

Meeting of:	<b>Shared Regulatory Services Joint Committee</b>
Date of Meeting:	<b>Wednesday, 25 September 2024</b>
Relevant Scrutiny Committee:	Homes and Safe Communities
Report Title:	<b>Review of the Shared Regulatory Services – Compliance and Enforcement Policy</b>
Purpose of Report:	To advise the Joint Committee of the development of two additional annexes to the Shared Regulatory Services Compliance and Enforcement Policy and to seek approval for implementation and use of the updated Policy
Report Owner:	Director of Environment and Housing Services
Responsible Officer:	Head of Shared Regulatory Services
Elected Member and Officer Consultation:	No Elected Members have been consulted. The following officers have been consulted: <ul style="list-style-type: none"> <li>• Assistant Director, Cardiff Council</li> <li>• Chief Officer Legal, Regulatory and Human Resources, Bridgend County Borough Council</li> </ul>
Policy Framework:	This is a matter delegated to the Joint Committee
<p><b>Executive Summary:</b></p> <ul style="list-style-type: none"> <li>• The report advises the Joint Committee of updates which are sought to the Shared Regulatory Services Compliance and Enforcement Policy. The Policy has been in place since 2016 to set the standards that will be applied when dealing with issues of non-compliance with public protection law. The Policy was last reviewed in 2023 to ensure that it remains up-to-date and fit for purpose.</li> <li>• A draft revised Policy has been prepared to reflect new areas of enforcement and to fully reflect the compliance and enforcement options available in the context of private sector housing.</li> <li>• This report seeks: <ol style="list-style-type: none"> <li>(i) The approval of the Joint Committee for Shared Regulatory Services to implement the updated Policy and,</li> <li>(ii) The recommendation of the Joint Committee for the updated Policy to be adopted by the three partner Councils.</li> </ol> </li> </ul>	

## Recommendations

The Joint Committee is asked to:

1. Give its approval for the revised Shared Regulatory Services Compliance and Enforcement Policy and accompanying Annexes to be used by SRS.
2. Recommend the adoption of the revised Policy by the respective Councils for those functions undertaken by the Shared Service on their behalf.
3. Authorise the Head of Shared Regulatory Services to make minor administrative amendments and updates to the revised Compliance and Enforcement Policy once implemented, should the need arise

## Reasons for Recommendations

1. The SRS Compliance and Enforcement Policy ensures consistency across geographical areas and across the various areas of the work of the Service. The recent review and updating of the Policy will ensure that it reflects the full remit of the Shared Service and remains current, relevant, and fit for purpose.
2. The decision to prosecute breaches of legislation enforced by the Shared Service rests with each Council and, as such, the revised Policy will need to be adopted by each of the three partner local authorities.
3. To ensure that during the lifetime of the revised Policy (i.e., prior to its next full review), minor updates and amendments can be incorporated without the need to seek approval on each occasion from the Joint Committee.

## 1. Background

- 1.1 The Shared Regulatory Services Compliance and Enforcement Policy was first adopted by the three partner Councils following its approval by the Joint Committee early in 2016. Since that time, three Annexes have been added to the overarching Policy (each being subject to further approval by the Joint Committee). These three Annexes cover the specialist areas of Food, Feed and Health and Safety respectively, and can be viewed here - [About SRS Wales](#).
- 1.2 The purpose of the Compliance and Enforcement Policy is to set the standards that will be applied when dealing with issues of non-compliance with public protection law, and what residents, consumers and businesses can expect from the Shared Service as a law enforcement agency.
- 1.3 Based upon the principles of the Regulator's Code of 2014, the Policy helps to promote efficient and effective approaches to regulatory inspection and enforcement and balances the need for improvement in regulatory outcomes

while at the same time minimising, where possible, unnecessary burdens on business.

- 1.4** Since its adoption in 2016, the Policy has been effective in ensuring a consistent enforcement approach that is appropriate to the circumstances, and which has enabled any legal challenges in respect of enforcement action, to be mitigated. The Policy was last brought to the Joint Committee in September 2023 following a root and branch review overseen by a Barrister who concluded that the Policy was well constructed and had stood the test of time. As such, no change of approach was required, rather a number of areas were identified where amendments would be recommended, in order to update references to legislation, guidance and best practice.
- 1.5** Further amendments to the Policy are now sought to incorporate additional Annexes to cover the specialist areas of Private Sector Housing, and also Minimum Energy Efficiency Standards (MEES) law.

## **2. Key Issues for Consideration**

- 2.1** The draft updated SRS Compliance and Enforcement Policy is included as **Appendix 1** to this report, now has a total of five Annexes, namely:
- Annex 1: Food Safety Enforcement
  - Annex 2: Feed law Enforcement
  - Annex 3: Health and Safety Enforcement
  - Annex 4: Housing Enforcement
  - Annex 5: Minimum Energy Efficiency Standards – penalties for non-compliance
- 2.2** The new **Annex 4** sets out the full range of enforcement options available when dealing with non-compliance in the private rented sector. Some of these options are unique to this sector, for example Hazard Awareness Notices and Emergency Remedial Notices, while others are common to other areas of the Shared Service. The new Annex 4 also explains the roles, responsibilities and expectations of the various parties in the private rented sector, namely SRS Officers, landlords, letting agents and tenants.
- 2.3** The overarching SRS Compliance and Enforcement Policy at section 9.3 considers the use of civil monetary penalties. The new **Annex 5** provides detail on this principle and the options available when formal action is taken in cases of non-compliance with Minimum Energy Efficiency Standards. Annex 5 sets out the factors to be considered in determining the extent of any monetary penalty imposed through Penalty Notices under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015.
- 2.4** The draft revised Policy together with the new draft Annexes 4 and 5 are attached as **Appendix 1**.

### **3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?**

**3.1** The Well-being of Future Generations Act requires the SRS to underpin decision making by contributing to the seven well-being goals of the Act, following the five ways of working, and consequently undertaking actions that will have a positive impact on people living in the future as well as those living today. Consequently SRS seeks to work in the following ways:

- Looking to the long term
- Taking an integrated approach;
- Involving a diversity of the population in the decisions affecting them;
- Working with others in a collaborative way to find shared sustainable solutions
- Acting to prevent problems from occurring or getting worse.

### **4. Climate Change and Nature Implications**

**4.1** One of the key strategic themes for the Shared Regulatory Service is *Protecting the Local Environment*.

**4.2** The SRS Business Plan articulates the work carried out under this theme to deliver on the corporate priorities for the participant Councils, including their ambitions to minimise climate change and impacts on the natural environment.

**4.3** In this context, the Joint Committee is regularly updated on the contribution of SRS to this agenda, for example through its work in the areas of animal health and welfare, air quality, contaminated land, energy efficiency in the private rented sector and investigating greenwashing claims or environmental fraud.

### **5. Resources and Legal Considerations**

#### **Financial**

**5.1** The Participants' contribution towards the Shared Regulatory Service is recharged on a quarterly basis, based upon the approved budgets for 2024/25. Accounting for the full year is reported to the Committee at the Annual General Meeting.

#### **Employment**

**5.2** There are no immediate employment implications associated with this report.

### **Legal (Including Equalities)**

- 5.3** The Policy seeks to ensure that regulatory decisions will not be influenced by the gender, disability, language, ethnicity, religion, political beliefs or sexual preference of the subject, victims, or witnesses. Through monitoring and review of the Policy, the Shared Service will ensure that its enforcement activity reflects this position and is in keeping with the Equality Statements and Policies of the participant authorities.

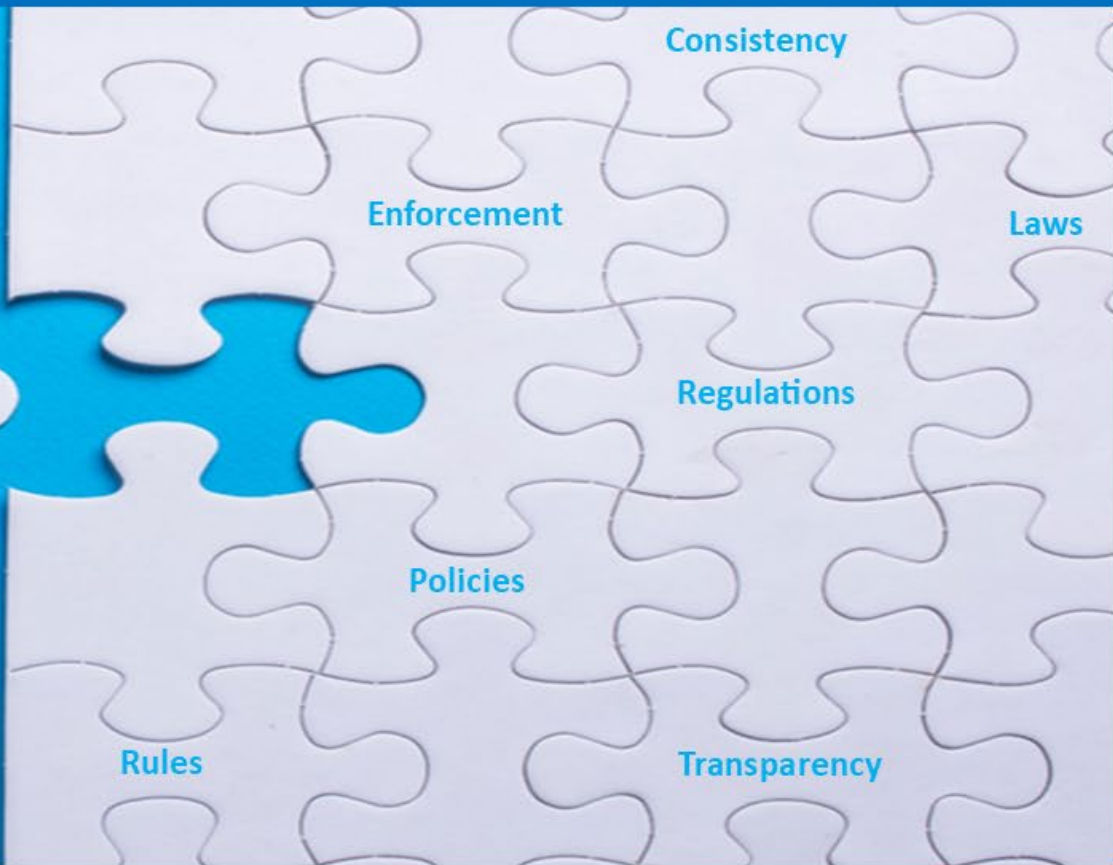
## **6. Background Papers**

- Appendix 1 SRS Compliance and Enforcement Policy with two additional annexes:
  - Annex 4: Housing Enforcement
  - Annex 5: Minimum Energy Efficiency Enforcement



