



**WOKINGHAM
BOROUGH COUNCIL**

Environment & Safety
Civic Centre
Shute End
Wokingham
RG40 1BN

WOKINGHAM BOROUGH COUNCIL ENVIRONMENT AND SAFETY DEPARTMENT ENFORCEMENT POLICY

INTRODUCTION

The Environment & Safety Department within the Place & Growth Directorate delivers a mix of statutory and local priority services across the disciplines of Environmental Health, Environmental Protection, Waste Management, Private Sector Housing, Licensing, Anti-Social Behaviour, Countryside Services, Drainage and Tree Protection and Public Rights of Way. This policy relates to the duties and powers vested in the Council in relation to those service areas.

OVERALL PURPOSE

To improve public health, the environment, community standards and business prosperity through the investigation of complaints, carrying out inspections, giving advice, licensing and enforcement of offences, breaches of regulations or failure to meet required standards.

OBJECTIVES

- Protect the health, safety and welfare of residents
- To help businesses, land owners, residents and visitors to meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly
- Investigate reports and non-compliance with regulations
- Targeted intelligence led interventions
- Provide advice in conjunction with key stakeholders and partners
- Work in partnership with other Council departments to maximize effectiveness of the service
- Maintain high standards of customer service

PURPOSE AND SCOPE

This policy has been developed with regard to the Regulator's Code under Section 22 of the Legislative and Regulatory Reform Act 2006 ("the 2006 Act") and aims to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without

Environment and Safety Department Enforcement Policy 10 February 2023

imposing unnecessary burdens. It is intended to ensure that any person exercising a regulatory function to which this policy applies must have regard to the principles that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent and should be targeted only at cases in which action is needed.

In certain circumstances we may conclude that a provision in the code is either not relevant or is out weighed by another provision. We will ensure that any decision to depart form the Code will be properly reasoned, based on material evidence and documented.

APPROVAL

The Executive Member for Environment, Sport and Leisure approved this policy on 23 February 2023.

REVIEW

This policy will be reviewed in response to new legislation or guidance.

ACCESS TO THE POLICY

This policy is publicly available on the Councils' website.

THE PRINCIPLES OF GOOD REGULATION

As required by section 21 of the 2006 Act this Policy is based on the following Principles:

- Transparency
- Accountability
- Proportionality
- Consistency
- Targeted only at those cases where action is needed

This document commits us to good enforcement policies and procedures based on those principles. Additional detailed procedures relating to the specialist operational/ functional areas within the team supplement this document and reinforce these objectives. An index of these procedures is at Appendix A.

TRANSPARENCY

Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any action is necessary, over what time-scale, and making sure that legal requirements are clearly distinguished from good practice advice.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing. If the method of appeal is internal within the Council then it will ensure that the officers who took the decision are not involved in the appeal.

We will aim to meet the following customer service standards:

1. Quality – customers should feel they have received a professional and competent response after the interaction with a service
2. Speed – we will aim to comply with corporate standards set by the Council for the timeliness of responses to phone calls, emails, letters and personal visits
3. Efficiency – the number of service requests received and opened will be compared to the number of those resolved
4. Accuracy – correct and helpful information is expected to be provided, and if this is not possible at the first point of contact, a slower time but correct answer will be provided as soon as is possible
5. Honesty – we expect that officers will be truthful about services, and realistic about what can be delivered
6. Availability - how much effort a customer has to exert to get an issue resolved, should be proportionate to the urgency of the issue. Services are normally open 9-5 Monday to Friday and any additional hours when available for contact will be publicised on the Council's website
7. Professional and objective – we aim that our officers should interact with the public in a polite and credible manner.

The Council collects and processes personal data relating to customers in order to provide services. The service is committed to being transparent about how it collects and uses that data and to meeting its data protection obligations.

What data is being collected?

The Council collects and processes a range of information both directly from the individuals (data subjects) and from publicly accessible data sources such as Companies House and HM Land Registry. Data may be obtained from council tax records and electoral roll, but only on an as needed basis.

Data can include:

- name, address and contact details, email addresses and telephone number
- date of birth
- protected characteristics, such as age, gender and ethnicity, in order to ensure services are provided in a fair and equitable manner
- financial information such as bank account and payment card details and transactional data including payments to or from
- information about medical or health conditions, including disability and support needs
- property details

What is the legal basis for processing the data?

The lawful basis for processing your personal data is “legal duty” and “public task”.

The “legal duty” arises because the Council needs to process the personal data for the purposes of

- law enforcement, regulation and licensing
- criminal prosecutions and court proceedings
- delivering the council’s licensing services
- keeping registers required by law
- delivering statutory duties such as dealing with hazardous conditions, statutory nuisances, public health hazards,

The Council processes a special category of personal data, namely character and criminal conviction data for the purposes of assessing whether persons are fit and proper persons, in respect of the following:

- Criminal conviction data is obtained from persons by self-declaration, and if necessary from the Disclosure and Barring Service for offences
- Unlawful discrimination on the grounds of protected characteristics in, or in connection with, the carrying on of any business or service delivery
- Contravention of any legislation.

We process criminal convictions or offences data to exercise official authority (e.g. public functions and powers set out in law) and because there is a substantial public interest for us to process it. We have made sure the processing is proportionate to the aim pursued and we have the appropriate safeguards in place for the data subject’s rights and interests.

The “public task” basis arises because the Council needs to process personal data to perform specific tasks in the public interest that are set out in law, such as:

- provide advice and guidance to businesses and residents
- protection from unlawful activity
- deliver government or Council priorities
- monitor services to ensure they are delivered in a fair and equitable way
- monitor services to support future service development and delivery
- monitor services to provide statistical data for statutory returns and governance and compliance purposes

Whom we may share your information with?

