



---

# NOTICE OF MEETING

---

## CABINET MEMBER FOR HOUSING

TUESDAY, 4 JULY 2017 AT 5.00 PM

## CONFERENCE ROOM A, FLOOR 2 OF THE CIVIC OFFICES

Telephone enquiries to Joanne Wildsmith, Democratic Services Tel: 9283 4057  
Email: [joanne.wildsmith@portsmouthcc.gov.uk](mailto:joanne.wildsmith@portsmouthcc.gov.uk)

If any member of the public wishing to attend the meeting has access requirements, please notify the contact named above.

---

## CABINET MEMBER FOR HOUSING

Councillor Jennie Brent (Conservative)

### Group Spokespersons

Councillor Stephen Morgan MP, Labour  
Councillor Tom Wood, Liberal Democrat  
Councillor Stuart Potter, UK Independence Party

---

(NB This Agenda should be retained for future reference with the minutes of this meeting.)

Please note that the agenda, minutes and non-exempt reports are available to view online on the Portsmouth City Council website: [www.portsmouth.gov.uk](http://www.portsmouth.gov.uk)

**Deputations by members of the public may be made on any item where a decision is going to be taken. The request should be made in writing to the contact officer (above) by 12 noon of the working day before the meeting, and must include the purpose of the deputation (for example, for or against the recommendations). Email requests are accepted.**

## AGENDA

- 1 Apologies for Absence
- 2 Declaration of Interests
- 3 Housing Planning Act - New Enforcement Policy (Pages 3 - 18)

The report by the Interim Director of Property and Housing seeks formal

implementation of a new enforcement policy for Private Sector Housing, taking into account change to current legislation and the introduction of new legislation.

**RECOMMENDED that the Cabinet Member for Housing approves the new Enforcement Policy and the calculation method for the fixed penalty charges as required by the Housing and Planning Act 2016.**

Members of the public are now permitted to use both audio visual recording devices and social media during this meeting, on the understanding that it neither disrupts the meeting or records those stating explicitly that they do not wish to be recorded. Guidance on the use of devices at meetings open to the public is available on the Council's website and posters on the wall of the meeting's venue.

# Agenda Item 3

Agenda item:

**Title of meeting:** Cabinet Member for Housing Decision meeting

**Date of meeting:** 4<sup>th</sup> July 2017

**Subject:** Review of the Enforcement Policy used by Private Sector Housing.

**Report by:** James Hill, Interim Director of Property and Housing

**Wards affected:** All

**Key decision:** Yes

**Full Council decision:** No

---

## 1 Purpose of report

- 1.1 To formally implement a new enforcement policy taking into change to current legislation and the introduction of new legislation.

## 2. Recommendations

**That the Cabinet Member for Housing;**

- 2.1 **approve the new Enforcement Policy and the calculation method for the fixed penalty charges as required by the Housing and Planning Act 2016.**

## 3. Background

- 3.1 The Housing Act 2004 introduced a raft of enforcement powers available to Portsmouth City Council to make landlords or owner occupiers undertake specific remedial measures to their properties.
- 3.2 The Housing and Planning Act 2016 introduced further measures to help local authorities deal with problem landlords, with one of the main changes being the ability to issue civil penalties as an alternative to prosecution for certain specific offences.
- 3.3 This Act received royal assent on the 12 May 2016, with specific chapters coming into force at different time.
- 3.4 The main areas concentrated on for the purpose of possible enforcement action by Portsmouth City Council are Chapter 4, Rent Repayment Orders and Civil Penalties Part 5, section 126 as defined within Schedule 9 both came in force on 6<sup>th</sup> April 2017.

#### **4. Rent Repayment Orders.**

- 4.1 The Rent Repayment Orders were introduced within the Housing Act 2004 which covered situations a landlord failed to obtain a licence for a property and specific offences in relation to licencing under section 72 and 95 of the Housing Act 2004.
- 4.2 The Housing and Planning Act 2016 has extended this to cover:
- Failure to comply with an Improvement Notice served under section 30 of the Housing Act 2004,
  - Failure to comply with a Prohibition Order served under section 32 of the Housing Act 2004,
  - Breach of a banning order made under section 21 Housing and Planning Act 2016 (Scheduled to be enacted October 2017)
  - Using violence to secure entry to a property under section 6 of the criminal Law Act 1977, and
  - Illegal eviction or harassment of the occupants of a property under section 1 of the Protection from Eviction Act 1977.
- 4.3 The method of seeking a rent repayment order has not changed and Portsmouth City Council would need to make an application to the First-tier Tribunal, who would make a decision on the case.
- 4.4 If the First-tier agrees with the application they may award up to 12 months' rent to be paid back to either the tenant if they have been paying the rent themselves or to Portsmouth City Council, if Housing Benefit was being paid.
- 4.5 If the rent is paid by both the tenant and Portsmouth City Council, then any repayment would be on an equivalent basis.