# Shared Regulatory Services

## Compliance and Enforcement Policy



Shared  
Regulatory  
Services

Gwasanaethau  
Rheoliadol  
a Rennir



# Shared Regulatory Service Compliance and Enforcement Policy

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# 1. Introduction

- 1.1 The Shared Regulatory Service (SRS) administers the Environmental Health, Trading Standards and Licensing functions on behalf of Bridgend County Borough Council, City of Cardiff Council and the Vale of Glamorgan Council. The services provided include food safety, animal health and welfare, health and safety, fair trading, pollution control, and weights and measures. It also has licensing responsibility for a range of matters including alcohol, gambling and taxis.
- 1.2 The SRS is committed to good enforcement practice and the development of this policy is based upon the current legislation, guidance and codes that apply in this context, and in particular the Regulator's Code.
- 1.3 This policy sets out the approach of the SRS to compliance and enforcement activities, and is intended to establish a consistent approach to enforcement across its various functions, without placing too heavy a burden on local businesses, organisations and the public. This policy has been subject to consultation across a range of stakeholders. However further feedback is always welcomed using the contact details provided below. We will give consideration to the inclusion of any suggested improvements in future revisions.
- 1.4 In adopting this policy, the SRS intends to apply legal powers consistently and fairly, whatever the circumstances. Decisions will not be influenced by the gender, disability, language, ethnicity, religion, political beliefs or sexual preference of the subject, victims or witnesses.
- 1.5 The SRS wants to make it easy for you to receive our information. This policy is published in English and Welsh on our website <https://www.srs.wales/en/Home.aspx> and in hard copy. We are also able to provide the document in alternative formats including audio tape, large print and in community languages. We have access to interpreter services where required. Requests for copies in other formats or other languages should be addressed to:-

Shared Regulatory Services  
Vale of Glamorgan Council  
Civic Offices  
Holton Road  
Barry  
CF63 4RU  
Email: [enquiries@srs.wales](mailto:enquiries@srs.wales)

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## 2. Aims of the SRS

2.1 The National Enforcement Priorities for Wales are:

- To protect individuals from harm and promote health improvement;
- To ensure the safety and quality of the food chain to minimise risk to humans and animal health;
- To promote a fair and just trading environment for citizens and business; and
- To improve the local environment to positively influence quality of life and promote sustainability.

2.2 The SRS adopts these priorities as it aims to safeguard the health, safety and economic wellbeing of those who live in, work in or visit the region; while at the same time maintaining a fair and competitive market place where legitimate businesses can thrive.

2.3 Compliance with the law is encouraged proactively and to this end we want to work with business and individuals to promote this goal through the provision of advice and education, intelligence led checks on compliance and proportionate responses to regulatory breaches. Our ultimate purpose is to ensure that the “marketplace” functions effectively and that risks to health, social and economic wellbeing are addressed. When that purpose is undermined we will use our legal powers to take action to resolve any unsatisfactory situations and ensure that any wrongdoers are held to account. This is what is meant by the term enforcement action.

2.4 We are committed to taking firm and appropriate action in the following situations:-

- Against those who flout the law, or who deliberately or persistently fail to comply
- Where there is a serious or immediate risk to health and safety; and
- Where it is necessary to protect the more vulnerable in our communities from harm

2.5 The SRS publishes an annual service delivery plan which sets out our performance targets and our main areas of work for the year ahead and how these link in with national and local priorities as well as the corporate priorities of the participant Councils.

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### 3. What is this policy for?

- 3.1 The purpose of this document is to set out the SRS policy in respect of its compliance and enforcement activities, and to give guidance to those affected by it, in particular businesses, consumers and the public. It does not, however, affect the discretion to take legal proceedings when this is considered to be in the public interest.
- 3.2 The staff of the SRS will adhere to this policy, and this will be subject to regular monitoring as part of the review process set out in section 10 below.

### 4. When does this policy apply?

4.1 This policy covers broadly the areas of:-

- Animal Health and Welfare
- Food Safety
- Food Standards
- Health and Safety
- Fair Trading
- Licensing
- Product Safety
- Pollution Control
- Housing Safety
- Port Health
- Communicable Disease
- Wales Illegal Money Lending Unit

4.2 In some instances we have developed a number of area specific enforcement policies which also exist to provide detailed information about how and when those areas will carry out a particular type of enforcement. These are:-

**Annex 1** – Food Safety Enforcement Annex

**Annex 2** – Feed Law Enforcement Annex

**Annex 3** – Health and Safety Enforcement Annex

**Annex 4** – Housing Enforcement Annex

**Annex 5** – Minimum Energy Efficiency Enforcement Annex

Should any conflict ever arise between this policy and those area specific documents, then this overarching Compliance and Enforcement Policy will take precedence.

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## 5. Our approach to compliance and enforcement

5.1 We will ensure that the allocation of resources and effort is targeted where they would be most effective by assessing the risks against our regulatory outcomes. Such risk assessments will inform our approach to regulatory activity including data collection, inspection programmes, business advice and enforcement sanctions. As part of this risk assessment, we will give consideration to the combined effect of the potential impact of non-compliance on regulatory outcomes and the likelihood of that non-compliance.

5.2 The Legislative and Regulatory Reform Act 2006, as amended, requires the SRS to have regard to the Principles of Good Regulation when providing Environmental Health, Trading Standards and Licensing services.

We will exercise our regulatory activities in a way which is:

- **Proportionate** – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence
- **Accountable** – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures
- **Consistent** – our approach to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to take a similar approach as other local authorities to achieve compliance with the law.
- **Transparent** – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- **Targeted** – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

5.3 The SRS embraces the principles of good enforcement established in the **Regulators' Code** (April 2014), as amended, i.e.,

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

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However, in certain instances we may conclude that a provision in the Regulators' 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 the available evidence. The decision and the reasons for it will be recorded in writing.

- 5.4 The SRS is committed in all aspects of its work to the promotion of equality in accordance with the participant authorities' Equality statements and policies. The Service will seek to adopt best practice in pursuit of that commitment, including in relation to the provision of assistance, information and advice. This policy will contribute to the fairness of decision-making and will seek to ensure that decisions will not be influenced by the ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity of the subject, defendant, victims or witnesses. During the monitoring and review of our practices under this policy we will make sure that our enforcement activity reflects this commitment.
- 5.5 In some areas of our work we have a shared enforcement role with other agencies, some examples being the Health and Safety Executive, National Resources Wales, Her Majesty's Revenue and Customs and the Police. Sometimes it will be more appropriate for other enforcement agencies or other local authorities to deal with particular breaches of legislation, so officers may pass details of offences to other such agencies. In circumstances where a shared or complementary role exists, we will still adhere to this Compliance and Enforcement Policy, but the other agencies will retain the right to take whatever action that they consider is necessary.
- 5.6 When we exchange information on enforcement activities with our partner agencies, we will do so in accordance with any established methods of information sharing and legal requirements, including the Data Protection Act 2018 and the Crime and Disorder Act 1998.
- 5.7 We will work closely with other service areas within the councils, and the appropriate external regulators to ensure that our 'own house is in order' to promote regulatory compliance in all relevant areas, for example food law, and fair trading. For example should an infringement be detected in the case of a serious food safety breach in local authority controlled establishments, the Chief Executive will be notified without delay.

## 6. Advising on the rules

- 6.1 Advice to business will be provided proactively and also in response to specific requests for guidance. Such advice will be given clearly and in plain language and will be confirmed in writing on request. Legal requirements will be clearly distinguished from best practice, codes of practice, guidance and other advice.
- 6.2 Officers will be encouraged to promote compliance with legal requirements, by raising awareness of relevant standards and legal requirements, by means of media releases, distributing leaflets, face-to-face contact and through business and community partnerships.

