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Meeting	COMMUNITY SCRUTINY COMMITTEE
Time/Day/Date	6.30 pm on Wednesday, 5 April 2023
Location	Board Room, Council Offices, Coalville
Officer to contact	Democratic Services

AGENDA

Item	Pages
1. APOLOGIES FOR ABSENCE	
2. DECLARATION OF INTERESTS	
Under the Code of Conduct members are reminded that in declaring interests you should make clear the nature of that interest and whether it is a disclosable pecuniary interest, registerable interest or other interest.	
3. PUBLIC QUESTION AND ANSWER SESSION	
To receive questions from members of the public under rule no.10 of the Council Procedure Rules. The procedure rule provides that members of the public may ask any question on any matter in relation to which the Council has powers or duties which affect the District, provided that three clear days' notice in writing has been given to the Head of Legal and Support Services.	
4. MINUTES	
To approve and sign the minutes of the meeting held on 23 November 2022.	3 - 4
5. ITEMS FOR INCLUSION IN THE FUTURE WORK PROGRAMME	
To consider any items to be included in the work programme. The plan of forthcoming Cabinet decisions and the current work programme are attached for information.	5 - 14
6. DRAFT RESOURCE AND WASTE STRATEGY FOR LEICESTERSHIRE 2022-2050	
Report of the Head of Community Services.	15 - 54
7. SAFEGUARDING CHILDREN YOUNG PEOPLE AND ADULTS	
Report of the Head of Community Services.	55 - 60

8. PRIVATE SECTOR HOUSING POLICIES

Report of the Head of Community Services.

61 - 192

Circulation:

Councillor J Houlton (Chairman)
Councillor R L Morris (Deputy Chairman)
Councillor C C Benfield
Councillor A J Bridgen
Councillor T Eynon
Councillor J Geary
Councillor M D Hay
Councillor G Houlton
Councillor J G Simmons
Councillor M B Wyatt

MINUTES of a meeting of the COMMUNITY SCRUTINY COMMITTEE held in the Council Chamber, Council Offices, Coalville on WEDNESDAY, 23 NOVEMBER 2022

Present: Councillor J Hault (Chairman)

Councillors R L Morris, C C Benfield, T Eynon, J Geary, M D Hay, G Hault, J G Simmons and M B Wyatt

In Attendance: Councillors R Johnson

Portfolio Holders: Councillors R D Bayliss and A C Woodman

Officers: Mr J Arnold, K Hiller and Mrs R Wallace

62. APOLOGIES FOR ABSENCE

There were no apologies for absence.

63. DECLARATION OF INTERESTS

There were no declarations of interest.

64. PUBLIC QUESTION AND ANSWER SESSION

None.

65. MINUTES

Consideration was given to the minutes of the meetings held on 7 and 21 September 2022.

It was moved by Councillor J Geary, seconded by Councillor T Eynon and

RESOLVED THAT:

The minutes of the meeting held on 7 and 21 September 2022 be approved as a correct record.

66. ITEMS FOR INCLUSION IN THE FUTURE WORK PROGRAMME

The Chair referred to the Committee's Work Programme and invited Members to make requests for any additional items.

By affirmation of the meeting, it was

RESOLVED THAT:

The future work programme be noted.

67. RECOMMENDATIONS OF THE FUEL POVERTY TASK AND FINISH GROUP

Councillor T Eynon, addressed the Committee as the Chair of the Fuel Poverty Task and Finish Group to present the recommendations as detailed within the report. She thanked all officers and representatives from Community and Partnership Groups for coming along to give evidence, as well as the Members of the group who had worked well together. The Committee were urged to support the recommendations for Cabinet.

The Committee commended the work of the Group and were in support of the recommendations. During discussions a number of concerns were raised, firstly that the review focused mainly on rented properties, and it was felt that there were also people in the District dealing with fuel poverty who owned their homes, such as elderly people in very old properties. Councillor T Eynon explained that privately owned homes were discussed by the Group, and it was felt that communication was key to inform all residents what support was available. Members were signposted to section eight of the report. A Member requested that the new Customer Service Centre have all the relevant information available, and it be clearly advertised.

The second concern was that if a local measure was adopted, there could be a disconnect of terminology when bidding for national funding which could cause difficulties. Councillor T Eynon explained that the Group did discuss the definition of fuel poverty and it was felt that no matter an individual's background or circumstances, if they could not afford to pay for their fuel then they were fuel poor. It was acknowledged that there were lots of different channels of support available which was why the focus on communication and making sure staff had the right data to support people was very important, particularly when they need to make every contact count.

Members that took part in the review addressed the Committee on how they felt the work undertaken was successful and that it was a good opportunity to highlight potential improvement areas within the Council. It was felt that the review was worthwhile and the recommendations, if supported, were a good start in addressing the areas that the Council could have the most impact.

It was moved by Cllr R Morris, seconded by Cllr T Eynon and

RESOLVED THAT:

The recommendations of the Fuel Poverty Task and Finish Group as detailed within the report be put to Cabinet.

The meeting commenced at 6.30 pm

The Chairman closed the meeting at 6.52 pm

Community Scrutiny Committee – WORK PROGRAMME (as at 28/03/23)

Date of Meeting	Item	Lead Officer	Witnesses	Agenda Item Duration
28 June 2023				
28 June 2023	Hermitage Recreation Ground Ecopark	Jason Knight, Leisure Services Team Manager		15 minutes
28 June 2023	NWL Local Cycling and Walking Infrastructure Plan and Strategy	Jason Knight, Leisure Services Team Manager		15 minutes
28 June 2023	Health and Wellbeing in North West Leicestershire	Jason Knight, Leisure Services Team Manager		15 minutes
28 June 2023	Scrutiny Annual Report	James Arnold, Strategic Director of Place		30 minutes

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Requests for Items

Date request Received	Requested by	Summary of request	Consideration by scrutiny Y/N	Reasons
None	-	-	-	-

Please note: Further discussions on future items will continue with the Scrutiny Work Programming Group following the district elections in May.

Principles and Criteria used for Assessing Items Put Forward

Identify Issues for consideration by Scrutiny

- Consulting with members of Scrutiny Committees, senior officers, Cabinet members – horizon scanning on policy development
- Looking at the corporate priorities, Council Delivery Plan and Cabinet Forward plan – identify key issues/topics for investigation/inquiry
- Considering events and decisions in the Council's calendar which could require an input/consultation via scrutiny – eg budget setting, CDP development
- Considering requests from members – eg via another forum or scoping report submitted
- Evaluating the Council's performance – eg quarterly reports, end of year reports, reviewing success of a particular scheme or initiative
- Reviewing any follow up work required after previous scrutiny work

Prioritise the potential list of scrutiny topics based on factors including

- the resources required to deliver it (from members, offices and financially)
- the value and level of impact which could be achieved
- link to the council's priorities
- whether it is a regular recurring item which requires consideration before Cabinet/Council approval
- consideration of the guidance for selecting scrutiny topics

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Topics are suitable for Scrutiny when	Topics are not suitable for Scrutiny when
Scrutiny could have an impact and add value	The issue is already being addressed elsewhere and change is imminent
The topic is of high local importance and reflects the concerns of local people	The topic would be better addressed elsewhere (and will be referred there)
The resources are available that would be required to conduct the review – staff and budget	Scrutiny involvement would have limited or no impact on outcomes
It avoids duplication of work elsewhere	The topic would be sub-judice or prejudicial to the councils interests
The issues is one that the committee can realistically influence	The topic is too broad to make a review realistic
The issue is related to an area where the council or one of its partners is not performing well	New legislation or guidance relating to the topic is expected in the next year

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Forward Plan Scoping Actions – Community Scrutiny Committee (as at 24.03.23)

Item	Date requested	How requested	Who requested	Scoping Form Y/N	Officer responsible	Key Stakeholders	Task & Finish Group Y/N	WP Group Agreed Y/N	Meeting scheduled
Effectiveness of the Planning Enforcement Team – Progress Update	Sep 2022	From Officers as part of report	-	-	Chris Elston	-	No	-	Autumn 2023 – Exact date TBC
Status:									
Update report was proposed as part of ‘The Effectiveness of Planning Enforcement’ report taken to committee in September 2022. Date TBC once meeting schedule has been agreed at Annual Council.									

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Draft Notice of Executive Key Decisions

The attached notice lists the matters which are likely to be the subject of a key decision by the Council's executive and executive decision making bodies. This notice is produced in accordance with the Constitution adopted by North West Leicestershire District Council and will be published a minimum of 28 days before the date on which a key decision is to be made on behalf of the Council.

Key Decisions

A key decision means a decision taken by the Cabinet, a committee of the Cabinet, an area or joint committee or an individual in connection with the discharge of a function which is the responsibility of the executive and which is likely:

- (a) to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; or
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the area of the Council;
- (c) for the purposes of (a) and (b) above £100,000 shall be regarded as significant in terms of expenditure or savings, and any issue which, in the opinion of the Leader is likely to have an impact on people, shall be regarded as significant in terms of impact on communities.

The Council's Executive

The Council's executive committee is the Cabinet. The Cabinet comprises:

⇒ Councillor R Blunt	-	Leader	Councillor T J Pendleton	-	Regeneration and Planning
Councillor A V Smith MBE	-	Deputy Leader and Community Services	Councillor N J Rushton	-	Corporate
Councillor T Gillard	-	Business	Councillor R D Bayliss	-	Housing

Confidential Items and Private Meetings of the Executive

Whilst the majority of the Cabinet's business at the meetings listed in this notice will be open to the public and media organisations to attend, there will inevitably be some business to be considered that contains, for example, confidential, commercially sensitive or personal information. This is a formal notice under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 that part of the Cabinet meetings listed in this Forward Plan may be held in private because the agenda and reports for the meeting contain exempt information under Part 1 Schedule 12A to the Local Government Act (Access to Information) Act 1985 (as amended) and that the public interest in withholding the information outweighs the public interest in disclosing it. Those Items where it is considered that they should be considered in private are identified on the Notice.

Access to Agenda and Related Documents

Documents relating to the matters listed in this notice are available at least 5 clear working days prior to the date of decision as indicated below. Other documents relevant to the matters listed in this notice may be submitted to the decision maker.

If you wish to request or submit a document, or make representation in relation to any issue contained within this notice, please contact Democratic and Support Services on telephone number 01530 454512 or by emailing memberservices@nwleicestershire.gov.uk

Executive Decisions

Decision	Decision Maker	Status of Decision	Public or Private (and reason – where private)	Date of Decision	Contacts	Documents to be submitted to the Decision Maker	Scrutiny Committee Considered
June 2023							
The Leicestershire Partnership Revenues and Benefits Joint Committee - Appointment of Members	Cabinet	Key	Public	6 June 2023	Clare Hammond Tel: 01530 454529 claire.hammond@nwleicestershire.gov.uk	Report The Leicestershire Partnership Revenues and Benefits Joint Committee - Appointment of Members	
Treasury Management Stewardship Report 2022/23 To inform Cabinet of the Council's Treasury Management activity undertaken for the financial year 2022/23.	Cabinet	Non-Key	Public	6 June 2023	Anna Crouch Tel: 01530 454492 anna.crouch@nwleicestershire.gov.uk	Treasury Management Stewardship Report 2022/23	
Former Tenant Rent Arrears, Current Tenant Rent Arrears, Council Tax, Non Domestic Rates and Sundry Debtor Write Offs To agree write-offs over £10,000 and receive details of debts written off under delegated powers.	Cabinet	Key	Public	6 June 2023	Andy Gould andy.gould@nwleicestershire.gov.uk	Former Tenant Rent Arrears, Current Tenant Rent Arrears, Council Tax, Non Domestic Rates and Sundry Debtor Write Offs	

Decision	Decision Maker	Status of Decision	Public or Private (and reason – where private)	Date of Decision	Contacts		Documents to be submitted to the Decision Maker
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NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

COMMUNITY SCRUTINY COMMITTEE

WEDNESDAY, 5 APRIL 2023



Title of Report	DRAFT RESOURCES AND WASTE STRATEGY FOR LEICESTERSHIRE 2022 - 2050	
Presented by	Paul Sanders Head of Community Services	
Background Papers	Our Waste, Our Resources: A Strategy for England Recycle More...The Plan Leicestershire Resources and Waste Strategy 2022-2050 – Summary of Public Consultation Leicestershire Resources and Waste Strategy 2022 -2050 – Equality and Human Rights Impact Assessment	Public Report: Yes
Financial Implications	<p>There are no financial implications arising directly from the adoption of this strategy. Future waste service changes resulting from the strategy and a wider review of the waste service will be subject to a separate Cabinet or Council report, detailing the financial implications for the Council.</p> <p>Based on the latest available information from the government's net zero commitments, it is envisaged that capital and revenue costs for a separate food waste collection service will be funded by central government.</p>	
	Signed off by the Section 151 Officer: Yes	
Legal Implications	<p>Legislation to enable the policy changes within the Recycling Waste Strategy (RWS) are contained within the Environment Act which received Royal Ascent on 9 November 2021.</p> <p>The Leicestershire Resources and Waste Strategy 2022 - 2050 (LRWS) has considered the potential forthcoming legislative changes, these are reflected accordingly, and in some instances caveats have been made due to the continued delay of confirmation of government policy. It is important to note the strategy is high-level and therefore non-site specific.</p>	
	Signed off by the Monitoring Officer: Yes	
Staffing and Corporate Implications	<p>There are no staffing or corporate implications arising directly from the adoption of this strategy. Future waste service changes resulting from the strategy and a wider review of the waste service will be subject to a separate Cabinet or Council report.</p>	
	Signed off by the Head of Paid Service: Yes	

Reason Agenda Item Submitted to Scrutiny Committee	<p>To receive feedback from Community Scrutiny Committee on the following drafts:</p> <p>Leicestershire Resources and Waste Strategy 2022-2050 in Appendix One</p> <p>Leicestershire Resources and Waste Strategy 2022-2050 Action Plan Timeline in Appendix Two</p>
Recommendations	<p>THAT SCRUTINY COMMENT ON THE DRAFT RESOURCES AND WASTE STRATEGY FOR LEICESTERSHIRE 2022 – 2050 AND THE ASSOCIATED ACTION PLAN AND TIMELINE, BEFORE CONSIDERATION BY CABINET ON 25 APRIL 2023.</p>

1. INTRODUCTION

- 1.1 Under the Waste and Emissions Trading Act 2003, all two-tier authorities are required to have in place a Joint Municipal Waste Management Strategy for the management of municipal waste within their areas. Therefore, there is a legal requirement for all seven district councils and Leicestershire County Council to have a joint waste strategy in place and this is delivered through the Leicestershire Waste Partnership (LWP) of which all eight councils are members.
- 1.2 The Leicestershire Resources and Waste Strategy 2022-2050 (LRWS) sets out how the LWP intends to manage municipal waste in the period up to 2050 (see Appendix One). The LRWS replaces the Leicestershire Municipal Waste Management Strategy (LMWMS) which was last updated in 2011.
- 1.3 A public consultation forms part of the process of a formal review of a Joint Municipal Waste Management Strategy as per the government's guidelines.

2. BACKGROUND

- 2.1 The first Leicestershire Municipal Waste Management Strategy (LMWMS) was adopted by the Leicestershire Waste Partnership (LWP) in 2002. In 2006 it was comprehensively reviewed, including a public consultation and a full Strategic Environmental Assessment (SEA). The strategy was subsequently updated in 2011 to reflect changes in performance and the economic climate since 2006, but maintained the objectives of the 2006 strategy.
- 2.2 In 2019 the LWP commissioned consultants Frith Resource Management to develop the new 2022 – 2050 strategy. All eight councils in the partnership are in the process of adopting this final strategy and this should be completed by April 2023.
- 2.3 The strategy highlights significant legislative changes are on the horizon. In responding to these, the waste partnership will need to be maintained and enhanced to ensure appropriate political, strategic and organisational engagement. As government policy evolves, the partnership will need to explore collaborative opportunities which are most effectively able to deliver the changes required and ensure the balance of risk and reward is shared across both the waste disposal and waste collection authorities.

Innovative collaborative opportunities should be considered which have the potential to deliver environmental improvements, whilst helping to reduce costs across the

waste-system, such that cost shunting is avoided and mutual benefits are shared across all partners. Where funding is provided which requires allocation across the partnership, this will be calculated on a basis that is acceptable to all partners to ensure legally compliant, cost effective and timely distribution.

- 2.4** The government's Resources and Waste Strategy (RWS) for England was released in 2018 (see background paper). It focuses on known problems with effective solutions that will reduce reliance on single use plastics, cut confusion over household recycling, tackle the problems of packaging and end food waste. The RWS outlines how the government aims to make the UK more resource efficient and to move towards a circular economy which keeps resources in use for longer. The RWS covers the period until 2050 and includes the Circular Economy Package target of a 65% recycling rate of municipal (household) waste by 2035.
- 2.5** Following on from the publication of the RWS, two rounds of consultations were released by the government with local authorities identified as key stakeholders. These included proposals that are expected to affect local waste services, including mandatory weekly food waste collections, free garden waste collections, the introduction of a deposit return scheme for single use drinks containers, extended producer responsibility for packaging (this is in essence where the full cost of collection, recycling and disposing of packaging is met by the producers of the packaging) and a move towards consistent waste collections by all local authorities. These three policies are known collectively as the 'Collection and Packaging Reforms' and consist of:
- Deposit Return Schemes (DRS) (England, Wales & Northern Ireland) – closed June 2021
 - Reforming the UK Packaging Responsibility System/Extended Producer Responsibility (EPR) (UK) – closed June 2021
 - Consistency in Household and Business Recycling Collections (England) – closed July 2021
- 2.6** To date, the results of the second round of consultations have only been published for extended producer responsibility for packaging. They have not yet been published for a deposit return scheme and consistency in household and business recycling collections.
- 2.7** Legislation to enable the policy changes within the RWS are contained within the Environment Act which received Royal Assent on 9 November 2021.
- 2.8** The LRWS has considered the potential forthcoming legislative changes, and these are reflected accordingly, and in some instances, caveats have been made due to the continued delay of confirmation of government policy. It is important to note that the strategy is high-level and therefore non-site specific.
- 2.9** The Council's current Recycle More Plan (see background paper) was adopted in 2019 and aligns with the LRWS. The intention is to update the Recycle More plan, whilst carrying out a wider review of the Council's waste and recycling service, which will be presented at a future Scrutiny meeting.

3. JOINT MUNICIPAL WASTE MANAGEMENT STRATEGY - REVIEW PROCESS

- 3.1** The purpose of a joint municipal waste management strategy is to:

- a) Identify the baseline position
- b) Outline where partners want to be and when by
- c) Articulate how this will be achieved.

To achieve the above the following steps were undertaken:

Strategy Review Steps	Outputs
Production of a detailed project plan	Project Plan
Project planning, gap analysis, data analysis	Baseline Report
Undertake full Equalities and Human Rights Impact Assessment	Equalities and Human Rights Impact Assessment
Agree objectives and options and options assessment criteria	Draft Options Appraisal Report and Draft Headline Strategy
Strategic Environmental Assessment (SEA)	Scoping Report and five-week statutory consultation; Draft Environmental Report
Public Consultation	Public Consultation Report
Finalisation of the Strategy	Final Headline Strategy
Action Plan Timeline	Final Action Plan Timeline

4. PUBLIC CONSULTATION FINDINGS

4.1 Extensive public consultation was undertaken for twelve weeks in Spring 2022. A summary of the public consultation responses is provided - see background paper.

4.2 Across Leicestershire a total of 5,233 responses were received. Almost two thirds of the respondents were female (63%). Compared to the known population of Leicestershire (Census 2011), this shows females were over-represented and males under-represented. Almost half (45%) of respondents were aged between 45-64 years. Under-represented age groups in respect to population include 15-24 years old and those over the age of 85 years.

4.3 12% of the respondents were from North West Leicestershire. 84% of the respondents either strongly agreed or tended to agree with the Vision of the LRWS, and 85% either strongly agreed or tended to agree with the pledges set out in the LRWS.

4.4 The majority of the respondents in Leicestershire were supportive of the Vision, with 83% in agreement:

“To work towards a circular economy and contribute to achieving net zero carbon by 2050 in Leicestershire. This means fully embracing the waste hierarchy by preventing waste and keeping resources in circulation for as long as possible, through reuse, repair, and recycling, to realise their maximum value whilst minimising environmental impacts”.

4.5 A workshop was held on 10 December 2021 between North West Leicestershire District Council members, the Head of Community Services and the Waste Services Team Manager. Officers gave a presentation and provided a briefing note regarding the LRWS. Members made references to fly-tipping and litter within the strategy and that they needed strengthening and noted the differences between district kerbside collections.

5. OVERALL FINDINGS AND CHANGES TO THE STRATEGY

5.1 The results to the survey were analysed and the key conclusions were:

- The proposed Vision and Strategy resonate with residents
- The understanding of the relationship between waste and climate change is limited.
- Residents are enthusiastic about greater engagement in reducing waste and increasing recycling and recognise they have a key role to play (community initiatives and collective action).
- Communications and engagement activities need to be developed bearing in mind learning from behavioural science, addressing the environmental, personal and social factors that can affect behaviour.

5.2 The key themes that have been highlighted in the consultation responses together with the issues and considerations that have been raised are summarised below. These are not presented in an order of priority:

- Tackling fly-tipping – an area of concern for residents.
- Putting pressure on producers – residents would like to see producers take more responsibility and use recyclable packaging for their goods.
- Increased access to sustainable activities – recognition of these to be accessible and affordable for all, especially waste prevention and reuse.
- Engagement and encouragement – respondents like to be kept informed and suggested potential for incentives for rewarding positive behaviours.
- Educating residents – suggested that efforts need to be made to encourage understanding the issue of waste and its relationship to climate change.
- Concerns with food waste collections – respondents were generally positive on the introduction of food waste collections, but there were concerns raised of how it works in practise e.g. smells and hygiene.
- Expanding kerbside recycling – to reduce the amount of residual waste, respondents were keen for the introduction of a wider variety of materials collected at the kerbside.
- Accessibility of garden waste collections – residents were generally satisfied with the service, but a reoccurring theme was accessibility to this service and charging.
- Restricted residual waste collection and household size – residents from larger households raised concerns on restricted residual waste. Overall the option of a fortnightly collection with a smaller size bin was more favourable (39%) than a three-weekly collection with a current size bin (16%).
- Improving Household Waste Recycling Centres (HWRCs) – levels of satisfaction with HWRCs were high, although some respondents did raise concerns regarding short opening hours, too few HWRCs and inaccessibility.

- 5.3** Findings from the consultation exercise will be utilised to help inform future initiatives and campaigns. A key theme which came out of the consultation exercise, which is not dealt with by the pledges, is fly-tipping. The Leicestershire Waste Partnership has therefore committed to address this and added an additional pledge (pledge two below).
- 5.4** Minor modifications have been made to the remaining eleven pledges, but it is not considered that these existing pledges require alteration. The final pledges are:
- 1) All councils within the partnership will review their purchasing activities and internal waste management services to seek to promote waste prevention, reuse, and recycling to support the objectives of this strategy and lead by example.
 - 2) Environmental crime, particularly fly-tipping does not recognise council boundaries. The partnership will work together to reduce fly-tipping and litter across Leicestershire and educate residents, businesses, or anyone disposing of rubbish, about their legal duty of care to dispose of their rubbish responsibly.
 - 3) The partnership pledges to support and encourage waste prevention activity across LWP. This will include working with stakeholders, residents, and communities to prevent unnecessary waste arising, for example through food waste reduction campaigns such as Love Food Hate Waste.
 - 4) The partnership pledges to continue delivering reuse services and expand activities where practicable, working in partnership with other stakeholders and to signpost to places that advocate for waste prevention and reuse, in support of developing a circular economy. This includes a pledge to continue to improve the collection of items for reuse at Household Waste Recycling Centres and explore the development of reuse shops at suitable sites.
 - 5) The partnership will implement and promote separate food waste collections to all households, subject to confirmation of the national policy, legislation, and the provision of total ongoing government funding. This will be as soon as possible when contracts and circumstances dictate. The county council will procure anaerobic digestion capacity to treat the collected food waste in a manner that contributes to effective carbon emissions reduction across the county and improves soil quality.
 - 6) The partnership will explore the use of alternative fuels for collection vehicles and the transportation of waste and resources to further reduce carbon emissions of the service and improve air quality.
 - 7) The partnership will continue to offer a garden waste collection system to Leicestershire residents. This will follow national guidelines as to the form of the collection and will be subject to legislation and total ongoing government funding. The partnership will continue to procure composting capacity to treat the collected garden waste in a manner that supports carbon reduction and improves soil quality.
 - 8) The partnership shall ensure that the full range of recyclables (as specified by the government and subject to funding) are collected from residents (and

businesses where applicable) across Leicestershire by 2025, or as soon as possible when contracts and circumstances allow.

- 9) The partnership shall continue to explore the viability of adding extra materials to recycling collections (e.g. small electrical goods) striving to continually improve Leicestershire's recycling performance.
- 10) The partnership will put in place collection systems to contribute towards the achievement of the national 65% recycling target by 2035. This may include restricting residual waste capacity to encourage greater materials separation, carbon savings and resource recovery. Improvements in materials recovery at Household Waste Recycling Centres will also contribute towards the national target.
- 11) The partnership will continue to allocate a communications budget sufficient to help promote good recycling behaviour and support resource recovery to progress the circular economy and low-carbon objectives of this strategy.
- 12) The county council will reduce waste sent to landfill to less than 5% by 2025, well in advance of the 10% national target by 2035. The county council will undertake future procurement processes for residual waste treatment (alternatives to landfill) in line with the vision and objectives of this strategy.

5.5 In the period during the public consultation, the government released its response to its extended producer responsibility for packaging consultation and has confirmed that glass which was originally to be included in the proposed deposit return scheme will now be part of extended producer responsibility for packaging. No further modelling was undertaken within the options appraisal due to the continued uncertainty around the government's preferred approach, however the future waste and recycling projections were updated to take account of this amendment.

5.6 Due to the continued uncertainty in regard to government policies, a local government finance position statement also been added to the strategy.

6. ACTION PLAN TIMELINE

6.1 A further step in the review process is to produce an action plan timeline (see Appendix Two) which provides a route map for delivering the vision, objectives and pledges set out in the strategy. It provides a clear direction of travel to ensure that resources and waste are managed effectively.

6.2 The action plan timeline will guide the implementation of the strategy and will be subject to regular review and monitoring. Changes may be made to the action plan timeline in response to (for example):

- Accelerated or delayed implementation of actions
- Variance in predicted performance of actions
- Changes in government policy, legislation or regulations; or
- Other changes in circumstances

6.3 The action plan timeline has been divided into the following themes:

- Reuse/Circular Economy
- Recycling (performance & collections)

- Residual Waste Reduction
- Partnership Working
- Leading by example
- Communication
- Carbon

- 6.4** Some of these themes contain overlapping elements. Each action within the plan details what action is to be taken, how this relates to either an objective or pledge of the strategy, by whom and when.
- 6.5** The action plan timeline associated with the LRWS is high level, but builds on the objectives and pledges of the strategy. There may be further (more detailed) actions for example: a procurement plan; individual council action plans; business cases, or; communications plans.
- 6.6** Each authority within the Leicestershire Waste Partnership (LWP), which comprises of Leicestershire County Council and the seven district councils in Leicestershire are in the process of seeking adoption of the final draft strategy as listed in the table below.

Local Authority	Scrutiny Meeting	Cabinet Meeting	Full Council
Blaby District Council	N/A	N/A	22 February 2023
Charnwood Borough Council	N/A	9 March 2023	N/A
Harborough District Council	19 January 2023	6 February 2023	N/A
Hinckley & Bosworth Borough Council	26 January 2023	N/A	22 February 2023
Leicestershire County Council	19 January 2023	24 April 2023	N/A
Melton Borough Council	11 January 2023	25 January 2023	23 March 2023
North West Leicestershire District Council	5 April 2023	25 April 2023	N/A
Oadby & Wigston Borough Council	N/A	23 February 2023	N/A

7. RISK IMPLICATIONS

Risk description	Mitigating actions
Failure to adopt the strategy would mean NWLDC is not aligned with joint Leicestershire strategic waste priorities, national policy and legislative requirements on the Environment Act 2021.	Ensure the strategy is adopted. The Strategy pledges have been subject to public consultation and are caveated to ensure government funding is required. Each partner needs to ensure sign up for their organisation.
Lack of funding from central government to fund change.	The strategy includes a financial position statement and pledges include “subject to total ongoing funding” where relevant.
Significant changes in government policy	Pledges caveated with regard to policy changes. The strategy will be reviewed regularly to reflect changes and new modelling will be completed once clarity on the Department for Environment, Food & Rural Affairs (Defra) policy is confirmed.

8. EQUALITY AND HUMAN RIGHTS IMPLICATIONS

- 8.1** An Equality and Human Rights Impact Assessment (EHRIA) was undertaken and concluded that the review of the LMWMS was subject to a full EHRIA (see background paper). This EHRIA provides a strategic framework and further EHRIAs will be

undertaken, where appropriate, for delivery of activities, and as specific schemes are developed.

- 8.2** This EHRIA has enabled the LWP to assess whether the new LRWS discriminates or has any adverse impact on any particular community or group of people within Leicestershire. The key outcome of the EHRIA is for the LWP to ensure the LRWS promotes accessible services, accessible information and appropriate equality training where required.

9. CONCLUSION

- 9.1** It is recognised that further clarity from government is needed to fully understand the impact of the potential policy changes which may be the most significant seen for many years. The options modelled which support the strategy provide a reasonable guide to the magnitude of changes that might be expected and are subject to forthcoming legislation and future funding mechanisms.
- 9.2** The strategy sets the LWP in a robust policy position for an imminent period of substantial change (2023 – 2027) and longer-term goals and will help deliver on net zero priorities.

Policies and other considerations	
Council Priorities:	Developing a clean and green district.
Policy Considerations:	See the background papers.
Safeguarding:	None.
Equalities/Diversity:	See the Equality and Human Rights Impact Assessment (background paper)
Customer Impact:	Future waste service changes resulting from the strategy, and a wider review of the waste service will be subject to a separate Cabinet or Council report detailing the customer impact.
Economic and Social Impact:	None.
Environment and Climate Change:	Reducing carbon emissions featured prominently in the development of the strategy, and if implemented certain collections changes would significantly reduce carbon emissions, notably the introduction of separate weekly food waste collections.
Consultation/Community Engagement:	Detailed in the report – see section four.
Risks:	Detailed in the report – see section nine.
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Draft Resources and Waste Strategy for Leicestershire 2022-2050



Executive Summary

How we view 'waste' has changed; it is no longer only something to get rid of, but is considered a valuable resource, to be retained and reused, or avoided at all where possible. Using waste as a resource can help to reduce the raw materials needed for producing new goods, which has environmental, social and financial benefits. This updated draft Leicestershire Resources and Waste Strategy (LR&WS / the 'Strategy') reflects this global current thinking and describes the recycling and waste management services which will be delivered by the Leicestershire Waste Partnership (LWP)¹ from 2022 up to 2050. The Vision of the draft LR&WS is:

To work towards a circular economy and contribute to achieving net zero carbon by 2050 in Leicestershire. This means fully embracing the waste hierarchy by preventing waste and keeping resources in circulation for as long as possible, through reuse, repair and recycling, to realise their maximum value whilst minimising environmental impacts.

This vision is supported by specific Strategy objectives and a range of pledges and measures that sit alongside national policy changes - setting a direction for long term management of material resources for the benefit of the residents and communities of Leicestershire². In addition, the Strategy includes:

- The policy framework - the current and future context for resources and waste management, considering local issues e.g. air quality, and global issues such as carbon reduction or greenhouse gas reduction and climate change
- Strategy delivery - how resources and waste will be managed to achieve the vision and objectives, through the services provided by the LWP to its residents and communities and 11 pledges regarding commitments, actions and performance.

The draft LR&WS includes a focus on waste prevention (avoiding waste generation in the first place) and developing more initiatives on reuse of goods - both at the Household Waste and Recycling Centres and in the community. There are challenging targets around recycling and reuse, aiming to enhance Leicestershire's performance from current levels (around 44% recycling rate) to 65% by 2035, with the majority of progress made over the next five years through the Countywide implementation of weekly food waste collections, more consistent and effective recycling collections and, subject to Government guidelines, funding and potential changes to garden waste collections.

If the national 65% recycling rate is to be met the amount of residual waste (all general mixed 'rubbish') managed by Councils will need to fall from around 620kg per household to around 360kg per household by 2035. Furthermore, the management of residual waste in Leicestershire is also set to change with a pledge to reduce the amount of waste landfilled from current levels (of around 30%) down to 5% by 2025. This is substantially ahead of the new national target of 10% landfilled waste by 2030.

The net effect of the measures within the draft LR&WS is a reduction in the amount of carbon (as measured in CO₂ equivalents) in the range of 5,000 -10,000 tonnes of CO₂ eq. each year from the collection and management of wastes and resources in the County. This is equivalent to taking between 1,800 – 3,600 cars off the road, in terms of annual emissions savings.

¹ Leicestershire Waste Partnership comprises Leicestershire County Council and the seven District and Borough Councils. Leicester City Council is an associate member.

² Note that this Strategy does not cover Leicester City Council which is a unitary authority with its own waste collection and disposal arrangements

This document is the 'consultation draft' of the Strategy. The LWP are asking for views and feedback from residents and communities, including businesses that use, or are affected by, the proposed resource and waste services in this Strategy by 25th April 2022.

CONSULTATION DRAFT

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1. Introduction

What is a Resources and Waste Strategy?

This document is the consultation draft of the Leicestershire Resources and Waste Strategy (LR&WS) for the Leicestershire Waste Partnership (LWP). The partnership comprises Leicestershire County Council (the Waste Disposal Authority) and the seven Leicestershire Waste Collection Authorities (the District and Borough Councils). Leicester City Council manages its waste via separate arrangements as a Unitary Authority.

This LR&WS is an update to the Leicestershire Municipal Waste Management Strategy 2020 which has been in place since 2002 and was reviewed and updated in 2006 and 2011 respectively.

The LR&WS describes the recycling and waste management services which will be delivered by the LWP up to 2050. The Strategy sets out:

- The policy framework - the current and future context for resources and waste management, considering local issues e.g. air quality, and global issues including carbon/greenhouse gas reduction and climate change
- The vision, aims, and objectives - what the LWP wants to achieve in terms of resources and waste management; and
- Strategy delivery - how resources and waste will be managed to achieve the aims and objectives, through the services provided by the LWP to its residents and communities.

How we view 'waste' has changed; it is no longer only something to get rid of, but is now considered a valuable resource, to be retained and reused, or avoided at all where possible. Also, the adverse impacts of raw material inputs e.g. the resources we use, are becoming increasingly apparent, meaning now more than ever raw materials need to be used efficiently and conserved. Using the resources from waste can help to reduce the raw materials needed for producing new goods, which has environmental, social and financial benefits. This updated LR&WS reflects this global current thinking.

The Strategy covers services for managing municipal solid waste (MSW). MSW is all the waste collected by the local authorities in the LWP³. This includes household, commercial and street cleansing wastes, and wastes taken to the Household Waste and Recycling Centres (HWRCs).

As Waste Collection Authorities, the District and Borough councils have a legal duty to collect municipal waste and Leicestershire County Council, as the Waste Disposal Authority (WDA), has a legal duty to treat, manage and dispose of MSW. The WCAs and WDA work in partnership, recognising that joint working on planning the collection, treatment (composting, recycling, and recovery) and disposal of waste supports efficient service delivery for residents and communities, including businesses.

This Strategy runs up to 2050, however it will be reviewed regularly at appropriate periods during this time. Reviews are needed to make sure the Strategy remains current and in line with national guidance.

This Strategy is a 'Consultation Draft'. For the next steps during and after the consultation, see section 5 'Consultation-Next Steps' in this document.

³ It also applies to similar wastes collected by other parties; however this is not under the control of the local authorities.

How is the service delivered?

All districts in Leicestershire currently have household collections of recycling, residual⁴ and garden waste. Food waste is not currently collected district wide by any WCA, however some have either collected this in the past or have trialled weekly food waste collections over the last few years, including Harborough District Council, Hinckley & Bosworth Borough Council and Oadby & Wigston Borough Council. North West Leicestershire District Council have been successfully trialling a food waste collection since November 2019, and continue to do so.

Recycling

How recycling is collected is broadly consistent across the LWP. Six of the Districts collect all recycling material together in one container (typically a wheeled bin), this is often referred to as a 'commingled collection' and is collected every two weeks. Residents in North West Leicestershire District on the other hand, are provided with a mixture of bags and boxes to separate out key recyclable materials, which are then placed in different compartments on a specialist vehicle. This is often referred to as a 'kerbside-sort' or 'multi-stream' collection. Examples of the containers for each District and Borough council are shown below.

	
Commingled collections for: Blaby District Council, Charnwood Borough Council, Harborough District Council, Hinckley & Bosworth Borough Council, Melton Borough Council and Oadby & Wigston Borough Council.	Kerbside sort or 'multi-stream' collections for North West Leicestershire District Council (Image: NWLDC website)

All of the commingled recyclable materials collected from residents are currently sent to a Materials Recycling Facility (MRF) in Leicester. At this facility, recycling is separated using a combination of manual and automatic sorting processes to sort material streams before being baled and sent for reprocessing.

North West Leicestershire District Council has its own arrangement for processing recycling (which is already separated on the vehicle as it collects from households). Their recycling is transported to a depot in Coalville. Here, the materials are unloaded from the collection vehicles and tipped into dedicated bays where further separation is used where needed. For example, magnets are used to separate the metals from the plastic. Once baled, the collected recyclables are sold on, and this can be directly to reprocessors.

⁴ 'Residual' waste is 'black bin' waste that is not separated, so is mixed waste or 'general rubbish'

Garden waste

Unlike recycling and residual waste, the collection of garden waste is a non-statutory service and is a discretionary service provided by Local Authorities. As such, Local Authorities are able to provide this service for free, or to ask residents to pay for its collection. All authorities in the LWP charge for the collection of garden waste, except for North West Leicestershire District Council who offer this service for free. Residents wishing to have their garden waste collected typically pay an annual subscription fee which covers the cost of a wheeled bin, vehicles and crew that collect garden waste.