We will share personal information with law enforcement or other authorities if required by applicable law such as:

- The Cabinet Office
- Government agencies
- Police and Crime Commissioner
- Specified anti-fraud organisations
- The Police
- Judicial agencies e.g. Courts
- Department of Work and Pensions
- HMRC

- Local authorities
- In certain circumstances employers

We will only share information with these organisations where it is appropriate and legal to do so. We may also share information, for example, if there is a risk of serious harm or threat to life.

How long will the data be stored for?

We will only keep your information for as long as is required by law and to provide you with the necessary services.

We may also anonymize some personal data you provide to us to ensure that you cannot be identified and use this data to allow the council to effectively target and plan the provision of services.

Your personal data will not be transferred to other countries or international organisations, except when included in documents sent to persons who are interested parties in the property you control or manage.

What rights does the data subject have?

You have the right to request a copy of the information that we hold about you. The General Data Protection Regulation also gives you additional rights about the information we hold about you and how we use it, including the right to:

- Withdraw consent and the right to object and restrict further processing of your data; however, this may affect service delivery to you
- Request to have your data deleted where there is no compelling reason for its continued processing and provided that there are no legitimate grounds for retaining it
- Request your data to be rectified if it is inaccurate or incomplete
- Not be subject to automated decision-making including profiling

To request information that we hold about you visit our Subject Access Request webpage.

How can the data subject raise a complaint?

You have a right to complain to us if you think we have not complied with our obligation for handling your personal information; please visit our Complaints page on the website.

If you are not satisfied with the Council's response you have a right to complain to the Information Commissioner's Office (ICO). You can report a concern by visiting the ICO website.

Developing and testing business applications

The Council may use the information you give us to maintain and improve the services which we deliver, this includes developing and upgrading the systems which we use to process your information.

Corporate business intelligence

The Council may share the information you give us for research and analysis purposes, to help us design the services we provide and to identify and contact residents who may benefit from them.

Prevention and detection of fraud

We have a duty to protect the public funds we administer. To this end we may use the data you have supplied for the purposes of the prevention and detection of fraud. This includes data matching exercises such as the National Fraud Initiative.

ACCOUNTABILITY

We will provide a courteous and efficient service and staff will identify themselves by name and give a contact point, telephone number and e-mail address for further correspondence. Officers will encourage residents and businesses to seek advice and information from officers who will deal with representations and applications efficiently and promptly.

We will provide well-publicised, effective and timely complaints procedures easily accessible to residents or businesses. All complaints will be investigated in accordance with written procedures. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

We will seek opportunities to receive feedback from customers about the service generally or about how their case was handled. This may be in the form of individual customer feedback, surveys, forums, as examples of how this could be done.

Compliance with delegated authority

All enforcement officers will be authorised and have the necessary training and competency to enable them to exercise the powers available to them. Officers are required to produce their authorisation and ID cards at the time of inspection/visits if required.

Formal Enforcement Action must be authorised by the appropriately delegated level of officer. Some more serious enforcements must be authorised at manager level.

Exercising Powers of Entry

Parliament has also made provision for powers of entry allow officers who are properly authorised in writing to require entry, for example, to:

- survey
- conduct a valuation
- determine if the Council should use enforcement powers
- determine if a notice has been complied with
- carry out work in default
- determine if an offence has been committed.

There are specific purposes in law where a power of entry exists without a requirement to give notice, in which case the council may not give notice and may make an “unannounced visit”.

Failure to provide access as requested may result in an offence of obstruction being committed. Obstruction of an officer or of a worker or contractor employed by the Council to carry out work in default will be considered for prosecution in accordance with the policy set out above.

Certain powers of entry also provide for a justice of the peace to issue a warrant authorising entry using reasonable force, if satisfied that admission to the premises has been refused, or would be refused, or cannot be obtained, or that an application for admission would defeat the purpose of the entry.

Execution of warrants for entry will be notified to the police and where appropriate the police may be asked to assist in the execution or to prevent a breach of the peace.

If the premises subject to the warrant is unoccupied or the occupier is temporarily absent, the Council will leave the premises as effectively secured against trespassers as it was found if it was entered by force. If new locks have been fitted to secure the premises, information will be left on how to obtain the keys.

PROPORTIONALITY

Enforcement action is most likely to be taken when someone acts (or fails to act) in a way which is unreasonable and / or:

- is an offence prescribed in law or regulation
- causes damage to the environment or creates a hazard to health or is a nuisance
- causes, or is likely to cause harassment, alarm or distress to another person
- causes housing related nuisance and annoyance
- is detrimental to the quality of life of those in the locality

We will minimise the costs of compliance by ensuring that any action required is proportionate to the risks involved or the seriousness of the breach.

Officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference.

We will take particular care to work with individuals, small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

CONSISTENCY and TARGETING

We will carry out our duties in a fair, equitable and consistent manner.

In deciding what course of action to take, officers will have regard to various factors including:

- the risk to the public presented by the breach
- the degree of urgency of action to remedy the breach
- representations by persons affected, such as victim impact statements
- previous compliance history of the duty holders or businesses concerned
- the level of premeditation or prior knowledge the responsible person is believed to have had about the breach
- the likely future consequences of non-compliance
- the need to deter others
- the need to counter any benefits which may have accrued from the breach
- the likely effectiveness of the various enforcement options
- the availability of other appropriate remedies

The following options will be considered where no absolute offence has been committed in breach of a statute or regulation and the matter is capable of remedy by agreement:

- take no action
- take informal action such as
 - give advice either verbal or written
 - agree a voluntary course of action to remedy the breach
 - serve a preliminary notice or formal warning

The following options will be considered where no absolute offence has been committed in breach of a statute or regulation and voluntary agreement is not (or is judged to be unlikely to be) forthcoming, or it is in the interests protecting the public or the environment or is required by law.