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- 6.3 In offering advice to businesses, the SRS will act promptly; however, those businesses with which it has a Primary Authority agreement will be given priority when heavy demands are placed on limited staff resources. The Primary Authority arrangements of other local authorities will be respected.
- 6.4 The Service supports the Government’s ‘golden rules’ for guidance on regulation set out in the Code of Practice on Guidance Regulation [http://www.fwr.org/WQreg/Appendices/CoP\\_on\\_Guidance\\_on\\_Regulation.pdf](http://www.fwr.org/WQreg/Appendices/CoP_on_Guidance_on_Regulation.pdf) (BIS, 2009), in that it should be:
- Based on a good understanding of users
  - Designed with input from users and their representatives
  - Organised around the user’s way of working
  - Easy for the intended users to understand
  - Designed to provide users with confidence in how to comply with the law (i.e., no use of legal disclaimers of liability)
  - Issued in good time
  - Easy to access
  - Reviewed and improved
- 6.5 Businesses approaching the Service for advice on any non-compliance can in the main do so without fear of automatically triggering an enforcement action. Nevertheless there will be occasion in the circumstances outlined in 2.4 above, or when there is a history of non-compliance where after due consideration, enforcement action is unavoidable.

## 7. Checking compliance

- 7.1 The SRS adopts an intelligence-led approach to ensure that its resources are most effectively targeted. It also utilises a number of risk assessment frameworks across its areas of work to determine the frequency of checks on compliance which includes inspections of and other visits to business premises, taking samples, making of test purchases and so on.
- 7.2 Complaints received by the Service about alleged non-compliance will be assessed on an individual, case by case basis and allocated to an appropriate officer for investigation / action as necessary.
- 7.3 After dealing with issues of non-compliance by way of advice, the Service will follow up to ensure that the areas of concern have been rectified and the business is fully compliant. Where remedial work has been required, an explanation will be given as to why it is required, and over what timescale it has to be completed.

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## 8. Responding to Breaches of the Rules

### 8.1 Overview

- 8.1.1 In responding to breaches of the law, a range of actions is available to the Service, and these are set out in 8.4 below. The appropriate action will be determined following careful consideration of the particular facts of each individual case and taking into account the approach of the offender, and any comments they wish to be taken into consideration.
- 8.1.2 The SRS will normally take a stepped approach within the hierarchy of enforcement, and progress to taking formal action when informal means have failed to achieve the desired effect. Note however, that as highlighted in 2.4 above, there will be circumstances that warrant appropriate formal action from the outset.
- 8.1.3 There may be circumstances where it is suspected that an offender has committed offences across a number of local authority areas. It may be more appropriate for another local authority outside of the Shared Service to take enforcement action even when an offence has been committed within the Bridgend County Borough, City of Cardiff or Vale of Glamorgan Council area. Conversely there may be occasion when it would be more appropriate for the Service, (through one of the participant Councils) to take enforcement action in respect of offences that occurred elsewhere. In such circumstances we may enter into a legal agreement for one authority to take the lead role, as appropriate, making use of the provisions of section 19 of the Local Government Act 2000, section 222 of the Local Government Act 1972 or any other enabling provisions.

### 8.2 Conduct of Investigations

- 8.2.1 All investigations will be carried out with due regard to the following legislation and any associated guidance or codes of practice, in so far as they relate to the SRS
- the [Criminal Procedure and Investigations Act 1996](#)
  - the [Police and Criminal Evidence Act 1984](#)
  - the [Regulation of Investigatory Powers Act 2000](#)
  - the [Criminal Justice and Police Act 2001](#)
  - the [Human Rights Act 1998](#)
  - the [Protection of Freedoms Act 2012](#)
  - the [Health and Safety at Work etc. Act 1974](#)

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential suspects.

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- 8.2.2 Our procedures for interviewing suspects follow the principles set out in the Police and Criminal Evidence Act 1984, as amended, and the relevant associated Codes of Practice.
- 8.2.3 Enforcement powers are provided by the legislation under which our officers are authorised, and staff will use these powers when necessary, but always in a proportionate manner. Officers will reasonably expect co-operation during the investigation of alleged contraventions and it can be an offence to obstruct an authorised officer in the course of their duties.
- 8.2.4 Where officers exercise their powers of seizure, the person from whom any goods or documents are seized (or their representative) will be advised of the fact and provided with a receipt. Seized items will be stored securely and in accordance with documented procedures.
- 8.2.5 Offenders are not normally subject to the possibility of arrest under the law enforced by the SRS, however there are some exceptions. These include offences under the Trade Marks Act 1994, and other law, subject to the necessity test of section 24 of the Police and Criminal Evidence Act 1984, for example when the bringing of a case would be hindered by the disappearance of the suspect.
- 8.2.6 All investigations will be completed in a timely fashion and having regard to any time limits for bringing formal action prescribed by specific pieces of legislation.
- 8.2.7 Where the Council has an interest in a premises it will carry out its enforcement duties in exactly the same way that it does in other premises in which it does not have an interest. Furthermore, it will ensure that the attention received is in accordance with the criteria applied to other duty holders.

### 8.3 Communication

- 8.3.1 Our staff will always communicate with any Primary Authority or Home Authority at the earliest possible opportunity in an investigation.
- 8.3.2 Those subject to enforcement action (i.e., suspects and defendants) will be kept informed of the progress of investigations. This will be done in a clear, appropriate and timely manner.
- 8.3.3 As decisions are made regarding the direction in which an investigation will be concluded, those subject to the investigation will receive written confirmation of the intended course of action. This will be provided as soon as practicable, together with information on rights to representation and appeal.
- 8.3.4 In respect of the those directly impacted by the non-compliance of others under public protection law, the SRS embraces the relevant principles of the Victims Code 2020 - [MoJ Victims Code 2020 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/111111/victims-code-2020.pdf). These are:
  - To be able to understand and to be understood
  - To have the details of the crime recorded without unjustified delay
  - To be provided with information when reporting the crime

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- To be referred, where appropriate, to services that support victims and have services and support tailored to your needs.
- To be provided with information about compensation, where eligible, that might be obtained for any loss, damage or injury caused as a result of crime.
- To be provided with information about the investigation and any prosecution.
- To make a Victim Personal Statement.
- To be given information about the trial, trial process and your role as a witness.
- To be given information about the outcome of the case and any appeals.
- To be paid expenses if required to attend court to give evidence, and to have any property used as evidence returned.
- To be given information about the offender following conviction.
- To make a complaint should they feel that their Rights not being met – *see also section 11 of this Policy.*

8.3.5 The SRS will publish the results of its prosecution cases on its website. Such results may also be drawn to the attention of interested parties.

## 8.4 Decisions on Enforcement Action

8.4.1 A range of enforcement outcomes is available to the Service, as detailed in session 9 below. Additional options are set out in Annex 1, 2 and 3 of this policy in respect of food law enforcement, food law enforcement and health and safety, respectively. The appropriate action will be determined following careful consideration of the circumstances of each individual case.

8.4.2 We will use compliance advice and support as a first response in the case of many breaches of legislation that are identified. Advice is provided, sometimes in the form of a warning letter, to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter will set out what should be done to rectify the breach and to prevent re-occurrence. If a similar breach is identified in the future, this letter will be taken into account in considering the most appropriate enforcement action to take on that occasion.

8.3.3 We recognise that where a business has entered into a Primary Authority Partnership, the Primary Authority may provide compliance advice and support, and will take such advice into account when considering the most appropriate enforcement action to take. We may discuss any need for compliance advice and support with the Primary Authority.

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## 9. The civil remedies and criminal enforcement actions available

There are a number of civil remedies and criminal enforcement actions available to the Service:

### 9.1 Voluntary Undertakings

We may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The Service will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

### 9.2 Injunctive Actions

In some circumstances the Service may seek an injunction or order from the court that an identified breach is rectified and / or prevented from recurring, or it may control or prohibit a particular activity in the future. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with an injunctive action constitutes a contempt of court offence which may lead to imprisonment.

### 9.3 Civil Sanctions

The Regulatory Enforcement and Sanctions Act 2008 enables the government to give local authorities the power to impose various new civil sanctions. These options are:-

- The issuing of a fixed monetary penalty notice
- The issuing of a variable monetary penalty notice
- The issuing of a compliance notice
- The issuing of a restoration notice
- The issuing of a stop notice
- Permitting a business to make an enforcement undertaking

In respect of certain legislation, local authorities in Wales currently have powers to impose the following:

#### 9.3.1 Fixed Monetary Penalties

The Service may impose Fixed Monetary Penalties, which are capped at a relatively low level and are not intended to be used for more serious cases of non-compliance. Fixed

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Monetary Penalties are not criminal fines and do not appear on an individual’s criminal record. Fixed Monetary Penalties cannot be used in conjunction with any other sanction.

### 9.3.2 **Discretionary Requirements**

The Service has powers under certain legislation to impose Variable Monetary Penalties and Non-Monetary Discretionary Requirements. Variable Monetary Penalties may be imposed up to a maximum level set out in the relevant legislation. Non-Monetary Discretionary Requirements are requirements to take steps to ensure that a breach does not continue or recur. Where the Service chooses to impose Non-Monetary Discretionary Requirements it will clearly set out what those steps should be and the time period within which they must be completed. A failure to comply with the requirements is likely to result in a financial penalty.

Variable Monetary Penalties and Non-Monetary Discretionary Requirements may be used in combination.

Should the Government make additional sanctions available to the Service, we will comply with the legislative requirements for their use, provide guidance on how we will use these penalties and publicise details of any case in which these sanctions are used.