Residents are also encouraged to use other methods to dispose of garden waste. Firstly, via home composting garden waste (cuttings, trimmings, plants, branches and other garden waste which can be composted). Alternatively, residents can also take their garden waste to any of the Household Waste and Recycling Centres.

Household Waste and Recycling Centres (HWRCs)

Household Waste and Recycling Centres (HWRCs)⁵ are provided for residents to dispose of any bulky or additional waste and recycling which cannot be collected through the kerbside collection. There are fourteen HWRCs located across Leicestershire, as shown in the image below. These sites are managed by Leicestershire County Council.

⁵ Locally in Leicestershire known as Recycling and Household Waste Sites (RHWS) or historically known as 'the tip'



Figure 1: HWRCs across Leicestershire

The HWRCs take a wide range of items which can be sent for reuse, recycling or disposal. Opening hours and the waste accepted varies across each site. Leicestershire residents are generally able to use these sites for free. Some charges may apply for specific materials, including hardcore and rubble, tiles, plasterboard and asbestos. Vans, pick-ups and cars with trailers, and any vehicle bringing asbestos, chemicals or liquid paint, require a permit to visit the sites.

In 2019/20, the combined reuse, recycling and composting performance was 45.5% for household waste from collections at the kerbside and from the HWRCs. This is lower than the UK's target to recycle 50% of household waste by 2020. The average for England within the same period was 43.8%, meaning that Leicestershire did perform above national average, despite the fall in overall performance shown below. A key reason for the fall, shown in Figure 2, was not that householders were recycling less, but that a facility which was extracting extra material for recycling from residual waste had closed.

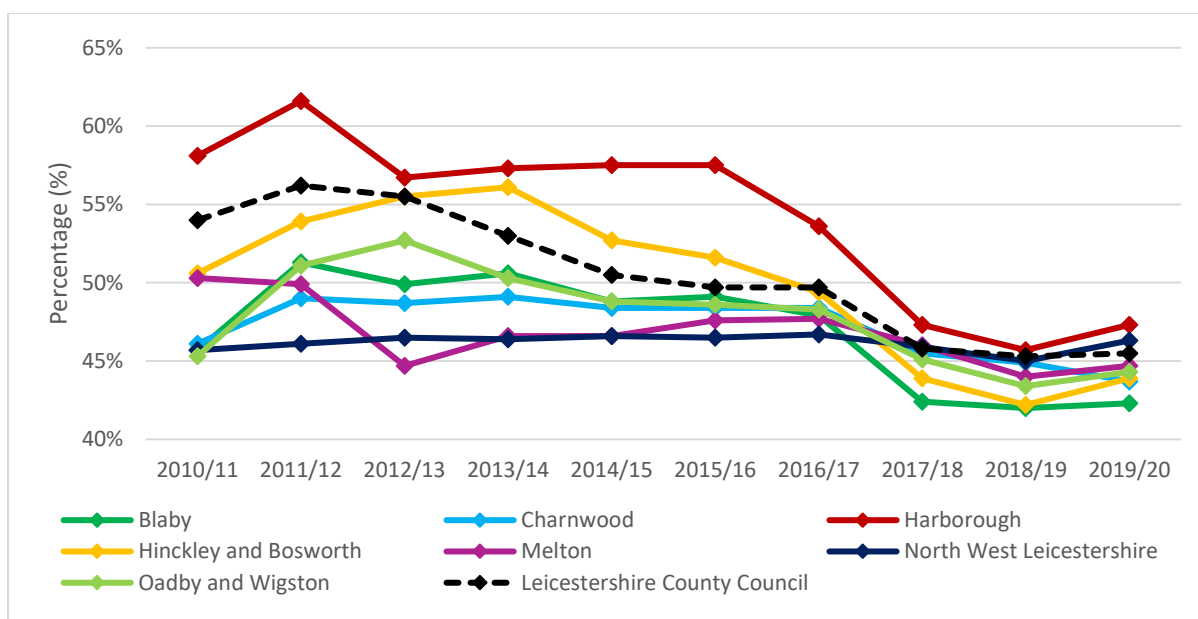


Figure 2: Current and historic recycling rates for Leicestershire Councils 2010/11 – 2019/20

Although the recycling rate is above the national average, the amount of waste sent to landfill (the least desirable outcome) was 31.8% in 2019/20, this is much higher than the average landfill rate for local authorities in England, for the same time period (8.5%). Both reducing the waste sent to landfill and increasing recycling are key elements of this Strategy (see section 3).

Who delivers the collection services?

The collection of waste and recycling is the responsibility of the District and Borough Councils. The delivery of this service can be managed in several ways; in-house (the Council run the collections using their staff), via a Local Authority Trading Company (a type of publicly owned 'arms length' company), or by outsourcing the service to a private contractor (also known as contracting out the service). At present, four of the District and Borough Councils operate this service in house (Blaby, Hinckley & Bosworth, North West Leicestershire and Oadby & Wigston) and three are outsourced to the private sector (Charnwood, Harborough and Melton). Collection service contracts typically last between 7 and 10 years.

Bulky Waste

Across the County, residents can arrange for the collection of larger items - this is known as a bulky waste collection. Each District and Borough Council has its own service in place for its residents. This service is chargeable (price varies per Council), often with a minimum collection fee. The types of items that can be collected include domestic furniture, appliances (televisions, fridges, freezers, washing machines), beds etc.

Trade Waste

Some District and Borough Councils also offer a collection service from businesses in their area, this is known as a trade waste collection. An overview of the trade waste services is provided below.

Council	Waste types collected	Other characteristics
Blaby District Council	General Waste Mixed Recycling	Customers can choose from a range of options for both the frequency of

	Glass Only	collection and the size of containers provided.
Charnwood Borough Council	General Waste	Weekly (or multiples of weekly) collections of residual waste. Intention to start mixed recycling collection soon.
Harborough District Council	General Waste Mixed Recycling	Customers can choose from a range of options for both the frequency of collection and the size of containers provided.
Hinckley & Bosworth Borough Council	General Waste Mixed Recycling	Customers can choose from a range of options for both the frequency of collection and the size of containers provided.
Leicestershire County Council	N/A	LCC run a trade service at Whetstone Waste Transfer Station (WTS) which includes an outlet for general waste and also source separated waste such as cardboard, green waste, wood and inert waste.
North West Leicestershire District Council	General Waste Mixed Recycling	Customers can choose from a range of options for both the frequency of collection and the size of containers provided.

What is in your bins?

The average composition of what a Leicestershire resident puts in their bins each year is shown in the pie chart below. What this illustrates is that the vast majority of items that are disposed of can be prevented, reduced, reused or recycled in some way. This isn't just the materials that we are familiar with recycling like paper, card, metals, glass and plastic, but also other materials like food waste and waste electrical and electronic equipment (WEEE), which can be collected separately and have their resource value recovered.

Separating these additional materials for recycling can help contribute towards achieving 65% recycling, the national recycling target for 2035, set by Government ⁶.

Furthermore, other items may be reused to prevent them becoming waste at all. This is preferable to recycling, and options such as using washable nappies, reusable water bottles for drinks and refilling containers with goods from a refill shop or station to avoid new packaging all help conserve resources and avoid packaging and other wastes. There is more on this in sections 3 and 4 of this Strategy.

⁶ This is included in the 2020 Circular Economy Package (CEP)

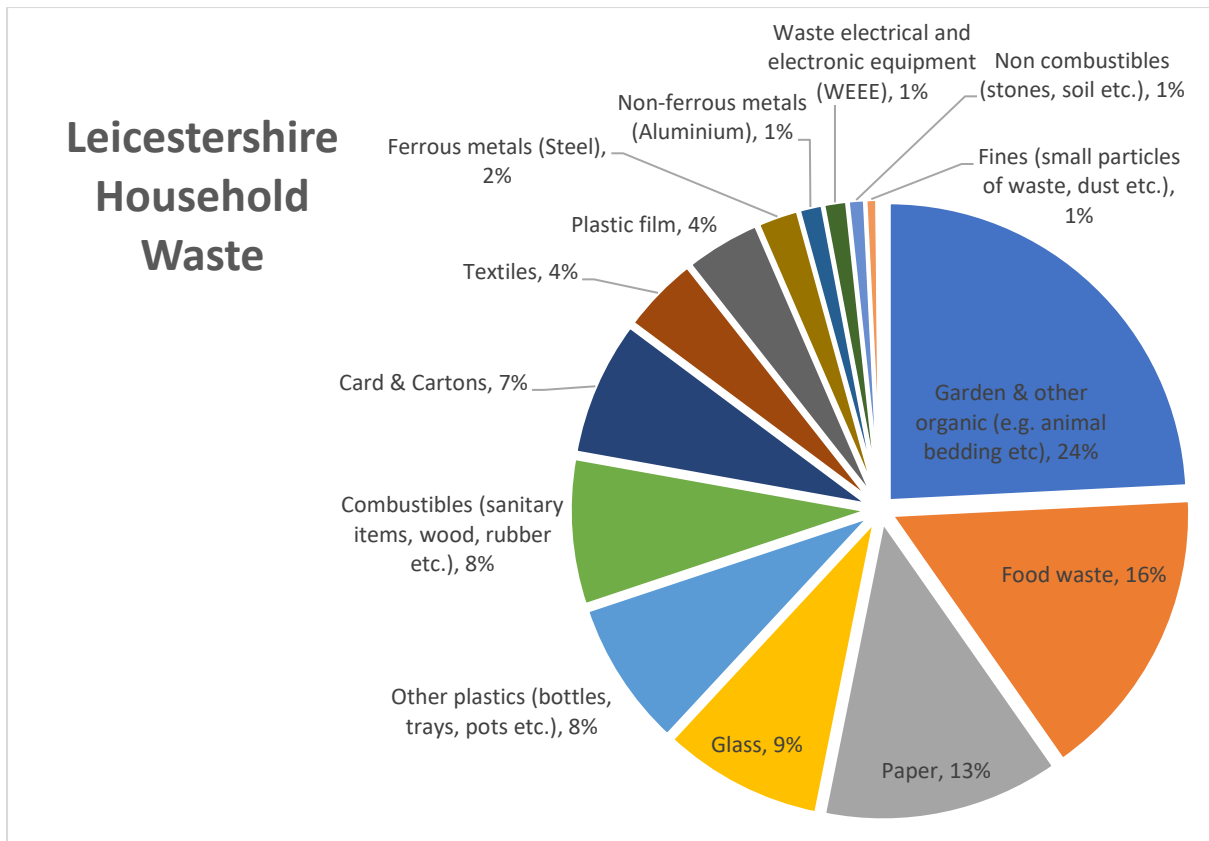


Figure 3: Waste composition of all bins (residual, recycling and garden) combined - 2019/20 data⁷

⁷ Data may not add up to 100% due to rounding

2. What is the proposed Strategy for Leicestershire?

This section explains the direction envisaged for the LR&WS and includes a summary of influences (both national and local) that have shaped its development.

The Strategy focuses on municipal waste that is waste generated by households and similar wastes from businesses and commerce. It explores different options to reduce the amount of waste arising in the first place (see 'the waste hierarchy' described later in this section), and then to manage the remaining material in a way that gives benefit from its resource value.

The management of the residual waste (the remaining waste left for disposal) is managed by long term contracts. Whilst there are different ways to manage this waste, the Strategy takes the position that the prime aim is to avoid waste going to landfill. When new contracts are to be let for managing residual waste, they should review the latest options available and adhere to the principles of this Strategy for subsequent decision making on residual waste management technologies.

The vision and objectives of the LR&WS are explained below.

Our Strategic Vision

The overarching vision of the draft LR&WS is:

To work towards a circular economy and contribute to achieving net zero carbon by 2050 in Leicestershire. This means fully embracing the waste hierarchy by preventing waste and keeping resources in circulation for as long as possible, through reuse, repair and recycling, to realise their maximum value whilst minimising environmental impacts.

Key aspects of this vision, like what we mean by a circular economy and the waste hierarchy are explained in more detail later in this section of the Strategy.

Our objectives to deliver the vision

To achieve the vision outlined above, the following objectives have been developed, and grouped into themes. These are all important guiding principles for the service as a whole and are not in order of priority.

Deliver services in accordance with circular economy principles

Objective 1: Manage materials in accordance with circular economy principles, except where costs are prohibitive, or where the environmental consequences can be demonstrated to be negative.

Objective 2: As local authorities, set an example by preventing, reducing, reusing, recycling and composting our own waste and use our buying power to positively encourage sustainable resource use.

Reduce the climate change / carbon / air quality impact of waste services in Leicestershire

Objective 3: Reduce carbon emissions from Leicestershire's waste management services.

Deliver services that are financially sustainable and equitable across the Partnership

Objective 4: Consider the whole life financial, social and environmental impact, and deliver quality services designed to allow flexibility, innovation and improvement.

Objective 5: Promote the economic and employment opportunities of sustainable waste management where this is consistent with circular economy principles. Consider local / regional supply chain and markets for recycle and other secondary raw materials.

Delivery of high quality waste services for the residents of Leicestershire

Objective 6: Work together to adapt and deliver coordinated services and infrastructure for waste services with lower environmental impacts.

Objective 7: Aim to reduce and manage residual waste within the County where this is consistent with the proximity principle and to manage all other waste at the nearest appropriate facility by the most appropriate method or technology.

Work in partnership with local communities across Leicestershire

Objective 8: Work with the community and businesses to raise awareness about environmental matters (including climate change, energy and resource management) and increase participation in waste prevention, reuse and recycling initiatives and link to national campaigns.

Objective 9: Lobby and work with others, in pursuit of the Partnership's vision of sustainable waste and resource management.

The Strategy also includes a number of pledges setting out specific actions to support and achieve these objectives, these are presented in Section 3.

National Policy & Influences

A guiding principle of managing waste and resources is the 'waste hierarchy', this is shown below with definitions as to the meaning of each level. The most beneficial method is 'prevention' of waste and the least beneficial 'disposal'. This Strategy sets out Leicestershire's intentions on each level.

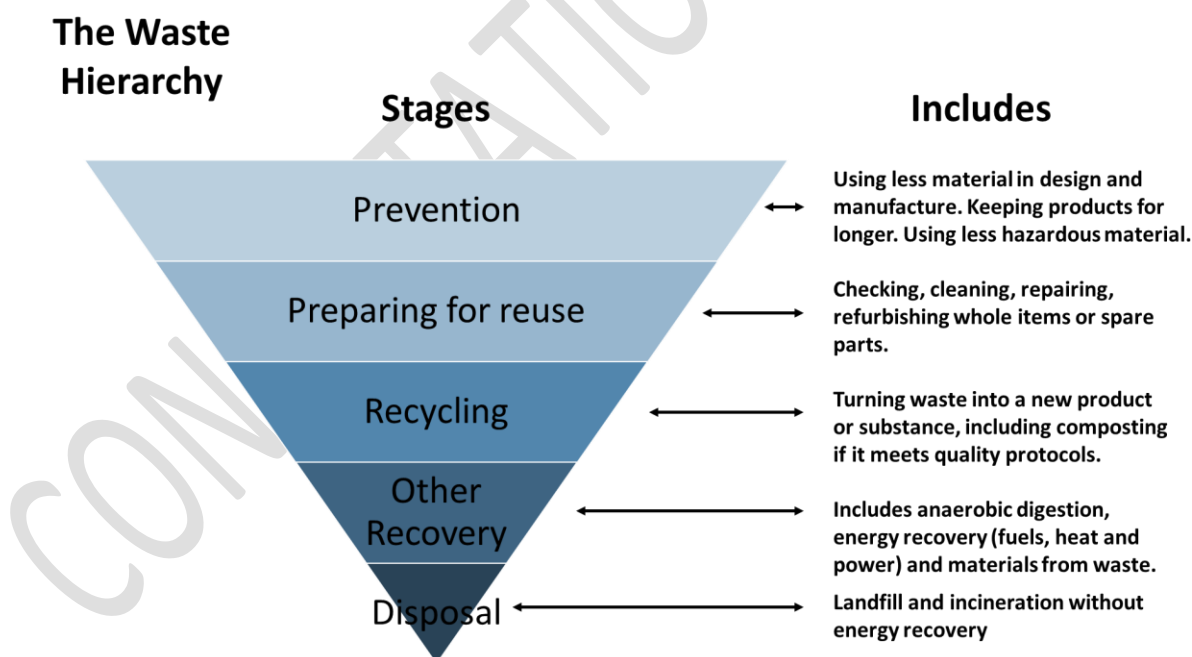


Figure 4: The Waste Hierarchy (2011)

Resources & Waste Strategy for England

"Our Waste, Our Resources: A Strategy for England" (2018), is focussed on improving recycling quality and increasing recycling rates from households and businesses. It includes substantial reforms to municipal waste collection and management services, including requiring the separate collection of food waste from households. It also puts a greater responsibility on producers of goods

and packaging to play their part in dealing with the products at the end of their life. New measures proposed include Extended Producer Responsibility for packaging materials (EPR)⁸ and the introduction of a deposit return scheme (DRS) for single use drinks containers. This is explained in more detail in section 3. These measures are likely to have a significant impact on the services delivered in Leicestershire and who pays for them. The direction of the national Strategy has had a major influence on the LR&WS.

Waste Prevention Programme for England

Waste prevention activity reduces the amount of waste which is generated, and the Government's view on how this can be achieved is set out in the Waste Prevention Programme for England, "Prevention is better than cure: the role of waste prevention in moving to a more resource efficient economy" (2013). Key actions for Central Government include setting a clear direction, leading by doing, driving innovation, and ensuring that information regarding waste prevention is available to all. In March 2021, a consultation on a revised Waste Prevention Programme for England was held. The consultation document outlines how waste prevention could be achieved through transforming product design, making it easier for consumers to make sustainable choices or purchases and aligning policy with a circular economy approach (see below).

Net Zero Carbon

Climate change is the greatest environmental challenge facing the world and is driven by rising levels of greenhouse gases in the atmosphere (which include gases such as carbon dioxide and methane). This results in global heating, rising sea levels and changing patterns of rainfall. These changes can increase the risk of flooding, heatwaves, droughts, and wildfires. To overcome this, the Government has committed the UK to achieving net zero by 2050. This means that there will be an equal balance between the amount of greenhouse gas emissions produced and the amount removed from the atmosphere, through planting trees or using technology such as carbon capture. The waste management sector is estimated to have contributed around 4% of greenhouse gas emissions in the UK in 2019⁹. These emissions can be addressed through minimising the quantity of waste sent to landfill (which is a large contributor of methane emissions), and by applying the waste hierarchy (prioritising prevention, reuse, recycling and recovery).

Circular Economy

In a Circular Economy, we see a transition away from a take-make-dispose ideology to a more circular system in which we keep resources in use for as long as possible. This is achieved through maintaining the maximum value when in use, and then recovering and repurposing material at the end of its life. The EU Circular Economy Package (CEP) introduces a revised legislative framework, identifying steps for the reduction of waste and establishing an ambitious and credible long-term path for waste management and recycling. This has been largely incorporated into UK Government strategy and policy and key elements within "Our Waste, Our Resources: A Strategy for England" (2018).

⁸ The National Strategy also raises the potential for further producer responsibility measures including for textile wastes (e.g. to help tackle 'fast fashion' impacts), bulky waste (e.g. mattresses, carpets) and other waste streams.

⁹ Department for Business, Energy & Industrial Strategy (2021). 2019 UK Greenhouse Gas Emissions, Final Figures.

Clean Growth Strategy

The Clean Growth Strategy was published in 2017 by HM Government, which aims to increase national income while reducing greenhouse gas emissions in order to meet the UK's 2050 net zero goal. The Strategy highlights that the UK waste sector has contributed to significant falls in carbon, with the large reduction in waste being sent to landfill resulting in lower greenhouse gas emissions. 12.5% of the UK's energy was generated from 'renewable sources and waste' in 2019. The incineration of waste (Energy from Waste or 'EfW') made up 13.3%¹⁰ of the renewable energy generated.

Air Quality

Air quality is used to describe the condition of our air, it can be negatively impacted by a number of pollutants including sulphur dioxide and nitrogen oxide. Road transport is a contributor to poorer air quality, demonstrated by the fact that it accounted for 33% of nitrogen oxide emissions across the UK in 2019. The impact of waste management activity on air quality is most likely to arise through transport impacts, for example, when collecting household waste and recycling and the transport of this to transfer, recycling, treatment and disposal facilities. However, alternative fuels for Refuse Collection Vehicles (RCVs, or 'bin lorries') are coming into the market which will help to reduce the impact that the waste management sector has on air quality, this is because these fuels are cleaner and have a lower environmental impact in comparison to diesel. A pledge on alternative (low emission) vehicle fuels is included in section 3.

Local Policies and Influences

The LR&WS will be implemented in the context of local policies, which both shape and affect it. The proposals in this draft Strategy have been developed in consideration of these policies, in order to check that the Strategy can be practically implemented and that it either complements or does not diverge from the wider aims of the LWP member authorities, as set out in other relevant policies.

The types of policies influencing the Strategy include the Leicestershire Minerals and Waste Local Plan (the Local Plan). For waste, the Local Plan aims to provide adequate facilities for waste management and mineral extraction/processing facilities within Leicestershire to meet identified needs. The current plan runs from 2019 to 2031. The Local Plan includes Leicester City; Leicester City Council is not within the LWP, but both parties cooperate to deliver plans which affect a wide geographic area.

Further policies and plans considered during the Strategy update cover a wide range of environmental and social issues, such as carbon management, climate emergency declarations and net zero ambitions, community strategies, air quality management, biodiversity and transport. It is important that, to the extent possible, the LR&WS is aligned with these other documents. This is specifically addressed by an Environmental Report (see below) which gives more consideration to the local policy influences.

Supporting Documents

This draft LR&WS is not developed in isolation; it is supported by research, analysis and consultation. This has been undertaken through the following processes.

¹⁰

<https://www.ons.gov.uk/economy/environmentalaccounts/datasets/ukenvironmentalaccountsenergyconsumptionfromrenewableandwastesources>

Firstly, an **Options Appraisal** was prepared. This is an assessment of alternative resource and waste service delivery options, analysing combinations of factors such as waste collection methods, recycling options, or treatment approaches. The outcome was a selection of possible approaches to meet the Strategy aims and objectives.

Secondly, a **Strategic Environmental Assessment (SEA)** was undertaken. SEA considers wider policy influences and assesses the Strategy options against important environmental effects and proposed mitigation. An Environmental Report is the outcome of the SEA; the assessment and mitigation measures in the **Environmental Report** have influenced the final selected strategy option(s).

Thirdly, an **Equalities and Human Rights Impact Assessment (EHRIA)** was conducted. This assesses, at a strategic level, if the proposed resource and waste services are accessible to the entire community, regardless of characteristics such as age, gender, health, disability, race, or socio-economic status. The EHRIA also includes a public consultation which helps identify any additional unknown barriers the community may have in accessing services in the Strategy. The EHRIA influences the Strategy, identifying if any proposed options need adjusting in order for everyone to have access to the services.

Lastly, there is a **consultation questionnaire** on key elements within the draft Strategy to gain feedback from the residents and communities of Leicestershire.

3. How can the Strategy be delivered?

This section identifies LWP's commitments required to deliver the Strategy. These are divided into the topic areas needed to meet the overall vision.

Working in partnership

The draft LR&WS has been developed jointly by LWP members, and it will be implemented by the LWP members working together. The Strategy update has included consultation with officers and elected members from all the LWP authorities. The LWP also recognise that waste issues cross administrative boundaries, and therefore it works with Leicester City Council. Leicester City Council is a Unitary Authority, which makes its own independent waste collection and disposal arrangements, but it co-operates with the LWP on strategic waste issues.

The LWP also works in partnership with residents and communities as they are central to the Strategy. The Strategy objectives are to deliver resource and waste services in which residents and communities can participate effectively. This requires clear and effective communication between the LWP and its residents. Residents are encouraged to maximise resource recovery by using the wide range of recycling services provided by the LWP; in turn, the LWP is required to provide accessible services for the residents, responding to their needs and aspirations.

In the near future, the LWP will also be working with private sector 'Producers' of waste under new Extended Producer Responsibility (EPR) legislation. EPR is intended to promote packaging¹¹ design which considers resource inputs and easier end of life recovery (e.g. reuse or recycling) of the resources within the products. Once finalised, EPR regulations will require the LWP members to participate in its implementation with possible service changes.

The Partnership is also aware of its role in managing wastes and conserving resources from materials generated in Council buildings and activities and makes the following pledge:

Strategy Pledge no. 1:

All Councils within the partnership will review their purchasing activities and internal waste management services to seek to promote waste prevention, reuse and recycling to support the objectives of this Strategy and lead by example

Preventing waste and preparing items for reuse

Waste prevention is the highest priority of the waste management hierarchy and is an integral part of any R&WS. Waste prevention measures ensure that the quantity of waste is reduced (either through the avoidance of waste creation in the first place, reuse of products and services, or the extension of its useful life). It therefore reduces the adverse impacts on the environment of waste generation and management, and subsequently prevents impact on human health.

It also eases our demand on finite natural resources and as such, reduces the carbon emissions associated with waste management activity.

The most effective waste prevention activities are often focused on particular waste streams or products. Over recent years, LWP members have implemented a number of initiatives in support of waste prevention and reuse. These projects have included food waste reduction training through

¹¹ Government has indicated that EPR may be expanded beyond packaging into other goods and products

Adult Learning Services, supporting the use of reusable nappies by offering free trials of reusable nappies, encouraging home composting via compost bin subsidies and training, and providing guidance on reducing unnecessary waste such as contamination or junk mail.

As part of the options appraisal supporting this draft Strategy, we have explored the impact of waste prevention measures and make the following pledge:

Strategy Pledge no. 2:

The Partnership pledge to support and encourage waste prevention activity across LWP. This will include working with stakeholders, residents and communities to prevent unnecessary waste arising, for example through food waste reduction campaigns such as Love Food Hate Waste

The second highest priority of the waste hierarchy is 'preparing items for reuse', the aim of repair and reuse is to extend the useful life of a product or service. This has wide ranging benefits which include saving money, conserving the Earth's limited resources and lowering carbon emissions. Reuse activities often support social and economic development, through skills training, employment and community volunteering.

Recent examples of reuse activity across Leicestershire include:

- **Adult Learning Service** – Furniture reuse workshops are available to all Leicestershire residents, free of charge. These workshops take place regularly and teach individuals how to fix and upcycle items of furniture.
- **Textiles repair** – An online guide is available on the Less Waste website, which aims to reduce clothing waste. It encourages more sustainable purchasing habits, gives advice about how to care for and repair clothes, how items can be upcycled and where clothing can be donated/sold. Free classes are also available for residents to learn sewing skills, such as how to make new items out of existing fabric at home.
- **Give or Take Day toolkit** – A Give or Take Day is an event where people can exchange unwanted goods for items which they may need. A toolkit is available on the Less Waste website to help individuals set up their own event.

Leicestershire residents are also able to engage in reuse activities at the HWRCs across the County. Leicestershire County Council have been investing in developing its provision for reuse at its HWRCs, creating signage and designated deposit areas called 'ReHome Zones', for items which residents deem eligible for reuse or repair. This currently includes bric-a-brac and bicycles however Leicestershire County Council have a vision to expand and enhance the range of materials which can be saved from going into the 'waste' stream, retaining the definition as a 'product' thereby extending its useful life.

LWP also run the 'Less Waste' website which serves as an online platform for the Partnership to provide information on recycling and waste management to its residents, focusing on themes of 'reduce', 'reuse' and 'recycle'. The website also includes links and information on many of the initiatives quoted above¹².

¹² www.lesswaste.org.uk

As part of the options appraisal supporting this draft Strategy, we have explored the role of reuse in developing a waste strategy and as such make the following pledge:

Strategy Pledge no. 3:

The Partnership pledge to continue delivering reuse services and expand activities where practicable, working in partnership with other stakeholders and to signpost to places that advocate for waste prevention and reuse, in support of developing a circular economy. This includes a pledge to continue to improve the collection of items for reuse at Household Waste Recycling Centres and explore the development of reuse shops at suitable sites.

Collecting food waste and garden waste



Figure 5: Food waste collection trial taking place in North West Leicestershire DC

After preventing food waste occurring (see Love Food Hate Waste example referred to previously), the next most important method of reducing carbon emissions from food waste is to separately collect and treat it. The most effective way of doing this is to collect food waste from households and businesses on a weekly basis, as a separate material stream, and to process the food waste in Anaerobic Digestion (AD) facilities.

The Government has recognised that a key method of avoiding damaging methane emissions from landfill (methane is a powerful greenhouse gas 28 times more potent than CO₂), is to remove food waste from the residual waste stream, through a dedicated collection service. The Government is requiring (through the Environment Act) all households to have a separate collection of food waste, on a weekly basis, from the mid 2020's.

Food waste collections have been trialled in parts of the County and there are increasing numbers of councils implementing them across the UK.

They tend to use small, dedicated collection vehicles and the carbon benefits from separating and effectively managing the food waste far outweigh the carbon emissions of the collection fleet. An image of the collection trial in North West Leicestershire is shown in Figure 4. More separation of waste for recycling can mean additional mileage to operate the collection service and this can add to local air pollution if not appropriately managed. Electric Refuse Collection vehicles, and some fuelled by hydrogen have been trialled and implemented in the UK, and these have the potential to dramatically reduce local air emissions and save significant amounts of carbon emissions. Vehicles running on alternative fuels are currently much more expensive and require new infrastructure around refuelling / charging, however this is an important area to be evaluated by the Partnership as new vehicles are procured and the cost of technology falls.

The separately collected food waste is usually sent to an AD process. Anaerobic digestion is a process that takes place in sealed vessels in the absence of oxygen. Food waste is fed into the vessels which act like a digestion process, breaking down the food waste using bacteria (in a similar way and a slightly higher temperature than your stomach digesting food). The waste degrades and releases a flammable biogas (which is roughly half methane and half carbon dioxide), this gas is then usually combusted in a gas engine to generate electricity, which can be fed back into the national grid as renewable electricity. The gas can alternatively be used to fuel vehicles with 'biomethane' or, after further processing, as an input into the gas grid. The remaining residue from the food waste is reduced to a slurry and can be, after some further 'maturation' (like a composting process), applied to land as a soil conditioner or fertiliser. As part of the options appraisal supporting this draft Strategy, we have modelled the introduction of separate food waste collections across the County and make the following pledges:

Strategy Pledge no. 4:

The Partnership will implement and promote separate food waste collections to all households, subject to confirmation of Government policy, legislation and the provision of funding. This will be as soon as required and when contracts and circumstances dictate. The County Council will procure Anaerobic Digestion capacity to treat the collected food waste in a manner that contributes to effective carbon emissions reduction across the County and improves soil quality.

Strategy Pledge no. 5:

The Partnership will explore the use of alternative fuels for collection vehicles and the transportation of waste and resources to further reduce carbon emissions of the service and improve air quality

A garden waste collection is offered to all residents in Leicestershire on a fortnightly basis, as described in section 2. There is currently no duty on WCAs (the Districts / Borough Councils) to collect garden waste, however the Government is considering making a free garden waste collection a mandatory requirement (or introducing a maximum charge), through the National Resources and Waste Strategy for England, this is subject to separate consultation.

The collected garden waste from the County is sent to composting facilities and the resulting compost applied to land to improve soil quality and add nutrient value.

As part of the options appraisal supporting this draft Strategy, we have modelled both free of charge and subscription based garden waste collection systems and make the following pledge:

Strategy Pledge no. 6:

The Partnership will continue to offer a garden waste collection system to Leicestershire residents. This will follow Government guidelines as to the form of the collection and will be subject to legislation and total Government funding. The Partnership will continue to procure composting capacity to treat the collected garden waste in a manner that supports carbon reduction and improves soil quality.

[Expanding recycling for homes and businesses](#)

The residents and communities of Leicestershire already have a wide range of materials collected for recycling. This mirrors the Government intention to have a standardised set of materials collected

for recycling from each house and business across the Country. This will include food waste (as described previously) and each of the following:

- Metals (cans, foil trays, foil, aerosols)
- Plastics (plastic film, bottles, trays, pots, tubs)
- Cartons (e.g. Tetra Pak)
- Card
- Paper
- Glass

The aim is that all of England has the same range of materials collected (by 2023) and that this will enable more targeted nationwide messages and standardised product labelling for recyclability to be established. Furthermore, residents moving from one area to another will know what materials can be separated for recycling (although there might be different colours or types of containers in which to separate them).

In addition to these changes, Government are seeking to introduce a deposit return scheme (DRS) for all single use drinks containers (excluding bottles made of High-Density Polyethylene plastic, primarily milk bottles). This is likely to place an additional 20p charge (the deposit) onto bottles and cans containing drink, which then may be redeemed (returned) when the bottle / can is placed in an authorised collection point. The collection points are likely to be at shops / supermarkets and are known as reverse vending machines, although alternative methods of redeeming deposits are also being investigated. The DRS scheme is still undergoing consultation but is due to be implemented in 2024. This could have the effect of changing consumer behaviour to an extent, also potentially reducing the amount of littering of containers (covered by the DRS) and may reduce the amount of recyclables and waste handled by the local authorities.

As part of the wide-ranging national changes and to encourage greater resource recovery from waste, the Government are also intending to implement Extended Producer Responsibility (EPR) for all producers of packaging. EPR means that all packaging producers will need to pay for the costs of dealing with their packaging at the end of its life (e.g. when it is recycled or thrown away). In future (and this is intended to be implemented from 2024), packaging producers will be responsible for the net costs of collecting, handling, recycling, treating and disposing of packaging waste, by providing monies to local government equivalent to that cost. This, together with the DRS scheme, will also provide an incentive to product and packaging producers to consider how their products can be designed better for their resource recovery, for example by making them easier to recycle. Packaging that is hard to recycle will cost more for disposal which will ultimately cost the producer of that packaging. This approach helps the role of the Councils and should assist in improving resource recovery and recycling over the medium and long term.

The appraisal of different collection systems (see supporting Options Appraisal document) demonstrated a preference for maximising recycling through the establishment of a food waste collection. This would be alongside maintaining similar recycling collection systems as at present but increasing participation and use of the recycling service by restricting the residual waste. The preferred method of restricting residual waste was by providing smaller wheeled bins whilst still allowing for plenty of space in the recycling containers. The addition of a weekly food waste collection should also reduce the need for the current levels of residual waste capacity. The Options Appraisal also demonstrated the benefit of providing collection services for other materials like batteries and textiles from households. As part of the modelling for this draft Strategy we have

considered EPR and DRS in addition to different recycling collection systems across the County and make the following pledges:

CONSULTATION DRAFT

Strategy Pledge no. 7:

The Partnership shall ensure that the full range of recyclables (as specified by Government and subject to funding) are collected from residents (and businesses where applicable) across Leicestershire by 2025, or as soon as possible when contracts and circumstances dictate

Strategy Pledge no. 8:

The Partnership shall continue to explore the viability of adding extra materials to recycling collections (e.g. for batteries, small electric goods or clothing) aiming to keep Leicestershire performance above the national average

Strategy Pledge no. 9:

The Partnership will put in place collection systems to contribute towards the achievement of the national 65% recycling target by 2035, this may include restricting residual waste capacity to encourage greater materials separation, carbon savings and resource recovery. Improvements in materials recovery at Household Waste Recycling Centres will also contribute towards the national target

Strategy Pledge no. 10:

The Partnership will continue to allocate a communications budget sufficient to help promote good recycling behaviour and maximise resource recovery to support the circular economy and low carbon objectives of this Strategy

Avoiding landfill as much as possible

At present, Leicestershire landfills more waste than the national average. This is explained in section 2 of this draft Strategy and is an area that the County Council are working to reduce. A recent procurement process to secure alternative residual waste treatment capacity should enable Leicestershire to exceed national targets for landfill. The Government has set a target for England, that no more than 10% of municipal waste should be sent to landfill by 2030.

The County Council, over the period of this draft Strategy (to 2050), are likely to procure further contracts for waste treatment capacity. The technologies and options available to utilise for residual waste treatment change over time, but they should be assessed in the light of the vision and objectives of the final form of this LR&WS, to ensure that they are consistent with the direction expressed in this document, and wider (local and national) objectives.

Leicestershire County Council makes the following pledge:

Strategy Pledge no. 11:

The County Council will reduce waste sent to landfill to less than 5% by 2025, well in advance of the 10% national target by 2030. The County Council will undertake future procurement processes for residual waste treatment (alternatives to landfill) in line with the vision and objectives of this Strategy.

Contributing to Net Zero Carbon in Leicestershire

The measures throughout this Strategy will make significant reductions to carbon emissions from the municipal waste management service. Modelling undertaken for the Options Appraisal and Strategic Environmental Assessment process indicates that by implementing all of the measures within this Strategy, carbon savings of the range of 5,000 – 10,000 tonnes of CO₂ equivalent would be delivered each year, compared against the current situation. This is the equivalent (in carbon emissions terms) of taking approximately 1,800 – 3,600 cars off the road.

CONSULTATION DRAFT

4. Where will the Strategy take us?

Projecting ahead to 2050

Although it is impossible to predict the future for resource and waste management, we can be sure that 2050 will be very different from today; consider how we manage waste in our households now, compared with 20 years ago. The need to reduce carbon emissions to achieve net zero will require many changes to our current lifestyles and to our environmental impacts. This lifestyle change is part of the global movement towards a circular economy model, essential to reduce our demands on limited resources and to dramatically decrease our carbon impacts. These influences will affect the future amount and type of resources and waste in Leicestershire.

Already, Leicestershire has seen major changes in its resources and waste. Recently, increasing digitisation means residents and communities produce less paper. By contrast, more on-line shopping has increased quantities of household cardboard; this was exacerbated by the lifestyle changes resulting from the COVID-19 pandemic. Also, over the last 20 years, although each person is now producing less waste because of lighter weight packaging, the waste they do produce includes far more plastic. Because plastic is usually oil based (fossil carbon), this conflicts with the aims of a low carbon future, unless we can recycle that material multiple times.