- serve a statutory notice
- seize items associated with causing a nuisance
- seek a court order to prevent recurrence

The following options will be considered where an offence or breach of statute or regulation has been committed, or a statutory notice has not been complied with or it is in the interests protecting the public or the environment or is required by law

- where authorised by law, to impose a financial penalty
- prosecute
- carry out works in default
- apply for a forfeiture or other court order, such as a Criminal Behaviour Order (after a conviction)
- issue a formal caution

Option to take no action

If on investigation it is found that it is not proportionate or in the public interest to take action, then no further action by the Council may be required.

Option to take informal action

This option may involve providing advice, verbal warnings, recommendations for action contained in a letter or referral to another agency for action or an alternative remedy. Informal action is appropriate only where the consequences of non-compliance will not pose a significant risk to the public or the environment. This may be where for example:

- the defect or breach of duty is not serious enough to warrant formal action
- the complainant elects to take up an alternative remedy
- previous history suggests that informal action will achieve compliance within a suitable time

If there is sufficient evidence to prove that an offence has been committed which has a sanction available in law such as financial penalty or prosecution, informal action will only be considered if it is not in the public interest to issue a financial penalty or initiate a prosecution (see the section below “Option to Prosecute or Impose a Financial Penalty”)

Option to serve a preliminary notice or notice of intention

In some cases, service of a preliminary notice sets out a required course of action and time scales for start and completion of the action. Such notices invite representations if there is disagreement with the requirements of the notice or proposals for alternative courses of action. Such notices may require an undertaking to be signed to confirm agreement to carry out the action. Failure to adhere to the undertaking may lead to one of the following options.

Option to serve a statutory notice

Statutory notices will be served when one of the following situations apply:

- a formal notice is required to be served by law
- there is a lack of confidence that an informal approach will succeed
- the consequences of the breach continuing present a serious risk to the public or the environment
- effective action needs to be taken as quickly as possible to remedy conditions that present a serious risk and are deteriorating or likely to deteriorate
- immediate action is required to deal with a public health matter or statutory nuisance

Statutory notices will only be served by officers who are authorised under the scheme of delegation. Notices will be served in accordance with written procedures, any relevant statutory guidance and codes of practice.

Wherever possible, the officer serving the notice will attempt to discuss the requirements of the notice with the person responsible for compliance. All notices will specify realistic time limits for compliance.

Failure to comply with a statutory notice will, in general, result in the institution of legal proceedings and/or the carrying out of works in default of the person responsible for compliance, or any other formal sanction such as a financial penalty .

Statutory notices will set out details of the right of appeal against the notice as well as the time scale for an appeal and details of where to make the appeal.

Seizure or forfeiture

In certain circumstances the Council has the power through legislation to seize equipment or items responsible for causing nuisance to residents or apply to a court for forfeiture. Officers conducting a seizure or receiving a forfeiture will do so in accordance with set procedures and the requirements of the relevant legislation.

Option to Carry Out Work in Default

Failure to comply with a notice may also result in the Council deciding to carry out the remedial action required by a notice and recovering the cost incurred.

Such action may be in addition to or instead of the prosecution policy set out below. There will be situations that arise when it is appropriate to carry out action in default because of the urgent nature of the required action or because action has still not been carried out after a prosecution.

The required notification of the intention of the Council to carry out action in default will be given to all interested parties in accordance with relevant

statutory provisions. Tendering processes and contractors engaged by the Council to carry out work in default will be in accordance with the Council's Financial Limits and Procedures

Certain works in default require immediate or emergency action without prior notification. Such work in default will be undertaken in accordance with legislation and local procedures and residents will be advised in writing as to why the action was necessary.

Option to Prosecute , Impose a Financial Penalty or offer a Formal Caution

The Council has discretion whether or not to prosecute for an offence or (where authorised by legislation) impose a financial penalty. The decision will be based on the circumstances of each individual case.

Any decision to Prosecute will be made applying the Code for Crown Prosecutors.

Generally, prosecution will be used instead of a financial penalty where one or more of the following criteria apply:

- Aggravating features such as non co-operation, hostility or aggression towards members of the public, third parties or officers, or serious harm caused to people, property, the public purse or the environment.
- Two previous financial penalties imposed by the same Council on the same person
- Multiple offences relating to the same or different properties committed by the same person
- Reason to believe that a financial penalty will have little or no deterrent effect or impact on changing behaviour (or a financial penalty is not available).

In all other cases where a financial penalty is available in law, the financial penalty will normally be more appropriate than prosecution, provided there is believed to be sufficient evidence that a specified offence has been committed and that it will act as a sufficient deterrent against re-offending.

A financial penalty can be issued when it is not in the public interest to prosecute. A financial penalty is an alternative to prosecution and once paid discharges liability for prosecution.

The decision whether to impose a financial penalty and if so the amount of the penalty will take account of the Council's procedures for establishing level of financial penalties.

Where a case passes the evidential test under the Code for Crown Prosecutors but it is the opinion of the Council that a formal caution can be offered instead of prosecution or a financial penalty then a Caution will be offered as per the Home Office Guidelines.

IMPLEMENTATION OF THE ENFORCEMENT POLICY

The relevant Managers will be responsible for ensuring that all enforcement officers are familiar with the requirements and carry out their duties in accordance with this Enforcement Policy.