## 9.4. **Criminal Enforcement Actions**

### 9.4.1 **Statutory Notices**

In respect of many breaches, the Service has powers to issue statutory notices. These include: ‘Stop Notices’, ‘Prohibition Notices’, ‘Emergency Prohibition Notices’, and ‘Improvement Notices’. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/ or, where appropriate, the carrying out of work in default (see 9.5.1 below).

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

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#### 9.4.2 Fixed penalty notices and penalty notices for disorder

The Service has powers to issue *fixed penalty notices* in respect of certain breaches. Where available, these notices give the offender the opportunity to avoid prosecution by payment of the prescribed sum in recognition of the offence.

A *penalty notice for disorder* (PND) may be an option for disposal in the case of underage sales of alcohol, and in such cases, the SRS will have due regard to the relevant guidance [Penalty Notices for Disorder \(PNDs\) guidance \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) when their use is being considered. When making decisions regarding the issuing of a PND, any departure from the guidance will be justified and recorded in writing.

Both a fixed penalty notice and a penalty notice for disorder will only be offered where the evidence would have been sufficient to support a prosecution. Payment of the penalty does not provide an individual with immunity from prosecution in respect of similar or recurrent breaches. In some circumstances, in particular where breaches are serious or recurrent, it may be the case that prosecution is more appropriate than the issuing of a fixed penalty notice or penalty notice for disorder.

#### 9.4.3 Enforcement Orders

In some circumstances the Service may seek an order from the Court. Failure to comply with a court order constitutes contempt of court, which may lead to imprisonment.

The Service is required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by the notice. Otherwise, a court order will generally only be sought where there are serious concerns about compliance with voluntary undertakings or a notice.

In some instances, the Service may ask the Court for forfeiture orders in respect of seized goods or articles with a view to their destruction / confiscation.

#### 9.4.4 Simple Caution

A simple caution (previously known as a formal caution) is an alternative to prosecution, where the circumstances are such that the caution is likely to be effective and its use is appropriate to the offence.

Simple cautions can only be given in cases where the offender is over the age of 18, and where:

- There is sufficient evidence to give a realistic prospect of a conviction,
- The offender admits their guilt, and
- It is considered to be in the public interest to use a simple caution rather than institute criminal proceedings.

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There is no legal obligation for a person to accept the offer of a simple caution, but failure to accept a caution will normally result in prosecution for the offence.

Where the offence committed is a recordable offence, a simple caution will appear on an offender's criminal record. A simple caution is likely to influence how the Service and others deal with any similar breaches in the future and may be cited if it is relevant to any proceedings in the future. If a simple caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment and in certain circumstances may be revealed as part of a criminal record check.

Simple cautions will be used in accordance with the Ministry of Justice guidance on the cautioning of adult offenders, currently -

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/416068/cautions-guidance-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/416068/cautions-guidance-2015.pdf), and other relevant guidance.

#### 9.4.5 Prosecution

The SRS may, through the relevant participative Council, prosecute breaches of legislation, particularly in respect of those who flout the law or who act irresponsibly, or where there is an immediate risk to health and safety. Where other enforcement actions, such as voluntary undertakings, statutory notices or a caution have failed to secure compliance previously, then prosecution is more likely.

As with the preceding enforcement options, a number of factors will be taken into consideration including

- The seriousness of the offence
- The previous history of the offender
- Any statutory defence available
- Action taken to avoid recurrence
- Any explanation offered, and if the law allows the circumstances and attitude of the offender
- What course of action will best serve the public interest
- Whether there is a realistic prospect of conviction

The decision as to whether prosecution is the most appropriate course of action in a particular case will be made:

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- In accordance with this Policy;
- In accordance with [The Code for Crown Prosecutors](#); and
- In accordance with statutory requirements, taking into consideration all relevant codes of practice, and without any unnecessary delay.

In following the Code for Crown Prosecutors, a prosecution will only be commenced where the Service and the relevant participant Council is satisfied that there is **sufficient evidence** to provide a realistic prospect of conviction against the defendant(s). In addition the Service / Council must be satisfied that having considered all the relevant facts and circumstances of the case, and having regard to the criteria established by the Code for Crown Prosecutors, a prosecution would be **in the public interest**.

Having considered all the relevant facts and circumstances of an individual case, the Head of SRS will recommend a course of action to the relevant local authority.

- In respect of prosecutions undertaken by Bridgend County Borough Council, the decision to institute proceedings will be made by the Chief Officer Legal, Regulatory and Human Resources
- In respect of prosecutions undertaken by the City of Cardiff Council, the decision to institute proceedings will be made by the Director of Governance
- In respect of prosecutions undertaken by the Vale of Glamorgan Council, the decision to institute proceedings will be made by the Head of Legal Services

In certain circumstances, the Head of SRS may institute legal proceedings in consultation with the officers identified above.

A successful prosecution will result in a criminal record. There is a range of punishments available to the court depending on the charge, and the particular circumstances of a case and the offender. These include a discharge, a fine, a community order, or a prison sentence in serious cases. The court may order the forfeiture and disposal of non-compliant goods and/or the confiscation of any profits, which have resulted from the breach. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors, and may have consequences for individuals seeking certain types of employment.

#### 9.4.6 **Confiscation of Assets**

Officers may make applications under the Proceeds of Crime Act 2002 for confiscation of assets of offenders in serious cases. The purpose is to recover the financial benefit that the offender has obtained from their crimes. Proceedings only take place after a criminal conviction has been obtained, but they are conducted according to the civil standard of proof. Where appropriate, compensation orders can also be sought from the court.

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The SRS uses powers pursuant to sections 294 to 298 of the Proceeds of Crime Act 2002 to seize, detain and forfeit cash. If there are reasonable grounds to believe that cash is derived from or intended for use in crime it can be seized by an Accredited Financial Investigator (AFI). The AFI may detain the cash for a period of 48 hours and / or apply for an order made by the Magistrates Court that the cash be detained for a period of up to 2 years. While cash is detained, an application can be made by the AFI to the Magistrates Court for the forfeiture of the cash. A person aggrieved by an application for detention and / or forfeiture will be provided with details as to how they can resist these applications in the Magistrates Court.

## 9.5 Other remedies and sanctions

### 9.5.1 Works in default

Under certain pieces of legislation, the Service has powers to carry out works in default where a person has been required to do works but has failed to do so. The work in default powers are provided in the legislation being used in relation to a case.

In most circumstances, a person will be given notice of the intention to carry out works in their default. Once work has started, it is an offence for that person to obstruct the Council or any of the contractors that have been employed to carry out the works. The cost of the works will be recovered in accordance with the relevant legislation.

### 9.5.2 Refusal, Suspension or Revocation of Licences

Powers exist to review, suspend and revoke a range of licences. Some of these powers are delegated to officers acting under section 113 of the Local Government Act 1972, but where legislation prescribes or the authority has reserved the right under its scheme of delegations, such actions can only be taken by a sub-committee of the relevant participant Council. Licence holders have the right to attend hearings and to be informed of their right of appeal against a decision. When considering future licence applications, the previous breaches and enforcement action will be taken into account.

### 9.5.3 Taking animals into possession and disqualification of keepers

In cases where it is established that protected animals are suffering or are likely to suffer if their circumstances do not change, Officers will use powers under the Animal Welfare Act 2006 to remove the animals by seizing them. An application can be made to the court for the Vale of Glamorgan Council to be given ownership of the animals, enabling them to be disposed of through rehoming and other available means as appropriate. The costs of caring for animals taken into possession will always be sought.

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In cases where individuals are found guilty of animal welfare offences, consideration will be given to seeking their disqualification, through the court, from keeping animals in the future. Such disqualifications may be for a finite time (months or years), while in the case of very serious or persistent offending, a lifetime disqualification order may be granted.

#### 9.5.4 Closure Orders

In cases where illicit products are being supplied, for example the supply of counterfeit or non-duty paid tobacco, a closure notice may be issued under the Anti-social Behaviour, Crime and Policing Act 2014. Such a Notice requires the premises concerned to remain closed for 48 hours prior to the matter being considered by the Magistrates Court.

The Court then has the power to grant a closure notice on the premises for a period of up to 3 months, which may be extended by the Court upon application.

#### 9.5.5 Criminal Behaviour Orders

A Criminal Behaviour Order may be sought from the court in circumstances where an individual convicted of an offence has engaged in behaviour that has caused, or is likely to cause, harassment, alarm or distress, and the court believes that making the order will help prevent the offender from engaging in such behaviour.

## 10. Review

- 10.1 This policy will be updated and developed as required by changes in the law and will be reviewed biennially for continued accuracy and adherence to it by staff and reported to the Joint Committee and the respective Overview and Scrutiny Committees.
- 10.2 Data on equality profiles of those affected by this policy will be collated and monitored for any discriminatory practices.

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# 11. Comments and Complaints

11.1 We strive to provide a high standard of service. However, for anyone wishing to make a complaint about the service they have received from us, there is a [formal complaints procedure](#), to ensure that concerns are dealt with quickly and consistently. Complaints can be made in person, in writing, by email or by using the online complaints form – link.

11.2 Any comments or complaints about the application of this policy should be addressed to the SRS at the address given in the introduction to this Compliance and Enforcement policy. If it is felt that a complaint about this policy has not been satisfactorily concluded, it will be passed to the Director of Environment and Housing at the Vale of Glamorgan Council and will be dealt with in accordance with the formal complaints procedure detailed above.

