been identified.

10.2.3 These figures take into consideration the administrative costs incurred by the Council in investigating and preparing the case and the civil penalty notice (CPN).

11.0 Stage 3 – Mitigating factors

11.1 The Council will take into consideration mitigation either in relation to the offence or personal matters. To support a claim for personal mitigation such claims must include full disclosure.

11.2 Factors reducing the seriousness of the offence or reflecting personal mitigation are shown in the table below

Factor	Percentage reduction to starting penalty
No previous convictions or no relevant / recent convictions	10%
Co-operation and steps voluntarily taken to remedy problem or putting things right.	10%
Self-reporting	10%

11.3 The Council recognises that there are myriad of mitigating factors that may not fall into the categories in the table at 11.2. The Council has discretion to apply further deductions to reflect other mitigating factors that may be put forward by the offender.

11.4 The Council may take into account consideration of personal mitigating factors. Full disclosure will be required including evidence of any personal claims made. The Council will record the matters taken into consideration when determining the level of reduction in the amount of the civil penalty.

12.0 Stage 4 – financial benefit

12.1 Each case will be determined on its own merits. Examples of potential financial benefits are shown in the table below. The Council will need to prove the amount of financial benefit the offender has obtained. If the offender does not provide sufficient information an estimate of the benefit can and will be made.

Offence	Example of potential financial benefit
Failure to comply improvement notice or electrical safety regulations	The cost of any works required for compliance, but which have not been completed.
Offences of contravention of an overcrowding notice	Rental income whilst the property was being occupied in contravention of the overcrowding notice.
Failure to comply with management regulations in respect of HMO	The cost of any works that are required to avoid breaching the regulations.

12.2 Once determined, this amount will be added to the penalty so as to remove any financial benefit gained through offending. It will be added at this stage, irrespective of whether the issues have been rectified.

13.0 Stage 5 – considering the landlord's income (for licensing offences only)

13.1 The Council is permitted to consider all a landlord's income and assets when calculating a civil penalty. The Council may use its legal powers to require landlords to provide details of their finances.

13.2 The rental income is calculated as the benefit obtained by committing the offence. Examples of what may be considered rental income are shown in the table below.

Offence	Example of potential income benefit
Offences in relation to licensing of HMOs	Rental income whilst the HMO was operating unlicensed or where it was occupied by more than the number of persons authorised by the licence, the additional rental income from letting the property as an HMO requiring a licence as opposed to a non-licensable property, the cost of complying with any works conditions on the licence, and the cost of the licence.
Offences in relation to licensing of houses under Part 3 of the Act	Rental income whilst the property was operating unlicensed or where it was occupied by more than the number of persons authorised by the licence, the cost of complying with any works conditions on the licence, and the cost of the licence.

13.3 The Council may consider all the landlord's income throughout the duration of the offence when calculating a civil penalty. This will be the weekly income, as declared on the tenancy agreement for the property where the offence occurred, or the evidence of rental income gathered at the time of the offence occurred.

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

13.5 The Council can make a full financial assessment of a landlord's assets and any income they receive, not just from rental income, when calculating an appropriate

financial penalty. The Council will consider carrying out a full financial investigation where it considers it is reasonable and proportionate to do so in the circumstances. Full financial investigations will normally only be considered for the more serious cases.

13.6 Full disclosure and evidence of financial information will be required in order that an accurate portrayal can be considered. This can include:

- work undertaken for the repair and maintenance of the property.
- utilities such as electricity, gas and water.
- services such as broadband, cleaning and gardening.
- landlord training.
- management fees.

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

14.0 Stage 6 – review of the penalty

14.1 Lastly, this review stage (Stage 6) will check:

- whether the proposed level of penalty charge is proportionate.
- the offender should be deterred from committing further offences.
- there should be no financial gain committing the offence.

14.2 This review (Stage 6) will give the final civil penalty amount that will be imposed on the offender.

14.3 The amount of the civil penalty imposed will never be less than it would have reasonably cost the landlord to comply in the first place.

15.0 Role of the First-tier Tribunal (Property Chamber)

15.1 The Council is required to issue a 'notice of intent' to issue a financial penalty. Under this notice a landlord has 28 days with which to make representations to the Council. These representations will be taken into account when determining any aggravating or mitigating factors, as outlined in this policy. At the end of this period, should the Council still propose to issue the financial penalty, the Council must serve a 'final notice' imposing the penalty

- 15.2 On receipt of a final notice imposing a financial penalty a landlord can appeal to the First tier Tribunal against the decision to impose a penalty and/or the amount of the penalty. The appeal must be made within 28 days of the date the final notice was issued. The final notice is suspended until the appeal is determined or withdrawn.
- 15.3 The Tribunal has the power to confirm, vary (increase or reduce) the size of the civil penalty or cancel the civil penalty.

16.0 Recovery of penalty charge

16.1 The Council can apply to a County Court for a court order to enforce the civil penalty and recover the debt where the landlord has not paid within 28 days of the service the charge notice and the landlord has either:

- not made an appeal to the First Tier Tribunal
- made an appeal that has since been determined in the Council's favour

16.2 The Council will also seek to recover the costs incurred in taking this action from the landlord.

17.0 Database of rogue landlords and property agents

17.1 Where a landlord or property agent receives two or more civil penalties over a 12-month period, we will include that person's details in the database of rogue landlords and property agents. While it is not a compulsory requirement, the government's statutory civil penalty guidance strongly encourages councils to do so, to ensure that other councils are made aware that formal action has been taken.

18.0 Reduction of civil penalty amount.

18.1 A 25% reduction in the penalty may be offered if at the first opportunity the landlord admits guilt for the offence and immediately remedies any outstanding issues. This is in line with the "General guideline: overarching principles" issued by the Sentencing Council and will only be available for a first offence.

18.2 Where offered, the reduction will only be available to the landlord when the council serves the Final Notice, and is conditional upon the following criteria being met:

- payment of the net civil penalty (after the 25% reduction) is made in full within 28 days of the date of the Final Notice.
- any outstanding issues or works are fully completed within the same period.

- 18.3 In default of the above conditions the offer of a reduction will be withdrawn, and the full amount of the penalty will become payable.
- 18.4 At any point after 28 days of service of the Final Notice there will be no further offer of any reduction in the level of penalty.

19.0 Review of policy

- 18.1 This policy will be reviewed annually.