Index of service specific procedures

Financial Penalties available for environmental offences (Appendix 1)

Financial Penalties for housing offences

Smoke Alarm and Carbon Monoxide Regulations 2015 (Appendix 2)

Energy Efficiency Regulations 2015 (Appendix 3)

Electrical Safety Standards in the Private Rented Sector Regulations 2020 (Appendix 4)

Housing Act 2004 Schedule 13A (Appendix 5)

Tenant Fees Act 2019 (Appendix 6)

Advertising Boards on the Highway (Appendix 7)

Public Rights of Way (Appendix 8)

High Hedges and Light Loss (Appendix 9)

Appendix 1

Financial Penalties available for environmental offences under the remit of the service

	Description of offence	Act	Penalty Charge	Maximum penalty upon conviction and prosecution
1	Depositing of Litter	Section 87/88 Environmental Protection Act 1990	£100	£2,500
2	Unauthorised Depositing Of Waste (Fly Tipping)	Section 33 Environmental Protection Act 1990	£400	Imprisonment for a term not exceeding 12 months or an unlimited fine. or both
3	Failure to Produce written waste transfer information	Section 34(5) and regulations made under it/34(6)/34 A – Environmental Protection Act 1990	£300	An unlimited fine
4	Failure to produce a certified copy of your waste carriers licence	Section 5/5B Control of pollution (Amendment) Act 1989	£300	An unlimited fine
5	Failure to comply with a waste receptacle notice	Section 46/47/47ZA/47ZB Environmental Protection Act 1990	£60	£1,000
6	Abandoning a Vehicle	Section 2A(1) Refuse disposal (Amenity) Act 1978	£200	Imprisonment for up to 3 months and /or a fine for £2,500
7	Fly posting and Graffiti	Section 43 Anti – social Behaviour Act 2003	£100	£2,500 Various offences listed under s44 of the 2003 Act, including Criminal Damage which is punishable by life imprisonment.
8	Failure to comply with Community Protection Notice	Anti Social Behaviour, Crime and Policing Act 2014, Section 43 Community Protection Notice	£100	£2,500 for individuals and an unlimited fine for organisations
10	Failure to remove Dog faeces from designated land	Section 3 and 4 – Dogs (Fouling of land) Act 1996	£100	£1000
11	Littering from a vehicle	Section 87(1) Environmental Protection Act 1990	£100	£2,500

Appendix 2

1 Smoke Alarm and Carbon Monoxide Regulations 2015

For context this is a summary of the relevant parts of the Regulations and are not a substitute for legal advice.

A landlord must ensure that during any period when the premises are occupied under a tenancy

1. A smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation
2. A carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains **any** fitted gas combustion appliance other than a gas cooker; and
3. Checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

Unless the landlord can show that he, she or it has taken all reasonable steps, other than legal proceedings, to comply with a remedial notice, the Council may require the landlord to pay a penalty charge of such amount as the authority may determine not exceeding £5,000.

Regulation 13 requires the Council to prepare and publish a statement of principles which it proposes to follow in determining the amount of a penalty charge. The Council may revise its statement of principles and, where it does so, it must publish the revised statement. The Principles are set out below.

If the landlord served with a penalty charge notice requests a review the Council must consider any representations made by the landlord, and serve notice of its decision whether to confirm, vary or withdraw the penalty charge.

A landlord who, having requested a review of a penalty charge notice, is served with a notice confirming or varying the penalty charge may appeal to the First-tier Tribunal against the Council's decision.

The process for determining the financial penalty to be imposed has two steps.

Step 1:

Determine the Band of the offence (the more serious the offence the higher the band).

Offence	Band 1	Band 2	Band 3
Smoke Alarm and Carbon Monoxide Regulations	Alarms are present but missing on one storey; <u>or</u> alarms present but were not checked to be in working order on first day of a new tenancy but were repaired within 7 days of start of new tenancy	Alarms present but missing on more than one storey; <u>or</u> alarms not checked to be in working order on first day of a new tenancy but were repaired within 7 to 14 days of start of new tenancy	No alarms present; <u>or</u> alarms present but not checked to be in working order on first day of new tenancy and not repaired within 14 days of start of tenancy
Level of severity			
Low	£1,000	£2,500	£4,000
Medium	£1,500	£3,000	£4,250
High	£2,000	£3,500	£4,500
Very high	£2,500	£4,000	£5,000

Step 2:

Determine the level within the band (using the procedure on page 23):

- Low
- Medium
- High or
- Very high

The level within the allotted band determines the level of the financial penalty

Appendix 3

The Energy Efficiency (Private Rented Property) Regulations 2015

For context this is a summary of the relevant parts of the Regulations and are not a substitute for legal advice.

Regulation 23: Prohibition on letting of sub-standard property

A landlord of a sub-standard domestic property must not let the property unless he has made all the relevant energy efficiency improvements for the property, or there are no relevant energy efficiency improvements that can be made to the property, or one or more of the exemptions applies.

Where a landlord appears to it to be, or to have been at any time within the preceding 12 months, in breach of regulation 23 “Prohibition on letting of sub-standard property”, the Council may under **Regulation 37** serve a compliance notice on a landlord requesting such information as it considers necessary to enable it to monitor compliance.

The Council may serve a penalty notice on a landlord in any case where it is satisfied that the landlord is, or has been at any time in the 18 months preceding the date of service of the penalty notice, in breach of one or more of regulations 23, 27 or 37 imposing a financial penalty, a publication penalty, or both a financial penalty and a publication penalty.

The “publication penalty” means publication for a minimum period of 12 months, or such longer period as the the Council may decide, on the Exemptions Register of such of the following information in relation to a penalty notice as the Council decides:

- Where the landlord is not an individual, the landlord’s name
- Details of the breach of these Regulations in respect of which the penalty notice has been issued
- The address of the property in relation to which the breach has occurred, and
- The amount of any financial penalty imposed.

Where the landlord has registered false or misleading information under regulation 36

A financial penalty not exceeding £1,000, and (b) the publication penalty

Where the landlord has breached regulation 23 and, at the time the penalty notice is served has, or had, been in breach for less than three months

A financial penalty not exceeding £2,000, and (b) the publication penalty

Where the landlord has failed to comply with a compliance notice in breach of regulation 37

A financial penalty not exceeding £2,000, and (b) the publication penalty

Where the landlord has breached regulation 23 and, at the time the penalty notice is served has, or had, been in breach for three months or more

A financial penalty not exceeding £4,000, and (b) the publication penalty

Where the Council imposes financial penalties on the landlord in relation to a breach of regulation 23 **the total of the financial penalties imposed on the landlord must be no more than £5,000.**

The landlord may request a review of the penalty notice by the Council and, where a penalty notice is confirmed on review, may appeal against the imposition of the penalty notice to the First-tier Tribunal.