However, sometimes your concern or complaint will not be dealt with via the Corporate Concerns and Complaints Policy, examples include:

- an appeal against a ‘properly made’ decision made by the Council
- a means to seek change to legislation or ‘properly made’ policy decision
- decisions in respect of which there is a separate right of appeal or review, e.g. via a Magistrates Court

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# Compliance and Enforcement Policy

## Annex 4: Housing Enforcement

### 1. Introduction

- 1.1 This annex supplements the Shared Regulatory Services Compliance and Enforcement Policy in establishing a consistent approach in respect of Housing Enforcement. It must be read in conjunction with that overarching policy.
- 1.2 Shared Regulatory Services is committed to improving the standards of private rented sector housing by ensuring that accommodation is well managed, properly maintained, safe and habitable. We recognise the significant role of the Private Rented Sector (PRS) within the local housing market and will continue to support good landlords and agents as they comply with the law to provide decent, well-maintained homes. At the same time, the Service is aware of issues that persist in the PRS, relating to the condition and management of properties and is committed to tackling unscrupulous landlords who continue to fail in their legal obligations and seek profit from their non-compliance.
- 1.3 SRS aims to advise owners, landlords and agents on the property standards they are expected to meet; support tenants in understanding their rights and responsibilities, and to take formal action when deemed necessary or where issues cannot be resolved amicably.
- 1.4 Officers tackle a broad and extensive range of housing issues, from tenant complaints concerning housing standards to the licensing and inspection of Houses in Multiple Occupation (HMOs). There is a statutory duty to enforce the provisions of the Housing Act (2004) and this annex sets out our approach when enforcing other housing-related legislation, such as the Public Health Acts 1936 – 1984 and the Environmental Protection Act 1990.
- 1.5 The different housing stock characteristics of the three partner Council areas bring different priorities and challenges. This means that there will be regional differences in the use of the different enforcement tools and levers that are available.
- 1.6 Where there is any conflict in interpretation between this annex and the overarching Compliance and Enforcement Policy, the latter will take precedence.

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## 2. Roles and responsibilities

### 2.1 Officers

2.1.1 It may be possible to take action in the following areas if conditions are not satisfactory. Please note that this list is not exhaustive).

- Property in disrepair (Hazards and Risks to Health)
- Entry by intruders
- Conditions within HMOs
- Vermin and infestation problems
- Fire safety
- Overcrowding
- Poor management
- Public Health Nuisance issues (e.g., accumulation of rubbish)
- Emergency health issues (e.g., lack of hot water/heating)
- Energy efficiency and excess heat/cold
- Inadequate security

2.1.2 Shared Regulatory Services will respond to complaints based on seriousness and risk of harm. If enforcement action is necessary, regulatory powers can be used to address and resolve the issue. In the first instance and where appropriate, we expect the landlord to take steps to rectify the issues before we intervene formally.

2.1.3 Officers will conduct inspections when there is a statutory duty to do so, or in cases where the Council considers it is appropriate to intervene. This could be a part of a proactive inspection programme or reactively if there is reason to believe a health and safety hazard exists.

2.1.4 Upon inspection, officers may use equipment to take measurements, samples, and photographs where appropriate. Following an inspection, officers will notify the reasons for enforcement action and specify the remedial works required over a specified timeframe and will distinguish between works that are a legal requirement and works that are best practice.

2.1.5 Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case with the person responsible and, if possible, resolve points of difference, unless immediate action is required (for example, an imminent risk to health and safety).

2.1.6 Where immediate action is considered necessary, an explanation of why such action was required will be confirmed in writing and accompanied by a statement of reasons in all cases within 10 working days.

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2.1.7 The Service is committed to ensuring that all its authorised officers have the necessary skills, competencies, and experience required for their roles and responsibilities. Officers will undergo Continuing Professional Development (CPD), training and development programs, to enable them to carry out their jobs effectively and efficiently.

## 2.2 Tenants

2.2.1 Before SRS will consider taking any action in respect of a tenanted property, we require tenants to first inform their landlords of any problems before contacting us. This initial communication allows landlords to begin addressing their legal obligations and resolve the issue informally. It is encouraged that concerns are made in writing, wherever feasible, as written evidence may be required by officers at a later date.

2.2.2 Contract-holders are expected to provide landlords with a reasonable time to inspect and carry out any repair work required. Timeframes are dependent on the type of repairs needed and can vary depending on how serious and complex the problem is. If the landlord fails to carry out the works needed by the agreed-upon date, then SRS will investigate and take action where appropriate.

2.2.3 Note that the below conditions may result in the withdrawal of an investigation (this is not an exhaustive list):

- Where the Council has evidence that the tenant(s) unreasonably refused access to the landlord, managing agent or landlord’s contractor, to arrange or to carry out any necessary works.
- The tenant(s) have, in the Council’s judgement, clearly caused the damage to the property which they are complaining about, and there are no other disrepair concerns. *(Please Note: Any damage that poses a significant risk to the health and safety of the tenant, will require rectification by the landlord, regardless of who is at fault for the damage).*
- Where the tenant(s) has requested a service and then failed to keep to an appointment and has not responded to a follow-up letter or appointment card.
- Where the tenant(s) is being aggressive, threatening or verbally or physically abusive towards officers.
- Where there is found to be no justification for the complaint on visiting the property.
- Where the tenant(s) has unreasonably refused to provide the Council with relevant documentation.
- Where the tenant(s) only reason for contacting SRS is, in the Council’s opinion, to get re-housed. Our Housing Enforcement teams are responsible for ensuring housing conditions are safe and habitable and do not serve to increase applicants’ priority on

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the housing register. Instead, the landlord will need to be contacted to remedy the issues at the property for the tenant to remain in situ.

- 2.2.4 Officers will consider the views of occupants when determining the most appropriate course of action. Where there are concerns about vulnerable occupants, officers shall consult other relevant agencies (such as social services).

## 2.3 Landlords/Letting Agents

- 2.3.1 SRS expects landlords/letting agents to be aware of their legal obligations and to remain updated with any new or amended legislation/regulations.
- 2.3.2 A landlord must always keep the dwelling in repair. If a landlord/letting agent receives a service request from a tenant, the council expects the landlord to respond promptly and resolve the issues at the earliest opportunity without the need for the council's intervention.
- 2.3.3 Before entering a property, it is expected that landlords/agents provide written notice to their tenant (this could be in the form of an email, text, or letter). The landlord/agent must provide reasonable notice to tenants when an inspection is required or to complete work.
- 2.3.4 SRS expects landlords/letting agents to cooperate with their investigations for non-compliance as it may be considered an offence if an officer is obstructed when performing their duties. Officers also expect that any informal requests are complied with promptly.
- 2.3.5 Where appropriate, landlords are expected to submit a valid HMO licence application and meet management regulations.
- 2.3.6 Since 1<sup>st</sup> December 2022, landlords/letting agents have a duty to ensure their dwelling meets the **Fitness For Human Habitation** (FFHH) requirements. The FFHH Regulations place three specific requirements on landlords to help prevent certain matters and circumstances arising. These are:
- ensuring the presence of smoke alarms in proper working order
  - ensuring the presence of carbon monoxide detectors in proper working order
  - ensuring the inspection and testing of the electrical installation

**Please note:** *The FFHH requirements have been documented solely for the purpose of reference. Should requirements not be followed, SRS will not investigate or enforce, but rather will recommend that legal advice be sought.*

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## 2.4 Leaseholder Complaints

- 2.4.1 SRS sometimes receives complaints from leaseholders requesting assistance in taking action against other leaseholders or freeholders. SRS action will be limited to; failure to licence enforcement, statutory nuisance enforcement and Category 1 and Category 2 hazards enforcement, where the leasehold flat is tenanted.
- 2.4.2 In all other situations (e.g. civil disputes between freeholder and leaseholder), the leaseholder will be redirected to; [The Leasehold Advisory Service](#) and advised to contact a solicitor who specialises in leasehold law.
- 2.4.3 Further information can be found at: <https://www.lease-advice.org/wales-page/> or by contacting: 020 7832 2500.

## 2.5 Registered Social Landlords

- 2.5.1 Tenants who reside in social housing will initially be advised to follow their social housing provider complaints procedure unless circumstances dictate urgent action is required (i.e., there is an imminent risk to health and safety). On completion of the complaints procedure, officers will consider an inspection of properties in this category in the Bridgend and Vale of Glamorgan Council areas. Please note that this service is only available in the Bridgend and Vale of Glamorgan areas.
- 2.5.2 Where Registered Social Landlords (RSL) have a programme of work to improve their stock to meet the Welsh Housing Quality Standard, an informal approach will be taken to enforcement. However, should the informal approach fail or where urgent action is required to protect the safety and health of tenants, formal action will be considered.
- 2.5.3 When determining the most appropriate course of action officers will consider the views of the occupants. Where there are concerns about vulnerable occupants, officers shall consult with other relevant agencies to agree upon a suitable approach (i.e. social services and/or housing teams). For example, the availability of suitable alternative accommodation may need to be considered when dealing with a crowding and space hazard.

## 3. Housing, Health, and Safety Rating System (HHSRS)

- 3.1 SRS will respond to complaints from tenants, as well as other residents and stakeholders, about private housing. Complaints will be prioritised based on the

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severity and the risk of harm. Following a complaint, an inspection will be conducted in cases where the officer considers it appropriate.