Dealing with these uncertainties and changes to resource and waste arisings needs a responsive and flexible LR&WS, which tackles new challenges with a broad range of solutions. We have set out a range of pledges and measures to support national changes and set a direction for long term resource recovery for the benefit of residents and communities of Leicestershire. We recognise however that there will be many substantial changes impacting on materials and wastes over the next five years, as the national Strategy takes effect. There is likely to be a need to review or update this Strategy before the end of the 2020's.

A projection of future waste growth rates, informed by housing forecasts, is shown in Figure 6, with High, Low and Core projections shown. This projection is also affected by the waste prevention and reuse activities, discussed in section 3. We are basing the core waste growth projection (the grey line) on an assumption of 0.1% reduction in waste per household each year across the Strategy period. This would be delivered by a variety of local waste prevention and reuse activities and also national changes driven by packaging producers affected by the Extended Producer Responsibility (EPR) measures (see section 3 for national and local influences)¹³.

¹³ High projection: Assumes short term Covid impacts to 2021/22 with static arisings per household from 2022/23 based on 2019/20 kg per household data.

Low projection: Assumes short term Covid impacts to 2021/22, static total arisings based on 2019/20 tonnages

Core projection: Assumes short term Covid impacts to 2021/22 arisings revert to 2019/20 levels as kg per household with a waste reduction (kg per household) of 0.1% per annum.

All projections have adjustments to kerbside from DRS & EPR (2025) and adjustments to kerbside and HWRCs from free garden waste collections (2023).

Trade waste tonnages are assumed to be the same as 2020/21 in 2021/22 and return to 2019/20 arisings (tonnage) in 2021/22 and remain static thereafter for all projections.

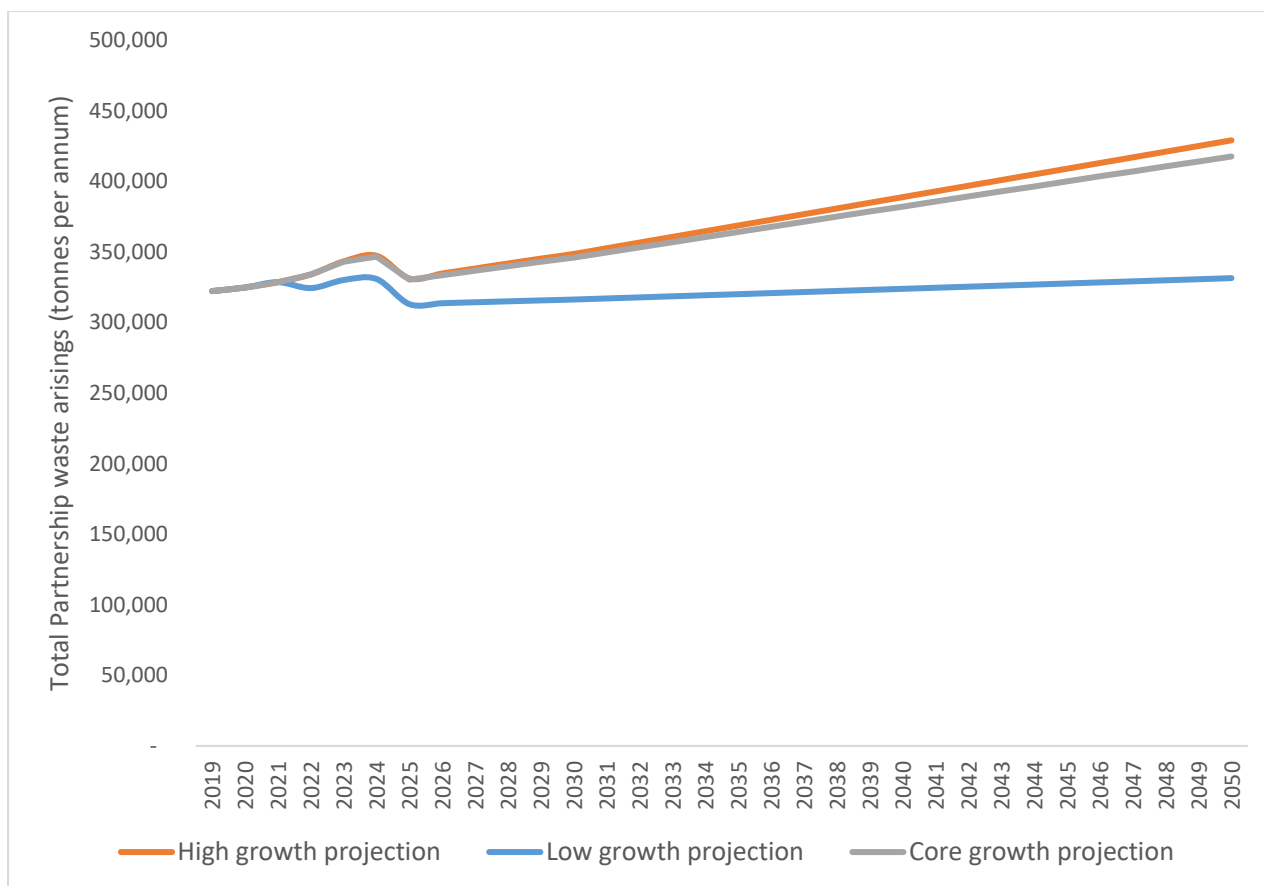


Figure 6: Waste growth projections for wastes collected by Local Authorities, 2019 – 2050

The increase in waste shown around 2020 and 2021 is the extra arisings generated by the Covid-19 pandemic (and associated behavioural changes such as home working, use of Personal Protective Equipment and internet shopping), this is assumed to revert back to 2019 levels in the following years, albeit influenced by rising numbers of households and other factors. The subsequent sharp dip in waste arisings is the estimated result of the implementation of a national Deposit Return Scheme (DRS) and Extended Producer Responsibility (EPR) in the period 2023 – 2025 (this is described in section 3).

Figure 7 shows delivery in Leicestershire of the national target for 65% of municipal waste to be recycled and prepared for reuse by 2035.

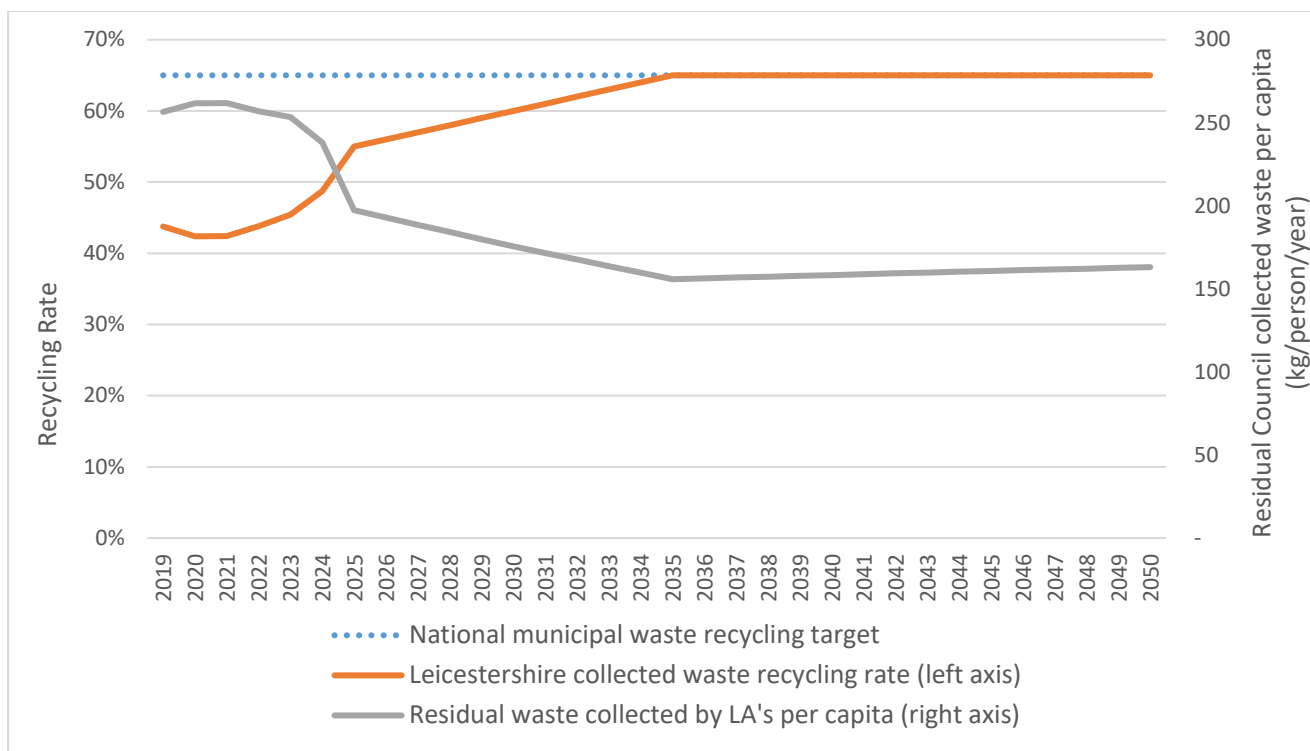


Figure 7: Recycling rate & residual waste per household projections for wastes collected by Local Authorities, 2019 – 2050

The modelling which informs this Strategy shows that c.62% recycling can be achieved through combinations of the options described in section 3, such as expanding recycling and food waste collections (Pledges 4, 6, 7, 8 & 9). In addition to these options, recycling and reuse will be further enhanced to reach the 2035 target by:

- The LWP continuing to promote and develop systems for reuse of usable goods and packaging (Pledge 3)
- the LWP promoting ongoing education and awareness raising for its residents and communities (Pledge 10)
- the County Council aiming to increase recovery from the Household Waste Recycling Centres (Pledge 9)
- the national changes around product labelling, and extended producer responsibility (making products and packaging easier to recycle); and
- residual waste treatment procurement, which may also deliver additional recycling (Pledge 11)¹⁴.

Figure 7 also shows that the actions set out within this draft Strategy, supported by national policy, should also reduce the amount of Council collected residual waste (general rubbish not separated for recycling). If the national 65% recycling rate is to be met the amount of residual waste (all general mixed 'rubbish') managed by Councils will need to fall from around 620kg per household to around 360kg per household by 2035. Furthermore, the management of residual waste in Leicestershire is also set to change with a pledge to reduce the amount of waste landfilled from current levels (of around 30%) down to 5% by 2025. This is substantially ahead of the new national target of 10% landfilled waste by 2030.

¹⁴ Subject to clarifications on how recycling performance is calculated in the future

5. Consultation and Next Steps

This document presents a 'consultation draft' of the Strategy. The LWP are asking for views and feedback from residents and communities, including businesses that use, or are affected by, the proposed resource and waste services in this Strategy. The feedback obtained from a Public Consultation Questionnaire and other consultation mechanisms will be used to develop the final LR&WS. The Consultation Questionnaire is available at www.leicestershire.gov.uk/have-your-say/current-engagement, until the consultation closes on 25th April 2022.

If you have further comments or wish to request another format, please email lesswaste@leics.gov.uk or call 0116 305 7005.

Following the consultation, the LWP aim to adopt the Strategy in late summer 2022. Once the Strategy is in place, the individual member authorities in the LWP will implement the services in a way that is appropriate to their context, residents and communities.

CONSULTATION DRAFT

Leicestershire Resources and Waste Strategy 2022 - 2050: Action Plan Timeline

LRWS Commitments			Responsibility			Year																														
Objective	Pledge	Action	WCA	WDA (LCC)	LWP	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050		
Reuse/Circular Economy																																				
1	3, 4	Reuse service - Evaluate and explore reuse options at Household Waste Recycling Centres (HWRCs)		X																																
2	3, 4	Facilitate or support the delivery of repair workshops (e.g. for Waste Electronic and Electrical Equipment (WEEE))		X																																
1, 5		Circular Economy principles promotion - Liaise and engage with stakeholders			X																															
1	3, 4, 11	Waste prevention/reuse focused campaign - Run at least once a year across the Partnership			X																															
1	4	Explore development of reuse shops at suitable sites			X																															
1	4	Promote reuse - Provide opportunities for or signpost householders (including those that cannot access HWRCs)	X		X																															
Recycling (performance and collections)																																				
6	5	Food Waste - Implementation of weekly food waste collections (all districts from 2025 or as contracts allow) with consideration of alleviating concerns raised in consultation (pests, containers, previous trial etc)	X		X																															
1,6		Deposit Return Scheme (DRS) - Explore any collection and treatment options associated with the introduction of DRS	X	X	X																															
5	7	Review garden waste collection service with consideration given to Government response to national waste consultation			X																															
	8	Implement dry collection systems to achieve high quality recycling with consideration given to Government response to national Resources and Waste Stratagy for England consultation	X																																	
1	10	Kerbside collections - Contribute towards the achievement of the national 65% recycling target by 2035			X																															
1	8, 9	Kerbside recycling collections - Review materials collected (e.g. plastic film) and explore additional collections (absorbent hygiene products (AHP), small WEEE, textiles, batteries, bulky waste)	X																																	
	5	Food waste treatment - Procure anaerobic digestion capacity to treat the collected food waste (and promote the positives of anaerobic digestion)		X																																
Residual Waste Management																																				
6		Consider options for reducing kerbside residual waste including reduced average weekly residual waste capacity and implementation of side waste policy where not in existence (alongside educating residents on the rationale of recycling, waste prevention etc). Closely monitor where in existence	X																																	
7	4	Evaluate options to enhancing separation at HWRCs to maximise recycling/reuse and recovery performance		X																																
1, 7		Align with national residual waste reduction targets (kg/person/yr)			X																															
	12	Landfill reduction - Reduce waste sent to landfill to less than 5% by 2025		X																																
7	12	Review options and approach to residual waste treatment to support greater resilience and align with the long-term aim to reduce waste arisings		X																																
1, 4		Review/adoption of resource efficiency metric as per data and Government policy			X																															

LRWS Commitments			Responsibility			Year																													
Objective	Pledge	Action	WCA	WDA (LCC)	LWP	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	
Partnership Working																																			
6, 8	3	Quarterly meetings - To discuss and action strategic and operational resource and waste issues and engagement with existing and new parties or bodies (e.g. producer responsibility organisations)			X																														
6		Adopt and promote the Leicestershire Resources and Waste Strategy			X																														
4		Action Plan review (annual)			X																														
4		Strategy review (5 yearly) or when there are significant changes in waste/environmental policy			X																														
6		Explore efficiencies of joint procurement (e.g. containers and food waste vehicles and collections) at strategic points (dates TBC)			X																														
Lead by Example																																			
1, 9		Lobby both Government and businesses to reduce the amount of waste generated and increase reuse, recycling, composting and recovery in line with the waste hierarchy	X	X	X																														
	1	Each Partner to review/audit their purchasing activities and internal waste management services regularly to promote waste prevention and with a view to reducing, reusing and recycling/developing a Circular Economy	X	X																															
4		Update EHRIA during review of LRWS			X																														
5, 8, 9		Coordinated publicity campaigns - Maintain high profile of green/sustainable activities/ events and initiatives in Leicestershire (e.g. through Less Waste/signposting enquiries to relevant contacts)			X																														
1, 4		Develop district level action plans for LRWS implementation	X																																
Communication Actions																																			
5, 8, 9	3	Engage with businesses and local communities to increase participation in waste prevention, reuse and recycling initiatives to reduce climate change impacts and improve other beneficial outcomes	X	X	X																														
	2	Work together to reduce fly-tipping and litter by educating residents and businesses about their duty of care to dispose of waste responsibly	X	X	X																														
	10	Consider opportunities to improve communications to residents regarding operation and safe use of HWRCs		X																															
	11	Continue allocation of communications budget			X																														
8, 9	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12	Communication Plan - Develop for LRWS implementation for LWP (working in partnership with local communities and businesses, promoting lead by example etc)			X																														
Carbon																																			
3	6	Explore the use of alternatives to fossil fuels for the waste collection services (and promote leading by example)	X	X	X																														
3		Monitor LWP waste management services carbon emissions in order to reduce environmental impacts			X																														
3	11	Contribute to the County wide Net Zero targets and engagement with all partners to support this aspiration		X	X																														

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL
COMMUNITY SCRUTINY COMMITTEE
WEDNESDAY, 5 APRIL 2023



Title of Report	SAFEGUARDING CHILDREN YOUNG PEOPLE AND ADULTS	
Presented by	Paul Sanders Head of Community Services	
Background Papers	NWLDC Adult Safeguarding Policy 2021.pdf NWLDC Children and Young People Safeguarding Policy 2021.pdf	Public Report: Yes
Financial Implications	There are no additional financial implications arising from this report.	
	Signed off by the Section 151 Officer: Yes	
Legal Implications	No direct legal implications arising from the report.	
	Signed off by the Monitoring Officer: Yes	
Staffing and Corporate Implications	Safeguarding relies on staff volunteers to manage referrals. The Community Safety team manages the Council's statutory responsibilities. The Head of Community Services is the Council's Senior Lead Officer for safeguarding.	
	Signed off by the Head of Paid Service: Yes	
Reason Agenda Item Submitted to Scrutiny Committee	To examine the Council's performance in relation to safeguarding and compliance with duties set out in the Children's Act 2004 and the Care Act 2014.	
Recommendations	That Community Scrutiny Committee make comment on the content of the report	

1. BACKGROUND

- 1.1. The Council has a statutory duty to protect adults with care and support needs as well as children and young people as part of delivering services in the community. The legal framework is set out in the Care Act 2014 and the Children's Act 2004.
- 1.2. The purpose of this report is to provide assurance that the Council is meeting its statutory duty and to set out the performance since 1 April 2022. The purpose of the case studies are to highlight the types of safeguarding concerns being identified by officers and the positive impact the referrals are having on individuals and families.

- 1.3. The Council also has a duty to co-operate with the Leicestershire Safeguarding Adults Board and the Leicestershire Safeguarding Children's Partnership for the purpose of protecting children, young people and adults.

2. DISTRICT DELIVERY MODEL

- 2.1. The Head of Community Services holds the role of District Senior Lead Officer for Safeguarding and has strategic and operational responsibility for fulfilling the Council's statutory duties. The Environmental Health and Community Safety Team Manager has the role of District Lead Professional Officer and is responsible for ensuring:
 - Safeguarding concerns raised by staff are managed appropriately;
 - Policies and procedures are in place and updated; and
 - Staff are adequately trained.
- 2.2. Designated Safeguarding Officers (DSO's) across different services in the Council manage referrals and concerns raised by staff on a voluntary basis. There are currently twelve DSO's.
- 2.3. A daily rota system operates for the management of new referrals. DSO's work in teams with each new case appointing a Lead DSO and a Second DSO. Lead DSO's are responsible for making appropriate referrals, ongoing case management and for following up outcomes. Second DSO's support the initial decision making.
- 2.4. Cases are managed using bespoke software (Sentinel) which was designed and developed by the Council in 2019 in conjunction with Vantage Technologies to improve processes and reduce risk.

3. TRAINING AND DEVELOPMENT

- 3.1. The Leicestershire Safeguarding Adults Board and the Leicestershire Safeguarding Children's Partnership have produced a 'competency framework' which sets out the skills and knowledge that all staff are expected to have proportionate to their role. The Council has mapped out all staff roles and identified which 'competencies' are appropriate. Training is designed so that these competencies are met and can be evidenced.
- 3.2. All new DSO's are required to attend an initial two day accredited course and are mentored and coached by more experienced DSO's in managing cases. DSO's are also required to attend quarterly meetings and undertake at least three training events per annum.
- 3.3. All Council staff are required to complete mandatory e-learning every three years and attend additional training according to their role. The e-learning module is due to be refreshed in 2023 and all staff will undertake refresher training in Summer 2023.
- 3.4. Face to face training is being arranged as part of the Council's Leaders Programme and will be delivered to one hundred staff in September 2023.

4. AUDIT

- 4.1. The Council is required by the Leicestershire Safeguarding Adults Board and the Leicestershire Safeguarding Children's Partnership to give assurance that it is delivering quality services which keep people safe from harm and abuse.

- 4.2. The Council is required to submit an annual self-assessment in conjunction with the other districts and boroughs in Leicestershire to identify any areas which require improvement. Self-assessments completed during 2021/22 rated North West Leicestershire District Council as 'fully' or 'mostly' effective in all areas with no improvement actions identified.
- 4.3. Internally, a weekly case review meeting takes place to validate decision making, review caseload and address any risks. The meeting is attended by the Environmental Health and Community Safety Team Manager, the Community Safety Team Leader and the Community Safety Officer responsible for Safeguarding. All new cases undergo a 'First Review' and all open cases are checked to ensure they are progressing as required. Once a case is ready for closure, it undergoes a 'Final Review' at the meeting before submitting to the Head of Community Services who is responsible for agreeing the closure of cases.
- 4.4. Internal audits are also undertaken at regular intervals. An internal audit was conducted in 2020/21 and published in February 2021. The level of assurance was scored as 'Reasonable'. Areas of positive assurance included:
- Policies, procedures and guidance in relation to Safeguarding are up to date and available to staff on the Intranet.
 - Staff have received Safeguarding training and would know what action to take should they need to raise a Safeguarding concern.
 - Safeguarding referrals and case records are effectively managed using the Sentinel case management system.
- Areas for improvement related to recruitment processes and record keeping and these have been addressed during 2021-22. Progress made against action plans are reported to the Audit and Governance Committee.

5. PERFORMANCE

- 5.1. A set of performance indicators were introduced for 2022-23 which monitor case management and workload and address the key risks. The performance for the year 2022/23 is explained below:
- 5.2. During 2022-23 (April 22 to mid-March 23) DSO's managed a total of 130 referrals from members of staff in addition to providing general advice and guidance. This is in line with pre-pandemic numbers following a surge during 2020-21. This compared with 125 referrals received during 2021-22.
- 5.3. During 2022-23 100% new referrals were addressed within the corporate target of two working days.
- 5.4. 93% of safeguarding referrals made during 2022-23 resulted in a DSO making an onward referral to support agencies demonstrating a good level of knowledge and judgement amongst staff members as to when to refer. This compared with 93% in 2021-22.
- 5.5. Ten different Council services made referrals during the period indicating a high level of safeguarding awareness within the Council. The referrals were received from Customer Services, Housing Management, Housing Choices, Environmental Protection, Asset Management/Repairs, Stronger & Safer Communities, Leisure Services, Revenues & Benefits, Business Focus and Environmental Health.

6. RISKS

- 6.1. Safeguarding is captured on the Council's Corporate Risk Register due to its statutory duty and reputational risk.
- 6.2. The role of DSO is a voluntary role. The number of DSO's available to manage cases fluctuates due to personal workloads and staff leaving or stepping down from the role.
- 6.3. The Council currently has twelve trained DSO's including three new DSO's who have recently been trained in order to add capacity.

7. CASE STUDIES - DESIGNATED SAFEGUARDING OFFICERS

- 7.1. Following receipt of a telephone call received from a distressed tenant, the team made referrals to both the Council's domestic abuse link worker and to Leicestershire Children's Social Care. Support was provided to both the victim of domestic abuse and others living within the property.
- 7.2. Following contact with the team by a Housing Officer, the team made referrals to the Children and Family Wellbeing Service and Adult Social Care Teams who provided support to a parent and child (with additional needs) in respect of a range of issues including accommodation hygiene, home and financial management and property adaptations.
- 7.3. Concerns were raised by the Council's housing team over a Right to Buy application received from an elderly lady. A referral was made to Adult Social Care and a report made to Action Fraud. The right to buy application was subsequently refused after an investigation was carried out.

8. FINANCIAL IMPLICATIONS

- 8.1 Safeguarding has a small standalone budget which funds training and development and the maintenance of the case management system 'Sentinel'.
- 8.2 No additional funding is requested

Policies and other considerations, as appropriate	
Council Priorities:	Our communities are safe, healthy and connected
Policy Considerations:	NWLDC Adult Safeguarding Policy 2021 NWLDC Children and Young People Safeguarding Policy 2021
Safeguarding:	Considerations included in report
Equalities/Diversity:	Included in the safeguarding policy and procedures
Customer Impact:	The safeguarding service has a significant impact on some of the most vulnerable individuals in the community
Economic and Social Impact:	The outcome of a safeguarding referral can have a significant economic or social impact for the individual

Environment and Climate Change:	No impact
Consultation/Community Engagement:	Not applicable
Risks:	Safeguarding is on the corporate risk register. Risks outlined in report
Officer Contacts	Paul Sanders Paul.Sanders@nwleicstershire.gov.uk

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NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

COMMUNITY SCRUTINY COMMITTEE – WEDNESDAY, 5
APRIL 2023

Title of Report	PRIVATE SECTOR HOUSING POLICIES	
Presented by	Paul Sanders Head of Community Services	
Background Papers	<u>Microsoft Word - Environment Directorate Enforcement Policy - amended 25.09.06.doc (nwleics.gov.uk)</u>	<u>Microsoft Word - Environment Directorate Enforcement Policy - amended 25.09.06.doc (nwleics.gov.uk)</u>
Financial Implications	<ul style="list-style-type: none"> Financial penalties offer an alternative to legal action The income from financial penalties is difficult to predict but will be reviewed annually as part of the budget process Capacity in the team is limited and in order to become a more proactive service, in January 2023, Cabinet responded to the Fuel Poverty Working Group's recommendations and approved the use of the Disabled Facilities Grant funding to provide additional officer resources. This is subject to approval by the Better Care Fund Accountant Income from financial penalties is retained by the Council for housing standards enforcement 	
	Signed off by the Section 151 Officer: Yes	
Legal Implications	No direct legal implications arising from the report	
	Signed off by the Monitoring Officer: Yes	
Staffing and Corporate Implications	Additional Officer resources are required and this has been approved by Cabinet in January 2023, subject to the Better Care Fund Accountant approval	
	Signed off by the Head of Paid Service: Yes	
Reason Agenda Item Submitted to Scrutiny Committee	To present to Scrutiny Committee the Council's approach to housing enforcement, including the Housing Enforcement Policy and more specific enforcement powers through civil penalties for certain housing offences, to ensure that there is transparency for owners, landlords, agents and tenants of private sector and social housing properties.	
Recommendations	COMMUNITY SCRUTINY ARE REQUESTED TO COMMENT ON THE FOLLOWING DRAFT HOUSING	

	<p>POLICIES AHEAD OF CONSIDERATION BY CABINET ON 25 APRIL 2023</p> <ul style="list-style-type: none"> • HOUSING ENFORCEMENT POLICY • REFRESH OF THE GENERAL ENFORCEMENT POLICY • CIVIL PENALTY POLICY • MINIMUM ENERGY EFFICIENCY STANDARDS • CARBON MONOXIDE & SMOKE ALARMS • ELECTRICAL SAFETY
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1.0 BACKGROUND

- 1.1 The Council has a statutory duty to enforce a wide range of legislation, with regulatory functions being delivered by several service areas across the Council. To ensure there is transparency and consistency in the approach to enforcement across the Council there is a General overarching Enforcement Policy which was approved by Cabinet in September 2014.
- 1.2 The Council is now looking to introduce an overarching private sector Housing Enforcement Policy that sits under the General Enforcement Policy and to consider new ways of dealing with offences by way of civil penalties for example. The General Enforcement Policy has also been updated as part of this work to ensure that it is up to date.
- 1.3 The Housing Enforcement Policy sets out the approach of the Council to housing enforcement and it sets out what owners, landlords, their agents and tenants can expect from officers and reduces the risk of successful challenge.
- 1.4 Authorised officers within the Environmental Protection Team have both statutory duties and discretionary powers to undertake enforcement action, using a range of legislation to address issues arising at rented properties, caravan sites and mobile home sites.
- 1.5 The Environmental Protection Team work with a number of different teams across the Council but one of the main teams is Housing Choices. The teams work together when there is a possibility that people may become homeless either through the action of a landlord or enforcement action via the Council. The teams have also worked very closely recently managing the Ukraine work. On some occasions the relationship between the hosts and guests can break down. Therefore, a re-match may be required and the teams work closely to manage any homeless situation.

2.0 Housing Enforcement Policy

- 2.1 The draft Housing Enforcement Policy aims to:
 - Demonstrate transparency of enforcement with respect to private sector housing, caravan sites and park home sites within the district by setting out legal requirements and principles that officers will follow when enforcing legislation.
 - Ensure that all properties let as residential properties throughout the district, including those in private ownership, are of good quality and well managed.

- Ensure that all residents of North West Leicestershire have a home that is safe, secure, dry and not overcrowded.
 - Improve the condition and energy efficiency of homes in the private rented sector and raise housing standards where possible.
 - Ensure Houses in Multiple Occupation (HMO's) are safe and well managed, and all relevant Management Regulations are adhered to;
 - Ensure Private Sector Housing is not left empty for an unreasonable period of time or becomes an eyesore and nuisance to neighbouring homes.
- 2.2 The policy applies to both individuals and businesses and should be read in conjunction with the Council's General Enforcement Policy which sets out the overarching parameters of enforcement.
- 2.3 The main objectives of the policy are to ensure that:
- Privately rented accommodation, including houses in multiple occupation ("HMO"), and accommodation provided by registered providers of social housing, are free from actionable hazards that affect the health and safety of the tenant, licensee or any visitor.
 - Private rented accommodation and tenancies are managed in accordance with relevant statutory requirements.
 - Privately rented accommodation meets minimum energy efficiency ratings.
 - All licensable properties are licensed, with licence conditions being met.
 - Targeted action is taken to bring empty homes back into use.
 - Owners or occupiers of privately owned accommodation or land do not cause a statutory nuisance, or an unacceptable risk to public health and safety, or to the environment or neighbourhood.
 - Caravan and mobile home sites are managed in compliance with site licence conditions and relevant statutory requirements.
- 2.4 The Environmental Protection Team will respond to enquiries and complaints about substandard, unsafe, problematic and empty housing and where standards are not met enforcement action may be taken.
- 2.5 Decisions will be made by competent and authorised officers, in accordance with legislation and by having regard to enforcement guidance as to the most appropriate course of action. In line with the policy, generally an incremental approach to enforcement will be implemented and where there is non-compliance after an informal approach has been made, formal action will be considered. However, where there are serious breaches of legal requirements, the Council will consider formal action in the first instance to safeguard the health, safety and welfare interests of occupiers, visitors and members of the public.
- 2.6 There has been an increase in the number of housing related enquiries received by the team over the past five years, with the most significant increase over the duration of the Covid pandemic, as more people were at home for longer periods. More recently, there has been a prioritisation of how the Council respond to reports of damp and mould in the private rented sector. There has also been an increase in demand within the team for housing standard inspections as part of the Homes for Ukraine scheme. The specific Housing Enforcement Policy will ensure a fair and transparent approach to housing and should reduce the risk of successful challenge against any enforcement action if due regard for the policy has been taken in the decision-making process.

2.7 Table one – housing complaints received by the team over a five year period

Year	Number of Complaints received
2021-22	123
2020-21	134
2019-20	157
2018-19	120
2017-18	104

2.8 There are currently 97 licenced Houses in Multiple Occupation across the district.

2.9 The refreshed General Enforcement Policy can be found in Appendix A.

2.10 The draft Housing Enforcement Policy can be found in Appendix B.

3.0 Civil Penalties Policy

3.1 Section 126 and Schedule 9 of the Housing and Planning Act 2016 introduces a number of amendments to the Housing Act 2004. The Housing and Planning Act 2016 provides powers that allow the Council to impose a financial penalty as an alternative to prosecution for specific offences under the Housing Act 2004.

3.2 A civil penalty is a financial penalty that may be imposed in instances where there are breaches of legislation which is considered to be a criminal act. However, before imposing a civil penalty the Council must be satisfied 'beyond all reasonable doubt' that a persons' conduct amounts to the relevant housing offence as defined by The Housing Act 2004.

3.3 A civil penalty can be imposed on a landlord or letting agent or both. The civil penalties are intended to be issued against landlords or letting agents that are in breach of one or more of the sections of the Housing Act 2004 and the Housing and Planning Act 2016 as detailed below:

- Section 30 – Failure to comply with an Improvement Notice
- Section 72 – Offences in relation to licensing of Houses in Multiple Occupation (HMO)
- Section 95 – Offences in relation to licensing of houses under Part 3 (Inc. Selective Licensing)
- Section 139 – Offences of contravention of an overcrowding notice
- Section 234 – Failure to comply with management regulations in respect of HMO
- Breach of a banning order (section 21 of the Housing and Planning Act 2016)
- Breach of any of the landlord duties prescribed under regulation 3 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

3.4 When determining the level of the civil penalty the severity and harm of the offence must be considered as stated in Section 63 Sentencing Act 2020: "in considering the seriousness of any offence the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably cause". Harm includes actual harm caused as well as risk of harm.

- 3.5 There is a right of appeal to a Civil Penalty. The person served with the Final Notice has the right to appeal to the First Tier Tribunal against the decision to impose a penalty; or the amount of the penalty. The appeal must be made within 28 days of the date the Final Notice was issued. If a person appeals, the Final Notice is suspended until the appeal is determined or withdrawn.
- 3.6 The Council is considering the introduction of a lesser charge for early payment of the penalty to encourage prompt payment and this will also reduce the administrative burden on the Council.
- 3.7 The Council can offer a discount to landlords and agents who pay the civil penalty in full within 28 days of the Final Notice being issued. In accordance with sentencing requirements, the reduction would be one third.
- 3.8 Recovery of an unpaid Civil Penalty would be through the Council's debt recovery process.
- 3.9 Where a civil penalty is appealed and the First Tier Tribunal confirms or varies the penalty, this decision will be automatically registered on the Register of Judgments, Orders and Fines when it is accepted by the County Court. This may affect the landlord's ability to obtain financial credit due to the Register of Judgment Order made against the individual.
- 3.10 Using civil enforcement as part of a graduated approach to enforcement means that prosecutions will be reserved for the most serious of cases where civil enforcement is not appropriate
- 3.11 A copy of the draft Civil Penalties Policy can be found in Appendix C.

4.0 Minimum Energy Efficiency Standards

- 4.1 Legislation has been introduced for the regulation of energy efficiency within the private rented housing sector. This imposes an obligation on private sector housing landlords to achieve a minimum energy performance within their properties, demonstrated by an Energy Performance Certificate with a rating of at least E.
- 4.2 A domestic private rented property is deemed "sub-standard" where the energy performance indicator of the property is below the minimum level of energy efficiency of Band E.
- 4.3 In order to enforce the regulations, the Council needs to have a policy on the financial penalties to be applied should a landlord be found to be:
- In breach of the prohibition on letting sub-standard property or
 - In breach of the requirement to comply with a compliance notice or
 - Guilty of uploading false or misleading information to the Exemptions Register.
- 4.4 The Council as the enforcement authority has the discretion to decide on the value of the financial penalties, up to the maximum limits set by the regulation. The proposed scale of financial penalties is set out in in table two.
- 4.5 Table two – Proposed Scale of Financial Penalties under The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

Breach	Max Financial Penalty	Proposed Financial Penalty
A) Where the landlord has let a sub-standard property in breach of the Regulations for a period of less than three months	£2000 plus a publication penalty	£1000 plus a publication penalty for first offence at property (33% early payment discount)* £2000 plus Publication penalty for subsequent offences at property (33% early payment discount)
B) Where the landlord has let a sub-standard property in breach of the Regulations for three months or more	£4000 plus a publication penalty	£2000 plus a publication penalty for first offence at property (33% early payment discount) £4000 plus Publication penalty for subsequent offences at property (50% early payment discount)
C) Where the landlord has registered false or misleading information on the PRS Exemptions Register	£1000 plus a publication penalty	£1000 plus a publication penalty (33% early payment discount)
D) Where the landlord has failed to comply with compliance notice	£2000 plus a publication penalty	£2000 plus a publication penalty (33% early payment discount)

*early payment discount applies if penalty paid within fourteen days of issue. The discount would be removed if an appeal against the notice is submitted.

4.6 A Local Authority can impose more than one financial penalty if there have been multiple breaches up to a maximum of £5000 per property.

4.7 The draft Minimum Energy Efficiencies Standards Financial Penalties Policy/Statement can be found in Appendix D.

5.0 Smoke and Carbon Monoxide (England) Regulations 2015

5.1 The regulations place a duty on landlords, which include freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence. The regulations exclude registered providers of social housing. The duty requires that landlords ensure that:

- A smoke alarm is installed on each storey of premises where there is living accommodation
- A carbon monoxide alarm is installed in any room of premises used as living accommodation, which contains a solid fuel burning appliance
- That checks are made by the landlord, or someone acting on his behalf, that the alarm(s) is/are in proper working order on the day the tenancy starts

5.2 Where the Council believes that a landlord is in breach of one or more of the above duties, the Council must serve a remedial notice on the landlord. The remedial notice is a notice served under Regulation 5 of these regulations.

- 5.3 If the landlord then fails to take the remedial action specified in the notice within the timescale, the Council can require the landlord to pay a penalty charge. The charge is potentially made up of two parts, the punitive element (punishment) for failure to comply with the absolute requirement to comply with a remedial notice and a cost element relating to any remedial works arranged and carried out by the Council's contractors.
- 5.4 The Council has discretion to offer an early payment reduction if a landlord pays the penalty charge within fourteen days beginning with the day the penalty charge notice is served. Should a subsequent appeal be made it is proposed that the discount will be removed.
- 5.5 The proposed charges are as follows:
- £2,500 for the first breach to comply with a remedial notice: £1,675 for early payment (33% reduction)
 - £5,000 for each subsequent breach to comply with a remedial notice: £3,350 for early payment, (33% reduction)
- 5.6 Early payment discount applies if payment is made within fourteen days of the penalty notice being issued and will be suspended if an appeal against the notice is submitted.
- 5.7 The draft Smoke and Carbon Monoxide Financial Penalties/Statement can be found in Appendix E.

6.0 Electrical Safety Standards Process and Overview

- 6.1 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (ESSPRS) came into force on 1 June 2020 (although the requirements apply to new tenancies from 1 July 2020 and existing tenancies from 1 April 2021). The regulations are designed to ensure electrical safety within the private rented sector in England by requiring landlords to have the fixed electrical installation within rented properties inspected at least every five years.
- 6.2 The aim of the legislation is to ensure that the electrical installation within rented properties is regularly checked and deficiencies are rectified in a speedy manner to minimise risk to the occupants. The provision of certification allows all parties to see evidence that this has occurred.
- 6.3 The Electrical Safety Standards Process and Overview can be found at Appendix F.