The amount of an unpaid financial penalty is recoverable from the landlord as a debt owed to the Council unless the notice has been withdrawn or quashed.

The process for determining the financial penalty to be imposed has two steps.

Step 1:

Determine the Band of the offence (the more serious the offence the higher the band).

Decide which seriousness band the offence sits within, according to the chart

Offence	Band 1	Band 2	Band 3
Energy Efficiency Regulations 2015	Registered false or misleading information	Breach for less than three months; failed to comply with a compliance notice	Breach for three months or more
Level of severity			
Low	£400	£800	£2,500
Medium	£600	£1,200	£3,000
High	£800	£1,600	£3,500
Very high	£1,000	£2,000	£4,000

Step 2:

Determine the level of the offence within the band (using the procedure on page 23):

- Low
- Medium
- High or
- Very high

The level within the allotted band determines the level of the financial penalty

Appendix 4

Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

For context this is a summary of the relevant parts of the Regulations and are not a substitute for legal advice.

If the Council has reasonable grounds to believe that a private landlord is in breach of a duty under Regulations 3(1)(a), (1)(b), (4) or (6) then it has a duty to serve a Remedial Notice and has the power to take Remedial Action, which is subject to an Appeal to the First-tier Tribunal.

Where the Council is satisfied, beyond reasonable doubt, that a private landlord has breached a duty above, or has failed to comply with a remedial notice served under Regulation 3(1)(a), (1)(b), (1)(c), (4) or (6) the Council may impose a financial penalty (or more than one penalty in the event of a continuing failure) in respect of the breach. The financial penalty may be of such amount as the authority imposing it determines; but must not exceed £30,000.

The private landlord may make written representations to the Council about the proposal to impose a financial penalty and if it decides to impose a Penalty it must serve a Final Notice against which the private landlord may appeal to the First-tier Tribunal.

Step 1:

Determine the Band of the offence (the more serious the offence the higher the band).

Decide which seriousness band the offence sits within, according to the chart

Offence	Band 1	Band 2	Band 3
Electrical Safety Standards Regulations 2020	Reports not obtained and supplied within required timescales	Inspection and testing not completed at intervals of no more than 5 years; and before tenancies commence	Electrical safety standards not met; failure to carry out remedial work required by an inspection report; failure to comply with a Remedial Notice
Level of severity			
Low	£1,000	£5,000	£6,000
Medium	£2,000	£10,000	£14,000
High	£3,000	£15,000	£22,000
Very high	£4,000	£20,000	£30,000

Step 2:

Determine the level of the offence within the band (using the procedure on page 23)

- Low
- Medium
- High or
- Very high

The level within the allotted band determines the level of the financial penalty

Appendix 5

Housing Act 2004 Schedule 13A - Financial penalties for housing offences

For context this is a summary of the relevant parts of the Regulations and are not a substitute for legal advice.

Under section 249A “Financial penalties for certain housing offences in England” the Council may impose a financial penalty on a person if satisfied, beyond reasonable doubt that the person’s conduct amounts to a relevant housing offence in respect of premises in England. “Relevant housing offence” means an offence under

1. **section 30 (failure to comply with improvement notice)**
2. **section 72 (offences in relation to licensing of HMOs)**
3. **section 95 (offences in relation to licensing of houses under Part 3 selective licensing)**
4. **section 139(7) (failure to comply with overcrowding notice); or**
5. **section 234 (failure to comply with HMO management regulations)**

Only one financial penalty under this section may be imposed on a person in respect of the same conduct.

Where both a landlord and a letting or managing agent have committed the same offence, a financial penalty can be imposed on both as an alternative to prosecution. The amount of the penalty may differ depending on the circumstances of the case.

The Council may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if the person has been convicted of the offence, or if there are ongoing criminal proceedings in respect of that conduct.

For the purposes of this paragraph a person’s conduct includes a failure to act.

The person served with the notice of intent may make written representations to the Council within 28 days of the notice being given. After the end of this period for representations the Council must

- (a) decide whether to impose a financial penalty on the person, and
- (b) if it decides to impose a financial penalty, decide the amount of the penalty.

If the Council decides to impose a financial penalty on the person, it must give the person a notice (a “final notice”) imposing that penalty. The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was given. Any person who is served with a final notice may appeal to the First-tier Tribunal.

The amount of a financial penalty imposed under this section is to be determined by the Council, but must not be more than £30,000.

The process for determining the financial penalty to be imposed has two steps.

Step 1:

Determine the Band of the offence (the more serious the offence the higher the band).

Decide which seriousness band the offence sits within, according to the chart

Band of Financial Penalty under Housing Act 2004 s.249A				
Offence	Band 1	Band 2	Band 3	Band 4
s.30 (failure to comply with improvement notice)	Category 2 Hazards (1 to 4 hazards all scored F - J)	Category 2 Hazards (1 to 4 hazards where one is scored D or E or 5 or more hazards scored D-J)		
		Category 1 Hazard scored C	Category 1 Hazard scored B or 2 Cat 1 hazards (scored B or C)	Category 1 Hazard Scored A (except loft insulation) or 3 or more Cat 1 hazards (A, B or C)
s.72 (offences in relation to licensing of HMOs) failure to licence		Failure to obtain HMO licence where 5 persons reside in the HMO at the time of the offence	Failure to obtain HMO licence where 6 or 7 persons reside in the HMO at the time of offence	Failure to obtain HMO licence where 8 or more persons reside in the HMO at the time of the offence
s.72 breach of licence condition – occupier numbers Overcrowding according to Housing Act 1985	Occupancy maximum exceeded temporarily (more than one week but less than 3 months) <u>and</u> by no more than one occupier	Occupancy maximum exceeded by 2 occupiers for more than one week <u>or</u> by one occupier for more than 3 months	Occupancy maximum exceeded by 3 or more occupiers for more than one week but less than 6 months	Occupancy maximum exceeded by 3 or more occupiers for more than 6 months
s.72 breach of licence condition – other conditions	Conditions related to signage or information for tenants	Conditions related to: procedures for dealing with complaints or ASB; waste receptacles, maintenance of common parts, living areas, decoration etc	Conditions related to provision of documentation regarding fire detection, emergency lighting, gas, electricity installations; minor repairs or alterations (except those covered by Band 4)	Conditions related to condition of smoke alarms, carbon monoxide alarms, emergency lighting, gas, electricity installations or fire detection and prevention including provision of safe means of escape
s. 234 (failure to comply with management regulations in respect of HMOs)	Conditions related to signage or information for tenants	Conditions related to: procedures for dealing with complaints or ASB; waste receptacles, maintenance of common parts, living areas, decoration etc	Where breach relates to provision of safe gas, electricity or water supplies	Band 3 offence in a 7 or more person HMO or where breach relates to provision of fire safety measures in <u>any size</u> HMO