- 3.2 The assessment of housing standards shall be made under the Housing Health and Safety Rating System (HHSRS). This is a risk-based assessment tool which allows officers to rate the impact of housing conditions on the health of occupiers.
- 3.3 Twenty-nine potential hazards are assessed and scored for their severity. Appendix 1 refers to the hazards and their descriptions that form part of this scoring system. The scores are sorted into categories based on their sub banding.
  - *Category 1 hazards (bands A-C)* indicate a serious danger to health and the Council must take appropriate action to reduce these hazards.
  - *Category 2 hazards (bands D-J)* indicate a less serious danger and the Council has the power, but no duty, to reduce category 2 hazards through appropriate action.
- 3.4 Under the Housing Act 2004, officers are equipped with a range of enforcement powers that can be used to remove or reduce any hazards identified to an acceptable level. Therefore, each case will be risk-assessed on their own merits to determine the most appropriate course of enforcement action.
- 3.5 Officers will make these judgements by reference to those who would be most vulnerable to the hazard, even if they may not be living in the property at the time. In determining what action to take, the Council will consider the hazard assessment score; whether the Council has a duty or discretion to act; the views of the occupiers; the risk to the current and likely future occupiers and regular visitors; and the presence of other significant hazards in the property.

## 4. Taking Enforcement Action

- 4.1 Section 8.4 of the SRS Compliance and Enforcement Policy is concerned with decisions on enforcement action and considers the broad range of enforcement options available to the Service. This purpose of this section is to set out the additional enforcement options available, specific to the administration of housing law, and these are considered from section 5 of this annex, onwards.
- 4.2 In deciding upon the type of enforcement action to take, authorised officers must have regard to the nature of the breach and the history of compliance of the business or individual. Unless circumstances indicate a significant risk, officers will operate a graduated and educative approach moving to more formal action where informal action does not achieve the desired effect.

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## 5. Enforcement Approaches

### 5.1 Compliance advice and support

5.1.1 Section 6 of the overarching SRS Compliance and Enforcement Policy is concerned with the provision of advice and guidance to businesses as a means of achieving compliance.

5.1.2 Certain circumstances may not warrant any action to be taken other than to provide advice and support. Listed below are examples where this may be the case (this list is not exhaustive):

- Where a premises is found to be satisfactory, or the health and safety risk is considered sufficiently low enough.
- When it appears apparent to the officer that problems have arisen through the direct lifestyle or actions of the tenant or similar.
- Where another regulator or advice service is considered more appropriate.
- Taking legal action would be considered disproportionate or inappropriate against the case circumstances.

5.1.3 Ordinarily, officers will confirm by writing or telephone that no action is being taken. Where appropriate, officers may also advise if there are any legal avenues available to the complainant where issues can be resolved without SRS intervention.

### 5.2 Informal Action

5.2.1 Officers may work on an informal basis with those involved to seek improvement and remedial works unless the case circumstances warrant officers to take a formal approach. Formal action will always be considered except where one of the following situations apply:

- There is no legislative requirement to serve a formal notice or order and the circumstances are not serious enough to warrant formal action.
- History suggests informal action will achieve compliance.
- There is confidence in the management or the individual.
- The consequences of non-compliance will not pose a significant risk to occupiers or the public at large.
- There is recognition from the landlord and a credible plan for completing the works.

5.2.2 Informal action can be provided through verbal advice, written communication (e.g., e-mail) or schedules of work detailing the action recommended.

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- 5.2.3 Advice provided by SRS officers will clearly differentiate between items that are legal requirements and those that are recommended as good practice. Details of the defects at the property and how the landlord can rectify the problem will be provided. Landlords will be given an opportunity to discuss the matter further.
- 5.2.4 It will be clearly stated that failure to comply with informal requests to meet legal requirements may result in formal action being taken.

### 5.3 Formal Action

- 5.3.1 Where the circumstances of the case justify it, or compliance with a statutory requirement has not been achieved by informal action, a range of formal enforcement options are available, and these are considered in the sections that follow.

## 6. Formal action under the Housing Health and Safety Rating Scheme

- 6.1 Officers can resort to the formal action measures under the Housing, Health and Safety Rating Scheme (HHSRS) listed below.
  - Hazard Awareness Notice
  - Improvement Notice (including a Suspended Improvement Notice)
  - Prohibition Order (including a Suspended Prohibition Order)
  - Emergency Prohibition Order
  - Emergency Remedial Action
  - Demolition Order
  - Clearance Area Declaration
- 6.2 The Council is limited to taking only one of the actions mentioned above at any given time concerning a particular hazard (unless one of the actions is an emergency action). However, if the action taken proves to be ineffective, it can be modified or repeated.
- 6.3 In each case where the Council has decided to take any of the above actions, a statement of reasons will be provided alongside the notice or order.
- 6.4 Where reasonably practicable, any proposed enforcement action will be discussed with the relevant person prior to the service of any notice or order under Part 1 of the Act, and their representations sought.
- 6.5 The remainder of this section provides further detail on each of the HHSRS enforcement options listed in above.

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### 6.5.1 Hazard Awareness Notices

6.5.1.1 A Hazard Awareness Notice (HAN) provides formal notification to an owner or landlord of the existence of a hazard at their residential premises. If a hazard is identified, but not addressed it may have future implications upon the property.

- Hazard Awareness Notices relating to Category 1 Hazards; Section 28
- Hazard Awareness Notices relating to Category 2 Hazards; Section 29

6.5.1.2 To serve a HAN, the Council needs to be satisfied that a hazard exists and that there is no management order attached to the property.

6.5.1.3 This notice sets out the hazards of concern and the remedial action officers believe would reduce the hazards. A HAN is not enforceable and therefore there is no right of appeal.

### 6.5.2 Improvement Notices

6.5.2.1 An improvement notice requires the person responsible to carry out a described set of remedial works to reduce or remove the hazard(s) identified within a specified timeframe.

- Improvement Notices relating to Category 1 Hazards; Section 11
- Improvement Notices relating to Category 2 Hazards; Section 12

6.5.2.2 The notice will be placed as a local land charge on the property. Failure to comply with an Improvement Notice is a criminal offence and enforcement action can be taken in relation to this, such as prosecution or works in default.

6.5.2.3 Officers will not serve an improvement notice unless they are confident that they have sufficient evidence to defend against an appeal. All improvement notices served will contain information about the right to appeal to the Residential Property Tribunal (RPT).

### 6.5.3 Prohibition Orders

6.5.3.1 A prohibition order is used to prevent the use of all or part of a dwelling, for certain defined purposes or for specific types of tenants who are particularly at risk or may be at risk when subject to the hazard.

6.5.3.2 Prohibition Orders may serve as the most appropriate form of enforcement action when housing conditions present a risk, but remedial action is unreasonable or

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impractical i.e., work cannot be carried out with the tenant(s) in residence. In an HMO a prohibition order can be used to prohibit the use of specified dwelling units.

- Prohibition Orders relating to Category 1 Hazards; Section 20
- Prohibition Orders relating to Category 2 Hazards; Section 21

6.5.3.3 A prohibition order will be placed as a local land charge on the property. Failure to comply with a Prohibition Order is a criminal offence and enforcement action can be taken in relation to this, such as prosecution.

6.5.3.4 Officers will not serve a Prohibition Order unless they are confident that they have sufficient evidence to defend against an appeal. All orders will contain information about the right to appeal.

6.5.3.5 Certain Category 1 hazards may warrant an [Emergency Prohibition Order: Section 43](#). This has the same effect as a Prohibition Order but comes into force immediately.

#### 6.5.4 Suspension of an Improvement Notice and Prohibition Order

6.5.4.1 A suspension may be enacted when enforcement action can be safely postponed until a specified event or time.

- Suspension of Improvement Notice; Section 14
- Suspension of Prohibition Order; Section 23

6.5.4.2 A suspension might be considered as the preferred enforcement choice where:

- i) There is good reason to defer enforcement action.
- ii) It is appropriate to wait until a particular circumstance ends, or a person departs, or ceases to occupy the premises.
- iii) An Improvement Notice or Prohibition Order has been served and remains non-compliant.

6.5.4.3 A suspended notice must be reviewed by the local authority within a year of when the notice was served, and at least annually thereafter.

6.5.4.4 The following are example situations in which it may be appropriate to suspend an Improvement Notice:

- The need to obtain planning permission (or other appropriate consent) that is required before repairs and/or improvements can be undertaken.
- Works which cannot properly be undertaken whilst the premises are occupied, and which can be deferred until such time as the premises falls vacant or temporary alternative accommodation can be provided.

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- Personal circumstances of occupants; for example, temporary ill health, which suggests that works ought to be deferred.

## 6.5.5 Revocation and Variation of Improvement Notices and Prohibition Orders

6.5.5.1 A revocation may be considered in cases where the Council is satisfied that an improvement notices or prohibition order has been complied with.

- Revocation and Variation of an Improvement Notice; Section 16
- Revocation and Variation of a Prohibition Order; Section 25

6.5.5.2 In the case of a notice or order that applies to more than one hazard, the requirement of compliance applies to each hazard individually.

6.5.5.3 The Council may also vary an improvement notice in the following circumstances:

- Where part of a notice, which relates to more than one hazard, has been revoked the remainder of the notice may also be varied as considered appropriate.
- With the agreement of the person on whom the notice was served
- In the case of a suspended improvement notice, alter the time or event specified that triggers the end of suspension.

## 6.5.6 Emergency Remedial Action (Section 47)

6.5.6.1 This action permits the Council to intervene and carry out works to remove one or more Category 1 hazard(s) at a property. Officers may consider this action when satisfied that:

- A Category 1 hazard exists on a residential premises and
- There is an imminent risk of serious harm to the health and safety of any occupiers and
- No management order is in place under Part 4 of the Act.