7.0 Financial

- 7.1 Income received from financial penalties is retained by the Council if it is used to support statutory functions in relation to its private rented sector enforcement. This is set out in Regulation 4 of The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017 s.294A(7).
- 7.2 There is currently insufficient information to be able to estimate the level of income that may occur from the introduction of any of the policies. Due to the nature of enforcement work it is very difficult to predict income derived from financial penalties. However, the income that is generated through this approach will be reviewed every year as part of the budget setting process. Income from proactive enforcement work may lead to higher levels of income in the first instance and then as compliance improves the income is likely to stabilise. However, the Council takes a graduated

approach to enforcement and if compliance is secured through the informal route this would not lead to income through financial penalties.

- 7.3 Any legal action can be costly and demanding on resources and the ability to consider an alternative to prosecution as a penalty for non-compliance is supported. Offering an early payment discount may reduce the risk of appeal against a civil penalty or other financial penalty notice which whilst this reduces the income received by the Council, it would also reduce the resource demands of the Legal and Environmental Protection Teams to respond to any appeal.
- 7.4 The capacity within the team is limited, with 1.2 FTE for housing standards enforcement work. Therefore, the service is mainly complaint led and reactive. As part of the Fuel Poverty Working Group recommendations, resources have been reviewed. In order to deliver a proactive service it has been identified that an additional full time Environmental Health Officer and an additional full time Technical Support Officer are required. In January 2023, Cabinet responded to the recommendations from the Fuel Poverty Working Group and approved the use of the Disabled Facilities Grant to fund these additional posts. This is subject to approval by the Better Care Fund Accountant.

8.0 Legal

- 8.1 There are many statutory or discretionary pieces of legislation enforceable by the Council. The Housing Enforcement Policy provides open and transparent information on the Council's approach to housing enforcement and reduces the risk of legal challenge.
- 8.2 The Civil Penalties and other financial penalties policies widen the enforcement tools that are available to the Enforcement Officers to encourage compliance by landlords.

Policies and other considerations, as appropriate	
Council Priorities:	<ul style="list-style-type: none"> - Local people live in high quality, affordable homes - Our communities are safe, healthy and connected
Policy Considerations:	The Council is not able to impose financial penalties without having an approved and published policy.
Safeguarding:	Any safeguarding concerns raised through the work within the Environmental Protection Team are referred as appropriate
Equalities/Diversity:	An Equalities Impact Assessment has been completed for these policies.
Customer Impact:	None
Economic and Social Impact:	None
Environment and Climate Change:	<p>Environmental Implications including contributions to achieving Zero carbon Council by 2030</p> <p>The Minimum Energy Efficiencies Standards Financial Penalties policy provides a regulatory framework for improving the energy efficiency in the private rented sector.</p>

Consultation/Community Engagement:	None required
Risks:	Having clear and transparent published policies will reduce the risk of successful challenge against any proposed housing enforcement action.
Officer Contact	<p>Paul Sanders Head of Community Services Paul.sanders@nwleicestershire.gov.uk</p> <p>Clare Proudfoot Environmental Protection Team Manager clare.proudfoot@nwleicestershire.gov.uk</p>

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General Enforcement Policy

Cabinet Approval: 23 September 2014
Updated and approved at Cabinet:

General Enforcement Policy

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1. Introduction

- 1.1 One of North West Leicestershire District Council's principal duties is to ensure that individuals, businesses and others are meeting their statutory obligations and complying with the law relating to a range of issues from the payment of council tax to the dropping of litter and producing safe food. To achieve this, officers from the council are authorised to take enforcement action.
- 1.2 A decision about enforcement action, and in particular the decision to prosecute, has serious implications for all involved. The council applies this policy to ensure that:-
- Decisions about enforcement action are fair, proportionate and consistent.
 - Officers apply current Government guidance and codes of practice.
 - Everyone understands the principles that are applied when enforcement action is considered.
- 1.3 The purpose of this general enforcement policy is to set out what those being regulated can expect from the council when enforcement activities are undertaken.

2. Approval and Application of the Enforcement Policy

- 2.1 This policy was approved by Cabinet on 23 September 2014. The policy has been updated and approved by Cabinet on
- 2.2 This policy applies to all law enforcement duties which the council undertakes, except those undertaken by the Revenues and Benefits service. Revenues related enforcement action is detailed within a service specific Recovery Policy.
- 2.3 In addition some service areas have specific enforcement policies. Service specific policies should be read in conjunction with this policy.
- 2.4 'Enforcement' includes any action taken by Officers aimed at ensuring that individuals or businesses comply with the law. This is not limited to formal enforcement actions such as prosecution, formal cautions and the issuing of enforcement notices; it also includes, for example, activities undertaken for the purpose of checking compliance with Acts of Parliament and Regulations, and the provision of advice to facilitate compliance. Some activities undertaken for the purposes of checking compliance is fee earning e.g. building control inspection.
- 2.5 This policy helps to promote efficient and effective approaches to inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens. This policy has been produced having had regard to the Regulators' Code (RC). Requirements of the Code are explained further at section 6.

3. How to obtain a copy of the Policy or make comments

- 3.1 This policy is available in printed format at the Council Offices. It is posted on the Council's website at: www.nwleics.gov.uk and is available in other formats or on disc on request.
- 3.2 If you need any help in understanding this policy, or you would like to comment on the contents, please contact us by:
- telephoning 01530 454545
 - e-mailing ehealth@nwleicestershire.gov.uk
 - writing to the Strategic Director of Place, North West Leicestershire District Council, PO Box 11051, Coalville, LE67 0FW.

4. General Principles

- 4.1 Each set of circumstances is unique and must be considered on its own merits. However, there are general principles that apply to the way each case will be approached. The principles of good enforcement contained in the Enforcement Concordat produced by the Cabinet Office have been formally agreed and adopted by the council.
- 4.2 Authorised officers must be fair, independent and objective and must not let any personal views about issues such as ethnic or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender influence their decisions. They must not be affected by improper or undue pressure from any source.
- 4.3 All authorised officers will have regard to the Policy and take action which is proportionate to the risk and to the seriousness of any breach of legislation where appropriate. In most circumstances officers have a range of actions available to facilitate compliance ranging from an educational and advisory approach to recommending legal proceedings. However, in certain circumstances legislation is prescriptive and this will limit the discretion of the Authorised Officer. In some circumstances persistent breaches will result in formal action being taken for what would normally be regarded as less serious contraventions.
- 4.4 Consideration will be given to the particular interests of customers including business owners, employees and the public. For example, where the hours of operation of a business do not coincide with normal office hours, we will endeavour to agree a mutually acceptable time or visit during the business's normal trading hours. Similarly, where English is not spoken as a first language, and there is particular difficulty in communication, the services of a suitable translator/interpreter and the provision of information in a relevant accessible form will be considered. Where formal action is proposed, the assistance of an interpreter may be obtained to ensure fairness. There may be occasions when a relative or friend of the individual may act as an interpreter. Officers will seek to confirm that their statements and questions are clearly understood.
- 4.5 Advice and information will be available and given, and businesses, employees and the public will be encouraged to contact the council regarding relevant matters. The council retains the right to charge for advice. See fees and charges for further information.
- 4.6 All officers undertaking enforcement activities will be duly authorised under the council's scheme of delegation and will be appropriately trained.

- 4.7 All authorised officers will be made fully aware of the requirements of this Policy. Any departure from this Policy will have to be justified to, and endorsed by, the relevant Head of Service.
- 4.8 This council is committed to the Equality of Opportunity in employment and the provision of services. Accordingly, this policy will take into account all equality and diversity issues.

5. Enforcing the Law

- 5.1 The Council believes in firm but fair regulation, and its enforcement activities follow these essential principles:-

- **Transparency**

Transparency means helping individuals and businesses to understand what we expect of them and what they should expect from us.

- **Consistency**

Our advice 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 act in similar ways to other local authorities.

- **Targeting**

Targeting means making sure that, whilst all requests for service are responded to, regulatory effort is directed primarily towards those whose activities actually or potentially give rise to the most serious risks to public safety and the environment.

- **Proportionality**

Proportionality means relating enforcement action to the risks posed. Any action taken by officers will be proportionate to the seriousness of any breach. Persistent minor breaches may also be viewed as serious.

- **Accountability**

Our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient feedback and complaints procedures.

6. Regulator's Code

Specific Obligations of the Regulators Code on the Authority

- 6.1 When developing policies and operational procedures relating to the regulatory functions and activities within the scope of the Regulators' Code the council will have regard to the requirements of the Code. This Code applies to the regulatory functions listed under Part 3 of the Legislative Reform (Regulatory Functions) Order 2007. They are:
- Food Standards and Safety
 - Environmental Protection
 - Housing

Animal Health and Welfare
Licensing
Public Health and Safety
Anti Social Behaviour
Consumer and Business protection

- 6.2 However, in certain circumstances we may conclude that a provision in the Code is either not relevant or is outweighed by another relevant consideration. We will ensure that any decision to depart from the Code is properly reasoned, based on material evidence and documented.

The council will:

- 6.2.1 Carry out activities in a way that supports those they regulate to comply and grow.

- The council will avoid imposing unnecessary regulatory burdens through regulatory activities. The council will choose proportionate approaches based on relevant factors including, for example, business size and capacity.
- When designing and reviewing policies the council will consider how to support or enable economic growth for compliant businesses, for example minimising the costs of compliance, improving confidence in compliance and encouraging and promoting compliance.
- The council will ensure that Authorised Officers have the necessary knowledge and skills to support those we regulate.

- 6.2.2 Provide simple and straightforward ways to engage with those they regulate and hear their views

- The council will have mechanism in place to engage those we regulate, residents and others to offer views and contribute to the development of policies and service standards.
- In responding to identified non-compliance the council will clearly explain what the non-compliant item or activity is, the advice being given, actions required or decisions taken, and the reasons for these. The council will provide an opportunity for dialogue in relation to the advice or decision. This does not apply where the Authorised Officer can demonstrate that immediate action is required to prevent or respond to a serious breach or where providing such an opportunity would be likely to defeat the purpose of the proposed action.
- Where the councils enforcement actions allow for an appeal an impartial and clearly explained route to appeal against a regulatory decision will be provided. The council will explain in writing any right to representation or right of appeal.
- The council will make available a clearly explained complaints procedure. The council will have a range of mechanisms to receive customer feedback. These processes are specific to each service area.

- 6.2.3 Base regulatory activities on risk

- The council will take an evidence based approach to determining the priority risks and will allocate resources where they would be most effective in addressing those priority risks.
- The council, when making an assessment of risk, will recognise the compliance record/history of those they regulate.
- The council will review the effectiveness of its chosen regulatory activities in delivering the desired outcomes.

6.2.4 Share information about compliance and risk

- The council will collectively follow the principle of “collect once, use many times” when requesting information from those it regulates.
- Where the law allows the council will agree secure mechanisms to share information with other regulators about businesses to help target resources and activities.

6.2.5 Ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.

- The council will provide advice and guidance that is focussed on assisting those it regulates to understand and meet their responsibilities. Legal requirements will be distinguished from good practice.
- The council will publish guidance, and information in a clear, accessible, concise format, using media appropriate to the target audience and written in plain language.
- The council will seek to create an environment in which those it regulates have confidence in the advice received and feel able to seek advice without fear of triggering enforcement action.
- In responding to requests for advice, the council will provide the advice necessary to support compliance, and will ensure that its advice can be relied on.
- The council will have a mechanism in place to work collaboratively to assist those regulated by more than one regulator. The council will consider advice provided by other regulators and, where there is disagreement, this will be discussed with the other regulator to reach agreement.

6.2.6 Ensure their approach to the regulatory activities is transparent.

- The council will publish a set of clear service standards, setting out what those it regulates can expect from them.
- Any information published to meet the requirements of the Code will be easily accessible, including being available on the Council’s website.
- The council will have a mechanism in place to ensure that Authorised Officers act in accordance with published service standards, including the Council’s enforcement policy.

- The council will publish details of performance against service standards, including feedback from customer satisfaction surveys and data relating to complaints and appeals.

7. Notifying Alleged Offenders

- 7.1 If we receive information that may lead to enforcement action against an individual or business we will notify that individual or business as soon as is practicable of any intended enforcement action, except in the circumstances described in 7.3 below.
- 7.2 During the progression of enforcement investigations/actions, individuals, business proprietors and witnesses will be kept informed of the progress of the matter under investigation. Confidentiality will be maintained and personal information about individuals will only be released during legal proceedings when required and/or in accordance with the Data Protection Act 1998.
- 7.3 In certain circumstances, we may choose not to keep individuals, business proprietors or witnesses informed of progress if this could impede enforcement action.

8. Covert Surveillance

- 8.1 During an investigation into suspected non-compliance with legislation the council may need to undertake directed covert surveillance from time to time. This may include remote sound or video monitoring equipment as well as personal observation. When this is necessary the requirements of the Regulation of Investigatory Powers Act 2000 will be complied with.

9. Deciding what level of enforcement action is appropriate

- 9.1 A decision on enforcement action will be taken on its own merits and after full consideration of the implications and consequences of the action. While fair and effective enforcement is essential to the maintenance of law and order, a breach of criminal law may not necessarily result in enforcement action.
- 9.2 A number of factors are considered when determining what action to take. These factors are detailed in **Appendix 1 [Factors we consider when taking enforcement action]**.

Levels of enforcement action:

We will take steps to help individuals and organisations comply with their legal obligations without unnecessary expense, while at the same time taking firm enforcement action where appropriate against those who flout the law or act irresponsibly. Officers have a range of actions at their disposal in seeking to secure compliance with the law and to ensure a proportionate response to apparent offences. **The range of enforcement actions available differs between Regulatory functions.**

The level of the action taken varies from no action through to proceedings in Court. Examples of the main types of action that can be considered are shown below:-

- No Action
- Verbal Warning and/or Advice
- Written Warning and/or Advice

- Acceptable Behaviour Contracts (ABC)
- Fixed Penalty Notices (FPN)
- Formal Notices
- Anti-Social Behaviour Injunction (ASBI)
- Seizure
- Court Injunction
- Refusal, Revocation or suspension of a Licence
- Formal Caution
- Prosecution

i) **No Action**

In some circumstances, contraventions of the law may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention on the community, or the cost of the required enforcement action to the District Council outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or the offender is elderly, frail or a juvenile and formal action would seriously damage their well being. A decision to take no action must take into account the health, safety, environmental damage or nuisance implications of the contravention.

ii) **Verbal Warning and/or Advice**

For minor breaches of the law verbal advice will generally be given to the offender. We will clearly identify the contraventions of the law and give advice on how to put them right and include a deadline by which this must be done. Sometimes we will advise offenders about 'good practice', but we will clearly distinguish between what they must do to comply with the law and what is advice only.

Failure to comply could result in more severe enforcement action being taken. The time allowed must be reasonable, but must also take into account the health, safety and nuisance implications of the contravention.

iii) **Written Warning and/or Advice**

For some contraventions we will send the offender a firm but polite letter clearly identifying the contraventions, giving advice on how to put them right and including a deadline by which this must be done. Failure to comply could result in a notice being served or more severe enforcement action being taken. The time allowed must be reasonable, but must also take into account the health, safety and nuisance implications of the contravention.

iv) **Acceptable Behaviour Contracts (ABC)**

For repeat or serious cases of anti-social behaviour, it may in some circumstances be appropriate for an individual to be asked to sign an acceptable behaviour contract. The ABC is a written agreement between the person who has committed repeated incidents of Anti-Social Behaviour and the council and/or the police. The contract is entered into voluntarily and clearly details the actions which the perpetrator is no longer allowed to engage. In

addition, a personalised support package is offered to help the individual keep to the conditions of their contract.

v) **Fixed Penalty Notices (FPN)**

For some contraventions Fixed Penalty Notices are issued once an offence has been committed, requiring the offender to discharge their liability to prosecution by payment of a fixed sum. Failure to pay the fixed sum will result in a prosecution being instigated unless there are exceptional circumstances.

vi) **Formal Notice**

Notices are served to require offenders to cease activities contravening the relevant legislation, to give offenders reasonable time to rectify a contravention or to require further information. Notices may require such activities to cease immediately where the circumstances relating to health, safety, environmental damage or nuisance demand. In other circumstances, the time allowed to comply with the notice must be reasonable, but must also take into account the health, safety, environmental damage or nuisance implications of the contravention.

All notices issued will include details of any applicable Appeals Procedures.

Certain types of notice allow the council to 'carry out work in default'. This means that if a notice is not complied with [i.e. a breach of the notice] the council may carry out any necessary works to satisfy the requirements of the notice. Where the law allows, the council may then charge the person/business served with the notice the costs incurred in carrying out the work.

Failure to comply with a notice is an offence which will result in a prosecution being instigated unless there are exceptional circumstances.

vii) **Anti-Social Behaviour Injunction (ASBI)**

Anti-Social Behaviour Injunctions (ASBI) are civil orders which are intended to protect the public from Anti-Social Behaviour. An injunction can contain certain conditions prohibiting the offender from carrying out anti-social acts or from entering specific areas in which they have previously committed Anti-Social Behaviour. Injunctions can also contain conditions requiring the offender to do certain things for example attend alcohol awareness for alcohol related problems. The Court will determine how long an ASBI should apply for though this is usually 12 months. If an ASBI is breached by the offender they could be committed to prison for up to two years, fined or have their assets seized.

A court may grant an ASBI against anyone who is ten years of age or over. The Council must consult youth offending teams in applications against under 18s. If an under offender is under 18 and breaches an ASBI they can be made subject to a supervision order or, as a very last resort, a civil detention order of up to three months for 14-17 year olds.

viii) **Seizure**

Certain legislation enables authorised officers to seize goods, vehicles or equipment. For example food that is unsafe or sound equipment that is being used to cause a statutory noise nuisance. When the council seizes goods an

appropriate receipt will be given. Where the law requires, the council will produce seized goods before the Magistrate Court.

ix) **Court Injunction**

In certain circumstances, for example where offenders are repeatedly found guilty of similar offences or where an injunction is a more appropriate course of enforcement action than any other, injunctions may be used as an enforcement measure to deal with repeat offenders or dangerous circumstances.

x) **Refusal, Revocation or Suspension of a Licence, Registration or Authorisation**

Certain types of premises/businesses require a licence, registration or authorisation to operate legally. In order to warrant refusal/revocation one of the following criteria must apply to the licensed individual or organisation:-

- No longer a fit and proper person.
- Deliberately or persistently breached legal obligations, which were likely to cause material loss or harm to others.
- Deliberately or persistently ignored written warnings or formal notices.
- Endangered, to a serious degree, the health, safety or well being of people, animals or the environment.
- Obstructed an officer undertaking their duties.
- Deliberate or persistent breach of licence conditions.
- Any other reasonable cause.

xi) **Simple Caution**

This procedure is used as an alternative to prosecution to deal quickly and simply with less serious offenders to divert them from the criminal courts. For a simple caution to be issued a number of criteria must be satisfied:-

- Sufficient evidence must be available to prove the offence, and;
- The offender must admit the offence, and;
- The offender must understand the significance of the caution and give informed consent to being cautioned.

There is no legal obligation for any person to accept a simple caution.

A record of the simple caution will be kept on the appropriate local and/or national database, and will be kept on file for 3 years. If the offender commits a further offence, the simple caution may influence any decision to prosecute the further offence.. If during the time the caution is in force the offender pleads guilty to, or is found guilty of, committing another offence anywhere in England and Wales, the caution may be cited in court, and this may influence the severity of the sentence that the court imposes.

If the offender refuses to accept a caution then legal proceedings will normally be instigated.

The caution will also be recorded in the council's Register of Convictions.

xii) **Prosecution**

A prosecution will normally ensue where one of the following criteria are met by the individual or organisation:-

- Deliberately or persistently breaching legal obligations, which were likely to cause material loss or harm to others.
- Significant or serious breach of legal obligations.
- Deliberately or persistently ignoring written warnings.
- Failure to comply with an enforcement notice, including the non-payment of a FPN
- Endangering, to a serious degree, the health, safety or well being of people, animals or the environment.
- Assaulting or obstructing an officer in the course of their duties.

10. Determining whether a Prosecution or Simple Caution is viable and appropriate

10.1 The council applies two 'tests' to determine whether a Prosecution or Simple Caution is viable and appropriate and follows guidance set by the Crown Prosecution Service when applying the tests:

- **The Evidential Test**

There must be sufficient evidence to provide a 'realistic prospect of conviction' against any defendant charged.

- **The Public Interest Test**

There may be public interest factors which are in favour of, or are against prosecution. These have to be considered before a decision regarding the final enforcement action (caution or prosecution) is taken.

For more information about the 'Code For Crown Prosecutors' visit:

http://www.cps.gov.uk/publications/code_for_crown_prosecutors/

10.2 If the case meets the evidential test, the Director will recommend appropriate formal action to the Head of Legal and Support Services. The Head of Legal and Support Services may then authorise a formal caution or prosecution.

10.3 Simple Caution or Prosecution proceedings will only be progressed when the case has passed both tests. Paragraphs 10.4 to 10.8 below, detail how this Policy applies to the consideration of taking a prosecution.

10.4 The Head of Legal and Support Services must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. A realistic prospect of conviction is an objective test that means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or magistrates' court should only convict if it is sure of a defendant's guilt.

- 10.5 When deciding whether there is enough evidence to prosecute, the Head of Legal and Support Services must consider whether the evidence can be used and is reliable.
- 10.6 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors tending against prosecution, which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentencing the defendant.
- 10.7 The Investigating Officer(s), along with senior managers and the council solicitors must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better. The following lists include some common public interest factors, both for and against prosecution. These are not exhaustive and the factors that apply will depend on the facts in each case.

The more serious the offence, the more likely it is that a prosecution will be in the public interest. A prosecution is likely to be appropriate if:-

- A conviction is likely to result in a significant sentence.
- The evidence shows that the defendant was a ringleader or an organiser of the offence.
- There is evidence that the offence was premeditated.
- The victim of the offence was vulnerable, has been put in considerable fear, or suffered personal, damage or disturbance.
- The victim of the offence has suffered harassment, alarm or distress.
- The offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics.
- There is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption.
- The defendant's previous convictions or cautions are relevant to the present offence.
- There are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct.
- A prosecution would have a significant positive impact on maintaining community confidence or safety.

A prosecution is less likely to be needed if:-

- The court is likely to impose a nominal penalty.
- The defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution.
- The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence).
- The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement.
- There has been a long delay between the offence taking place and the date of the trial, unless:-

the offence is serious;
the delay has been caused in part by the defendant;
the offence has only recently come to light; or
the complexity of the offence has meant that there has been a long investigation.

- A prosecution is likely to impact adversely on the victim's physical or mental health, always bearing in mind the seriousness of the offence.
- The defendant is elderly, frail or a juvenile or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated.
- The defendant has already discharged their liability through payment of a fixed penalty notice.

- 10.8 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Investigating Officer(s), along with senior managers and the council's Solicitors must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

11. Who decides what enforcement action is taken

- 11.1 For less serious infringements of the law, decisions about the most appropriate course of action are usually determined by the Investigating Officer(s). Decisions are based upon professional judgment, legal guidelines, statutory codes of practice and priorities set by the council and/or Central Government.
- 11.2 For more serious offences, where the nature of the offence points towards prosecution or simple caution, decisions about enforcement will be recommended by the relevant Director or Chief Executive and authorised and instigated by the Head of Legal and Support Services.

Details of '**Who decides what enforcement action is taken**' is shown in **Appendix 2**.

12. Reconsidering a Prosecution Decision

Normally if the defendant is told that there will not be a prosecution, or that the prosecution has stopped, the case will not start again. However, they may be an occasion when the decision not to prosecute, offer a simple caution or stop a prosecution, may be overturned.

The reasons for this include:-

- Rare cases where a new look at the original decision shows that it was wrong.
- Cases which were stopped so that further evidence could be collected.
- Cases which were stopped due to lack of evidence but more significant evidence is discovered later.
- Cases involving a death in which a review following an inquest concludes that a prosecution should be brought.

13. Liaison with other regulatory bodies and enforcement agencies

- 13.1 Where appropriate, enforcement activities carried out by the council will be co-ordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.
- 13.2 In some cases, for example where there has been a work related death we will inform and liaise directly with Leicestershire Police. Joint investigations may also be undertaken with the Police and or the Health and Safety Executive. These provisions along with other matters relating to workplace health, safety and welfare are detailed within our Health & Safety Enforcement Policy available at www.nwleics.gov.uk.
- 13.3 Where an enforcement matter affects a wide geographical area beyond the district boundaries, or involves enforcement by one or more other local authorities or organisations; all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity co-ordinated.
- 13.4 The council shares intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, including:
- Government Agencies, such as the Food Standards Agency, Health and Safety Executive, Environment Agency, Civil Aviation Authority and Public Health England.
 - Police Forces, such as Leicestershire Police
 - Fire Authorities, such as Leicestershire Fire and Rescue Service
 - Public Health Laboratory Service
 - Statutory undertakers, such as Severn Trent Water
 - Other Local Authorities
 - The Safer North West Partnership
- 13.5 Where wider regulatory matters can be more effectively addressed through joint working we will, where appropriate, enter into formal 'Enforcement Liaison Protocols'.
- 13.6 Where enforcement action is being considered against a business, reference will be made to the Primary Authority Scheme.
- 13.7 Where action is being considered in cases of persistent or serious anti-social behaviour a collective decision may be made by the local Community Safety Partnership (The Safer North West Partnership)

14. Offences

- 14.1 It is the duty of enforcement officers to make sure that enforcement action is taken against the right person. In doing so they must act in the interests of justice and not solely for the purpose of obtaining a conviction.
- 14.2 The Investigating Officer(s), along with the Council's Solicitors should select the most appropriate legislation and ensure that cases are dealt with in the appropriate court which so that the prosecution
- Reflects the seriousness of the offence.
 - Gives the court adequate sentencing powers.
 - Enables the case to be presented in a clear and logical way.

- 14.3 Juveniles (persons aged 17 or under) can be served with warning letters, a Fixed penalty Notice or issued with an acceptable behaviour contract or anti-social behaviour order. Prosecutions can be brought in the Youth Court.

15. Considering the views of those affected by offences

- 15.1 The Council undertakes enforcement on behalf of the public at large and not just in the interests of any particular individual or group. However, when considering the public interest test (see section 10.1 above), the consequences for those affected by the offence, and any views they may have expressed, will, where appropriate, be taken into account.
- 15.2 Those people affected by the offence will be told about any decision that makes a significant difference to the case.

16. Actions by the Courts

- 16.1 In cases of sufficient gravity, for example where serious injury or ill health has resulted, consideration will be given to requesting that the Magistrates Court refers the case to the Crown Court where the legislation allows.
- 16.2 The existing law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher courts. The Council will continue to raise the awareness of the courts to the gravity of offences and will encourage them to make full use of their powers.
- 16.3 The Council will always seek to recover the costs of investigations which result in court proceedings.

17. Protection of Human Rights

- 17.1 This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998.
- 17.2 Authorised Officers of the Council operate to a range of internal guidance documents that support the principles of primary human rights legislation, for example guidance relating to the Data Protection Act 1998 and Regulation of Investigatory Powers Act 2000. These guidance documents will be monitored by scheduled internal quality audits.

18. Publicity

- 18.1 Where appropriate, publicity will be actively sought for any enforcement action taken which could draw attention to the need to comply with the law or deter anyone else from non-compliance.
- 18.2 Information about enforcement actions will be made available on request subject to the restrictions placed on the authority by the Data Protection Act 1998 and the Freedom of information Act 2000.

19. Complaints, Appeals and Accountability

- 19.1 The Council operates a complaints procedure details of which are available on the website www.nwleics.gov.uk and in the leaflet entitled 'Have Your Say – Complaints, Comments and Compliments'
- 19.2 The mechanism for appeals against enforcement action taken will be referenced in all cases.
- 19.3 The actual service standards provided by the Council are contained in other service specific information.

20. Review of the Enforcement Policy

- 20.1 The implementation of this Policy will be monitored on an ongoing basis.
- 20.2 Every 5 years the Policy will be fully reviewed to ensure it is relevant.

Factors we consider when taking enforcement action?

Officer(s) carry out **investigations/inspections**. This can be done in response to a complaint or request for assistance, as part of routine planned inspections of business premises or survey work.

Investigating Officer discovers evidence and is satisfied that a **criminal offence** may have been committed or is about to be committed. This is called *Prima facie* evidence.

Investigating Officer considers a range of factors including:

- Previous History - whether any similar situation has been found before.
- Seriousness of the alleged offence(s), including:
 - Risks to the public or the environment
 - Any intent or recklessness of the person(s) committing the offence
 - Any obstruction of the Investigating Officer
 - Whether the alleged offence(s) are considered a special area of priority by Central Government and/or North West Leicestershire District Council
- Is there enough evidence to provide a realistic prospect of conviction
- Would any further action be in the public interest

For **LESS SERIOUS** infringements of the law and/or where there is no previous history of offences/non-compliance with legislation the following options are considered:

- **Informal Action** – verbal or written advice/warning
- **Statutory Notice** – service of a legal notice that will require certain specified action to be taken by the recipient

In all cases we will advise the alleged offender what he/she needs to do in order to comply with the law.

For **MORE SERIOUS** offences the following options will also be considered:

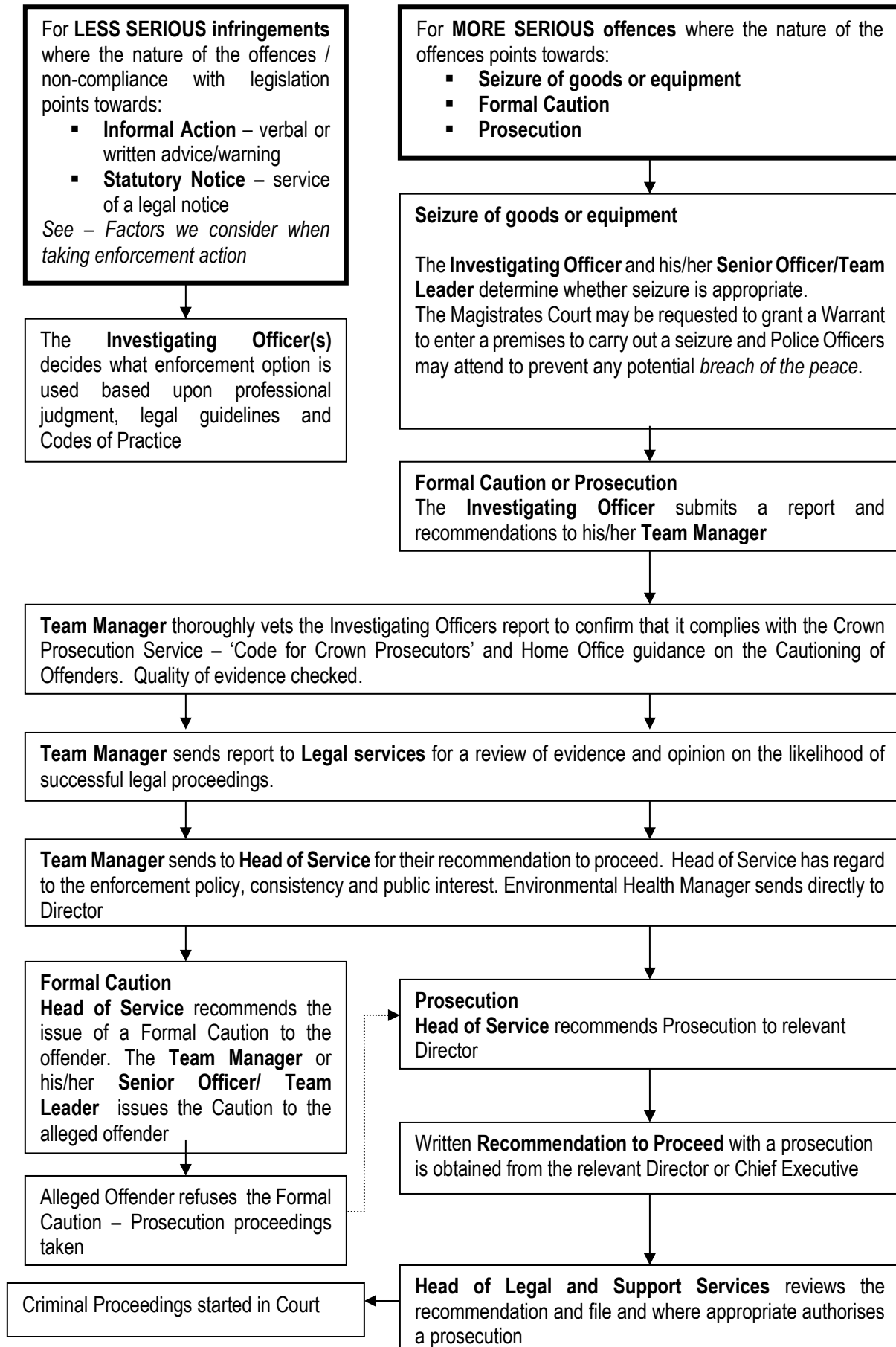
- **Seizure of goods or equipment** – In certain cases, goods or equipment may be seized to protect the public and/or employees, for example unsafe food or sound equipment being used to cause a nuisance.
- **Formal Caution** – a Formal Caution is an alternative to prosecution and can only be issued if strict criteria are met. The Home Office of Central Government sets these criteria. A Caution stays on public record for three years.
 - If a Formal Caution is offered to an offender, but he/she refuses to accept it then we may prosecute instead.
- **Prosecution** – legal proceedings are taken against the offender that results in the offender being summonsed to appear in Court. Any decision to prosecute is based upon guidelines set by the Crown Prosecution Service

In all cases the alleged offender will be informed of the matters under investigation and invited to attend a formal interview in accordance with the Police and Criminal Evidence Act 1984.

See – Who Decides What Action is taken [Appendix 2]

Appendix 2 – Council General Enforcement Policy

Who decides what enforcement action is taken?



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NWL Housing Enforcement Policy

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Introduction

Local Housing Authorities (“LHA”) are the primary enforcement agency for ensuring the protection of the health, safety and welfare rights for occupiers and visitors in private sector housing within England and Wales.

North West Leicestershire District Council (“the Council”) has set out its overall approach to enforcement in its General Enforcement Policy 2014.

This policy sets out the general approach of the Council to private sector housing enforcement and it sets out what owners, landlords, their agents and tenants of private sector properties can expect from officers.

Authorised officers (“officers”) of the Council have both statutory duties and discretionary powers to undertake enforcement action, using a range of legislation, to address issues arising at private rented properties, caravan sites and mobile home sites.

Equality Statement

The Council and its officers are committed to the equality of opportunity in employment and the provision of its services. In developing this policy, the Council has recognised its responsibilities under the Equality Act 2010 to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
- Advance equality of opportunity between people who share protected characteristics and those who do not;
- Foster good relations between people who share a protected characteristic and those who do not.

The council’s Equality, Diversity and Inclusion policy can be found on the Council’s website.

[Equality, Diversity and Inclusion - North West Leicestershire District Council \(nwleics.gov.uk\)](http://nwleics.gov.uk)

Approval of the Enforcement Policy

This policy was approved by the Council’s Cabinet on 23rd September 2014

Aim of the Policy

This Enforcement Policy aims to:

- Demonstrate transparency of enforcement with respect to private sector housing, caravan sites and mobile home sites within the district by setting out legal requirements, policies and principles that officers will follow when enforcing legislation;
- Ensure that all properties let as residential properties throughout the district, including those in private ownership, are of good quality and well managed;
- Ensure that all residents of North West Leicestershire have a home that is safe, secure, dry and not overcrowded;
- Improve the condition and energy efficiency of homes in the private rented sector through maintaining decency standards, and raising them where possible;
- Ensure Houses in Multiple Occupation (HMO’s) are safe and well managed and all relevant Management Regulations are adhered to;

- Ensure Private Sector Housing is not left empty for an unreasonable amount of time or becomes an eyesore and nuisance to neighbouring homes.

This Enforcement Policy applies to both individuals and businesses and should be read in conjunction with the general Enforcement Policy which sets out the general parameters of enforcement.

Enforcement

5.1 Regulators' Code

The Legislative and Regulatory Reform Act 2006 ("the 2006 Act") requires the Council to have regard to the Regulators' Code. This Enforcement Policy has regard to the Regulators' Code in that it follows the principles of good regulation set out in the 2006 Act, in that regulatory activities are carried out in a way that are transparent, accountable, consistent, proportionate to risk and targeted at cases where action is required.

Local Authorities are required by the Regulators' Code to publish a clear set of service standards, including their enforcement policy, explaining how they respond to non-compliance.

The Council's Service Standards can be found on the Council's website.

[Customer service standards - North West Leicestershire District Council \(nwleics.gov.uk\)](http://nwleics.gov.uk)

5.2 Enforcement Objectives

The main objectives of this Enforcement Policy are to ensure that:

- Privately rented accommodation, including HMOs, and accommodation provided by registered providers of social housing, are free from actionable hazards that affect the health and safety of the tenant, licensee or any visitor;
- Private rented accommodation and tenancies are managed in accordance with relevant statutory requirements;
- Privately rented accommodation meets minimum energy efficiency ratings;
- All licensable properties are licensed, with licence conditions being met;
- Targeted action is taken to bring empty homes back into use;
- Owners or occupiers of privately owned accommodation or land do not cause statutory nuisance, or an unacceptable risk to public health and safety, or to the environment or neighbourhood; and
- Caravan and mobile home sites are managed in compliance with site licence conditions and relevant statutory requirements.

Tenure Groups

The Public Protection Team has investigative and enforcement powers relating to all private housing regardless of tenure. However, the approach may vary depending on the tenure of the household. Tenure falls into broadly three main groups:

6.1 Private landlords and tenants

Tenants are reliant on their landlord or their managing agent to adequately maintain their home in accordance with legal requirements.