Step 2:

Determine the level of the offence within the band:

- Low
- Medium
- High or
- Very high

The level within the allotted band determines the level of the financial penalty

Level of severity	Band 1	Band 2	Band 3	Band 4
Low	£1,250	£2,500	£12,500	£22,500
Medium	£1,500	£5,000	£15,000	£25,000
High	£1,750	£7,500	£17,500	£27,500
Very high	£2,000	£10,000	£20,000	£30,000

Procedure to determine the level of the offence within the band

Points will be allocated from 1 (low) to 4 (high) for each of the 6 categories from a. to f. below. The total of these points (minimum 6 maximum 24) will determine the severity level:

Severity score	Level
6 - 10	1. Low
11-15	2. Medium
16-20	3. High
21-24	4. Very high

a) Culpability:

1 = Offence was not deliberate non-compliance, error of omission only and may have been shared responsibility

2 = Offence was careless or negligent and not deliberate non-compliance - sole responsibility *Default score in the absence of evidence to the contrary*

3 = Offence was deliberate failure to comply with obligations but may have been shared actions or responsibility

4 = Offence was deliberate action or failure to act by a sole person who was or should have been aware of their legal obligations

b) Offending History:

1 = No previous history of contravening any provision of the law relating to housing or of landlord and tenant law ("previous history") *Default score in the absence of evidence to the contrary*

2 = Previous history for a contravention of any provision of the law relating to housing or of landlord and tenant law

3 = Previous history for more than one contravention of any provision of the law relating to housing or of landlord and tenant law

4 = Previous history for a contravention of any provision of the law relating to housing or of landlord and tenant law, including a financial penalty or conviction

c) Harm to tenants:

- 1 = Little or no actual impact on occupiers or third parties
- 2 = Effect on occupiers or third parties was primarily inconvenience, financial loss, stress or anxiety *Default score in the absence of evidence to the contrary*
- 3 = Effect on occupiers or third parties was primarily physical or mental harm; also as per 2 but more than 4 persons affected
- 4 = Effect on occupiers or third parties was medically diagnosed illness or injury; also as per 3 but more than 4 persons affected

d) Mitigating Factors:

- 1 = Significant (such as serious illness, bereavement)
- 2 = More than a little (such as minor illness, stress; belated attempts to remedy)
- 3 = A little (such as let down by a third party)
- 4 = None *Default score where landlord does not respond to enquiries or the response is hostile or unco-operative*

e) Proportionality:

- 1 = Subject only has one rented property
- 2 = Small business or subject has two or three properties *Default score in the absence of evidence to the contrary*
- 3 = Medium size business or subject has more than three properties
- 4 = Subject has a large portfolio of rented properties (six or more)

f) Financial Impact On Landlord

- 1 = Significant (eg subject in administration or near bankrupt)
- 2 = More than some (eg subject has serious financial problems)
- 3 = Some (eg subject has no significant financial problems *Default score in the absence of evidence to the contrary*)
- 4 = Minor (eg financial penalty would have negligible impact on subject)

Appendix 6

Tenant Fees Act 2019 – Policy on prosecution or issue of financial penalty notice and the level of fines to be set

Summary

This policy document lays out the steps the Council will take in determining whether to prosecute or issue financial penalty notices to businesses for not complying with the Tenant Fees Act 2019 (TFA). This meets the requirements of the TFA - Statutory Guidance for Enforcement Authorities. This document also lays out the factors to take into consideration when determining the size of monetary penalty under this legislation and other related* legislation.

Regard has been paid to the TFA, the statutory guidance for enforcement authorities to the TFA and the published policy of the lead enforcement authority for the TFA when developing this policy.

The legislation requires that a first breach of the TFA is treated as a civil breach with financial penalties of up to £5,000. However, a further breach within 5 years allows an enforcement authority to either prosecute under section 12 of the Act or issue a monetary penalty of up to £30,000 for non-compliance with the Act. The factors below should be considered and given weight when a decision is being made.

Factors adding weight to prosecution:

- 1) First penalty was not paid
- 2) The business is being prosecuted for other matters
- 3) There is a history of non-compliance with housing or trading standards legislation
- 4) Severe breach

Factors adding weight to issue of further financial penalty (civil breach):

- 1) The first penalty was paid
- 2) The business is not being prosecuted for other matters.
- 3) There is no history of non-compliance with housing or trading standards legislation
- 4) Not a severe breach

The importance of the above factors will depend on the circumstances of the case and are not listed in order of importance.

Determining the level of monetary penalty for a breach of the Tenant Fees Act or related* legislation

The factors below will be taken into consideration when determining a final monetary penalty to be paid for a civil breach.