6.5.6.2 The Council will take emergency remedial action upon the relevant person within 7 days to inform them of the hazard and works taking place at their property.

6.5.6.3 Officers will not take emergency remedial action unless they are confident that they have sufficient evidence to defend an appeal against the notice.

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### 6.5.7 Demolition Orders (Section 46)

6.5.7.1 Requires the demolition of a property and will only be considered by SRS in circumstances where Category 1 hazards are present; no management order is in place (under Part 4 of the Act) and remedial works are not possible or reasonable because of excessive cost, or other reason.

6.5.7.2 Consideration will be given to the following:

- Availability of local accommodation for rehousing
- The sustainability of the accommodation if the hazard(s) were remedied
- The prospective use of the cleared site
- The local environment i.e., the suitability of the area for continued residential occupation and the impact of a cleared site on the appearance and character of the neighbourhood.

### 6.5.8 Clearance Areas (Section 47)

6.5.8.1 The Council may decide to declare a clearance area on a single or group of properties where it is satisfied that:

- The residential building(s) in the area contains a category 1 hazard, and that other buildings in the area (if any) are dangerous or harmful to the health or safety of the residents.
- The residential buildings in the area are dangerous or harmful to the health or safety of the residents because of their bad arrangement or the narrowness or poor arrangement of the streets.
- Each of the residential buildings in the area contains a Category 2 hazard and that the other buildings in the area (if any) are dangerous or harmful to the health or safety of the residents. The circumstances of the case are specified or described in an order made by the Welsh Assembly Government.

### 6.5.9 Appeals

6.5.9.1 Any person served with a notice/order has the legal right to appeal to the Residential Property Tribunal under The Housing Act (2004). Further details on the process for an appeal are contained in the relevant notice or order.

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## 6.5.10 Failure to comply with an Improvement Notice

6.5.10.1 Subject to the type of notice served an example of non-compliance can include:

- No works initiated.
- Not starting the work by the time specified within the notice.
- Works remaining incomplete by the completion date.

6.5.10.2 If the recipient of a notice does not comply, the Council may enforce the subsequent action.

- Undertake Works in Default
- Issue a Caution
- Pursue a Prosecution

## 7. Simple Caution

7.1 See section 9.4.4 of the Shared Regulatory Services Compliance and Enforcement Policy for details.

## 8 Prosecution (Section 30 & 32)

8.1 Prosecution will be considered as a course of action where there has been a failure to comply, 'without reasonable excuse', with the requirements of an operative improvement notice or prohibition order.

8.2 See section 9.4.5 of the Shared Regulatory Services Compliance and Enforcement Policy for details.

## 9. Works in Default (Section 31)

9.1 In circumstances where SRS have legally required someone to do work, but they have failed to do so, powers are available to carry out works in their default. This action may be taken with or without the agreement of the person responsible and a contractor will be appointed to carry out the required work.

9.2 SRS may consider this course of action in any of the following circumstances:

- There is an imminent risk to the health and safety of tenants or the public.
- Where a person has failed to comply with the requirements of an improvement notice.

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- Where reasonable progress, to the requirements of the notice, is not being made.
- 9.3 In most cases, notice from the council to carry out works in default will be provided. Once work has commenced it is an offence to obstruct the Council or any appointed contractor(s) to carry out the required work.
- 9.4 The Council will seek to recover costs and associated expenses through the courts.
- 9.5 Prosecution may still be considered irrespective of whether Works in Default has been carried out to alleviate the hazard.

## 10. Power to Charge for Enforcement Action (Section 49)

- 10.1 Under the Housing Act (2004) Section 49 local authorities have the power to make a charge to recover administrative and other expenses incurred by them when taking enforcement action.
- 10.2 It will be the policy of the Council to make a charge for taking enforcement action, our latest fees can be found here: [Shared Regulatory Services Fees and Charges](#)
- 10.3 The purpose of this fee is to cover the cost of the inspection of the premises, the consideration of any action to be taken and the service of a notice/order incurred by officers.

## 11. Power to Recover Certain Expenses

- 11.1 Where the Council undertakes works in default or exercises its power to take emergency remedial action, it will seek to recover the expenses reasonably incurred in doing so, in addition to any administrative charges from the relevant person.
- 11.2 Expenses will be recovered by demanding a payment of the charge. At the time that the demand becomes active, the sum recoverable will be registered as a local land charge on the premises concerned. Once the debt is cleared the registered charge will be removed.

## 12. Powers of Entry

- 12.1 The council has the power of entry to properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004 provided that the officer has:
  - written authority from an appropriate officer stating the purpose for which entry is authorised and

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- given at least 24 hours' notice to the owner (if known) and the occupier (if any) of the premises they intend to enter.

**Note:** In certain cases, prior notice may not be given when entry is required to determine whether an offence has been committed in relation to the licensing and management regulations of HMOs (under sections 72, 95 or 234(3) of the Housing Act, 2004) or where emergency remedial action is being undertaken.

12.2 The power of entry also allows officers to leave recording equipment in a property for later collection. The equipment must be relevant to the officer's enforcement powers.

## 13. Houses in Multiple Occupation (HMO)

The Housing Act 2004 introduced mandatory licensing for larger, higher-risk HMOs (Houses in Multiple Occupation), and provided discretionary powers to licence smaller, multiple-occupied properties.

### 13.1 Mandatory HMO licensing

13.1.1 A Mandatory licence is currently required for HMOs with three or more storeys with five or more occupiers forming two or more households and sharing amenities either a kitchen, bathrooms, or W.C.

### 13.2 Discretionary licensing

13.2.1 As defined by parts 2 and 3 of the Housing Act (2004), Local Authorities have powers to require landlords of specific privately rented properties to apply for a licence.

13.2.2 There are two types of discretionary licensing, that can be utilised: Selective Licensing and Additional Licensing.

- Additional licensing may be considered appropriate by the Council in areas that contain a high concentration of poorly managed HMOs. Consideration of this action would benefit tenants of smaller HMO properties that are not covered under mandatory licensing. The license requirements aim to improve the safety standards and the living conditions of HMO properties.

**Note:** Cardiff Council has declared some areas of the city as discretionary licensing areas, landlords and agents need to check to see if their property(s) are in the relevant areas.

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- Selective licensing may be considered appropriate by the Council in areas that contain a high proportion of properties in the private rented sector and there are issues in relation to, housing condition, migration, deprivation, or crime. SRS has not yet adopted selective licensing, but the situation will remain under review.

### 13.3 Licensing an HMO

13.3.1 The aim of licensing is to ensure that every licensable HMO is safe for the occupants and is properly managed. The responsibility to ascertain whether the building should have a licence rests with the person having control of or managing the property.

13.3.2 On receipt of a new application, an officer will contact the applicant to arrange an inspection of the licensable property. Following the inspection, a draft licence with a schedule of work and its timescales will be issued for comments. After the consultation period has lapsed for the draft licence, a full licence will be issued.

13.3.3 SRS will actively enforce HMO licence conditions to ensure continued compliance with the scheme, and to ensure the health and safety of all occupants. All licensed HMOs will continue to be inspected once at least every five years to ensure that licence conditions are being met.

13.3.4 It is also the landlord’s responsibility to re-licence a property as necessary. Landlords who fail to reapply for a licence in properties that require a renewal of their licence or fail to provide the required information or the appropriate fee, may be investigated for failing to licence a licensable property.

### 13.4 Fees

13.4.1 The Council will charge a fee for HMO licence applications. Fees will be set to cover costs incurred in administering the licensing schemes. Our latest fees can be found here: [Shared Regulatory Services Fees and Charges](#).

### 13.5 Licensing Offences

13.5.1 The Housing Act (2004) details the HMO licensing offences that include, without reasonable excuse:

- Failure to licence an HMO.
- Exceeding the number of occupants than the HMO licence allows.
- Failure to comply with any of the conditions specified on the licence.

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13.5.2 If you are unsure as to whether an HMO property requires a licence you can contact us, and our officers will be able to provide advice.

13.5.3 To check whether a property has been licensed you can also check the [HMO public register](#).

## 13.6 Duration of Licences

13.6.1 Licences will normally be granted for the full five-year period. We may reduce the length of the licence from five years to an appropriate reduced period:

- where the property has not been satisfactorily managed or there are management concerns
- where officers are concerned the proposed management arrangements may not be satisfactory and want to see evidence that they are suitable, before allowing a longer licence period to be granted.

13.6.2 In the case of a renewal of a licence to the same licence holder, the Council will normally grant a new licence for a period of five years, from the date of expiry of the previous licence.

## 13.7 Fit and Proper Person Check

13.7.1 Each application will be considered on its own merits to ensure that only fit and proper persons hold licences. If a licence is to be refused on the ground that a person is not fit and proper, the Council must be able to justify its decision with clear reasons.

13.7.2 If the Council has refused to award a licence because the applicant was not a fit and proper person, the Council will consider an alternative application from another manager who is fit and proper and sufficiently competent to hold the licence.

13.7.3 A person's fit and proper status may be reviewed at any time if circumstances change. If found that the person does not satisfy this standard, it may result in the refusal of an application or revocation of an existing licence(s).