6.2 Owner occupiers

The prime responsibility for maintaining and improving this type of housing tenure is the responsibility of the owner.

6.3 Registered social landlords

Registered Providers (“RPs”) are governed by the Regulator of Social Housing. RPs have their own procedures in place for reporting problems and making complaints.

Tenants are primarily reliant on the Registered Social Landlord (RSL) to adequately maintain their home in accordance with legal requirements. If this is not the case, the Council will investigate complaints from tenants.

Inspections

Where there are reasonable grounds to suspect a failure or where there is a statutory duty to do so, authorised officers will inspect properties in the private rented sector that fail to meet regulatory housing standards. Where such inspections have been completed, the Council will consider whether further action is necessary. If further action is necessary, the Council will determine what action is most appropriate to the particular circumstances of the case and may decide to exercise enforcement powers if the circumstances of the case make it necessary to do so. The Council will consider an inspection where there are imminent and significant risks to the health and safety of tenants and or the wider public.

7.1 Reactive Inspections

Reactive inspections will be carried out on those premises for which there are statutory requirements and/or present the greatest risk to occupiers and the public, for example where:

- There appears to be significant risks to the health and safety of occupiers and/or visitors;
- The tenant or prospective occupier is vulnerable;
- The issues are complex or involve neighbouring properties; and/or
- There is a poor history of compliance with legal requirements for housing conditions and/or management practices.

7.2 Proactive Inspections

Proactive inspections will be carried out in respect of private rented accommodation that is subject to HMO and discretionary licensing (if adopted by the Council) under Parts 2 and 3 of the Housing Act 2004 respectively and caravan sites and mobile home sites licenced by the Council, for the purpose of assessing compliance with:

- Licence conditions;
- Licence evasion;
- Housing conditions; and/or
- Property management.

7.3 Targeted Inspections and Proactive Interventions

Targeted inspections may take place of properties owned or managed by landlords or managing agents who have a poor history of legal compliance with regard to providing satisfactory housing conditions and/or management practices. Intelligence of legislative breaches may be gathered from partner agencies, by identifying those with previous enforcement action or via lack of engagement.

This service will not usually act on anonymous complaints, unless there is good cause for further investigation such as an imminent risk or danger. Relevant information will be recorded in case of any future complaints.

Enforcement Action

The Public Protection Team will respond to enquiries and complaints about substandard, unsafe, problematic and empty housing and where standards are not met, enforcement action may be taken.

Decisions will be made by competent and authorised officers, in accordance with legislation and by having regard to enforcement guidance, as to the most appropriate course of action. Where there is non-compliance after an informal approach has been made, formal action will be considered. However, where there are serious breaches of legal requirements, the Council will consider formal action in the first instance to safeguard the health, safety and welfare interests of occupiers, visitors and members of the public.

8.1 Prevention

The Public Protection Team encourages compliance with meeting regulatory housing standards for the maintenance of minimum housing standards and fair treatment of tenants by offering:

- Empty homes week;
- Landlord forum;
- Social media to highlight new legislation;
- Communication via website; and
- Mail shots.

8.2 No Action

In some cases, it may not be appropriate for the Council to take any enforcement action. The circumstances in which the Council may consider no action appropriate include:

- Where the risk is low and does not sufficiently present a significant risk to the occupiers, visitors or members of the public;
- The breach is of a technical nature;
- The allegations are unsubstantiated and unwitnessed;
- The tenant or occupier does not support enforcement action and the Council takes the decision enforcement action is not appropriate in the circumstances; and/or
- Where there are special circumstances regarding the person against whom action would be taken.

8.3 Informal Action

In the first instance, for most cases, tenants are encouraged to take their own action and report the problem to their landlord. This will usually be in the form of a written complaint affording the landlord sufficient time to respond. Where the problem cannot be resolved and a complaint is received by the Council the Public Protection Team will investigate.

Where defective housing conditions are evidenced to justify investigation and it is considered appropriate to take action, the Council aims to offer landlords, managing agents, owners and service users an opportunity to work informally with the Council to effect change to meet regulatory compliance and establish good management practices in respect of lower risks.

The circumstances in which the Council may consider informal action appropriate include:

- If taking no action presents a significant risk of harm to the occupiers, visitors or members of the public;
- Where the issue is not sufficiently serious to warrant formal action or where formal action will not achieve the desired result; and/or
- To allow responsible landlords, managing agents and owners an opportunity to comply with regulatory requirements and agree to undertake the works required by the Council in a short time scale.

8.4 Formal Action

When considering if formal enforcement action is to be taken, the Council will have regard to the impact the informal action has had, the lack of confidence in the property owner, including any history of non-compliance, and the health, safety and welfare of the occupants at the property. Anyone likely to be subject to formal enforcement action will receive clear explanations of what they need to do to comply and have an opportunity to resolve difficulties before formal action is taken.

The circumstances in which the Council may consider formal action appropriate include:

- If taking informal action has not achieved the expected outcome as set out in the request to take action or carry out works;
- The Council has a duty to serve a notice or order or take specific action;
- Remedial action needs to be taken quickly due to significant risk to the health, safety and welfare of the occupiers;
- There is evidence of previous non-compliance; and/or
- There is a long-term empty property.

The following options for taking formal action are available:

Action under the provisions of Part 1 of the Housing Act 2004 to:

- Serve an improvement notice under sections 11 and/or 12;
- Serve a suspended improvement notice under section 14;
- Make a prohibition order under sections 20 and/or 21;
- Make a suspended prohibition order under section 23;
- Serve a hazard awareness notice in accordance with sections 28 and/or 29;
- Take emergency remedial action under section 40;
- Make an emergency prohibition order under section 43; and
- Make a demolition order under section 265 of the Housing Act 1985.

The Council has a general duty to act where category 1 hazards are identified. The Council has a discretionary power to act in respect of category 2 hazards. All category 1 hazards will be dealt with as a priority over category 2 hazards.

8.4.1 Serving Statutory Notices or Orders

The Council will consider serving these notices when it is identified that a landlord is failing to comply with housing or other health and environmental legislation.

Legal notices will detail any rights of appeal and any rights to an extension of time to comply with the requirements of the notice, if requested for legitimate reasons.

8.4.2 Housing health and safety rating system (HHSRS)

The Housing Health and Safety Rating System (HHSRS) is a risk-based approach under the Housing Act 2004 used to tackle poor housing conditions and focus on any of the hazards that are potentially present within dwellings including those that are unoccupied. There are 29 hazards that arise from disrepair, lack of maintenance or poor design. The assessment determines whether there are category 1 or category 2 hazards and identifies the type of work that is needed on properties to conform with the requirements of the HHSRS assessment.

8.4.3 Improvement Notice

Section 11 of the Housing Act 2004 – Category 1 hazards;

Section 12 of the Housing Act 2004 – Category 2 hazards

This notice should be served in response to identified category 1 and category 2 hazards, where reasonable remedial works can be carried out to reduce the hazard sufficiently. Both category 1 and category 2 hazards can be included on the same notice.

8.4.4 Prohibition Order

Section 20 of the Housing Act 2004 – Category 1 hazards

Section 21 of the Housing Act 2004 – Category 2 hazards

This order should be served in response to identified category 1 and category 2 hazards. It may prohibit the use of part or all of a property for some or all purposes or for occupation by a particular number or description of people. An order may be appropriate where conditions present a risk but remedial action is unreasonable or impractical. In a HMO it can be used to prohibit the use of specified dwelling units. Both category 1 and 2 hazards can be included on the same notice

8.4.5 Hazard Awareness Notice

Section 28 of the Housing Act 2004 – Category 1 hazards

Section 29 of the Housing Act 2004 – Category 2 hazards

This notice should be served where a less serious hazard has been identified but it is not reasonable or appropriate to serve an improvement notice or prohibition order. It is served in an advisory capacity to draw attention to the need for remedial action. This notice is not registered as a land charge and has no appeal procedure and both category 1 and category 2 hazards can be included on the same notice.

8.4.6 Emergency Action

Where there is a category 1 hazard present that is considered to represent an imminent risk of serious harm to the health and safety of the occupiers of a dwelling, the Council may serve an Emergency Prohibition Order or take emergency remedial action. Such emergency actions would involve either the removal of certain defects giving rise to an immediate risk or the closure of part of the dwelling.

8.4.7 Suspended Improvement Notices or Prohibition Orders

The Council has the power to suspend the operation of an Improvement Notices and Prohibition Orders until a specified time has passed or a specified event has occurred. Such action would not normally be the preferred enforcement action unless the circumstances of the current occupants were such that other options were not practical or where there is evidence of programmed maintenance by landlords. The suspensions must be registered as a local land charge and they must be reviewed at the very least every 12 months.

Other enforcement action

9.1 Demolition Order

Section 265 of the Housing Act 1985

Demolition Orders are orders requiring the demolition of a property and are used where the property condition is such that hazards are present and remedial works are not possible or reasonable because of excessive cost or other reason. A Demolition Order should only be used in response to category 1 hazards, but not if the building is listed.

9.2 Clearance Area

Section 289 of the Housing Act 1985

A Clearance Area can be declared on a single or group of properties as a result of category 1 hazards and can be served due to the poor arrangement of the street or area to be cleared. The Council is required to consult on the declaration of a clearance area and publish its intentions.

9.3 Drainage

Building Act 1984

The Council has the power to deal with defects in buildings that require major repairs to drainage systems.

9.4 Enforced Sale

The Council has the power to force the sale of a property where it seeks to recover unpaid debts incurred by the Council in undertaking essential repair works in default.

Local Authorities have the statutory power to force the sale of a property through section 103 of the Law of Property Act 1925. Where Local Authorities have carried out work in default under some of the above legislation and are unable to recover the debt, it is possible under this legislation to register a charge on the property. This charge can then be recovered by way of an enforced sale.

9.5 Rent Repayment Order

The Council may apply to the First Tier Tribunal for a Rent Repayment Order ("RRO") where a landlord has committed a relevant offence (as set out in section 40 of the Housing and Planning Act 2016). A RRO is an order requiring the landlord to repay a specified amount of rent paid by a tenant or pay a local housing authority a specified amount in respect of a relevant award of universal credit paid to any person in respect of rent under the tenancy.

An application for a RRO may be in addition to other formal action, such as prosecution proceedings or the imposition of a civil penalty. The Council will offer advice and guidance to assist tenants to apply for a RRO in cases where the tenant paid the rent themselves.

9.5.1 Relevant offences

- Failure to obtain a property licence for a HMO (section 72(1) of the Housing Act 2004);
- Failure to obtain a property licence for a house in a designated selective licensing area (section 95(1) of the Housing Act 2004);
- Failure to comply with an Improvement Notice (section 30 of the Housing Act 2004);

- Failure to comply with a Prohibition Order (section 32 of the Housing Act 2004);
- Breach of a Banning Order made under section 21 of the Housing and Planning Act 2016;
- Using violence to secure entry to a property (section 6 of the Criminal Law Act 1977);
- Illegal eviction or harassment of occupiers of a property (section 1 of the Protection from Eviction Act 1977).

9.6 Banning Orders

For serious offenders, where a landlord has committed one or more offences specified in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018, the Council may apply to the First Tier Tribunal for a Banning Order that bans a landlord from:

- Letting housing in England;
- Engaging in English letting agency work;
- Engaging in English property management work; or
- Doing two or more of those things.

A banning order, if granted, must be for a minimum period of 12 months. There is no statutory maximum period for a banning order.

The Council will generally pursue a banning order for the most serious offenders. It will take into account the seriousness of the offence(s), whether the landlord has committed other banning order offences (or received any civil penalty in relation to a banning order offence) and any history of failing to comply with their obligations or legal responsibilities. It will also take into account other relevant factors, including:

- The harm, or potential harm, caused to the tenant;
- The need to punish the offender;
- The need to deter the offender from repeating the offence; and/or
- The need to deter others from committing similar offences.

9.7 Electrical Safety Standards

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (“the Regulations”) require landlords to ensure the electrical installations in private rented sector properties are safe for continued use and carry out periodic testing to evidence this.

The Regulations apply to all new specified tenancies from 1st July 2020, and all existing specified tenancies from 1st April 2021, and require landlords to carry out electrical testing no more than every five years and provide copies to tenants and to the Council on request.

Where the Council believes that a landlord has breached their duties under the Regulations, it may do one, or a combination of, the following:

- Serve a remedial notice on the landlord, requiring them to take action in respect of the breach;
- Carry out urgent remedial action where a report indicates it is required;
- Carry out remedial action where a landlord is in breach of a remedial notice; and/or

- Issue a financial penalty of up to £30,000 in respect of a breach of the Regulations.

Representations and appeals are built into the legal process and these will be highlighted in any relevant correspondence and notices.

Where a financial penalty is proposed, the penalty shall be determined in accordance with the Council's Private Sector Housing Civil Penalties Policy. Proceeds of civil penalties can be used to carry out private rented sector enforcement.

9.8 Protection from unlawful eviction and harassment

The Council has the power to take criminal proceedings for offences of illegal eviction and/or harassment. If the evidence justifies it, officers may carry out investigations and the Council may consider prosecution if it believes an offence has been committed.

Where the harassment takes the form of the landlord/agent not undertaking necessary repairs, and the property is in poor condition, the Council also has powers under the Housing Act 2004, through the Housing Health and Safety Ratings System (HHSRS), to take enforcement action to secure improvements to the condition of the property.

9.9 Community Protection Notice

Authorised officers have the power to issue a Community Protection Warning (CPW) and Community Protection Notice (CPN) under section 43 of the Anti-Social Behaviour, Crime and Policing Act 2014 to combat anti-social behaviour. CPNs can be used to tackle a landlord's behaviour where this is having a detrimental effect on the quality of life of those in the locality.

9.10 Work in default

The Housing Act 2004 and other legal powers outlined in this policy make provision for the Council to carry out works to a property where the person responsible has failed to comply with a formal notice. Any action taken would be in accordance with legislative requirements and may be taken either with or without the consent of the responsible person. The Council will aim to recover all costs incurred by completing work in default, the sum recoverable becomes a local land charge on the premises concerned.

9.11 Notice of Entry

Officers will give the required written notice under the appropriate power of entry and will clearly state which power of entry is being used and why.

Where the Council is unable to gain access using a notice of entry or where prior warning is likely to defeat the purpose of the entry the Council may apply to the Magistrates' Court for a warrant to enter.

If a warrant is authorised, entry can be secured by force, if necessary, in association with the police. Officers will, upon request, produce their identification and written authorisation for inspection.

9.12 Civil Penalties

The Council may serve notices imposing civil penalties, as an alternative to prosecution, of up to a maximum of £30,000 in respect of the following offences under the Housing Act 2004:

- Section 30 – Failure to comply with an Improvement Notice
- Section 72 – Offences in relation to licensing of HMOs

- Section 95 – Offences in relation to licensing of houses under Part 3 (inc. selective licensing)
- Section 139 – Offences of contravention of an overcrowding notice
- Section 234 – Failure to comply with management regulations in respect of HMOs
- Breach of a banning order (section 21 of the Housing and Planning Act 2016)
- A further breach of the Tenant Fees Act 2019 that occurs within five years of the imposition of a financial penalty or conviction for a previous breach (a civil penalty of up to £5,000 may be imposed in respect of an initial breach of the Tenants Fees Act 2019)

9.13 Simple caution

Simple cautions may be considered as an alternative to taking a prosecution.

When considering a simple caution the Council will take account of guidance and its general Enforcement Policy.

9.14 Prosecution

The Council may prosecute where there is a summary offence, a serious or recurrent breach or endangerment, to a serious degree, of the health, safety or well-being of people, or where there is a failure to comply with a statutory notice. The officer must investigate the offence, this may involve interviewing relevant people under caution, following the relevant parts of the Police and Criminal Evidence Act 1984.

When considering prosecution the council will take into account the Code for Crown Prosecutors and its general Enforcement Policy.

In prosecution cases where the defendant is found guilty by the Magistrates' Court or the Crown Court, in addition to any fine imposed the Council will seek to recover the costs incurred in bringing the prosecution case, including administrative costs for file preparation, attendance at court and associated legal services.

9.15 Proceeds of crime

The Proceeds of Crime Act 2002 affords the Council, where there is non-compliance by a landlord or owner with any legislative requirements in the private rented sector and who is in receipt of substantial financial gain, to consider taking action to confiscate or recover monies gained through illegal activities. The Council will consider using this legislation where appropriate.

9.16 Local land charge

Certain notices, orders and charges made under the Housing Act 2004 are required to be registered as a local land charge against the property to which it relates until the notice is either withdrawn or complied with. The Council will use this legislation where appropriate.

9.17 Recovery of costs

The Council will aim to recover all the costs and expenses it incurs in carrying out its statutory functions. The costs incurred will include the cost by hour of labour, parts and officer time. Action taken by the Council to recover costs and expenses will be in accordance with the legislative provisions of the relevant Acts.

The Council reserves the right not to invoice or to waive a charge for enforcement action in exceptional circumstances with each case being considered on its own merits.

All charges, where applicable, are set out in the North West Leicestershire District Council Fees and Charges Schedule.

The Licensing of Houses in Multiple Occupation

Mandatory requirements for licensing apply only to houses (or flats) that are in multiple occupation. Under current legislation, a landlord or agent must apply to the Council for a licence for each residential property having:

- Five or more occupiers living in two or more households; or
- Two or more households sharing amenities (either a kitchen, living room or bathroom/toilet facilities).

This enforcement policy will also apply to any properties which become HMO properties as a result of any future legislative changes.

The Council has discretionary powers to introduce licensing for other residential accommodation through additional or selective licensing schemes.

Additional licensing can be used for a HMO that is not subject to mandatory licensing.

10.1 Partnership working

The Council have a Memorandum of Understanding (MOU) with Leicestershire Fire and Rescue and will follow this when assessing fire safety in any HMO.

10.2 Overcrowding

Section 139 of the Housing Act 2004 allows the council to serve an Overcrowding Notice in respect of a HMO that is not required to be licenced or subject to an interim or final management order, where there is found to be a breach of the statutory overcrowding standard.

Officers will investigate complaints about overcrowded conditions from:

- Private rented sector tenants complaining about their own property;
- Other parties concerned about children or vulnerable adults; and
- Other parties where there are significant conditions that are legitimately impacting on a neighbour's health, safety or welfare.

In certain circumstances, advice may be given to the occupiers that their health and safety is at risk from the overcrowded conditions, but no enforcement action will be taken against the landlord.

Where enforcement action is taken that requires tenants to move out of a property, the Public Protection Team will liaise with the Council's Housing Choices Team, who will be able to give advice.

The effect of an overcrowding notice is that the person served must comply with the terms of the notice and if they fail to do so, they commit an offence for which the Council may consider prosecution. An overcrowding notice may either prohibit new residents or limit the number of people sleeping in the HMO, or both of these requirements on the same notice. Overcrowding in non-HMOs is classed as a hazard and may be dealt with by using the Housing Act 2004 notices as detailed above.

10.3 Management Orders

Schedule 3 of the Housing and Planning Act 2016 amends the Housing Act 2004 to allow interim and final management orders to be made in cases where a banning order has been made.

10.3.1 Management Regulations

The Management of Houses in Multiple Occupation (England) Regulations 2006 ("the Management Regulations") made under the Housing Act 2004 impose duties on landlords and managers of all HMOs (whether or not subject to licensing). There are no notice serving powers under the Management Regulations but the Council can prosecute for breach of the regulations.

10.3.2 Interim and final management order

The Council is under a duty to make an interim and final management order where necessary. The Council will instigate this action where necessary but as a last resort. All practical steps will be taken to assist the owner of the property to satisfy the licensing requirements.

An interim management order is made for the purpose of securing any action that the Council considers necessary, to protect the health, safety and welfare of the occupants.

The Council has a duty to make an interim management order in respect of a property where there is no reasonable prospect of it being licensed in the near future or it is necessary to protect the health, safety and welfare of the occupants.

Where a licence has been revoked, for any reason, but the revocation is not yet in force, if, when the revocation is in force, there is no reasonable prospect of the property regaining its licence an interim management order must be made by the Council.

Once an interim management order has been made the Council must take over the management of the property for up to 12 months. This includes carrying out any remedial works necessary to deal with the immediate risks to health and safety.

If there is still no prospect of a licence being granted after 12 months, then a final management order must be made which may be in force for up to 5 years. If after 5 years there is no prospect of the property being licensed, a further management order must be made.

Management orders can be varied or revoked at any time as a result of a request from the owner or on the initiative of the Council.

Review

This policy will be reviewed in line with the corporate policy register or sooner if there are changes in structure, titles and/or responsibilities and any legislation.

Covid-19 (Coronavirus) and other outbreaks

Officers will aim to maintain effective enforcement of standards in private rented properties by way of routine inspections and enforcement action. Inspections and enforcement action take place with due regard to statutory and non-statutory guidance,

any current public health guidance and in consideration of any related local health and safety policies and procedures.

Links with other policies

This policy has been considered alongside the following policies:

- The general Enforcement Policy
- The Civil Penalties Policy
- Returning Houses to Homes Policy and Procedures (Private Sector)
- North West Leicestershire Housing Strategy (2021 – 2026)
- Private Sector Housing Conditions and Empty Homes Enforcement Procedure
- Private Sector Housing Conditions and Empty Homes Enforcement Protocol
- Rent deposit guarantee scheme
- Homeless prevention and Rough Sleeping Strategy 2019 - 2024
- Tenancy Strategy

Appendix A – Key Legislation

Housing enforcement issues can sometimes be resolved through the use of other, more appropriate legislation, regulations, orders or guidance. The Council will consider the use of, but is not limited to, the following relevant legislation to meet the aims of this Policy.

- The Housing Act 2004
- Prevention of Damage by Pests Act 1949
- Local Government Miscellaneous Provisions Act 1982
- Building Act 1984
- Caravan Sites and Control of Development Act 1960 and Caravan Sites Act 1968
- Environmental Protection Act 1990
- Housing Act 1985
- Law of Property Act 1925
- Local Government (Miscellaneous Provisions) Act 1976
- Local Government (Miscellaneous Provisions) Act 1982
- Public Health Act 1936
- Town and Country Planning Act 1990
- Energy Act 2011; 2013
- Enterprise and Regulatory Reform Act 2013
- Mobile Homes Act 1983; 2013



Civil Penalty Policy

Version Control

Version	Date	Author	Name of report assessed:	Comments
0.0	26.11.2021	SM	Civil Penalty Policy	First draft
0.1	05.12.2021	SM	As above	Revised
0.2	09.12.2021	SM	As above	Revised
0.3	29.12.2021	SM	As Above	Revised
0.4	05.1.2022	SM	As Above	Revised calc and gov guidance
0.5	6/1/22	RC	As above	Revised inc calc and worked examples x2
0.6	06.1.22	SM	As above	Revised last sections of policy
0.7	7.01.22	RC	As above	Revised 3. And calc and WE.
0.8	9.1.2022	SM1	As above	Revised whole document
0.9	14.5.2022	RC	CPP	Comments from NWL
0.10	20/5/2022	RC	CPP	Additional formatting

Civil Penalty Policy

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- 2. What is a Civil Penalty?**
 - 2.1 Offences covered by Civil Penalties
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- 5. Recovering an unpaid Civil Penalty**
- 6. Income from Civil Penalties**
- 7. Enforcement or other consequences**
- 8. Further guidance**
- 9. Worked examples**

1. Introduction

North West Leicestershire District Council ("the Council") is committed to improving the standards of homes within the private rented sector, ensuring that all accommodation is safe, well managed, adequately maintained and compliant with regulations and requirements.

The Council acknowledges that the majority of landlords and letting agents operate their businesses in a professional and legal manner. However, it is also recognised there are some landlords and letting agents within the private rented sector that poorly manage and fail to maintain their properties to a safe standard and in some cases knowingly and wilfully disregard the law.

This policy set out below is supplementary to the Private Sector Housing Enforcement Policy and applies to both individuals and businesses.

This document follows the DCLG guidance in using the term "Civil Penalty", but the terms "Civil Penalty" and "financial penalty" are interchangeable.

2. What is a Civil Penalty

Section 126 and Schedule 9 of the Housing and Planning Act 2016 introduces a number of amendments to the Housing Act 2004. The amendments provided by the Housing and Planning Act 2016 allow the Council to impose a financial penalty as an alternative to prosecution for specific offences under the Housing Act 2004.

A Civil Penalty is a financial penalty that may be imposed as an alternative to prosecution for certain housing offences under the Housing Act 2004. Therefore, before imposing a Civil Penalty the Council must be satisfied 'beyond reasonable doubt' that a persons' conduct amounts to the relevant housing offence as defined by section 249A(2).

The exception to this is the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 as this is not considered as a criminal offence, however, a financial penalty may still be served. However, to impose a Civil Penalty the Council

must still be satisfied beyond reasonable doubt that the landlord has breached a duty under regulation 3.

The maximum fine that can be imposed is £30,000 per offence. The 'Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities' stipulates that the maximum penalty is for the worst offenders.

2.1 Offences Covered under Civil Penalties

A Civil Penalty can be imposed on a landlord or letting agent or both. The power to impose a Civil Penalty as an alternative to prosecution for certain specified housing offences is stated in section 126 of the Housing and Planning Act 2016. The Civil Penalties are intended to be issued against landlords or letting agents that are in breach of one or more of the sections of the Housing Act 2004 and the Housing and Planning Act 2016 as detailed below:

- Section 30 – Failure to comply with an Improvement Notice
- Section 72 – Offences in relation to licensing of Houses in Multiple Occupation(HMO)
- Section 95 – Offences in relation to licensing of houses under Part 3 (Including Selective Licensing)
- Section 139 – Offences of contravening of an overcrowding notice
- Section 234 – Failure to comply with management regulations in respect of HMO
- Breach of a banning order (section 21 of the Housing and Planning Act 2016)
- Breach of any of the landlord duties prescribed under regulation 3 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

Civil Penalties can be imposed under regulation 11 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (the Electrical Regulations) where the authority is satisfied beyond reasonable doubt that a landlord has breached a duty under regulation 3.

The breach of a Prohibition Order under section 30 of the Housing Act 2004 is not one of the specified offences. Where appropriate, the Council will be able to seek a rent repayment order in addition to prosecuting the landlord for the offence.

Sometimes minor offences and those that are less serious may be better addressed using a Civil Penalty. Court time is relatively limited, and the public interest test is applied before decision is made to bring a prosecution. The most appropriate course of action will be considered on a case-by case basis. This is in line with the Council's Private Sector Housing Enforcement Policy.

In circumstances where both a landlord and letting/managing agent have committed the same offence, a Civil Penalty can be imposed on both as an alternative to prosecution.

2.2. Burden of proof

The same criminal standard of proof is required to serve a Civil Penalty as to bring a criminal prosecution. The Council must therefore be satisfied that, before a Civil Penalty can be imposed, it can demonstrate it is satisfied 'beyond all reasonable doubt' that criminal offence(s) have been committed by either a landlord and/or letting / managing agent, and if the matter were to be prosecuted in the Magistrates' Court, there would be a realistic prospect of conviction.

In determining whether there is sufficient evidence to secure a conviction, the Council will have regard to its own Enforcement Policies and the Crown Prosecution Service Code for Crown Prosecutors. The Council must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each offender on each charge. The Code for Crown Prosecutors has two stages, the evidential stage and the public interest stage. Both tests will be considered during the Council's decision making process to determine the most appropriate course of action when considering issuing a financial penalty.

2.3 Considerations prior to a Civil Penalty being issued.

The Council must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against the landlord and that the public interest will be

properly served by imposing a Civil Penalty. The following questions should be considered:

- Does the Council have sufficient evidence to prove beyond reasonable doubt that the offence was committed by the landlord in question?
- Is the public interest properly served by imposing a Civil Penalty on the landlord in respect of the offence?
- Has the evidence been reviewed by the appropriate senior colleague at the Council?
- Has the evidence been reviewed by the Council's legal services?
- Are there any reasons why a prosecution may be more appropriate than a Civil Penalty? i.e., the offence is particularly serious and the landlord has committed similar offences in the past and/or a banning order should be considered.
- The Council will consider its own Private Sector Housing Enforcement Policy when determining whether it is appropriate to serve a Civil Penalty as an alternative option for prosecuting the relevant offence.

3. Determining Level of Civil Penalty

When determining the level of the Civil Penalty the severity and harm of the offence must be considered as stated in section 63 of the Criminal Justice Act 2003 in considering the seriousness of any offence, 'it must consider the culpability in committing the offence, and any harm which the offence caused, was either intended to cause or foreseeably have caused'.

The Government has laid out statutory guidance (*Civil penalties under the Housing and Planning Act 2016 Guidance for Local Housing Authorities 2018*) (as to the process and the criteria that need to be considered when determining Civil Penalties).

3.1 Considerations

a) Severity of the offence - The more serious the offence, the higher the penalty should be.

b) Culpability and track record of the offender - A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that

they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

c) The harm caused to the tenant - This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a Civil Penalty.

d) Punishment of the offender - A Civil Penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

e) Deter the offender from repeating the offence - The primary aim is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in the future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

f) Deter others from committing similar offences - While the fact that someone has received a Civil Penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a Civil Penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying Civil Penalties where the need to do so exists and (b) that the Civil Penalty will be set at a high enough level to both punish the offender and deter repeat offending.

g) Remove any financial benefit the offender may have obtained as a result of committing the offence - The guiding principle of Civil Penalties is that they should remove any financial benefit to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

3.2 Civil Penalty Calculator

The Council have adopted the following approach which is based on the same approach devised by West Lindsey District Council and subsequently adopted by Blaby District Council.

Matrices

Table 1 details the overall calculation process. Each of the 3 columns are totalled to give the cumulative total in Column 4 which is applied.

Table 1: Civil Penalty level for relevant offences

Column 1+Column 2+Column 3 = Column 4

1	2	3		4
Offence Specific Penalties	Further Penalties (if any)	Table 3 impact matrix score A	Level of penalty	Cumulative total
Total for each penalty shown in Table 2, Column A	Total for each penalty shown in table 2 columns B and/or C	20-30	£500	Level of civil penalty to be applied (Maximum £30,000)
		40-80	£1000	
		90-120	£2,500	
		130-170	£5,000	
		180-230	£10,000	
		240	£20,000	

Step 1: Column 1 in table 1 involves detailing what “Offence specific penalties” apply. This will involve going through the case in question and comparing the offences the officer is able to demonstrate “beyond reasonable doubt” to column A of Table 2 (below). For example, an offence of failing to obtain a HMO licence under section 72 of the Housing Act 2004 will automatically get an offence specific penalty of £2,500. If more than one offence has been committed at a property then they must be added together. So, for example, in a HMO the officer notes a series of offences under the Management of Houses in Multiple Occupation (England) Regulations 2006 (“the Management Regulations”), then each breach of a regulation has an associated offence specific penalty and must be must be aggregated (added together). Where a licensing offence is also a Management Regulations offence the licence offence will take primacy.

Step 2: Column 2 in table 1, involves looking at column B and C of Table 2 (below). This step applies where offences have been noted under sections 30 of the Housing Act 2004, 139 of the Housing Act 2004, or the Electrical Safety Standards in the

Private Rented Sector (England) Regulations 2020. For example, if in the improvement notice that has not been complied with, an offence may have occurred under section 30 of the Housing Act 2004; If the notice relates to three hazards (e.g. excess cold rated as an A, damp and mould rated as a D and falls between levels rated as B) then an additional £2,000 is added under Column B. An additional £1,000 is then added for column C as there are 3 or more “high scoring hazards”, as all hazards were scored E or higher.

Table 2: Offence specific penalty and other penalties.

Offences		A		B		C	
Housing Act 2004 Offences	Section 30	Non-compliance with improvement notice	£2,000	There are two or more Cat 1 hazards	£3,000	Where there are 3 or more high scoring hazards ¹	£1,000
	Section 72	Failure to obtain property licence	£2,500				
		Breach of licence conditions (Penalty per breach)	£1,000				
	Section 139	Non-compliance with overcrowding notice	£500	Penalty per additional person	£200		
	Section 234	Failure to comply with HMO management regulations (per breach)	£500				
Electrical Safety Standards in the Private rented Sector (England) Regulations 2020 Reg. 3		Breach of a duty of private landlords in relation to electrical installations (penalty per breach)	£1,000	There is 1 identified Code 1 defect or three or more identified relevant defects. ²	£3,500	There is one or more identified relevant defect (s)	£2,500

¹ A high scoring hazard is defined as a hazard achieving a score rating of E or higher using the HHSRS

² A relevant defect for the purpose of this matrix is defined as a defect which would result in a Unsatisfactory grading on an Electrical Installation Condition report (EICR) Namely a defect given a C1, C2 or F1 observation code.

Step 3: involves evaluating the impact and this requires table 3 (below) to be considered and applied.

The officer is required to answer questions 1-5 and score appropriately using the evidence of the case. It is important the officer records this in a narrative or tabulated form including the evidence that they are relying on. This may be required to be evidenced in next stages.

Table 3: Impacts scoring matrix

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

Question	Score	0	20	30	40
1	Severity of harm or potential harm caused x2 (The relevant column score is doubled)	LOW No identified risk Previous /current occupant not in vulnerable category. No impact assessed	MODERATE Moderate level of risk to relevant persons , Previous/ current occupant not in vulnerable category. Low impact assessed.	HIGH High level risk(s) to relevant persons. Previous /current occupant in vulnerable category. Occupants affected frequently or by occasional high impact occurrences.	SEVERE High level of risk(s) to relevant persons. Previous/ current occupants in vulnerable category. Multiple individuals at risk. Occupants are severely and/or continually effected.
2	Number of properties owned/managed	1	2-3	4-7	8+
3	Culpability and Track record	No previous enforcement history Minimal prior contact Clear evidence of action not being deliberate	1 or more previous enforcement notices served Clear evidence of action not being deliberate	1 or more enforcement notices served. Offender ought to have known that their actions were in breach of legal responsibilities.	Significant evidence of historical non-compliance. Actions were deliberate or offender knew or ought to have known that their actions were in breach of their legal responsibilities
4	Removal of financial incentive	Little or no income received	Low income received	Moderate income received	High Income received
5	Deterrence and prevention	High confidence that the penalty will deter repeat offence	Medium confidence that penalty will deter repeat offence	Low confidence that penalty will deter repeat offence	No confidence that penalty will deter repeat offence.

Note that the score for row 1 should be multiplied by two (doubled). When each question is completed and the total aggregated the total is compared to Table 1 column 3 so that an appropriate level of penalty for column 3 is apportioned. A number of worked examples are included at the end of the document.

The assessment of the impacts scoring matrix may take into consideration the following:

1) Severity of the Offence and Severity of Harm - the more serious the offence, a higher penalty should be imposed. The greater the harm or the potential for harm, the higher the amount should be when imposing a Civil Penalty. The severity of harm will also consider whether the property is occupied by a vulnerable individual (as detailed in the Housing Health and Safety Rating System (HHSRS) operating guidance). A vulnerable individual is one who is at greater risk of harm, and therefore the penalty should be greater when vulnerability is an issue. This assessment will consider both harm or potential harm within the property. The level of severity will be determined by whether Category One or Category Two hazards are present.

2) Number of properties owned/managed - consideration here is made towards the number of properties that are owned and/or managed by the offender.

3) Culpability and track record of the Offender - culpability levels will be considered higher if the offender has a large portfolio. Landlords, including property managers and agents are running a business and are expected to be aware of their legal obligations. A higher penalty will be appropriate where there is a history of failing to comply with obligations and that they were in breach of their legal responsibilities.

An assessment of culpability and track record includes any past enforcement action taken by the Council. This assessment can include, but is not limited to, the history held of the landlord or letting agent, the number of Housing Act 2004 notices served, previous Civil Penalties served, simple cautions issued, whether works in default have been undertaken by the Council as a result of relevant notices being breached, whether the landlord has been subject to either an Interim or Final Management Order, if the landlord is registered on the Rogue Landlord Database or is or has been subject to a Banning Order.

4) Removal of Financial Incentive - the principle is to ensure that the offender does not benefit due to committing an offence. The Council will consider the financial advantage as a result of the offence, including but not limited to, rental income gained, financial benefit from not undertaking remedial works contained within a

notice, and/or financial benefit in failing to obtain a property licence when required to do so.

5) Deterrence and Prevention - a Civil Penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all their legal responsibilities in the future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

While the fact that someone has received a Civil Penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a Civil Penalty.

3.3 Recording the decision: The officer making the decision shall be accountable to outline the rationale for imposing the penalty, giving reasons for coming to the amount of financial penalty which is to be imposed.

4. The Procedure for Imposing the Civil Penalty

Schedule 13A of the Housing Act 2004 and Schedule 1 of the Housing and Planning Act 2016 lays out the process the Council must undertake when imposing a Civil Penalty.

4.1 Notice of Intent - Housing Act 2004 Schedule 13A, paragraph 1

The Council will firstly serve a notice of intent on the person suspected of committing the offence. The notice of intent must be given no later than 6 months after the Council has sufficient evidence of the conduct to which the penalty relates, or at any time when the conduct is continuing. The notice of intent will specify:

- The amount of any proposed financial penalty
- The reasons for proposing the financial penalty

- Information about the right to make representations to the Council.

4.2 Written Representations following Notice of Intent - Housing Act 2004 Schedule 13A, paragraph 4

Any person in receipt of a notice of intent has the right to make representations in writing to the Council within 28 days of the date on which the notice was given.

4.3 Final Notice - Housing Act 2004 Schedule 13 A, paragraph 6

After the period for making representations has ended, the case, including the representations, will be reviewed by a senior officer within the Public Protection Team. If the senior officer still considers the issue of a Civil Penalty to be correct, a final notice will be served, signed by the Team manager. This notice will include the following information:

- the amount of the financial penalty;
- the reasons for imposing the penalty;
- information about how to pay the penalty;
- the period for payment of the penalty (28 days);
- information about rights of appeal to the First Tier Tribunal;
- the consequences of failure to comply with the notice.

The period for payment of a Civil Penalty is 28 days beginning with the day after that on which the notice was served, unless appealed.