Factors likely to Increase monetary penalty:

- 1) History of non-compliance
- 2) Severe breach
- 3) Knowingly or recklessly supplying false or misleading evidence
- 4) Unhelpful/obstructive attitude of landlord/agent towards investigation
- 5) Length of time since legislation came into force

- 6) No attempts to fix issue/continued non-compliance
- 7) Consumer detriment

Factors likely to decrease monetary penalty:

- 1) Compliance since investigation started
- 2) Minor breach
- 3) Co-operative attitude to investigation.
- 4) No consumer detriment
- 5) No history of non-compliance
- 6) Evidence provided by company that fine would cause financial difficulties

The above factors are matters which should be considered when reaching a decision concerning the monetary penalty of a final notice. They are not listed in order of importance. They are not exhaustive and may be given different weight in different circumstances. If different factors are important for an individual case, then this will be recorded. The reasons that a particular financial penalty was arrived at shall be recorded.

*Related Legislation - Any legislation which allows trading standards to impose civil penalties on landlords, letting agents, estate agents, property managers or property agents

Appendix 7 Advertising Boards on the Highway

Penalties for obstructing a highway and removal of obstructions

1 INTRODUCTION

Shopping areas within the Borough of Wokingham have much to offer by way of creating an ambience that makes them attractive to shoppers and visitors alike. The Council recognises this and wishes to encourage traders to promote their business activities in a way which both enhances the street scene and are sensitive to the needs of its users.

For the purposes of this policy, public highway includes carriageway, footway and grass verges maintained by Wokingham Borough Council.

The policy aims to provide a reasonable balance between commercial needs and the needs of highway users, and to confirm the conditions where advertising boards on the highway will be permitted without compromising safety for highway users.

By introducing this approach it will not be necessary for traders to apply for licences to place an advertising board, but their co-operation in observing and abiding by the conditions of this guide will be essential.

It is important that the number, size and positioning of advertising boards are regulated. If not, then they can create hazards for the highway users particularly for those with impaired vision, mobility problems, the elderly or those with young children.

All advertising boards on the highway are potential obstructions, however those displayed in accordance with the conditions below will be acceptable to the Council. Items placed in breach of these conditions may be viewed as unreasonable and could be subject to the procedures described in section 4.

2 GENERAL CONDITIONS

The following conditions are common to both the placing of advertising boards and the display of goods on the highway and must be met in all cases in addition to the specific conditions which relate to A-boards or displays.

- a) All alternative ways of advertising the business should be considered first, including signage attached to the business premises, displayed in the shop window, or safely on private land
- b) Only one advertising board will be permitted per premises, even if in multi-occupation
- c) Any advertisement must relate only to the normal business of the trading establishment and placed outside the business being advertised
- d) All advertising boards must be temporary in their nature so that they can be easily removed, that is, require no excavation to install or remove
- e) All signs and boards must not cause a visual distraction or obstruction to vehicle sight lines or block visibility for highway users. **On footways, signs, boards, displays, etc. must not be placed within 2.0 metres of any tactile paving or within 2.5 metres of tactile paving in pedestrianised areas**
- f) Signs and boards must not damage or have a detrimental effect on the fabric of the highway
- g) All signs and boards must be removed when the premises to which they relate are closed

- h) Signs, boards, displays, etc. **must not be located within 2.0 metres of any other permanent or temporary sign**, pillar, post, item of street furniture, other display **or the edge of the carriageway**
- i) **An unobstructed footway width of 2.0 metres is desirable, but where this is not practicable a minimum width of 1.2 metres must be maintained. In fully pedestrianised areas the minimum width is increased to 3.5 metres**
- j) Signs, boards, displays, etc. must be such that they can easily be detected by the visually impaired and negotiated by those with restricted mobility

Any advertising boards will be the owner's responsibility when placed on the public highway and the Highway Authority will not be liable for any injury or damage caused to highway users.

WBC or Highway Partner as the Highway Authority may require the immediate removal of any feature if requested by a Police Officer or with other reasonable cause including the need for access to maintain the highway.

In addition, nothing within this guide absolves those concerned from their legal responsibilities under the Highways Act 1980 and other legislation.

All signs and boards must take into account the other needs of the area e.g. bus stops, pedestrian crossings, etc. in relation to their positioning.

In areas of high volume pedestrian flow, e.g. near schools or in certain pedestrianised areas, the placing of advertising boards may not be allowed.

The local area highway team or their representative will make this decision.

3 CONDITIONS ABOUT THE BOARD – SIZE AND DESIGN

- a) Advertising boards must be no wider than 800mm and no higher than 1000mm above ground level (see Figure 1)
- b) No single advertisement on the advertising board may exceed the area, 800mm by 800mm
- c) No character or symbol on the advert may be more than 0.75m in height or 0.3m in an area of special control. An area of Special Control of Advertisements is an area specifically defined by the planning authority because they consider that its scenic, historical, architectural or cultural features are so significant that a stricter degree of advertisement control is justified in order to conserve visual amenity within that area
- d) Rotating or swinging signs will not be permitted
- e) All items must be presented in an attractive, professional manner, and the content of the advertisement must not be offensive
- f) Signs and boards must be stable and not represent a potential danger to any highway users
- g) Signs and boards must be removed from the Public Highway in extreme weather conditions such as high winds/ icy conditions to prevent trips or falls by highway users.

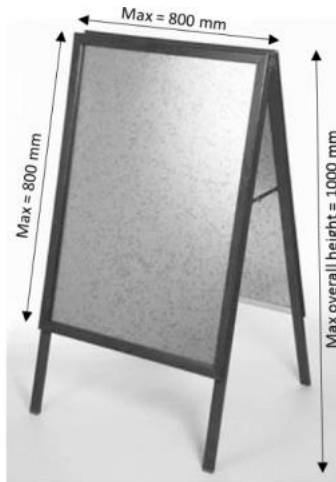


Figure 1: A-Board showing maximum dimensions

Advertising boards must not have anything attached to them – for example, balloons or flags

4 THE LEGAL BACKGROUND TO THE REMOVAL OF ADVERTISING BOARDS

Enforcement of this policy may need to take into account any Deemed Consent accruing from (or Express Consent which may have been granted under) the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, notwithstanding that even where planning consent is in place the consent of the owner of the land where the board is to be situated is still required. Advertising which does not benefit from Deemed Consent (or requires Express Consent but does not benefit from it) may be subject to Planning Enforcement.