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## 13.8 Interim and Final Management Orders

- 13.8.1 The Council may decide to use their powers to take over the management of an HMO and become responsible for running the property, collecting rent, and creating new tenancies.
- 13.8.2 An Interim Management Order transfers the management of a residential property to the council for a period of up to twelve months. A management order will only be considered as a measure of last resort in situations where there is no prospect of a qualifying HMO being licensed.
- 13.8.3 The Council would look to a partner Housing Association and / or local letting agencies to manage the HMO on the Council's behalf.
- 13.8.4 In exceptional circumstances, the council can also apply for a Final Management Order (FMO) which can last for up to five years.

## 13.9 Rent Repayment Order

- 13.9.1 A Rent Repayment Order is a financial penalty placed upon a landlord who, without reasonable excuse, manages or lets a property which ought to be HMO licensed under the Housing Act 2004.
- 13.9.2 A tenant or former tenant can make an application to the Residential Property Tribunal to impose a Rent Repayment Order. If successful, tenants can reclaim up to twelve months rent.

## 13.10 Temporary Exemption Notice

- 13.10.1 The Council will only serve a temporary three-month exemption notice, when officers are confident that steps are being taken to make an HMO non-licensable.
- 13.10.2 If we refuse to grant a temporary exemption notice we will advise the applicant by a notice, as soon as possible, and give the reasons for refusal and appeal details.
- 13.10.3 In exceptional circumstances a second TEN can be served for a further three-month period and will be considered on a case-by-case basis.

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# Compliance and Enforcement Policy

## Annex 5: Minimum Energy Efficiency

### 1. Introduction

- 1.1** This annex supplements the Shared Regulatory Services (SRS) Compliance and Enforcement Policy in establishing a consistent approach to enforcement of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, and it must be read in conjunction with that overarching policy. Where there is any conflict in interpretation between this annex and the overarching Compliance and Enforcement Policy, the latter will take precedence.
- 1.2** The purpose of the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 is to tackle and improve the least energy efficient domestic and non-domestic privately rented properties. The regulations prohibit:
- the letting out of such a property where the minimum level of energy efficiency (set out in the Energy Performance Certificate for the property) is less than an E rating (i.e. an F or a G rated property)
  - The registering of any false or misleading information of the Government's [National PRS Exemptions Register](#)
  - Failure to comply with a Compliance Notice issued under the regulations
- 1.3** SRS will identify rental properties that do not meet the minimum levels of energy efficiency, and for which no bona fide exemption has been registered. Assistance will be provided to landlords / letting agents in order for those properties to be brought into compliance. Landlords will be expected to demonstrate that they have a compliant EPC certificate (A-E rating), or alternatively set out a plan to achieve the required energy efficiency level.
- 1.4** Should the advisory stage not result in compliance, the regulations provide for specific enforcement options as set out in 2 below.

### 2. Enforcement Options

#### 2.1 Compliance Notice

- 2.1.1** Where it appears that in the previous 12 months a landlord has let out a substandard property, then under regulation 37, a Compliance Notice can be served to request

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information from the landlord to determine whether a breach of the regulations has occurred. In the event that either

- the landlord fails to comply with a Compliance Notice or
- provides information under the Compliance Notice that demonstrates non-compliance under the regulations,

then a Penalty Notice can be served (for which see 2.2 below).

## 2.2 Penalty Notice

**2.2.1** A Penalty Notice can be served when the enforcement authority is satisfied that in the previous 18 months, a landlord has been in breach of the Energy Efficiency Private Rented Property (England and Wales) Regulations 2015 in respect of:

- Regulation 23 – letting out a substandard (F/ G rated) domestic property, and/or
- Regulation 37(4)(a) – failure to comply with a Compliance Notice

In each case, the level of the financial penalty associated with the Penalty Notice is calculated on the basis of the seriousness of factors affecting culpability and factors affecting harm / risk. The methodology for this is set out in Section 3 below.

## 2.3 Publication Penalty

**2.3.1** The Enforcement Authority can decide to publish details of non-compliance for a property on the PRS Exemptions Register, with such details remaining in place for a period of at least 12 months. Note that the Publication Penalty is not a financial penalty.

## 3. Methodology for Determining the Level of a Financial Penalty

**3.1** The overarching SRS Compliance and Enforcement Policy at section 9.3 considers the use of civil sanctions, including fixed and variable monetary penalty notices. The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 specify the maximum financial penalties that can be imposed in respect of minimum energy efficiency enforcement as follows:

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- (a) *Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.*
- (b) *Where the landlord has let a sub-standard property in breach of the regulations for 3 months or more, the Local Authority may impose a financial penalty of up to £4,000 and may impose the publication penalty.*
- (c) *Where the landlord has registered false or misleading information on the PRS Exemptions Register, the Local Authority may impose a financial penalty of up to £1,000 and may impose the publication penalty.*
- (d) *Where the landlord has failed to comply with compliance notice, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.*

**3.2** SRS will take a staged approach to determining the appropriate financial penalty, as follows:

**Stage 1** – Three factors are considered, the culpability of the offender, the potential for tenant harm and the severity of risk. Collectively these factors identify the seriousness of the offence. The seriousness is then categorised, which will be used to determine the amount of penalty.

**Stage 2** – This stage determines the offender’s history of legal compliance

**Stage 3 (Penalty review)** - SRS will check the penalty is proportionate to the overall means of the offender and if there are multiple offences the Council will take the totality principle into account.

**3.3** SRS will first consider factors affecting culpability and harm to choose a starting point from the tables in 3.4 below for the financial penalty under consideration.

**3.4 Stages 1 and 2**

**3.4.1 Factors affecting Culpability:**

**High:** Landlord has failed to comply with requests to observe the Regulations. Knowingly or recklessly providing incorrect information in relation to exemptions to these Regulations.

**Low:** First breach under these Regulations, no previous history of non-compliance of with Housing related regulatory requirements. Complex issues partially out of

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control of the landlord have led to non-compliance.

### 3.4.2 Factors affecting Harm / Risk:

**High:** Low EPC rating e.g. G or close to a G rating, vulnerable tenants occupying property and/or, extended period of time since non-compliance.

**Low:** EPC score close to minimum acceptable EPC rating (E), No vulnerable tenants and/or short period of non-compliance.

	Low culpability	High culpability	Notes
Low harm	25%	50%	% = Proportion of maximum penalty
High harm	50%	100%	

### 3.4.3 The following tables show the starting points for penalty for each type of breach:

a) *Not meeting minimum standard for less than 3 months: MAX £2,000*

	Low Culpability	High Culpability
Low Harm	£500	£1000
High Harm	£1000	£2000

b) *Not meeting minimum standard for more than 3 months: MAX £4,000*

	Low Culpability	High Culpability
Low Harm	£1,000	£2,000
High Harm	£2,000	£4,000

c) *Providing False and Misleading Information, Exemptions Register MAX £1,000*

	Low Culpability	High Culpability
Low Harm	£250	£500
High Harm	£500	£1000

d) *Failing to comply with a Compliance Notice; MAX £2,000*

	Low Culpability	High Culpability
Low Harm	£500	£1000
High Harm	£1000	£2000

### **3.5 Stage 2 – Further consideration of Aggravating and Mitigating Factors**

**3.5.1** Officers may consider it appropriate to adjust the penalty from that determined in the table either up or down depending on particular aggravating or mitigating factors. This may include a landlord’s previous history of non-compliance or good compliance with housing related regulatory requirements.

**3.5.2** If factors come to light as part of the investigation that require any adjustments to the financial penalty, these factors will be included in the Financial Penalty. In addition, factors may be provided in representations from a landlord in his request to review after the Penalty Notice has been served.

### **3.6 Stage 3 – Review of the Penalty**

#### **3.6.1 Reductions**

The Council will consider any factors which indicate a reduction in the penalty may be appropriate and will have regard to the wider implications of the financial penalty on innocent third parties; for example, the impact of the offender’s ability to comply with the law or to make restitution to the victims/tenants.

#### **3.6.2 Totality Principle**

In addition to the maximum penalties listed in Regulation 40, SRS will, when issuing a financial penalty for more than one offence (e.g. penalties for more than one property), or where an offender has also been issued with another financial penalty, consider if the total penalties are just and appropriate to the offending behaviour and make adjustments accordingly.

The overriding principle is that the overall penalty must be just and proportionate.

### **3.7 Stage 3 – Review, Waiving or Modification of Penalty**

**3.7.1** The Landlord may within the specified period under regulation 38(2)(h)(ii), serve notice on the enforcement authority requesting a review of its decision to serve a penalty notice.

**3.7.2** Where the Landlord gives notice in accordance with 3.7.1 above, or where SRS decides to review its decision to serve a penalty notice in any other case, SRS must:

- a) Consider any representations made by the landlord and all other circumstances of the case,
- b) Confirm or withdraw the penalty notice and

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- c) Serve notice of the decision on the landlord

**3.7.3** Following the review, if SRS:

- a) ceases to be satisfied that the landlord committed the breach specified in the penalty notice,
- b) is satisfied that the landlord took all reasonable steps and exercised all due diligence to avoid committing the breach specified in the penalty notice, or
- c) decides that in the circumstances of the case it was not appropriate for a penalty notice to be served on the landlord.

A further notice will be served on the landlord withdrawing the penalty notice.

**3.7.5** On a review under clause 3.7.2 above, SRS may

- a) waive a penalty,
- b) allow landlord additional time to pay any financial penalty,
- c) substitute a lower financial penalty where one has already been imposed, or
- d) modify the application of a publication penalty.

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