At any time, the Council may withdraw the notice of intent or final notice, however, it reserves its right to pursue a prosecution for the original offence where appropriate to do so. If a notice of intent or final notice is withdrawn it will be by a written notice to the person on whom the notice was served. The Council may also reduce the amount specified in the notice of intent or final notice at any time. This will also be by a written notice to the person on whom the notice was served.

4.4 Right of Appeal

The person served with the final notice has the right to appeal to the First Tier Tribunal against: The decision to impose a penalty; or the amount of the penalty. The appeal must be made within 28 days of the date the final notice was issued. If a

person appeals, the final notice is suspended until the appeal is determined or withdrawn.

5. Recovering an unpaid Civil Penalty

It is the policy of the Council to consider all legal options available for the collection of unpaid Civil Penalties and the Council will commence proceedings to recover the debts owed. The Council will endeavour to recover these debts through the County Court, usually in form of a Court Order. Some of the Orders available to the Council through the County Court are as follows:

- A Warrant of Control for amounts up to £5,000;
- A Charging Order,
- A Third Party Debt Order;
- An Attachment of Earning Order;
- Bankruptcy or insolvency

A certificate, signed by the Council's Chief Finance Officer, which states the outstanding amount has not been received by a specified date, will be accepted by the Courts as conclusive evidence of the outstanding payment due to the Council.

Where appropriate, and where the amount of the Order is more than £1,000, the Council may consider applying for an Order for Sale against the property or asset in question. When considering which properties to apply for a Charging Order against, the Council can consider all properties owned by the landlord and not just the property to which the offence relates.

The recovery of the debt may be undertaken by third party Enforcement Agents (Bailiffs) and this may lead to additional fees being applied to the outstanding amount.

6. Income from Civil Penalties

Income received from a Civil Penalty can be retained by the Council provided it is used to further the Council's statutory functions in relation to its private rented sector enforcement activities as detailed in The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017.

7. Enforcement or other consequences

Where a Civil Penalty has been imposed on a landlord or agent, this will form part of the Council's consideration when it reviews the HMO licence applications relating to properties in which that person has had some involvement.

Although the imposition of a Civil Penalty will not automatically prevent the Council from granting a licence where such persons are involved, the reasons for imposing the penalty and the extent of the person's involvement in the property will be considered when deciding whether or not to grant a HMO licence.

In line with Government guidance where a landlord or property agent has received two or more financial penalties in respect of a banning order offence within a period of 12 months committed at a time when the person was a residential landlord or a property agent, the Council will seek to register the landlord's details on the Database of Rogue Landlords and Property Agents.

Further guidance

The 'Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Authorities' is statutory guidance which Local Housing Authorities must have regard to and has been reviewed as part of developing this Civil Penalty Policy. The Policy has also been developed with specific regard to the Housing Act 2004, Housing and Planning Act 2016 and North West Leicestershire District Council Private Sector Housing Enforcement Policy.

8. Worked Examples

Worked example 1

Landlord Mr Smith has a number of HMO's, he has forgotten to licence one of them. He is interviewed under PACE and admits that it was an oversight by one of his members of staff, for which he is responsible. He takes full responsibility of the oversight and has applied immediately upon finding two months after it expired previously.

He is genuinely remorseful and is happy to accept a CPN instead of prosecution which would affect his ability to hold a licence. The HMO is relatively safe, complaint with LACORS fire guide and in good condition with correct facilities and the certificates etc are up to date despite being unlicensed.

The Council officer judge it to be Low harm level and high culpability. He otherwise has an exemplary record and has licensed properties for a number of years.

The Council decide that he should receive a CPN as he was sent a reminder letter which apparently was lost by junior staff in his office as they have a note as having received it in their mail log but didn't action a response to the reminder.

Table 1: Civil Penalty level for relevant offences

Column 1+Column 2+Column 3 = Column 4

1	2	3		4
Offence Specific Penalties	Further Penalties (if any)	Table 3 impact matrix score A	Level of penalty	Cumulative total
Total for each penalty shown in Table 2, Column A	Total for each penalty shown in table 2 columns B and/or C	20-30	£500	Level of civil penalty to be applied (Maximum £30,000)
		40-80	£1000	
		90-120	£2,500	
		130-170	£5,000	

		180-230	£10,000	
		240	£20,000	

Table one determines the overall process and cumulative total.

Therefore, we next look at Table 2 below.

The offence is under Section 72 of the Housing Act 2004- a failure to obtain a HMO licence. Which has a £2,500 offence specific penalty.

There are no hazards noted so nothing added from column B and/or Column C.

Table 2: Offence specific penalty and other penalties

Offences		A		B		C	
Housing Act 2004 Offences	Section 30	Non-compliance with improvement notice	£2,000	There are two or more Cat 1 hazards	£3,000	Where there are 3 or more high scoring hazards ¹	£1,000
	Section 72	Failure to obtain property licence	£2,500				
		Breach of licence conditions (Penalty per breach)	£1,000				
	Section 139	Non-compliance with overcrowding notice	£500	Penalty per additional person	£200		
	Section 234	Failure to comply with HMO management regulations (per breach)	£500				
Electrical Safety Standards in the Private rented Sector (England) Regulations 2020 Reg. 3		Breach of a duty of private landlords in relation to electrical installations (penalty per breach)	£1,000	There is 1 identified Code 1 defect or three or more identified relevant defects. ²	£3,500	There is one or more identified relevant defect (s)	£2,500

Then consider Table 3.

Table 3: Impacts scoring matrix

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

Question	Score	0	20	30	40
1	Severity of harm or potential harm caused x2 (The relevant column score is doubled)	LOW No identified risk Previous /current occupant not in vulnerable category. No impact assessed	MODERATE Moderate level of risk to relevant persons , Previous/ current occupant not in vulnerable category. Low impact assessed.	HIGH High level risk(s) to relevant persons. Previous /current occupant in vulnerable category. Occupants affected frequently or by occasional high impact occurrences.	SEVERE High level of risk(s) to relevant persons. Previous/ current occupants in vulnerable category. Multiple individuals at risk. Occupants are severely and/or continually effected.
2	Number of properties owned/managed	1	2-3	4-7	8+
3	Culpability and Track record	No previous enforcement history Minimal prior contact Clear evidence of action not being deliberate	1 or more previous enforcement notices served Clear evidence of action not being deliberate	1 or more enforcement notices served. Offender ought to have known that their actions were in breach of legal responsibilities.	Significant evidence of historical non-compliance. Actions were deliberate or offender knew or ought to have known that their actions were in breach of their legal responsibilities
4	Removal of financial incentive	Little or no income received	Low income received	Moderate income received	High Income received
5	Deterrence and prevention	High confidence that the penalty will deter repeat offence	Medium confidence that penalty will deter repeat offence	Low confidence that penalty will deter repeat offence	No confidence that penalty will deter repeat offence.

From Table 3 (above) we judge that the severity of harm or potential for harm is low. So zero scored for row 1.

We noted that the Landlord has 5 other HMOs, totalling 6. So that row totals 30.
Row three – he has an exemplary record, so the officer scored this 0.

Row 4- Little or no income received, it had only just expired, and he has since put in an application so is no better off by not complying with the law. Interest rates are low so any financial income from that money being in his account for slightly longer is negligible. Landlord is also liable to a Rent Repayment Order should a tenant apply.

Row 5 – High confidence this will have the desired effect of making him manage his properties licenses better. The fine is enough to make him take note both financially and reputationally. Next time he would likely risk prosecution. Row 5 scored 0.

Totalling the 5 rows we get an impact matrix score of 30. Which has an additional fine of £500.

Going back to table 1, we thus score,

Column 1=£2500

Column 2=0

Column 3=£500

Cumulative total of £3000. So the total to be included without early repayment deduction is £3000.

Worked example 2

A freeholder has given his property to his Letting agent to hold the licence and manage the HMO as he is away from the Country for part of the year. The agents are specialist in managing HMO, hold 50 licenses and have previously had an adequate compliance record, though standards appear to have fallen. An officer has done a compliance inspection of a three storey, licensed student HMO.

The HMO is licensed for 5 people in five bedrooms. It was noted that two bedrooms had two people living in them with no alternative living arrangements. The Landlord had consented to this but didn't charge them additional money for it. The additional persons noted were in relationships with the student on the agreement for the room they were found in. This is a HMO licence condition offence.

The fire safety was adequate, fire doors were closing though the letting agent hadn't provided any additional facilities and though one bathroom with WC with an extra separate WC downstairs was OK for 5 people, it doesn't meet the Councils standards for 7 people. The existing licence required an additional WC room to have been provided 6 months ago. This hasn't been provided and is a HMO licensing offence.

The garden is overgrown with a wall partially knocked over by tree roots. The bins are a mess and recycling hasn't been collected for some time due to them being contaminated with non-recyclable materials. These are all HMO licence conditions offences (totalling 3 offences).

The front door lock was damaged to the front door leaving the house insecure if pushed and a bedroom where a tenant is alleged to have kicked his door in having lost his door key 6 months ago hasn't been repaired. This has been evidenced by the students and he has offered to pay for the damage he caused. It still hasn't been repaired. 2 HMO management regs offences.

There is a leak going down the living room wall from the WC pan connector in communal bathroom, which has been present for months and has been reported to the agent by the student's numerous times. They evidence these texts during the inspection and sent to the Council following the inspections. 1 HMO management regs offence.

There are few working lightbulbs in any communal areas and the handrail to stairs has fallen off and is in the front garden. 2 HMO management regs offences
Radiators to two top floor bedrooms don't work as the system doesn't have enough power/ pressure to go to the top of the house. The rooms are noticeably cold in autumn. This again is evidenced by the students as having been reported and the Licence holder refuses to spend the money to address the problem. 2 HMO management regs offences

Table 2: Offence specific penalty and other penalties

Offences		A		B		C	
Housing Act 2004 Offences	Section 30	Non-compliance with improvement notice	£2,000	There are two or more Cat 1 hazards	£3,000	Where there are 3 or more high scoring hazards ¹	£1,000
	Section 72	Failure to obtain property licence	£2,500				

		Breach of licence conditions (Penalty per breach)	£1,000				
	Section 139	Non-compliance with overcrowding notice	£500	Penalty per additional person	£200		
	Section 234	Failure to comply with HMO management regulations (per breach)	£500				
Electrical Safety Standards in the Private rented Sector (England) Regulations 2020 Reg. 3		Breach of a duty of private landlords in relation to electrical installations (penalty per breach	£1,000	There is 1 identified Code 1 defect or three or more identified relevant defects. ²	£3,500	There is one or more identified relevant defect (s)	£2,500

¹ A high scoring hazard is defined as a hazard achieving a score rating of E or higher using the HHSRS

² A relevant defect for the purpose of this matrix is defined as a defect which would result in a Unsatisfactory grading on an Electrical Installation Condition report (EICR) Namely a defect given a C1, C2 or F1 observation code.

Looking initially at table 2, we have a string of offences under the breach of licence conditions, and a string of HMO management offences. Where licence conditions overlap with HMO management regs offences we pursue under the licence condition offence as the primary offence.

In total we note 5 failures to comply with licence conditions and 7 HMO management regs offences.

From table 2 we calculate £5,000 and £3,500 respective offence specific penalties in relation to these offences.

Table 3: Impacts scoring matrix

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

Question	Score	0	20	30	40
1	Severity of harm or potential harm caused x2 (The relevant column score is doubled)	LOW No identified risk	MODERATE Moderate level of risk to relevant persons,	HIGH High level risk(s) to relevant persons.	SEVERE High level of risk(s) to relevant persons.

		Previous /current occupant not in vulnerable category. No impact assessed	Previous/ current occupant not in vulnerable category . Low impact assessed.	Previous /current occupant in vulnerable category. Occupants affected frequently or by occasional high impact occurrences.	Previous/ current occupants in vulnerable category. Multiple individuals at risk. Occupants are severely and/or continually effected.
2	Number of properties owned/managed	1	2-3	4-7	8+
3	Culpability and Track record	No previous enforcement history Minimal prior contact Clear evidence of action not being deliberate	1 or more previous enforcement notices served Clear evidence of action not being deliberate	1 or more enforcement notices served. Offender ought to have known that their actions were in breach of legal responsibilities.	Significant evidence of historical non-compliance. Actions were deliberate or offender knew or ought to have known that their actions were in breach of their legal responsibilities
4	Removal of financial incentive	Little or no income received	Low income received	Moderate income received	High Income received
5	Deterrence and prevention	High confidence that the penalty will deter repeat offence	Medium confidence that penalty will deter repeat offence	Low confidence that penalty will deter repeat offence	No confidence that penalty will deter repeat offence.

From the above table we calculate

Row 1; Officer observed it's a high risk regarding both the front door, missing handrail on steep stairs and the excessive number of people using one bathroom so $40 \times 2 = 80$.

Row 2; More than 8+ properties managed. So scored 40.

Row 3; Actions were deliberate so 40.

Row 4; Income 0 as no additional rent requested.

Row 5; Medium confidence=20 They're a big going concern. This was only one property though if standards don't improve, suggest straight to prosecution next time, depending on details of case (if similar) next time.

Total for table 3= 180 which equates to £10,000 according to table 1 below.

Table 1: Civil Penalty level for relevant offences

Column 1+Column 2+Column 3 = Column 4

1	2	3		4
Offence Specific Penalties	Further Penalties (if any)	Table 3 impact matrix score A	Level of penalty	Cumulative total

Total for each penalty shown in Table 2, Column A	Total for each penalty shown in table 2 columns B and/or C	20-30	£500	Level of civil penalty to be applied (Maximum £30,000)
		40-80	£1000	
		90-120	£2,500	
		130-170	£5,000	
		180-230	£10,000	
		240	£20,000	

Therefore, as per the table above, the cumulative total of table one is £18,500 for Column 1,2&3. This is the amount to include on the proposed Civil Penalty notice before any early repayment discount.

Worked example 3

Landlord Mrs Dench rents out her property to Mr and Mrs Smith and their young family including 2 small children under 5 years old. The date they moved in on the tenancy agreement was 3rd July 2020. Mrs Dench provided an EICR to Mr and Mrs Smith when they moved in. It stated that there were 2 issues. Firstly, exposed wiring due to a smashed double switched socket in the children's bedroom. This was stated to be a "C1" and there was also a lack of supplementary bonding to radiators meaning the radiators and hot water system wasn't earthed. This was a C2. Mrs Dench owns 3 properties, has some history of noncompliance and failed to address the issues in 28 days stating they were caused by the previous tenant. She had pushed a bed frame against the damaged socket in an attempt to prevent its use. When questioned by the EHO she didn't think the bonding was that serious as was stated to be a C2.

Thus, using tables 1,2 and 3 above we note 2 breaches of the regulations in failing to ensure that the electrical safety standards are met during any period when the residential premises are occupied under a specified tenancy. So the table 2 details that 2x £1000 offence specific penalties are noted.

We have noted from the EICR one CODE 1 (C1) which entails a penalty of £3500 in column 2 and another £1000 for the column 3 C2 defect. Totalling £6500 for columns 1 and 2 in table 1.

Looking at table 3 we note that children under 5 were present and they are the most vulnerable to electrical safety hazards. So we score $40 \times 2 = 80$ for row 1.

For row 2 she has 3 properties so scores 20.

Row 3, the offender ought to have known she was in breach of the law. She was advised to sort it out by the certificate/ electrician but instead ignored that advice and moved a bed over the damaged socket. So we scored this 30. Though 40 would also be ok.

Row 4 the cost of works wasn't even that high, perhaps 200 pounds. So she hasn't benefitted financially excessively. So, we have scored that as 20 for low income.

Row 5 we scored as 0, as we have high confidence that this penalty will deter her from doing so again.

Total for table 3 is 150 which when we convert to £ in table 1 = £5,000

So, the cumulative total is £6,500 + £5000 = £11,500 which is an effective deterrent.

Mrs Dench agrees to pay the fine and may in future hand over management of her portfolio of three properties to a managing agent. The Council then uses that money to part fund a post to proactively educate local Tenants, Landlords and agents on their responsibilities under the act. This could include employing an electrician to provide reports for the council on substandard electrical installation.



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Policy for Imposing Financial and Publication Penalties

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

MEES Enforcement Policy

MEES Enforcement Policy

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1. Background Legal Context

On 1 October 2016, the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 ('the Energy Regs') came into force.

On 1 April 2018, a phased implementation of the Energy Regs began.

The Domestic Minimum Energy Efficiency Standard (MEES) Regulations ('MEES Regs') provide a minimum energy efficiency standard ('MEES') for domestic private rented properties.

Where a property falls below the MEES Energy performance indicator rating of Band E, a landlord is legally obligated to make energy efficiency improvements to raise the Energy Performance Certificate (EPC) to at least a Band E before they let the property as a rented dwelling.

The Energy Regs apply to all domestic private-rented properties which are let on specific types of tenancy agreements and which are legally required to have an EPC.

Part 2 Chapter 2 of the Energy Regs allows a tenant to request permission from a landlord to make energy efficiency improvements to a private rented property.

The Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2019 makes changes to Part 3 of the Energy Regs.

Under Part 3, regulation 23 of the Energy Regs, where private rented property's EPC is below the minimum level of energy efficiency, it is illegal for the landlord to:

- grant a new tenancy of a property (including an extension or renewal) after 1 April 2018;
- continue to let the property (on an existing tenancy) after 1 April 2020.

Since 1 April 2019, landlords of domestic properties with an EPC rating below E must carry out up to £3,500 worth of works to improve energy efficiency if they cannot obtain third-party funding to meet the costs (the £3,500 figure includes VAT).

The £3,500 cap is an upper ceiling and not a target nor a spending requirement; landlords may, if they wish to, spend more than £3,500 on energy efficiency improvement to their let property.

If a landlord can improve their property to Band E (or higher) for less than £3,500 then they will have met their obligation.

2. Introduction

Under most circumstances, a private sector tenant must, by law, be provided with an appropriate EPC certificate by a landlord. However, in some cases, statutory exemptions exist for certain types of properties whereby EPC legal provisions are not applicable.

Under regulation 34, North West Leicestershire District Council ('the Council') is under a statutory duty enforce the Energy Regs in respect of domestic private rented properties and may serve compliance notices on any landlord who is currently in breach of regulation 23 and any landlord who (at any time within the 12 months before the date of service of the compliance notice) has previously been in breach of Regulation 23.

A compliance notice enables the Council to monitor compliance by requesting relevant information which can include either clear copies of or, alternatively, originals of:

- the EPC that was valid for the time when the property was let
- any other EPC for the property in the landlord's possession
- the current tenancy agreement used for letting the property
- any Green Deal Advice Report in relation to the property
- any other relevant document that the enforcement authority requires for the purpose of discharging its duties

The compliance notice may also require a landlord to register copies of the requested information on the PRS Exemptions Register.

The compliance notice will specify the name and address details of the person to whom the landlord must send the requested information as well as the date by which the requested information must be supplied which must not be less than one month from the date on which the compliance notice is served.

3. Objectives of the MEES Regs

The MEES Regs were created for a myriad of reasons which include:

- helping clinically vulnerable private rented tenants who are in most need of thermally efficient home environments
- tackling fuel poverty
- improving the energy efficiency of buildings
- helping tenants to reduce their energy bills

The regulations are also part of the Government's wider approach to reducing the UK greenhouse gas emissions and tackling climate change.

4. Landlords' Legal Duties

Under the MEES Regs, private landlords are legally required to take one of the actions listed below:

- They must ensure that their rented properties are, at the very least, EPC Band E
- Register a valid exemption on the PRS Exemption Register.

5. Exemptions and the PRS Exemption Register

There are valid exemptions which are available to a private landlord. It is, however, recommended that a private landlord has a clear understanding of the Energy Regs and how to register an exemption.

It is also recommended that a landlord refers to The Energy Act 2011 and the Government's guidance for the full details of the criteria required to register a valid exemption.

The PRS Exemptions Register is an online platform which allows a landlord (or an agent acting on their behalf) to register valid exemptions from the minimum energy efficiency requirements.

The Register can be accessed via the Department for Business, Energy & Industry Strategy ('BEIS') website.

All registered exemptions are valid for a period of five years unless otherwise stated.

It is unlawful to put false or misleading information on the Register.

A private landlord may register a valid exemption in the following situations:

- a) Cavity, external or internal wall-insulation has been recommended to help improve energy efficiency, but a recognised surveyor is of the expert written-opinion that such measures could potentially have a negative impact on the fabric or structure of the property (Reg 24(2))
- b) All relevant energy efficiency improvements have been made, within the cost-cap of £3,500 (this figure includes VAT) but the property still remains sub-standard (Reg 25(1)(a))
- c) there are no relevant energy efficiency improvements possible at the property (Reg 25(1)(b))
- d) The cost recommended for improvements exceeds the £3,500 cost-cap. (This figure of £3,500 includes VAT) MEES Regs
- e) A third party (such as a tenant, superior landlord, mortgage provider, freeholder, or planning authority) refuses to consent to the relevant energy efficiency improvements. However, the landlord must be able to demonstrate that they have made all reasonable efforts to obtain the consent before registering an exemption (Reg 31(1A))
- f) A surveyor or a qualified expert can confirm, in writing, that the recommended improvements would decrease the value of the property by more than 5% (Reg 32)
- g) A person may, on becoming a private landlord, register a valid (temporary) exemption under Regulation 33(1) if the person became the landlord by virtue of any of the following circumstances:
 - i. The grant of a lease due to a contractual obligation.
 - ii. Where a tenant becomes insolvent, and the landlord has been the tenant's guarantor.
 - iii. The landlord having been a guarantor, or a former tenant has exercised the right to obtain an overriding lease of a property under section 19 of the Landlord and Tenant (Covenants) Act 1995.
 - iv. A new lease has been deemed created by operation of law.
 - v. A new lease has been granted under Part 2 of the Landlord and Tenant Act 1954.
 - vi. A new lease has been granted by a court order, other than under Part 2 of the Landlord and Tenant Act 1954.
- h) When a person becomes a private landlord on purchasing a property, and on the date of purchase it was let to an existing tenant, a valid exemption may be registered under Regulation 33(3)

Temporary exemptions registered under Regulation 33 are valid for a maximum period of 6 months from the date the person became the private landlord of the property.

All exemptions must be registered on the PRS Exemptions Register. The register can be found online here: <https://prsregister.beis.gov.uk/NdsBeisUi/used-service-before>

Supporting evidence will need to be submitted when registering a valid exemption.

If a let property is sold, any exemption registered on the PRS Exemptions Register by the previous owner is not transferable to the new owner.

The new owner will be required to improve the property or register their own valid exemption.

6. Removal of “No Cost to the Landlord” Exemption

The originally enacted regulations allowed for a “no cost to the landlord” exemption to be registered. However, the regulations were amended in 2019 to introduce the £3,500 cost cap, and this exemption was not available after 31 March 2019.

Owing to the changes, all “no cost to the landlord” exemptions registered on the PRS Exemptions Register before 1 April 2019 and which were originally expected to last five years, have since expired on 31 March 2020.

7. Government guidance

The Council will have regard to any guidance issued by BEIS when exercising its functions under the Energy Regs.

This policy takes effect from **date ????** and will apply to all the relevant breaches of the Energy Regs which occur on the date the policy takes effect and thereafter.

The Domestic Private Rented Property Minimum Standard - Guidance for landlords and Local Authorities on the minimum level of energy efficiency required to let domestic property under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, as amended, is available online at: [The domestic private rented property minimum standard \(publishing.service.gov.uk\)](https://www.gov.uk/government/publications/the-domestic-private-rented-property-minimum-standard)

8. Compliance Notice

The Council will liaise with landlords of properties in breach of the Energy Regs informally at the first instance by sending them reminder letters and giving landlords of such properties adequate time frames within which to comply. Where breach of the regulations cannot be resolved informally through the warning letters, the Council will then proceed to initiate the penalty process as highlighted in this policy.

Where there is no action taken by the landlord after the first and second warning letters have been sent, and if it appears to the council that a private landlord is in breach of the prohibition on letting properties with an energy efficiency rating of F or G, the Council may serve a Compliance Notice (‘Comp. Notice’) on that private landlord requiring such information as it considers necessary to enable it to monitor compliance.

A Comp. Notice may also be served if it appears to the council that the private landlord was in breach of the regulations at any time in the 12 months preceding the date of service of the notice.

The Comp. Notice can formally request copies or originals of the following:

- The EPC for the property which was valid at the time the property was let
- Any other EPC
- Tenancy agreement
- Any qualifying assessment in relation to the property
- Any other document the council considers necessary to monitor compliance with the regulations

In addition, the Comp. Notice may require a private landlord to register copies of any of the above on the PRS Exemptions Register.

The Comp. Notice will specify the name and address of the officer of the Council to whom the documents or other information required must be supplied.

The Comp. Notice will also specify the time-period for compliance which will be no less than one month from the date the notice is served.

Under Regulation 37(4), a private landlord must comply with any Comp. Notice served on them by the Council; they must also allow the Council, when requested, to see and take copies of original documents.

9. Financial and Publication Penalties

There are 4 breaches under the Energy Regs for which a private landlord may be given a Financial Penalty (Fin. Pen.).

Regulation 40 sets out the breaches and the statutory maximum amounts that may be imposed in respect of each type of breach. These are as follows:

Breaching the prohibition on letting a property with an F or G rating, in contravention of Regulation 23, for less than 3 months:

Statutory maximum financial penalty of £2,000

Breaching the prohibition on letting a property with an F or G rating, in contravention of Regulation 23, for 3 or more months:

Statutory maximum financial penalty £4,000

Registering false or misleading information on the PRS Exemptions Register under Regulation 36(2):

Statutory maximum financial penalty £1,000

Failing to provide information to the Council demanded by a CN, in contravention of Regulation 37(4)(a):

Statutory maximum financial penalty £2,000

In respect of any one tenancy, a private landlord cannot, owing to Regulation 40(6), be subject to multiple financial penalties that exceeds a total of more than £5,000.

10. MEES – Financial Penalty Policy

The Council has determined to take the following approach when imposing a Fin. Pen. under the Energy Regs. The Council has discretion to offer an early payment reduction if a landlord pays the penalty charge within 14 days beginning with the day the penalty charge notice is served. However, should a subsequent appeal be made the discount will be removed.

Breaching the prohibition on letting a property with an F or G rating, in contravention of Regulation 23, for less than 3 months:

For the first breach under the Energy Regs for the property: £1,000 with 33% early payment discount

For any subsequent breach under the Energy Regs for the property: £2,000 with 33% early payment discount.

Breaching the prohibition on letting a property with an F or G rating, in contravention of Regulation 23, for 3 or more months:

For the first breach under the Energy Regs at the property: £2,000 with 33% early payment discount.

Registering false or misleading information on the PRS Exemptions Register under Regulation 36(2):

Breach under the Energy Regs: £1,000 with 33% early payment discount.

Failing to provide information to the council demanded by a Comp. Notice, in contravention of Regulation 37(4)(a):

Breach under the Energy Regs: £2,000 with 33% early payment discount.

For the purposes of this policy, where a landlord having been previously fined up to £5,000 for having failed to satisfy the requirements of the Energy Regs then proceeds to unlawfully let a sub-standard property on a new tenancy, a further financial penalty of up to £5,000 can be issued.

The maximum remains but the ability to issue a further Fin. Pen. starts again with a new tenancy.

11. Houses in Multiple Occupation

Where a House in Multiple Occupation ('HMO') is legally required to have an EPC under the provisions of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 and where it is let on one of the qualifying tenancy types, then the HMO, as a whole, is required to comply with the minimum level of energy efficiency.

However, individual rooms within HMOs are not required to have their own EPCs.

In accordance with Regulation 40(6), where a private landlord has committed multiple breaches in respect of a single tenancy and, where such circumstances would make the financial penalty to such landlord go beyond the £5,000 limit, the Council would consider adjusting one or more of the Fin. Pens. in such a way that the maximum of £5,000 (as permitted under the MEES Regs) is not exceeded.

12. Publication Penalties

Under Regulation 39, a Publication Penalty ('Pub. Pen.') means publication of the following information by the Council, on the PRS Exemptions Register:

- The name of the private landlord, but only where the landlord's name is not an individual;
- Details of the breach;
- The address of the property at which the breach occurred;
- The amount of Fin. Pen. imposed.

Under the provisions of Regulation 39(2), the Council may decide how long the details of each breach should stay on the PRS Exemptions Register, subject to a minimum period of 12 months.

13. The Council's Publication Penalty Policy

The Council shall impose a Pub. Pen. in respect of all breaches that are subject to a Penalty Notice ('Penalty notice'), unless there are allowed and permitted representations received.

The Council is also determined that all breaches will be registered on the PRS Exemptions Register for a period of minimum 12 months, but not more than 24 months.

14. Penalty Notice Scope

If the Council decides to impose a Fin. Pen. and/or a Pub. Pen. for a breach of the regulations, it will serve a Penalty Notice on the offender.

A Penalty Notice may be served in respect of an ongoing breach or a breach that has occurred in the 18 month period leading up to the date of the service of the Penalty Notice

Where a landlord fails to take the action required by a Penalty Notice, within the period specified in that Penalty Notice, then the Council can serve a further Penalty Notice, however the total amount of all fines, for the same breach, remains capped at £5,000.

The Penalty Notice will set out the following:

- a) the provision within the Energy Regs the Council believes the private landlord has breached;
- b) the particulars the Council considers necessary to identify the breach;
- c) the action the Council requires the private landlord to take to remedy the breach;
- d) the timescale in which remedial action must be taken (which must not be less than one month);
- e) the amount of the Fin. Pen. imposed and how it has been calculated including any applicable discount;
- f) whether a Pub. Pen. has been imposed;
- g) the time-period in which any Fin. Pen. must be paid (which must not be less than one month from the date the Penalty Notice was served)
- h) the name and address of the person to whom any Fin. Pen. must be paid and the method of payment.
- i) The effect of Regulation 42, which sets out the right to request a review of the Council's decision to serve a Penalty Notice
- j) the effect of Regulations 43 to 44, which sets out the right of appeal against any decision to confirm a Penalty Notice
- k) The effect of Regulation 45, which sets out the Council's power to recover any unpaid Fin. Pen. as a debt;
- l) the name and address of the person to whom any request to review the Council's decision (i.e. to serve a Penalty Notice) must be sent and the period within which such a request must be made (which must not be less than one month).

If a private landlord fails to take the action required by a Penalty Notice (i.e. to remedy a breach) then the Council may serve a further Penalty Notice.

15. Landlords' Rights re Penalty Notice

A private landlord, on whom the Council has served a Penalty Notice is entitled to request a review of the Council's decision to serve the notice. The Council will accept such a request if it is received within the period of one month (commencing the day on which the Penalty Notice was served).

A request for a review, together with any representations received, will be carefully considered by the Council before it makes a final decision as to whether to confirm or withdraw the Penalty Notice.

Once the Council has made its decision, it will notify the private landlord of that decision by serving a Notice of Decision Following a Review of a Penalty Notice ("Dec. Notice"). To ensure fairness and transparency, every decision to confirm a Penalty Notice following a request for review, will be subject to approval by the Regulatory Services Manager.

16. Appealing a Decision Notice

A private landlord, on whom a Penalty Notice or Dec. Notice has been served, may appeal to the First-tier Tribunal ('the Tribunal') on the grounds that:

- The issue of the Penalty Notice was based on an error of fact; or
- The issue of the Penalty notice was based on an error of law; or
- The Penalty Notice does not comply with a requirement imposed by the Energy Regs; or
- In the circumstances of the case, it was not appropriate for the Penalty Notice to be served.

Appeals must be brought within 28 days from the date on which the Penalty Notice was served. Once an appeal has been made, the Pen. No. is suspended until the appeal has been finally determined by the Tribunal or withdrawn by the landlord.

The Tribunal has the power to quash or affirm the Penalty Notice.

If the Tribunal decides to affirm the Penalty notice, it may do so in its original form or with such modification as it may deem fit.

The address and contact details of the Tribunal are as follows:

<https://www.gov.uk/courts-tribunals/first-tier-tribunal-general-regulatory-chamber>

First-tier Tribunal (General Regulatory Chamber) HM Courts and Tribunals Service PO Box 9300 Leicester LE1 8DJ

Email: grc@justice.gov.uk

Phone number: 020 39368963

17. Unpaid Financial Penalties – Implications and enforcement

The Council will take corresponding action to recover any unpaid Fin. Pens. (or part thereof) within the time period stipulated in a Penalty Notice and in line with the Council's debt recovery policy.

18. Multiple Breaches

In respect of any single tenancy, the Council may not impose a combination of Fin. Pens. on an offender that, in total, exceeds the statutory maximum of £5,000.

However, when considering imposing more than one Penalty Notice on an offender (resulting from the offender committing 1 or more breaches at multiple properties) the Council will carefully consider whether the cumulative Fin. Pen. would be just and proportionate, in the circumstances, having regard to the offending behaviour, as a whole.

The Council shall operate and maintain a just, equitable and proportionate approach.

19. Further Help and Advice

If you would like further advice or clarification, contact North West Leicestershire District Council by telephone on 01530 454545 or by email at environmental.protection@nwleicestershire.gov.uk

Alternatively, you can write to us at: North West Leicestershire District Council, PO Box 11051, Coalville, LE67 0FW.

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Smoke and Carbon Monoxide Alarm (England) Regulations 2015 Financial Penalties

North West Leicestershire District
Council Statement of Principles

Introduction

This statement sets out the principles that North West Leicestershire District Council will apply when exercising its powers to require a landlord (relevant landlord) to pay a Penalty Charge.

Purpose of the statement of principles

The council is required under these regulations to prepare and publish a statement of principles, which it then must follow when deciding on the amount of a Penalty Charge.

The council may revise this statement of principles at any time, but where it does so, it must publish a revised statement.

When deciding on the amount of the Penalty Charge, the council will have regard to the statement of principles published at the time when the breach in question occurred.

The legal framework

The powers come from the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (the Regulations), which came into force on 1 October 2015.

The Regulations place a duty on landlords, which includes freeholders or leaseholders who have created a tenancy, lease, licence, sub-lease or sub-licence. The Regulations exclude registered providers of social housing.

The duty requires that landlords ensure that:

- A smoke alarm is installed on each storey of premises where there is living accommodation
- A carbon monoxide alarm is installed in any room of premises used as living accommodation, which contains a fixed combustion appliance other than a gas cooker

Also for tenancies starting from 1 October 2022:

- That checks are made by the landlord, or someone acting on his behalf, that the alarm(s) is/are in proper working order on the day the tenancy starts

Where the council believes that a landlord is in breach of one or more of the above duties, the council must serve a Remedial Notice on the landlord. The Remedial Notice is a notice served under regulation five of these regulations.

If the landlord then fails to take the remedial action specified in the Remedial Notice within the timescale, the council can require the landlord to pay a penalty charge. The power to charge a penalty arises from regulation eight of these regulations.

A landlord will not be considered to be in breach of their duty to comply with the Remedial Notice, if they can demonstrate they have taken all reasonable steps to comply. This can be done by making written representations to The Environmental Protection Team, North West Leicestershire District Council, PO Box 11051, Coalville, LE67 0FW. Representations must be made within 28 days of when the Remedial Notice is served.

The council will impose a Penalty Charge where it is satisfied, on the balance of probabilities, that the landlord has not complied with the action specified in the Remedial Notice and has not made representations within the required timescales.

The purpose of imposing a financial penalty

The purpose of the council exercising its regulatory powers is to protect the interests of the public.

The aims of financial penalties on landlords are to:

- Lower the risk to tenant's health and safety
- Reimburse the costs incurred by the council in arranging remedial action in default of the landlord
- Change the behaviour of the landlord and aim to prevent future non-compliance
- Penalise the landlord for not installing alarms after being required to do so, under notice
- Eliminate financial gain or benefit from non-compliance with the regulations

- Be proportionate to potential harm outcomes, the nature of the breach and the cost benefit to comply with these legal requirements

The financial penalty - criteria and amount

A failure to comply with the requirements of a Remedial Notice allows the council to require payment of a Penalty Charge.

In considering the imposition of a penalty, the council will look at the evidence concerning the breach of the requirement of the Remedial Notice. This could be obtained from a property inspection, or from information provided by the tenant or agency that no remedial action had been undertaken.

Landlords can demonstrate compliance with the regulations by supplying dated photographs of alarms, together with installation records or confirmation by the tenant that a system is in proper working order.

Landlords need to take steps to demonstrate that they have met the testing at the start of the tenancy requirements. Examples of how this can be achieved are by tenants signing an inventory form confirming that they were tested by the landlord or landlord's agent and were in working order at the start of the tenancy. Tenancy agreements can specify the frequency that a tenant should test the alarm to ensure it is in proper working order.

In deciding whether it would be appropriate to impose a penalty, the council will take full account of the particular facts and circumstances of the breach under consideration.

A Penalty Charge will be considered appropriate if the council is satisfied, on the balance of probabilities, that the landlord who had been served with the Remedial Notice under regulation five, had failed to take the remedial action specified in the Remedial Notice within the time period specified.

The Regulations state the amount of the Penalty Charge must not exceed £5,000.

The Penalty Charge comprises two parts, a punitive element (punishment) for failure to comply with the requirement to comply with a Remedial Notice and a cost element relating to the investigation (investigative) costs, officer time, administration and any remedial works arranged and carried out by the council's contractors.

The Penalty Charge is payable within 28 days beginning with the day on which the Penalty Charge Notice is served.

The council has discretion to offer an early payment reduction if a landlord pays the Penalty Charge within 14 days beginning with the day the Penalty Charge Notice is served. Should a subsequent appeal be made the discount will be removed.

The council's Penalty Charges are as follows:

- £2,500 for the first breach to comply with a Remedial Notice: £1,250 for early payment (50% reduction)
- £5,000 for each subsequent breach to comply with a Remedial Notice: £2,500 for early payment, (50% reduction)

Steps taken to impose penalty charge notices

The Regulations impose a number of procedural steps which must be taken before the council can impose a requirement on a landlord to pay a Penalty Charge.

When the council is satisfied that the landlord has failed to comply with the requirements of the Remedial Notice, all Penalty Charge Notices will be served within six weeks.