Sections 137, 143, 148, and 149 of the Highways Act 1980 relate to obstruction of and depositing or placing of items within the highway and give the Highway Authority certain powers in their control.

This guide aims to minimise the need for exercising these powers by defining acceptable conditions, but where necessary further action will be taken in accordance with the Act in consultation with the Highway Authority's legal advisors.

Following complaints, or as part of a routine inspection, we will check to see if advertising boards comply with this guidance.

We want to keep the pavements safe, accessible and attractive to all road users and will make reasonable requests wherever we feel the guidance is not being adhered to. The owner may be requested to remove or reposition the board in accordance with this guide.

If the problem persists, the Council may serve notice that the objects be removed before eventually seeking a Magistrate's removal and disposal order in respect of the items.

If the board or object is causing a danger, it may be removed forthwith without notice (see section 149 Highways Act) and without the need for a court order.

Any advertising boards removed from the highway will be taken to nearby storage facility and stored outside. The owner will be notified, and if the board is not collected by the owner within 7 days it may be disposed of.

Owners of advertising boards which have been removed can reclaim their property by contacting asb@wokingham.gov.uk

5 OTHER LICENCES

The Highway Authority issues licences for the erection of scaffolding, the placing of builders skips or to provide catering facilities outside bars and restaurants in accordance with specific regulations which relate to their control. The Highway Authority can legally place items such as road signs, trees and seats on the highway.

6 MODIFICATIONS, ALTERATIONS, OR AMENDMENTS

The procedures and requirements specified within this guide may be modified, altered or amended at any time as Wokingham Borough Council deems appropriate.

Appendix 8 Public Rights of Way

Policy Statement

Wherever unauthorised interference with public rights of way or breaches of relevant legislation such as Highways Act 1980 and the Rights of Way Act 1990 are identified or notified, Wokingham Borough Council will utilise its various powers and where necessary its enforcement powers, to remedy the problem. Enforcement will be considered wherever appropriate statutory powers exist to deal with actions or inactions that may lead to risks to the health and safety of the public or to their rights being infringed.

Scope of the Policy

The main areas to which this policy applies are:

Land adjoining a public right of way:

1. Barbed wire
2. Electric fences
3. Bulls and dangerous animals
4. Dangerous land
5. Hedges and trees

Interference with a Public Right of Way

6. Obstructions
7. Gates across a Public Rights of Way
8. Ploughing and crops on Public Rights of Way
9. Ropes etc across Public Rights of Way
10. Stiles and gates interference
11. Damage to surface and elements of Public Rights of Way
12. Tree branches and limbs across Public Rights of Way
13. Width reduction
14. Extending the boundary of an adjacent property onto the Public Rights of Way for example fences, structures or hedges enclosing part of a right of way
15. Cross compliance ¹

Responsibility to Public Right of Way users

16. Deterring the public from using a Public Right of Way
17. Misleading signs and notices
18. Dogs out of control on Public Rights of Way

Other nuisances, obstructions and offences will be dealt with in a comparable manner according to the circumstances of the case.

¹ Cross compliance rules mean that farmers must comply with the Rights of Way Act 1990 to ensure that paths are not ploughed during farming operations, or are reinstated within the statutory timeframes

Procedure

In pursuing an enforcement case, the Council will follow the process below to try to remove the obstruction(s) and / or resolve the problem at the earliest possible stage.

In considering undertaking enforcement action regarding encroachments, a two tier approach will be adopted:

Tier 1: Major encroachment issues

Encroachment issues that are considered by the Council to be causing a significant detrimental impact will be addressed with the aim of the action to remove the encroachment at the earliest possible stage.

Priority will normally be given to cases where it is considered by the Council that one or more of the following criteria are met:

- 1) The obstruction provides an unacceptable health and safety risk
- 2) The resolution of the obstruction will result in a significantly enhanced Public Rights of Way network
- 3) The obstruction adversely affects a promoted route or strategically important path ²
- 4) A significant number of valid complaints have been received about the obstruction from a variety of independent sources.

The following sequence of steps will normally be adopted:

- Step 1: Informal letter of advice
- Step 2: Enforcement notice
- Step 3: Direct action and recovery of costs
- Step 4: Legal caution
- Step 5: Prosecution

Examples of direct action under Step 3 are:

- Removal of fences, structures or hedges that are enclosing part of a right of way
- Requiring hedges/trees/vegetation growing from private land to be cut back or managed (and undertaking work in default)
- Ensuring that the surface of a right of way is not damaged or interfered with

Tier 2: Minor encroachment issues

Encroachment issues that are considered by the Council to be an encroachment but not causing a significant detrimental impact will be addressed via an alternative enforcement process. This process will add an informative to the local land charges

² Promoted routes or strategically important paths are those which the Council actively promotes use, such as the Thames Path or the Greenways. Strategically important paths serve a critical need and are well used and needed.

record for the property as a disputed piece of land to ensure that any future purchasers of the property will be aware. The encroachment issue will then be recorded as a lower priority for direct enforcement action. This minor encroachment process does not restrict the Council from taking direct enforcement action under Tier 1 should circumstances change and the issue be considered a significant detrimental issue.

Appendix 9 High Hedges and Light Loss

With regard to the enforcement of high hedges legislation in Part 8 Anti Social Behaviour Act 2003 the Council follows the Government's policy and procedural guidelines laid down in [Hedge Height and Light Loss](#) (ODPM October 2005)

This page is intentionally left blank