Where a review is requested within 28 days from when the Penalty Charge Notice is served, the council will consider any representations made by the landlord. All representations are to be sent to The Environmental Protection Team, North West Leicestershire District Council, PO Box 11051, Coalville, LE67 0FW. The council will notify the landlord of its decision by notice, which will be either to confirm, vary or withdraw the Penalty Charge Notice.

A landlord who has requested a review of a Penalty Charge Notice and has been served with a notice confirming or varying the Penalty Charge Notice, may appeal to the First-tier Tribunal against the council's decision. Appeals should be made within 28 days from the notice served of the council's decision on review.

If the Penalty Charge Notice is not paid, then recovery of the Penalty Charge will be in accordance with the council's debt recovery policy.

However, in cases where a landlord has requested a review of the Penalty Charge Notice, recovery will not commence until after 28 days from the date of the notice served giving the council's decision to vary or confirm the Penalty Charge Notice. Where landlords do make an appeal to the First-tier Tribunal, recovery will commence after 28 days from when the appeal is finally determined or withdrawn.

Remedial action taken in default of the landlord

Where the council is satisfied that a landlord has not complied with a requirement described in the Remedial Notice within the required timescale and consent is given by the occupier, the council will arrange for remedial works to be undertaken in default of the landlord. This work in default will be undertaken within 28 days of the council being satisfied of the breach. In these circumstances, battery operated alarms will be installed as a quick and immediate response.

Smoke alarms

In order to comply with these regulations, smoke alarms will be installed on every storey of residential accommodation. This may only provide a temporary solution as the property may be a high risk due to:

- Its mode of occupancy such as a house in multiple occupation or building converted into one or more flats
- Having an unsafe internal layout where fire escape routes pass through living rooms or kitchens
- It being three or more storeys high

A full housing health and safety rating system inspection will be carried out at this point also taking into consideration Local Authorities Co-ordinators of Regulatory Services (LACORS) Housing and Fire Safety Guidance. This will consider the adequacy of the type and coverage of the smoke alarm system, fire escape routes including escape windows and fire separation measures such as fire doors, protected walls and protected ceilings. Any further works required to address serious hazards in residential property, that are not undertaken through informal agreement, will be enforced using the Housing Act 2004, in accordance with our Enforcement Policy.

Carbon monoxide alarms

In order to comply with these regulations, a carbon monoxide alarm will be installed in every room containing a solid fuel combusting appliance.

For more detailed information, including the LACORS fire safety guide provisions for certain types of existing housing, please visit [**fire safety law and guidance documents for business \(GOV.UK\)**](#)

All communications for representations made against the Remedial Notice (regulation five) or the Penalty Charge Notice (regulation eight) are to be sent to:

Environmental Protection Team
North West Leicestershire District Council
PO Box 11051
Coalville
LE67 0FW



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Electrical safety Standards Process and Overview

1. GUIDANCE

The aim of the legislation is to ensure that the electrical installation within rented properties is regularly checked and deficiencies are rectified in a speedy manner to minimise risk to the occupants. The provision of certification allows all parties to see evidence that this has occurred.

Responsibility of managing the documents is owned by the Public Protection Team.

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2. NWL/ESS – A1 – Overview of legislation and coding

Purpose of process	Version	Last reviewed	By
To provide a basic overview of Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020	0.1		

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (ESSPRS) came into force on 1 June 2020 (although the requirements apply to new tenancies from 1 July 2020 and existing tenancies from 1 April 2021). The regulations are designed to ensure electrical safety within the private rented sector in England by requiring landlords to have the fixed electrical installation within rented properties inspected at least every five years.¹

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020²

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020		
Regulation	Provision	Required notices / Letters
Part 2	Duties of Landlords	
Reg 3	<p>3(1) (a) – electrical safety standards have not been met during the period of a tenancy.</p> <p>3(1) (b) – that the electrical installation has not been inspected at regular intervals (5 years or shorter as required).</p> <p>3(1) (c) – that the first inspection was not carried out before the tenancy began (for new tenancies) or by 1st April 2021 (for existing tenancies).</p> <p>3(4) – that remedial or investigative work was required to the electrical system and this was not undertaken within 28 days (or a shorter period where required).</p> <p>3(6) – that remedial or investigative work was required to the electrical system as a result of further investigations and that this was not undertaken within 28 days (or a shorter period where required) of the further investigations.</p> <p>Duty to supply a copy of the most recent Electrical Inspection and Testing</p>	<p>Notice Requesting an Electrical Inspection and Testing Certificate.</p> <p>More than one penalty can be issued for a continuing failure. The maximum penalty for each offence is £30,000. Financial Penalty (Reg 11).</p> <p>Appeal provisions relating to the issue of financial penalties are contained within Schedule 2 of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.</p>

¹ <https://www.gov.uk/government/publications/electrical-safety-standards-in-the-private-rented-sector-guidance-for-landlords-tenants-and-local-authorities/guide-for-local-authorities-electrical-safety-standards-in-the-private-rented-sector>

² <https://www.legislation.gov.uk/ukdsi/2020/9780111191934>

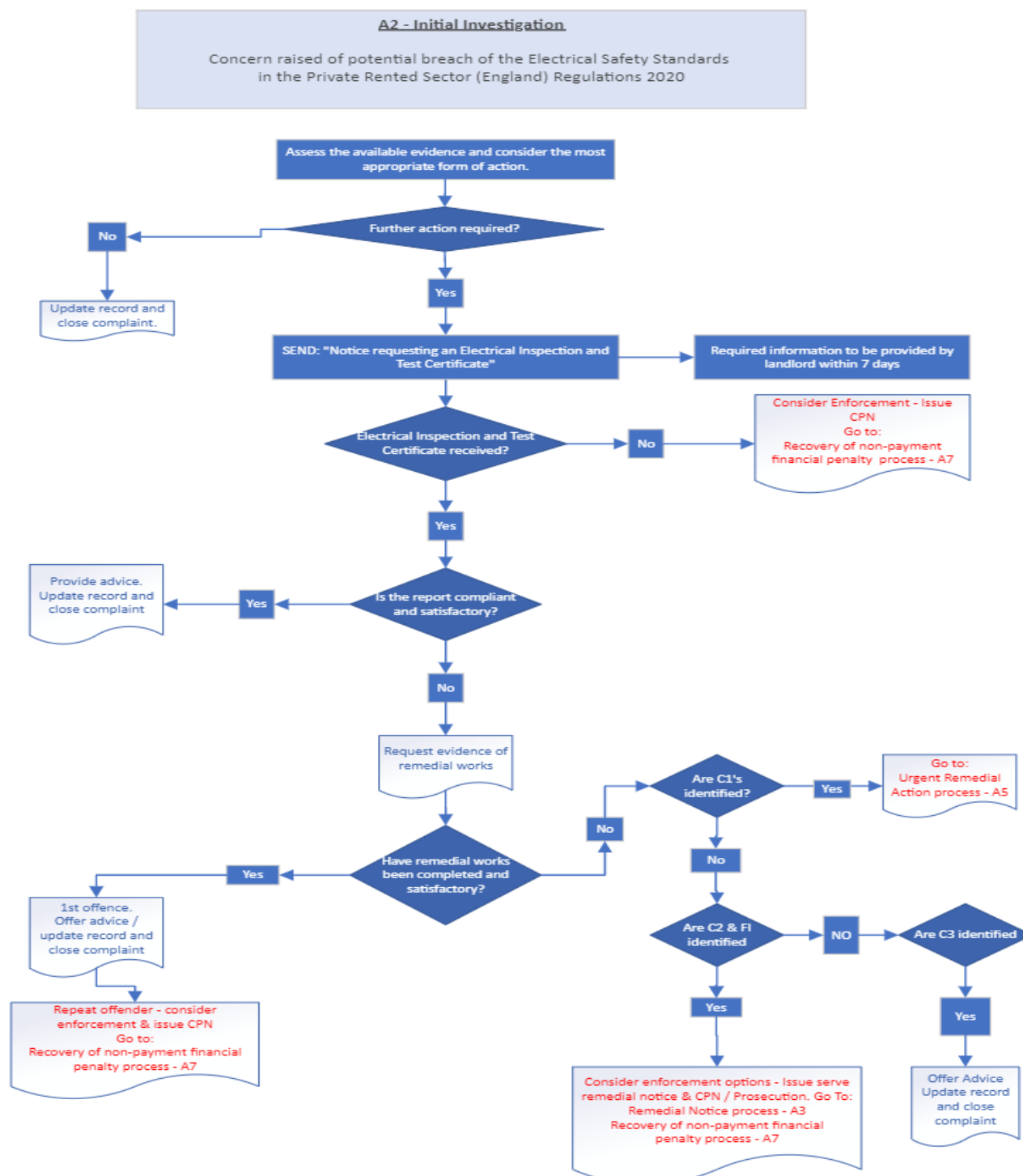
	Certificate relating to the fixed electrical installation at the foregoing property.	
Part 3	Remedial Action	
4	Duty of local housing authority to serve a remedial notice	Remedial notice
5	Duty of landlord to comply with remedial notice	
6	Power of LHA to arrange remedial action	Notice of intention take remedial action. Letter giving notice to tenant for remedial action. Letter providing 48hrs notice and contact details of contractor.
7	Appeals relating to remedial action by local housing authorities	Letter – response to representations received
8	Recovery of costs	Financial Demand (appeal to FTT)
9	Appeals against recovery of costs	
Part 4	Urgent Remedial Action	
10	Urgent Remedial Action	Urgent remedial action notice
Part 5	Financial Penalties	
11	Financial penalties for breach of duties	Issue financial penalty. More than one penalty can be issued for a continuing failure. The maximum penalty for each offence is £30,000.
12 & Sch 2		Notice / Final Notice to issue financial penalty
Part 6	Licences under Parts 2 & 3 of the HA 2004	
Part 7	Duty of manager to supply and maintain gas and electricity	
Schedule 1	Excluded Tenancies	
Schedule 2	Procedure for appeals against financial penalties	

Landlords must obtain a report giving the results of the test and setting a date for the next inspection. Landlords must comply within 7 days with a written request from the local housing authority for a copy of the report and must also supply the local housing authority with confirmation of any remedial or further investigative works required by a report. Inspectors will use the following classification codes to indicate where a landlord must undertake remedial work.

Codes		
Code 1 (C1)	Danger is present and there is a risk to injury	The Landlord must ensure remedial work or further investigative work is carried out by a qualified person within 28 days or less if specified in the report.
Code 2 (C2)	Potentially dangerous	
Further Investigation (FI)	Further investigation without delay	
Code 3 (C3)	Improvement recommended	Draw recommended improvement to the attention of the landlord.

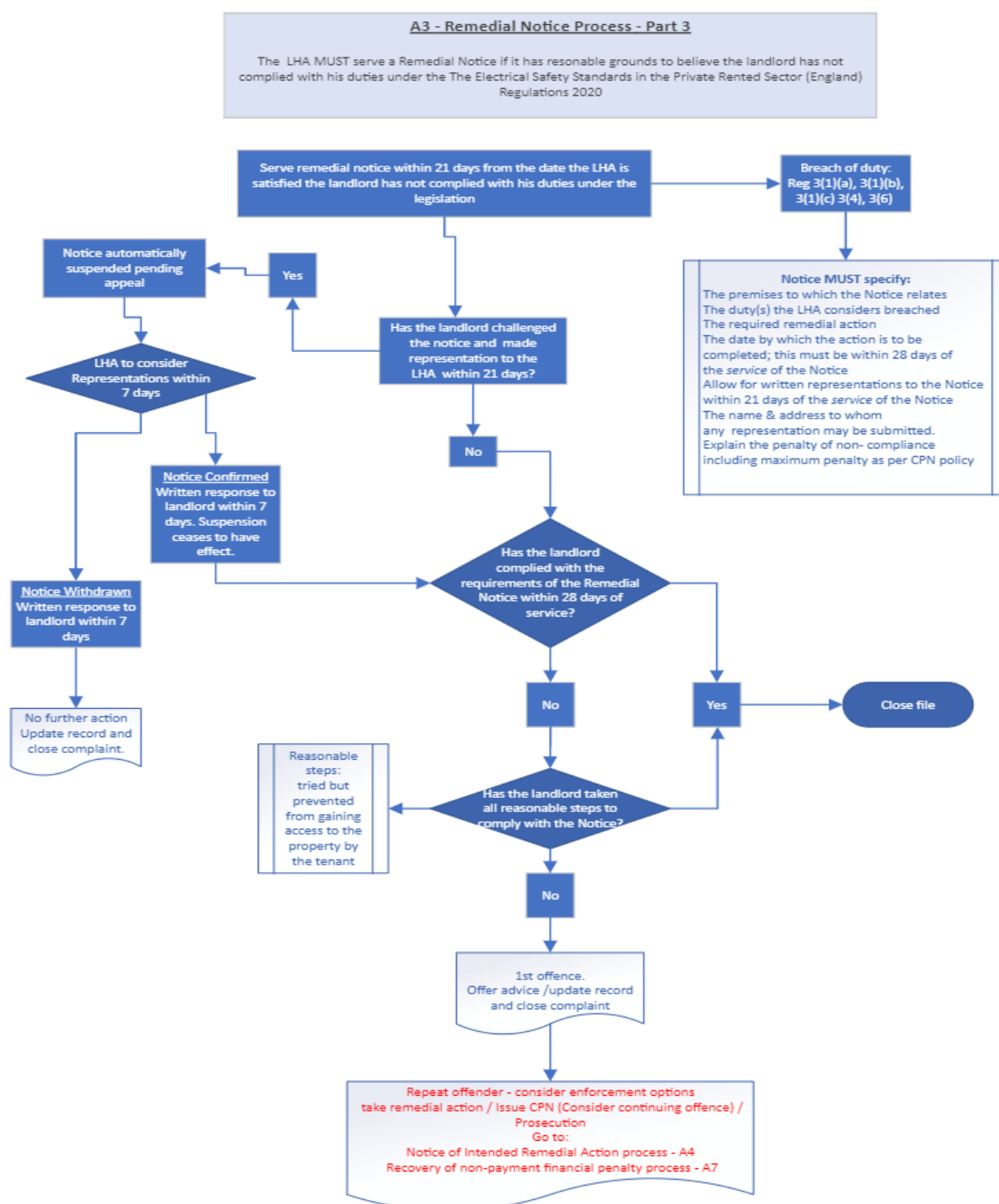
3. NWL/ESS – A2 – Flow chart – Initial Investigation

Purpose of process	Version	Last reviewed	By
To provide a basic overview of initial investigative process and procedure relating to a concern of a potential breach of legislation	0.1		



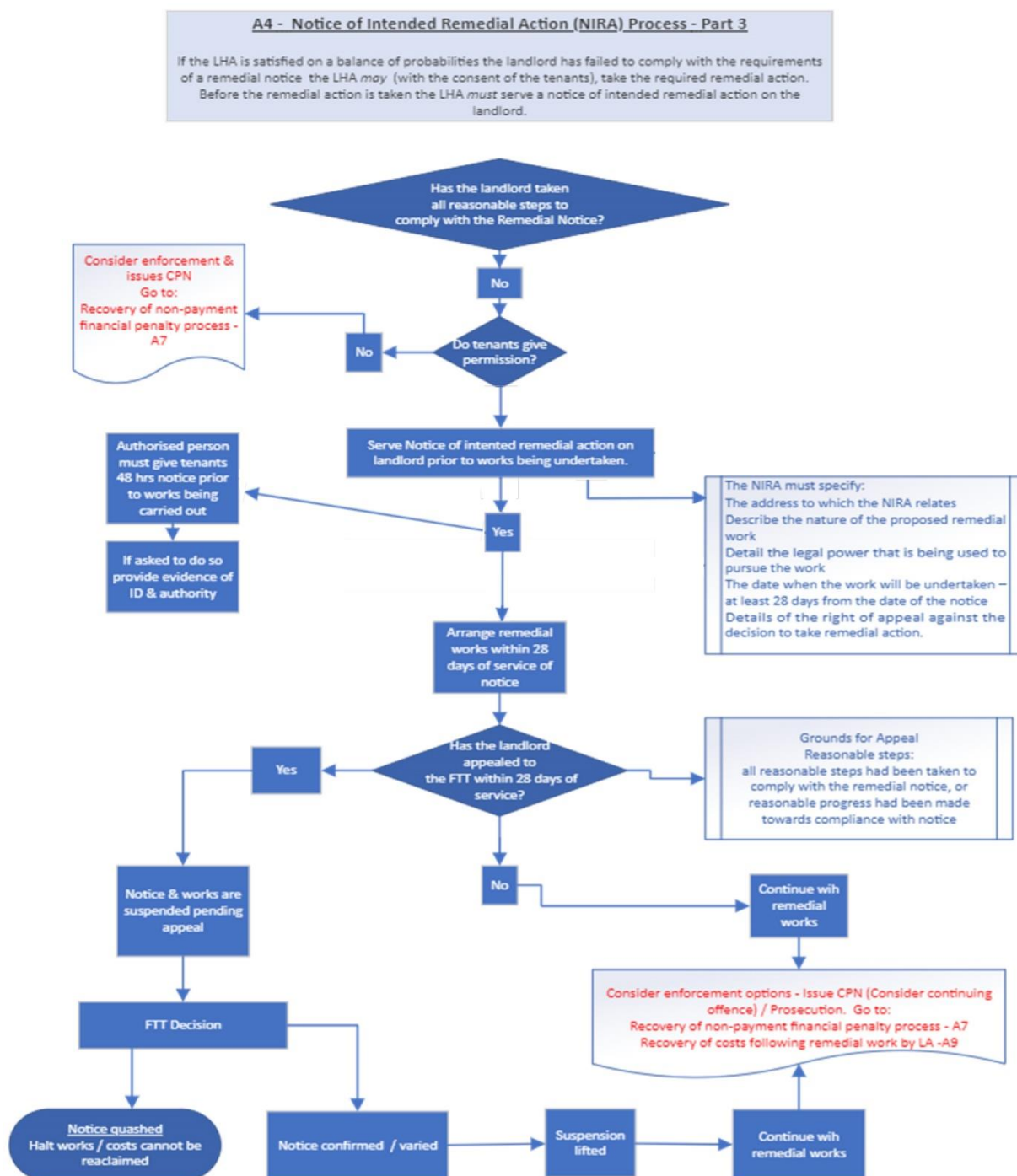
4. NWL/ESS – A3 – Flow chart – Remedial action

Purpose of process	Version	Last reviewed	By
To provide a basic overview of the process of serving a remedial notice, appeal and enforcement options	0.1		



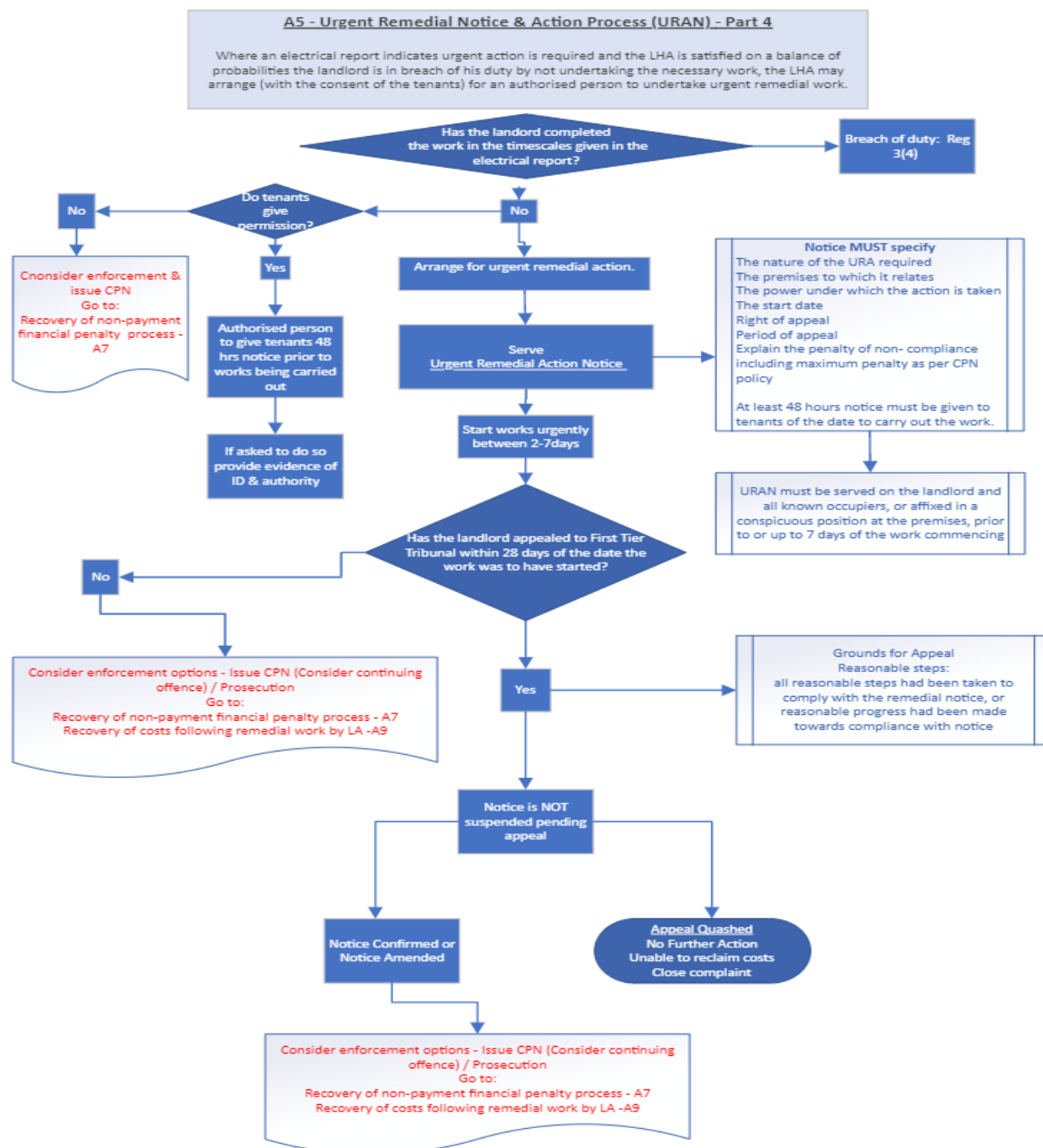
5. NWL/ESS – A4 – Flow chart – Notice of Intended Remedial Action

Purpose of process	Version	Last reviewed	By
To provide a basic overview of the process of serving a urgent remedial action notice, appeal and enforcement options	0.1		



6. NWL/ESS – A5 – Flow chart – Notice of Urgent Remedial Action

Purpose of process	Version	Last reviewed	By
To provide a basic overview of the process of serving a urgent remedial action notice, appeal and enforcement options	0.1		



7. NWL/ESS – A6 – Accompanying Notes – Investigation, Remedial action, Notice of Intended Remedial Action and Urgent Remedial Action

Purpose of process	Version	Last reviewed	By
Supporting procedure document to flowcharts: A2, A3, A4, A5	0.1		

INITIAL INVESTIGATION (A2)

The regulations require the LHA to enforce the duties imposed on private landlords and include the power to arrange remedial action.

The Landlord

As defined in section 122(6) of the Housing and Planning Act 2016; who grants or intends to grant a specified tenancy must ensure that the fixed electrical installation is safe during the period of the tenancy.

Tenancies (schedule 1 of the Regulations)

Specified tenancy – tenancies to which the regulation apply:

- Grants one or more persons the right to occupy all or part of the premises as their only or main residence
- Provides for the payment of rent (whether at market value or not)
- Is not an excluded tenancy.

Excluded Tenancies – tenancies to which the regulations do not apply:

- Tenancies where the landlord is a registered social landlord
- Where the tenant shares the property or part with the landlord or a member of the landlord's family
- Long leases of seven years or more
- Student halls of residence
- Hostels and refuges
- Care homes
- Hospitals, hospices and other healthcare-related accommodation.

Duties of a landlord – Part 2

Ensure the property meets the national standards for electrical safety for the period it is let under a specified tenancy.

Ensure the electrical installations are inspected every five years against the electrical safety standard laid down in the 18th Edition of the Wiring Regulations and by a competent person who is part of the electrical safety industry competent-person scheme.

Electrical installations are deemed to be:

- Consumer units
- Light fittings
- Plug sockets
- Wiring

A copy of the inspection certificate must be provided by the landlord to:

- All existing tenant(s) within 28 days of the inspection
- New or prospective tenant before they occupy the property, or receiving a request for the report
- To the LHA within seven days of receiving a written request to do so.
- To the next person undertaking the next inspection and test.

Complete required works with 28 days or a shorter period where the inspection certificate requires this.

Complete further remedial work or further investigation within a further period of 28 days (or shorter period, where this is required).

Where a LHA has cause to do so it may request a copy of the most recent Electrical Inspection and Testing Certificate and condition report relating to the fixed electrical installation at the rented property pursuant to Regulation 3(3) of the regulations. Failure to comply with request is a breach of duty and can result in the LHA imposing a civil penalty in accordance with its civil penalty policy. There is no statutory appeal against the notice although the landlord may make representations to the LHA. Alternatively, the landlord may challenge the notice through Judicial Review.

OVERVIEW OF ENFORCEMENT – LHA POWERS

- ▶ Regulation 3(1)(a)
electrical safety standards have not been met during the period of a tenancy, or
- ▶ Regulation 3(1)(b)
electrical installation has not been inspected at regular intervals (5 years or shorter as required), or
- ▶ Regulation 3(1)(c)
the first inspection was carried out before the tenancy began (for new tenancies) or by 1st April 2021 (for existing tenancies), or
- ▶ Regulation 3(4)
remedial or investigative work was required to the electrical system and that this was not undertaken within 28 days (or a shorter period where required), or
- ▶ Regulation 3(6)
that remedial or investigative work was required to the electrical system as a result of further investigations and that this was not undertaken within 28 days (or a shorter period where required) of the further investigations; and
- ▶ The most recent inspection report does not indicate that urgent remedial action is required

Where the Council believes that a landlord has breached their duties under the Regulations, they may do one, or a combination of, the following:

- ▶ Serve a remedial notice on the landlord, requiring them to take action in respect of the breach;
- ▶ Carry out urgent remedial action where a report indicates it is required;
- ▶ Carry out remedial action where a landlord is in breach of a remedial notice;
- ▶ Issue a financial penalty of up to £30,000 in respect of a breach of the Regulations.
- ▶ Consider using discretion to make entries onto the database of rogue landlords and property agents under the Housing and Planning Act 2016 where a landlord or has received 2 or more civil penalties within a 12-month period.
- ▶ Consider prosecution proceedings taking into account and alongside current overarching policies including but not exclusive to the Housing and General Enforcement policy.

REMEDIAL NOTICE – PART 3 (A3)

A notice of intended remedial notice *must* be served where the LHA has reasonable grounds to believe the landlord has failed in his duty to comply with the requirements of the legislation.

The remedial notice must be served within 21 days from the date the LHA is satisfied that the landlord has not complied with one of his duties. The Notice must specify:

- The premises to which the Notice relates
- The duty(s) the LHA considers breached
- The required remedial action
- The date by which the action is to be completed; this must be within 28 days of the *service* of the Notice
- Allow for written representations to the Notice within 21 days of the *service* of the Notice
- The name & address to whom any representation may be submitted.
- Explain the penalty of non- compliance including maximum penalty as per CPN policy

Reasonable Steps

A landlord has a duty to comply with a remedial notice unless they are able to claim that they have taken all reasonable steps, where the landlord (or electrician) has tried to gain access to the property to undertake the work and the tenant has prevented this.

Right of make representation

The landlord has 21 days from the date of service to challenge the Remedial Notice and make representations to the LHA.

On receipt of any appeal the notice is automatically suspended pending the outcome of the appeal.

The LHA must consider the representation and respond in writing with its decision to the appellant within 7 days of receipt of the appeal.

Outcome of representation

- Representation accepted – notice withdrawn – no further action – compliant closed.
- Representation declined – notice confirmed or varied - suspension lifted – landlord must comply with the notice within 21 days of receipt of confirmation.

Enforcement

- Carry out urgent remedial action where a report indicates it is required;
- Carry out remedial action where a landlord is in breach of a remedial notice;
- Issue a financial penalty of up to £30,000 in respect of a breach of the Regulations.
- Consider using discretion to make entries onto the database of rogue landlords and property agents under the Housing and Planning Act 2016 where a landlord or has received 2 or more civil penalties within a 12-month period.
- Consider prosecution proceedings taking into account and alongside current overarching policies including but not exclusive to the Housing and General Enforcement policy.

REMEDIAL ACTION BY LHA – PART 3 – (A4)

Notice of intention to take remedial action (NIRA)

If the LHA is satisfied on a balance of probabilities the landlord has failed to comply with the requirements of a remedial notice the LHA *may*, with the consent of the tenant, arrange for an authorised person to carry out remedial action.

If the tenant fails to give permission for the remedial works, the LHA may consider issuing a civil penalty notice in accordance with its Civil Penalty Policy.

Prior to any remedial action being taken by the LHA must serve a notice of intention to take remedial action (NIRA) on the landlord. The NIRA must include:

- The address to which the Notice of Intention relates
- Describe the nature of the proposed remedial work
- Detail the legal power that is being used to pursue the work
- The date when the work will be undertaken – at least 28 days from the date of the notice
- Details of the right of appeal against the decision to take remedial action.
- Copies must be served on any interested parties

If an appeal has not been received and at the end of the 28-day period, works may be undertaken by an authorised person.

The authorised person must give the tenants at least 48 hours' notice of the remedial works. If asked to do so by the landlord or tenant the authorised person carrying out the works must produce proof of authority and identity.

Right of appeal – Landlord representations

The landlord has 28 days from the date of service of the NIRA to appeal against the decision of the LHA to take action, to the First Tier Tribunal (property chamber).

A landlord may submit an out of time appeal if he can demonstrate good reason for failing to appeal within the statutory timeframe.

Reasonable steps

A landlord has a duty to comply with a notice of intended remedial action unless they are able to claim that they have taken all reasonable steps. An appeal maybe brought on the grounds on “reasonable steps” where the landlord (or electrician) has tried to gain access to the property to undertake the work and the tenant has prevented this or where reasonable progress has been made towards compliance.

NIRA is suspended pending appeal.

Appeal outcome

- Appeal allowed - Notice quashed – cease works, costs cannot be reclaimed
- Appeal declined – Notice confirmed or varied – suspension lifted, works can recommence and costs can be recovered.

Enforcement

- Issue a financial penalty of up to £30,000 in respect of a breach of the Regulations.
- Consider using discretion to make entries onto the database of rogue landlords and property agents under the Housing and Planning Act 2016 where a landlord or has received 2 or more civil penalties within a 12 month period.

- Consider prosecution proceedings taking into account and alongside current overarching policies including but not exclusive to the Housing and General Enforcement policy.

URGENT REMEDIAL ACTION – PART 4 (A5)

Where an electrical report indicates that urgent action is required and the LHA is satisfied on the balance of probabilities that the landlord has failed to undertake the works the LHA may, with the consent of the tenant, arrange for an authorised person to carry out urgent remedial work.

If the tenant fails to give permission for the urgent remedial works the LHA may consider issuing a civil penalty notice in accordance with its Civil Penalty Policy.

Subject to 48 hours' notice to be given as referenced below the LHA may exercise its right to arrange remedial works at any time.

The LHA must issue and serve an Urgent Remedial Action Notice (URAN) on the landlord and all known occupiers, or affix the notice in a conspicuous position at the premises, prior to or up to 7 days of the work commencing.

The Notice must include:

- The nature of the urgent remedial action required
- The address to which the Notice relates
- The power being used to justify the urgent work
- The date when the urgent work is or has been started
- The right of appeal and the period of appeal
- The provisions relating to the issue of financial penalties.

The authorised person must give the tenants at least 48 hours' notice of the remedial works. If asked to do so by the landlord or tenant the authorised person carrying out the works must produce proof of authority and identity.

Right of appeal – landlord representations

The landlord has 28 days from the date the urgent remedial work started or was due to start (whichever was first) to appeal against the Notice to the First Tier Tribunal (property chamber).

A landlord may submit an out of time appeal if he can demonstrate good reason for failing to appeal within the statutory timeframe.

Right of appeal – Landlord representations

The landlord has 28 days from the date the remedial work started or was due to start to appeal against the decision of the LHA to take action, to the First Tier Tribunal (property chamber).

A landlord may submit an out of time appeal if he can demonstrate good reason for failing to appeal within the statutory timeframe.

Reasonable steps

A landlord has a duty to comply with a notice of intended remedial action unless they are able to claim that they have taken all reasonable steps. An appeal may be brought on the grounds on "reasonable steps" where the landlord (or electrician) has tried to gain access to the property to undertake the work and the tenant has prevented this or where reasonable progress has been made towards compliance.

The URAN is not suspended on appeal.

Appeal outcome

- Appeal allowed - Notice quashed – cease works, costs cannot be reclaimed

- Appeal declined – Notice confirmed or varied – suspension lifted, works can recommence and costs can be recovered.

Enforcement

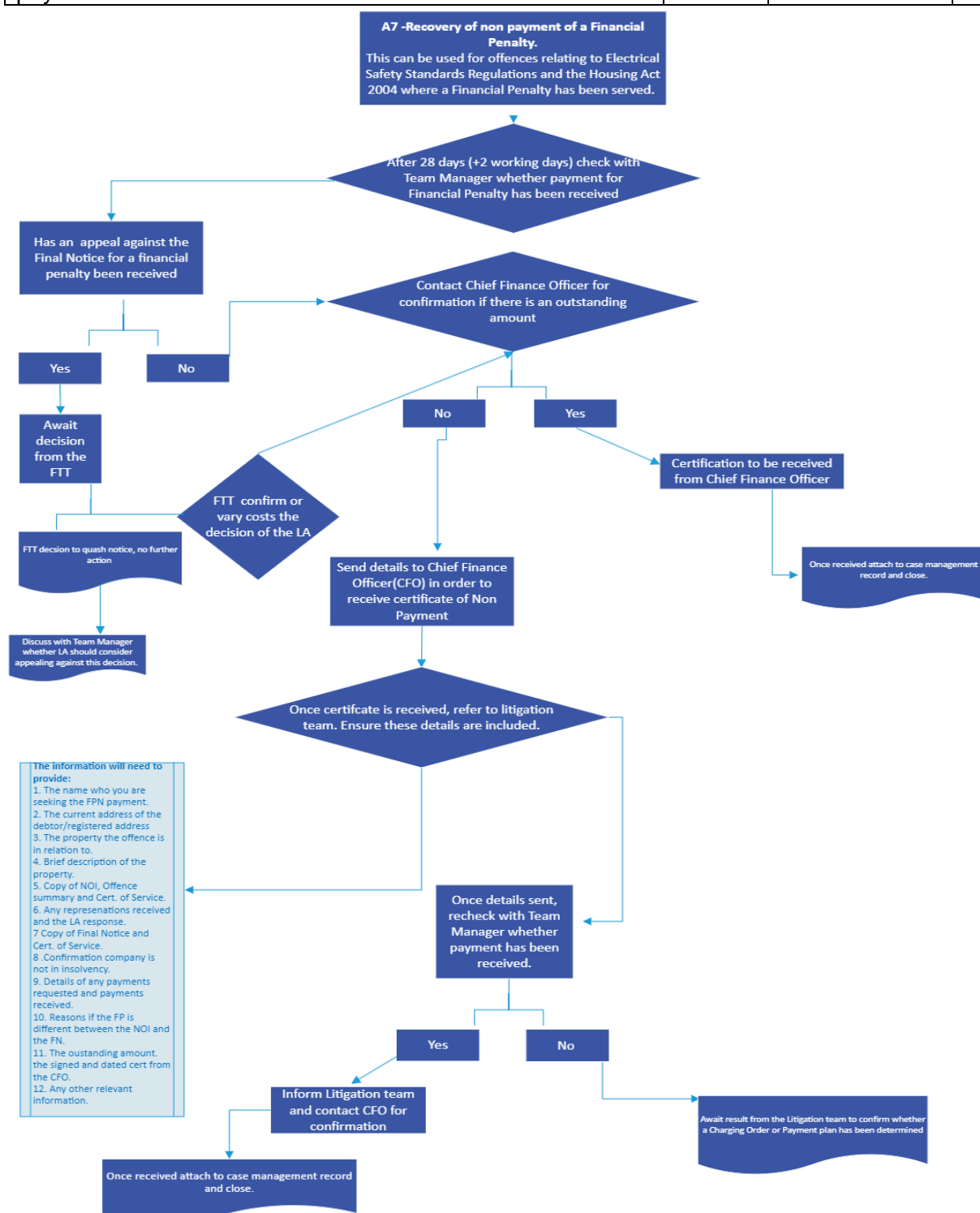
- Issue a financial penalty of up to £30,000 in respect of a breach of the Regulations.
- Consider using discretion to make entries onto the database of rogue landlords and property agents under the Housing and Planning Act 2016 where a landlord or has received 2 or more civil penalties within a 12 month period.
- Consider prosecution proceedings taking into account and alongside current overarching policies including but not exclusive to the Housing and General Enforcement policy.

Power of Entry

Powers provided under section 239 of the Housing Act 2004.

8. NWL/ESS – A7 – Flow chart – Recovery of non-payment financial penalty

Purpose of process	Version	Last reviewed	By
To provide an overview of the process to recover non-payment of Financial Penalties	0.1		



NWL/ESS – A8 – Accompanying Notes - Recovery of non-payment of financial penalty process

Purpose of process	Version	Last reviewed	By
Supporting procedure document to flowchart A7	0.1		

Prior to undertaking this process, determine whether an appeal against the financial penalty has been received. An appeal made against the Financial Penalty can be made pursuant to the Electrical Safety Standards Regulations 2020 Schedule 2 (5, (1)). If an appeal has been made to the First Tier Tribunal (FTT), await the outcome of the hearing as the value of the financial penalty may change or the financial penalty quashed.

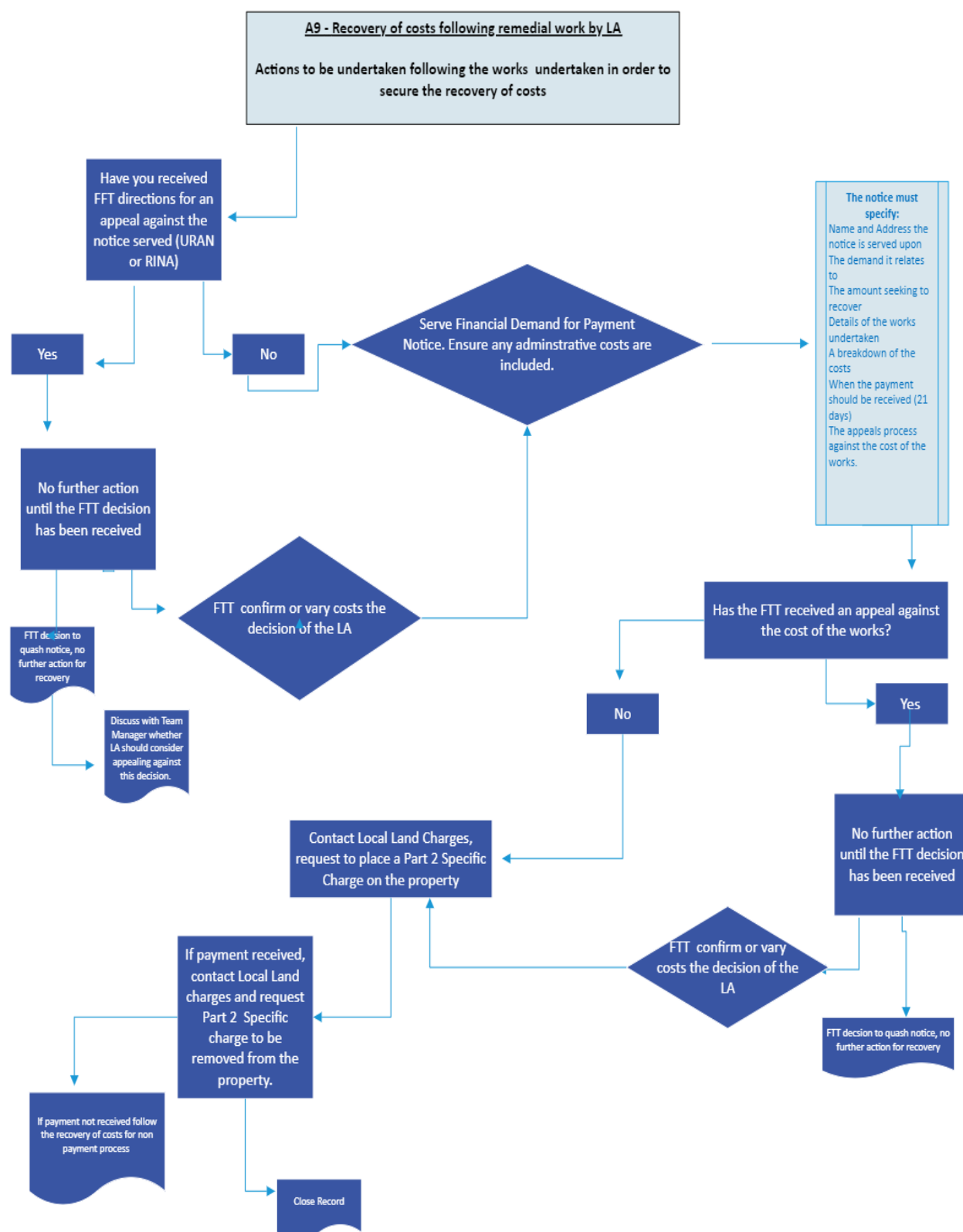
- 1 28 days (+2 working days) after the date the financial penalty notice has been served, check with the team manager whether payment has been received. If the financial penalty has been paid in full, no further action is required.
- 2 Once satisfied payment is outstanding, contact the councils Finance Team Manager for confirmation of this. A certificate from the Finance Team Manager should be received.
1. The Finance Team Manager will review the case and provide a certificate confirming the outstanding amount.
2. Refer the certificate of non-payment to the litigation team. The following details are required to be provided:
 - The name of whom you are seeking the financial penalty payment.
 - The current address of the debtor/ registered address.
 - The property the offence is in relation to.
 - Brief description of the offence.
 - Copy of the Notice of Intent, offence summary and certificate of service.
 - Attach a copy of any representations received (if applicable).
 - Attach a copy of the councils' response to any representations (if applicable).
 - Copy of the Final notice and certificate of service, highlighting the date it was served.
 - Confirm check made on company's house for insolvency details if you are seeking to recover the debt against the company.
 - Details of any requests for payments by instalments including date of the first payment and agreed date and amount per month to be received after the first payment.
 - If the amount has changed from the notice of intent and the final notice, the reasons why.
 - The date and amount of any payments received.
 - The outstanding amount.
 - The signed and dated certificate from the Finance Team Manager.
 - Any other information you think may be relevant.
3. Recheck with both the team manager and the Finance Team Manager whether payment has been made. If so, inform the litigation team and await a further certificate of payment demonstrating a new outstanding amount.
4. The litigation team will arrange for either a County Court or High Court hearing (depending on the outstanding amount). Await from the litigation team the results of the hearing and whether a charging order or payment plan has been ruled.
5. If a payment plan is made, undertake the usual process. If there is a charging order made, an interim charging order following this a final charging order will be determined by the courts. For

confirmation of this, you should receive a copy of the final charging order and an up to date land registry document detailing the charge on the property for the Final notice amount plus any additional costs that have been incurred chasing the debt.

6. Once all payments received, email the finance team to confirm. Once confirmed the full amount of the finically penalty has been received, update the case management file and close the record.

9. NWL/ESS – A9 – Flowchart – Recovery of costs following remedial work by LA

Purpose of process	Version	Last reviewed	By
Process of actions to be undertaken following Works in default	0.1		



10. NWL/ESS – A10 – Accompanying Notes - Recovery of costs following remedial work by LA

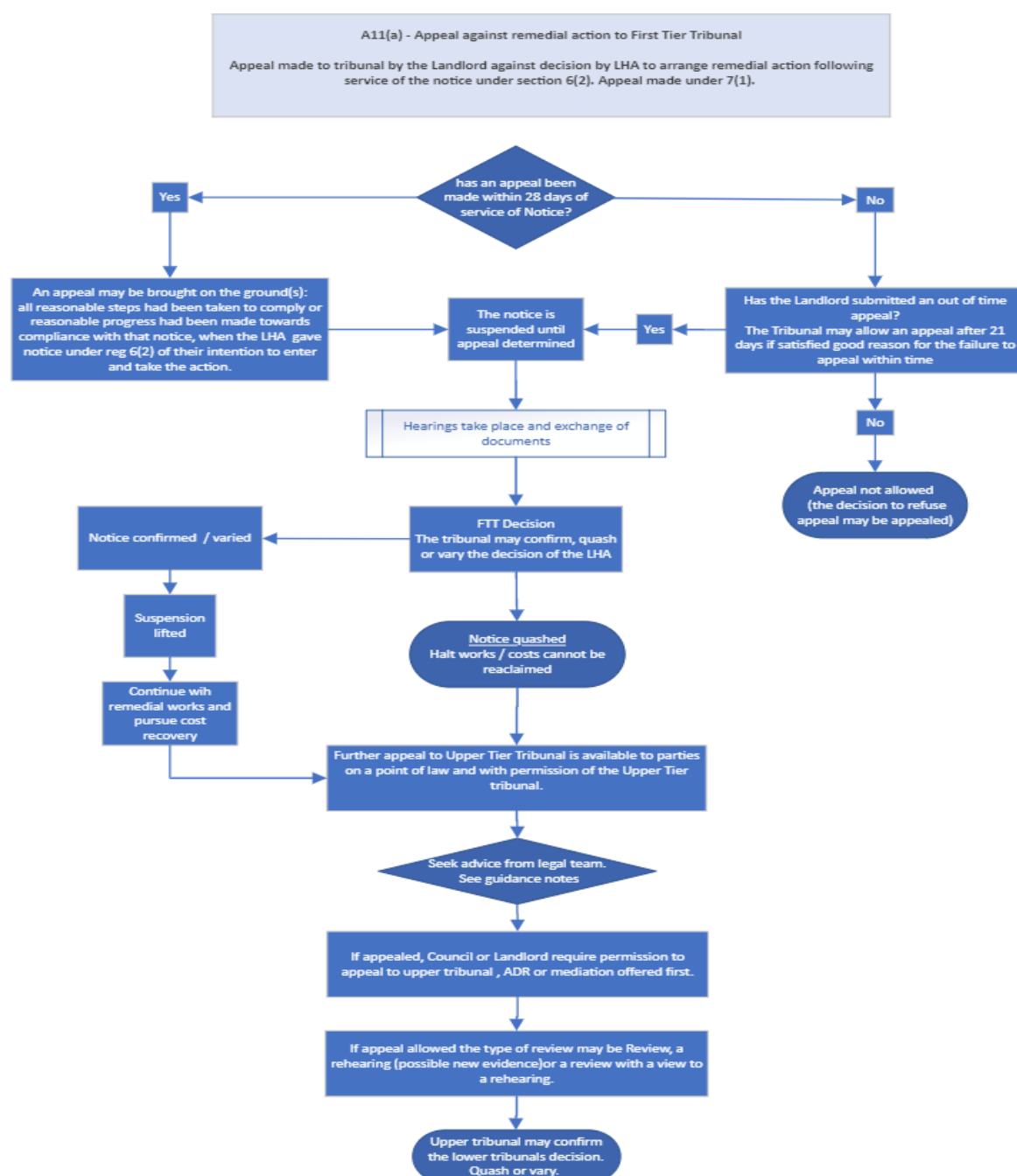
Purpose of process	Version	Last reviewed	By
Supporting procedure document to flowchart A9	0.1		

1. Once works in default have been undertaken regarding either the Urgent Remedial Action Notice (URAN) or Notice of Intended Remedial Action (NIRA), a Financial Demand for payment under Regulation 8 (2) of the Electrical Safety Standards (ESS) must be served on the person whom you are seeking payment from. This will be the landlord.
2. Once the appeal period for either notice has passed and you are satisfied no directions have been received from the FTT you can arrange for a competent person to undertake the remedial action on behalf of the local authority and arrange to recover reasonable costs.
3. The appeal period is 28 days for either the URAN or the NIRA.
4. Once the remedial works have been undertaken, serve a Financial Demand Notice under Regulation 8(2). This Financial Demand will be used for costs incurred for either urgent remedial action or the remedial action that has been undertaken and the property.
5. The Financial Demand has an appeals process to the FTT and the landlord can make this appeal under Regulation 9 of the Electrical Safety Standards Regulations 2020. The appeal period is 21 days.
6. Check the total amount on the invoice received from the trusted/approved contractor regarding the electrical works that have been undertaken at the property. Ensure these match what works were instructed.
7. If the amount is correct and the invoice details the works included in the URAN or RAN serve the notice for the Financial Demand. As the local authority are undertaking works in default by implementing public law, it is widely viewed that generally VAT should be deducted from the amount the local authority are seeking from the individual or company (sundry debtor). Within the Electrical Safety Standard Regulations (ESSR) it states that a demand for recovery of costs must be served on the private landlord whom the local authority is seeking recovery.
8. The Financial Demand must include the following:
 - Name and address of whom the notice is served upon. This must be the person NWL are seeking recovery of payment.
 - The demand the property relates to.
 - The amount NLW are seeking to recover.
 - Detail of the works undertaken at the property.
 - A breakdown of the costs -This will usually consist of the cost of the works undertaken and any administrative charges that have occurred as a result of the North West Leicester having to oversee the works. The costs must equate to the total amount you are seeking to recover.
 - When the payment should be received – 21 days from the date of service of the notice.
 - How the landlord can appeal against the costs and the timescale the landlord has to make an appeal to the First Tier Tribunal (FTT) (21 days).
 - Officers' signature and date.
9. After 21 days (+2 working days) from the date of the demand of the Financial Payment notice was served, the demand becomes payable if no appeal has been received. Contact local finance services to establish whether payment has been received.

10. If payment has not been received contact local land charges and request that a part two specific land charge registered on the property. Ensure you receive confirmation of this (usually through email) so the debt can be recovered should the property be sold.
11. Once payment has been received, contact local land charges and ask for the part two specific land charge to be removed and receive confirmation of this.

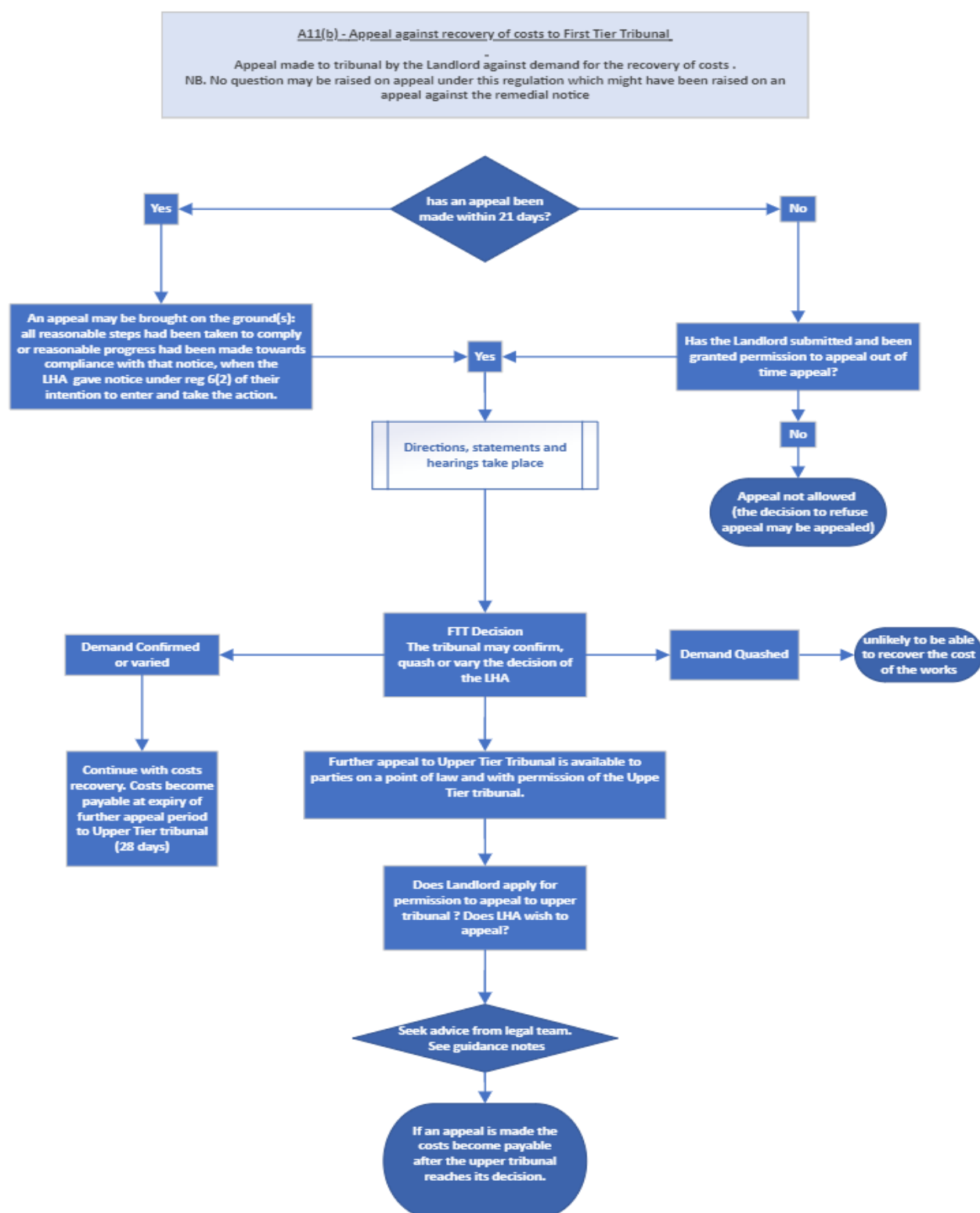
11. NWL/ESS – A11a – Flow chart – Appeal against remedial action to First Tier Tribunal

Purpose of process	Version	Last reviewed	By
Appeal made to the FTT following URAN or NIRA	0.1		



12. NWL/ESS – A11b – Flow chart – Appeal against recovery of costs to First Tier Tribunal

Purpose of process	Version	Last reviewed	By
Appeal made to the FTT following URAN or NIRA	0.1		



13. NWL/ESS – A12 – Accompanying Notes – Appeal to First Tier Tribunal

Purpose of process	Version	Last reviewed	By
Supporting procedure document to flowchart A11a and A11b	0.1		

The Process flow diagrams show the two different appeal processes including timescales that can be made to the tribunal.

Process A11a - Appeal against Notice to the First Tier Tribunal (Land Chamber)

- This details the Landlords (the appellants) appeal under regulation 7 against decision by Local Authority to take remedial action or urgent remedial action, following service of the notice under 6(2) or 10 (3) (URAN).
- The appeal must have been received by the tribunal within 28 days of the service of the notice or under URAN within 28 days of the start of taking of the urgent action.
- The notice is suspended as and when the appeal is received by the tribunal. However the URAN notice is not suspended when appealed (as in all likelihood it has already started or been completed and may put tenants at immediate risk if not undertaken).
- The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8) must be followed and can be found at the following link. It is advised the respondent both read and understand the rules, though the case worker for the tribunal will effectively lead the respondent through the process using directions that will be produced at the start of the process.
- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/357067/property-chamber-tribunal-procedure-rules.pdf
- The tribunal is likely to require the production of a statement of case as part of the directions made by firstly the Landlord as to why they are appealing. This is the opportunity for the Landlord to state why they are appealing. These are known as the grounds of the appeal. The timescales given must be strictly adhered to.
- If the timescales cannot be adhered to the Landlord must apply for an extension of time via the tribunal case worker. They will contact the respondent for consent (Council). If they agree a joint application from both parties may be submitted. If the Council objects they must give a reasoned explanation as to why the object.
- If there is a possibility that the appeal can be resolved using alternative dispute resolution a stay in proceedings of up to six weeks may be allowed. If mediation is considered by both parties then the two parties are encouraged to attend to resolve their differences in this way. It is often cheaper in terms of time and legal fees and expert reports.
- Fees must be paid as directed by the tribunal. Non-payment may mean the tribunal must not proceed further until paid.
- The tribunal may require the exchange of documents between the two parties of relevant documents. This may include (but not limited to)
 - a. Evidence that the work is required (from Council and Landlord).
 - b. Statements from electricians who have attended, certificates or periodic inspection reports refuting oppositions evidence, purchase orders, email conversations, records of telephone calls. Etc.
 - c. Statements of agreed matters
 - d. Expert evidence.
- There may be a hearing if it cannot be concluded by written submissions. This may involve a visit to the property involved.
- A hearing would normally follow the property inspection by the tribunal either in a court room or in a community centre etc.
- If the appellant withdraws the effect is that the notice is confirmed.

- If the tribunal in its decision confirm the notice the Landlord may appeal to the upper tribunal.
- The Council or landlord may choose to appeal if it quashes the notice and disagrees with the findings of the tribunal.
- If the notice is quashed the notice ceases to exist and the Council may need to consider what (if any) further action to take. It can reserve a notice. Care needs to be taken that the subsequent notice is taking into account the findings of the tribunal. If for example the initial notice was served on the wrong person.
- If the notice is varied the landlord is still required to address the varied works/notice.
- If an appeal is made against the decision of the first tier tribunal the upper tribunal will consider if the case has merit. An explanatory leaflet detailing the process is found at the following link.³

Process A11b – Appeal to the Upper Tier Tribunal (Land Chamber)

- This details an appeal against recovery of costs following service of a demand by the Local Authority following either works undertaken by the LA, following a remedial action notice under section 6 or secondly following urgent remedial action following a notice served under section 10.
- Note that the appeal must not consider those issues which could be dealt with by process A11a. Two separate appeals should be made if both the reason for the service of the notice is being appealed as well as the recovery of costs.
- Appeal in this case must be made within 21 days of the demand for payment from the Council for the recovery of their costs.
- An out of time appeal may still be heard if special circumstances exist that would convince the tribunal to allow the appeal.
- An appeal may be heard if the grounds for appeal include that the landlord had made reasonable progress to comply with the notice when the Council gave notice of their intention to enter and take the action.
- The tribunal is likely to require a statement of case from the Landlord as to why they are appealing.
- The tribunal is likely to require evidence of the reasonable steps that the appellant (Landlord) had made.
- The tribunal will provide directions for the Local Authority including timescales and deadlines for when it must be provide certain information.
- It is likely in this case to require evidence from the officer involved of their involvement and communications with the landlord.
- It is likely that quotations may be examined and possibly the authorities procurement policy has been complied with.
- The tribunal in its decision may quash the demand, vary the demand (increase or decrease the demand), or confirm the demand.
- If the demand is quashed the Council is unlikely to be able to recover the cost of the works.
- If the demand is confirmed the costs become payable at the end of the period during which the appeal to could be made. So if the Tribunal gives the appellant 28 days to appeal, then the costs become payable at the end of 28 days.
- If an appeal is made the costs become payable after the upper tribunal at the time of its decision.

³ [T605 - Explanatory leaflet for appeals against decisions of the First-tier Tribunal \(Property Chamber\), and the Leasehold Valuation and Residential Property Tribunals \(publishing.service.gov.uk\)](#)

14. NWL/ESS – A13 – Worked examples

Purpose of process	Version	Last reviewed	By
Problem statements and explanation relating to the above	0.1		

Worked example 1

EHO receives a complaint from a tenant that they hadn't received an electrical safety certificate from their landlord when they moved in three weeks ago. It is a standard assured short hold tenancy. They have noticed there are a few concerning items around the house that need addressing. They have sent in two photos of switched sockets that have cracked with exposed live contact points behind.

EHO starts initial investigation process (A2)

They assess the evidence and judge that they should send a notice requesting the electrical inspection and test certificate.

They send this to the landlord Mr Smyth. The Council have no prior knowledge of the Landlord.

5 days later the EHO receive a copy of the test certificate and it identifies that the supplementary bonding is inadequate to the radiator pipe works which is stated to be a C2. It also says that 2x C1s (damaged switched sockets) were found and have since been addressed. The Landlord included photographs of the repaired switched sockets showing the front plates have been replaced. He included a report from the electrician stating he had repaired the urgent C1s.

The EHO calls the Landlord asking for evidence that the bonding has been addressed also. He says he hasn't done it as he hasn't been paid any rent for some weeks and he will address this when the tenant pays his missing rent or when they move out. The landlord says he has never needed a periodic inspection report to date and he has had the property for ten years.

The EHO then considers the necessity to address the C2 identified and seeing as the Landlord will not do it of his free will decides to serve a Remedial Action Notice.

The EHO is satisfied that there is a breach of duty under section 3(1) (a) so within 21 days they send a remedial notice to the Landlord. They follow Remedial Notice process (A3)

On the notice it states

- 1 The address the notice refers to. Flat 2B main road, Ashby
- 2 The duty the landlord has been judged to have breached. 3(1)(a)
- 3 The required remedial action. Provide supplementary bonding/earthing to the wet central heating system in the house in line with current wiring regulations.
- 4 The date by which the action is to be completed- within 28 days.

The landlord responds in writing to the EHOs manager (within 5 days) stating that he would address the works within 2 months if the Tenant pays their rent. *The notice is suspended at this point.*

The senior officer receiving the response, reviews the response and decides this is not an adequate response or timescale and within 7 days provides a written response back to Mr Smyth saying that the Notice is confirmed and that the notice is no longer suspended.

14 days later (within the total of 28 days allowed) the EHO is contacted by the tenant who says the landlord's electrician has come back and done some work to the pipes. So, the EHO re-inspects the house, and the supplementary bonding has been completed and the tenant has been left with

a certificate stating that the electrical installation is now compliant. A copy is received from the landlord within 3 days via the post.

The Council must then decide if they will take further action using the civil penalty process. They decide based on the facts of the case that they will not on this occasion serve a notice of intent to serve financial penalty. But instead write formally to him warning him that any future failures in his duty to comply with the regulations will likely result in a civil penalty. The case is then concluded and closed.

Worked example 2

Background

Mrs Jones is Landlord and has a number of properties (10) in the Local authority area. She is well aware of the electrical safety standards regulations having been found previously to be operating without a periodic inspection report and certificate at a previous house. She was not served with a civil penalty for this previous failure as it was her first offence.

She has since rented a property to a family with young children on a 6-month assured short-hold tenancy. It's a relevant tenancy.

The Tenants have not received a periodic inspection report nor certificate despite moving in two months ago.

The Tenant's house has been in partial darkness upstairs for a week. The upstairs wiring circuit has been effectively condemned due to squirrels biting through the insulation/ cables in numerous places to the loft. It's classified as a C1 on the report.

Her electrician who attended made it safe, but has left upstairs without a working lighting circuit and was awaiting an order number from the landlord before he could start work to rewire the upstairs lighting circuit and repair the socket.

Mrs Jones has provided a few lamps (to be plugged into the ring main) to deal with the lack of lighting.

Also present upstairs were one cracked socket. This was not addressed/made safe. The tenants have complained to the Council.

The EHO sent a notice to the landlord requesting the Electrical inspection and test certificate. This was received promptly by return of email.

The report dated two weeks previously, showed two C1 issues. It stated that the works to address the C1's should have been completed in 7 days.

No remedial action had been taken within the time specified on the inspection report (apart from making the lighting circuit safe) but the electrician hadn't repaired it nor the cracked electrical socket. The Landlord is (or is potentially) in breach of their duty to undertake remedial work within the period specified in the report as stated in 3(4) (b).

The EHO cannot get in touch with the landlord following the email and answer phone messages are not being answered.

URAN

As there are 2 C1s (urgent) the EHO therefore goes through the urgent remedial action process (URAN- process A5).

The family want this work completing urgently and the landlord is not contacting them back, they therefore give permission for the works to be carried out by the Council. The EHO uses a suitably qualified electrician using their trusted contractor list to provide a quotation for

- Replacing the lighting circuit to current wiring regulations.
- Replace the damaged socket.

While on site the contractor quoting for the works also notices that there is some

- Thermal damage to a socket above the cooker.

- An MCB fitted to the distribution board has an incorrect breaking current.

Both of which issues are stated to be C2s. This additional information and report is relayed to the landlord by email who is instructed to address it.

Therefore the process is split into two. Firstly, a URAN is served to address the C1's which is to replace the wiring to the lighting circuit upstairs and to replace the damaged socket.

The second part of the works required to address the C2s (not being urgent) will revert to the remedial notice process A3 if the Landlord doesn't address it.

The EHO therefore follows the URAN process contained in flow diagram A5. The notice served includes the following.

- 1 Name of the premises. 12 Acacia walk, Coalville.
- 2 The power under which the action is taken. Regulation 6.
- 3 The date (three days' time) when the work will commence by the authorised person.
- 4 The right of appeal to the notice. Which must be made 28 days from the service of the works.
- 5 The notice is served on the occupiers (family at the rented house) and on the landlord at her home address.

The works are then undertaken 3 days later by the Councils contractor having been procured in line with the Council procurement procedures. Adequate notice has been given to the Tenants that the works start after 48 hours.

The landlord doesn't appeal against the URAN to the FTT in 28 days.

Cost recovery process

The Council then go through the Cost recovery process for the works undertaken.

- 1 Firstly the EHO contacts the local land charges team by email and asks them to place a part 2 financial charge on the property including the cost of works and additional admin charge for arranging the works inline with our current charging policy.
- 2 The officer raises an order number for the works and adds a 20% fee for the Council's costs in arranging the works.
- 3 After the order number is raised, then an invoice is raised and sent to the Landlord through the Councils own internal system.

The Landlord then pays the invoice for the works, within 7 days.

Civil Penalty

The EHO then decides that a civil penalty will be considered. The Landlord is noted to be a repeat offender having failed in her duties previously. So to calculate the CPN the EHO uses the civil penalty policy and calculator, the tables of which are included below to assist calculation.

Table 1: Civil Penalty level for relevant offences

Column 1+Column 2+Column 3 = Column 4

1	2	3		4
Offence Specific Penalties	Further Penalties (if any)	Table 3 impact matrix score A	Level of penalty	Cumulative total

Total for each penalty shown in Table 2, Column A	Total for each penalty shown in table 2 columns B and/or C	20-30	£500	Level of civil penalty to be applied (Maximum £30,000)
		40-80	£1000	
		90-120	£2,500	
		130-170	£5,000	
		180-230	£10,000	
		240	£20,000	

Table 2: Offence specific penalty and other penalties

Offences		A		B		C	
Housing Act 2004 Offences	Section 30	Non-compliance with improvement notice	£2,000	There are two or more Cat 1 hazards	£3,000	Where there are 3 or more high scoring hazards ¹	£1,000
	Section 72	Failure to obtain property licence	£2,500				
		Breach of licence conditions (Penalty per breach)	£1,000				
	Section 139	Non-compliance with overcrowding notice	£500	Penalty per additional person	£200		
	Section 234	Failure to comply with HMO management	£500				

		regulations (per breach)					
Electrical Safety Standards in the Private rented Sector (England) Regulations 2020 Reg. 3	Breach of a duty of private landlords in relation to electrical installations (penalty per breach)	£1,000	There is 1 identified Code 1 defect or three or more identified relevant defects. ²	£3,500	There is one or more identified relevant defect (s)	£2,500	

¹ A high scoring hazard is defined as a hazard achieving a score rating of E or higher using the HHSRS

² A relevant defect for the purpose of this matrix is defined as a defect which would result in a Unsatisfactory grading on an Electrical Installation Condition report (EICR) Namely a defect given a C1, C2 or F1 observation code.

Table 3: Impacts scoring matrix

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

Question	Score	0	20	30	40
1	Severity of harm or potential harm caused x2 (The relevant column score is doubled)	LOW No identified risk Previous /current occupant not in vulnerable category. No impact assessed	MODERATE Moderate level of risk to relevant persons, Previous/current occupant not in vulnerable category. Low impact assessed.	HIGH High level risk(s) to relevant persons. Previous /current occupant in vulnerable category. Occupants affected frequently or by occasional	SEVERE High level of risk(s) to relevant persons. Previous/current occupants in vulnerable category. Multiple individuals at risk. Occupants are severely

				high impact occurrences.	and/or continually effected.
2	Number of properties owned/managed	1	2-3	4-7	8+
3	Culpability and Track record	No previous enforcement history Minimal prior contact Clear evidence of action not being deliberate	1 or more previous enforcement notices served Clear evidence of action not being deliberate	1 or more enforcement notices served. Offender ought to have known that their actions were in breach of legal responsibilities.	Significant evidence of historical non-compliance. Actions were deliberate or offender knew or ought to have known that their actions were in breach of their legal responsibilities
4	Removal of financial incentive	Little or no income received	Low income received	Moderate income received	High Income received
5	Deterrence and prevention	High confidence that the penalty will deter repeat offence	Medium confidence that penalty will deter repeat offence	Low confidence that penalty will deter repeat offence	No confidence that penalty will deter repeat offence.

Looking at Table 2 above of the civil penalty policy to calculate the offence specific penalty, there is a £1000 per breach of duty, which in this case Regulation 3 (1) (a) states that a Landlord who grants a relevant tenancy has a duty to...

“ensure that the electrical safety standards are met during any period when the residential premises are occupied under a specified tenancy;”

The Electrical Safety Standards have not been met. As there are two unrepaired C1's this is the first failure of duty under 3(1) (a).

The Officer notes that the test report and certificate is dated some weeks after the tenant has moved in. Therefore a duty under 3 (1) (c) (i) (which is to ensure the test was carried out before they moved in) has also been breached.

The EHO asks the landlord if a previous report has been completed in the previous 5 years, but none could be produced. Therefore, the Landlord has failed in their duty to regulation 3 (1) (b) also (as the electrical installation was not inspected and tested at regular intervals of 5 years).

Also the officer notes that Regulation 3(4) which states that:

(4) Where a report under sub-paragraph (3)(a) indicates that a private landlord is or is potentially in breach of the duty under sub-paragraph (1)(a) and the report requires the private landlord to undertake further investigative or remedial work, the private landlord must ensure that further investigative or remedial work is carried out by a qualified person within—

(a) 28 days; or

(b) the period specified in the report if less than 28 days, starting with the date of the inspection and testing.

The Officer notes that the electricians report says the C1's should be repaired within 7 days from the day of the testing- being urgent. Therefore 4(b) hasn't been complied with.

The breached duties are therefore 3(1) and 3(4) (b).

The Officer then considers if there are any identified Code 1 defects present on the inspection report and we have two, so in column two we calculate an additional £3,500 to be added to the £2000.

The officer then considers the questions in table 3 of the Civil Penalty Policy (CPP).

Question 1= Score of 30- High risk. If someone touches the live contact points which are at a low level in switched sockets, the score for this is doubled as per the policy to 60.

Question 2= The landlord owns 10 properties, so the score= 40.

Question 3= The Landlord has some previous enforcement action against them and should have known what they were doing was wrong. So score= 30.

Question 4= Apart from the cost of the works little or no income was received as a result of their action. So scores 0

Question 5= Medium confidence that this will deter from repeat offending. So scores 20.

Total for table 3 the score = 150, which when we look at Table 1 of the CPP is £5,000.

So looking at table 1 of the CPP,

Column 1+Column 2+Column 3 = Column 4

1	2	3		4
Offence Specific Penalties	Further Penalties (if any)	Table 3 impact matrix score A	Level of penalty	Cumulative total
£2000	£3,500	150	£5,000	£10,500

The process for the service of civil penalties for the ESS regulations is contained in Schedule 2 of the Regulations.

Following the process contained in schedule 2, the Notice of intention to serve a Civil Penalty is served within 6 months of the Council being made aware of the breach.

The notice of intention sets out

- 1 the amount of the proposed financial penalty; £10,500
- 2 the reasons for proposing to impose the penalty; The Landlord has failed in their duty to maintain the electrical installation for a relevant tenancy leaving the Tenant in a potentially dangerous situation.
- 3 information about the right to make representations under paragraph 2. The Landlord may make representations against the proposal to serve a notice within 28 days.

Following receipt of the notice of intention to serve a civil penalty, the Landlord then supplies a representation to the Council. It states:

"I was in the process of undertaking the works. I had provided the Tenant with alternative lighting upstairs until a full repair was made. The lighting circuit was made safe and a series of pest control treatments were being undertaken to address the squirrel problem in the loft. I didn't see much point reinstalling the wiring until the squirrels were dead or stopped from getting into the loft as they may have done it again. I had gone away on business when the URAN was received. I would have actioned it immediately if I had received it in time before the urgent works commenced. I have already paid the invoice for the works as I accept it is my responsibility. I inspected the property between tenancies (before the tenant moved in) and there was no cracked socket in that location and it is likely the tenant may have done this, possibly when moving furniture in, as it's located behind some furniture. I provide a dated photograph showing the socket in good working order dated 1 month ago, I have looked at the socket in question and although cracked there doesn't appear to be any exposed contact points. I provide a photo and it appears to be only a hairline crack. May I also add that I had instructed the electrician to start the rewiring and repairs the following week, it was in a safe condition and risk was in my opinion low despite it being stated to be a C1". Appended to the response were 3 inspection reports from the pest control company for the squirrel trapping, evidence she was away on business (flight receipts), photographs of the electrics between tenancies and a current photo of the damaged socket.

The Council decides that this representation has raised some issues that would make the service of a civil penalty at its current level appealable and perhaps unfair.

Therefore the Council decides to reduce the level of civil penalty on this occasion.

The reason for this is as follows, the Landlord's electrician had made the C1 safe in the loft however they hadn't addressed the cracked socket. The socket may have been damaged by the tenant or their children. There doesn't appear to be any exposed contact points and therefore questionable if it was urgent (C1) to begin with. The senior officer considering the evidence presented decides it is possibly unfair to serve her with a civil penalty for £10,500.

However the Landlord has made no representation about the lack of testing of the electrical standards for the dwelling in the past 5 years. Therefore, the calculation is adjusted as follows.
Column 1+Column 2+Column 3, =Column 4

1	2	3		4
Offence Specific Penalties	Further Penalties (if any)	Table 3 impact matrix score A	Level of penalty	Cumulative total
£1000	0	150	£5,000	£6,000

Column 1 is reduced to £1000 for failing in her duty to test the electrical standards in the past 5 years. The Landlord has reasonable excuse not to have complied with duty 4(b) due to the ongoing squirrel problem. The penalty for breach of duty under 3 (1) remains.

The further penalties (column 2) are reduced to 0, as they had reasonable excuse for not having completed the work in 7 days and had in any case removed that wiring until the squirrels were dealt with.

The offence specific penalty for the cracked socket is decided to be removed due to questionable accuracy regarding exposed contact points.

Column 3 remains the same at £5000 as the Landlord knew about the regulations and the remaining facts remained the same. Which gives column 4 (the CPN to be served) as £6,000. The CPN is therefore reduced by £4,500. The Landlord doesn't make any further representations to the amended notice of intention to serve a civil penalty. A final civil penalty is served for £6,000 and no appeal is made to the tribunal. The Landlord pays it.

Remedial Notice process A3.

The EHO notes after 28 days that the C2s picked up by the Council electrician still haven't been addressed by the landlord and must consider addressing the C2s noted on the Council's electricians report and decides to serve a remedial action notice. This notice must include...

The premises to which the Notice relates ...12 Acacia Walk Coalville.

The duty(s) the LHA considers breached; Regulation 3(4)

The required remedial action;

- 1 Replace the thermally damaged socket near cooker, moving it to a more appropriate location
- 2 Replace MCB for correctly specified new MCB as per current wiring regulations.

The date by which the action is to be completed; this must be within 28 days of the service of the Notice.

Allow for written representations to the Notice within 21 days of the service of the Notice

The name & address to whom any representation may be submitted.

Explain the penalty of non- compliance including maximum penalty as per CPN policy.

The Landlord decides they will address the works using their own electrician having received the proposed civil penalty prior to receiving the remedial action notice.

The inspection report and certificate and evidence the works have been completed are sent in and checked by the Council.

The case is closed.