#### **5. Civil Penalties.**

- 5.1 The introduction of Civil Penalties, with a maximum level of £30,000 as an alternative to prosecution for certain specific areas was seen as a way local authorities can be more proactive in clamping down on poor landlords.
- 5.2 The Housing and Planning Act 2016 has introduced the ability for Portsmouth City Council to issue a civil penalty for the following offences under the Housing Act 2004:
- Failure to comply with an Improvement Notice (Section 30)
  - Offences in relation to licencing of Houses in Multiple Occupation (Section 72)
  - Offences in relation to licencing of Houses under Part 3 of the Act (section 95).
  - Offences of contravention of an overcrowding notice (section 139),
  - Failure to comply with management regulation in respect of Houses in Multiple Occupation (section 234)

## **6. Best Practice for setting the level of the penalty.**

6.1 Portsmouth City Council has the ability to impose a civil penalty of up to £30,000 for any of the breaches mentioned within this report. However, the guidance produced following the introduction of the new legislation has stated that we should only reserve the maximum penalties for the worst offending and has stated that the following factors should be considered when setting a civil penalty:

- Severity of the offence,
- Culpability and track record of the offender,
- The harm caused to the tenant,
- Punishment of the offender
- Deter the offender from repeating the offence
- Deter others from committing similar offences.
- Remove any financial benefit the offender may have obtained as a result of committing the offence.

6.2 We are also obliged to look at the landlord's assets and any income, not just rental income in determining the appropriate penalty, to ensure that as a result of the penalty we do not place a landlord in an undue financial position, to the point they can no longer sustain their business.

6.3 Appendix 01 provides a more comprehensive breakdown of how we will undertake this assessment.

## **7. Equality Impact Assessment (EIA)**

7.1 An equalities Impact assessment is not required as this change to the policy is due to specific legislative changes issued by Central Government.

## **8 City Solicitor's comments**

8.1 The comments within the report are reflective of the current change within enforcement away from a court based process to that of a fine based approach with appropriate rights of appeal being allowed and payment discounts for early payment being key features. The Portsmouth City Council Enforcement Policy is drafted with the above observations in mind. The policy aims to be consistent and clearly outlines the availability of options to the enforcing Authority covering a wide range of statutory offences.

## **9 Director of Finance comments**

9.1 There are unlikely to be any adverse cost implications following the implementation of the fixed penalty charges required by the Housing and Planning Act 2016. Any costs that do arise should be covered by the penalty charge income. As no income from fixed penalty charges has been budgeted for, any income collected will financially assist the Private Sector Housing Team in maintaining local housing standards.

.....  
Signed by:  
James Hill, Interim Director of Property and Housing.

**Appendices:**

Appendix 1 - Private Sector Housing - Enforcement Policy 2017.  
Appendix 2 - Fee structure for enforcement action for Notices and Orders.

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Housing and Planning Act 2016	<a href="http://www.legislation.gov.uk/ukpga/2016/22/contents/enacted/data.htm">http://www.legislation.gov.uk/ukpga/2016/22/contents/enacted/data.htm</a>

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by ..... on .....

.....  
Signed by:  
Councillor Jennie Brent  
Cabinet Member for Housing

# Enforcement Policy.

## 1. Introduction

- 1.1 The Private Sector Housing Team aims to support the local economy and promote continuing growth whilst making sure that there is a balanced housing market that provides for a range of individual needs and income levels. The Council is committed to fair and effective enforcement, which protects both the economic interest and health and safety of the public, businesses and the environment.
- 1.2 The main objective of enforcement action is to ensure that non-compliance in the local housing market is addressed in the most effective way to ensure that compliance is achieved for the benefit of all.
- 1.3 This document sets out the enforcement policy for the Council's Private Sector Housing Team when dealing with non-compliance of laws enforced by this Service.
- 1.4 The content of the Private Sector Housing Enforcement Policy has been written having regard to;
  - A. The Regulators Compliance Code – which promotes proportionate, consistent and targeted regulatory activity through transparent and effective dialogue and understanding between regulators and those they regulate. Regulators must have regard for this code when developing policies and procedures that guide their regulatory activity. A copy of the code is available on request or may be downloaded from <https://www.gov.uk/government/publications/regulators-code>.
  - B. In certain situations we may decide that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.
  - C. The Enforcement Concordat – The concordat is a voluntary, non - statutory code of practice which Portsmouth City Council has signed up to. It sets out principles with regards to good enforcement practice. The principles cover: Standards of Service and Performance, Openness, Helpfulness, Proportionality, Consistency and Complaints about Service.

## **2. Human Rights and Equality Issues**

- 2.1 Investigations and any enforcement action will be conducted in a manner which does not conflict or undermine the fundamental principles of the Human Rights Act 1998.
- 2.2 Enforcement decisions will be fair, impartial and objective and will not be influenced by issues such as the ethnicity or national origin, gender, religious beliefs, political views or sexual orientation of the suspect, victim, witness or offender. For a copy of Portsmouth City Councils full equalities policy please go to <https://www.portsmouth.gov.uk/ext/the-council/equalities/equality-law-and-its-significance-for-the-council.aspx>

## **3. Purpose and Methods of Enforcement**

- 3.1 The Private Sector Housing Team expects full compliance with the law. We will help property owners to meet their legal obligations by providing clear and concise information about what they need to do comply. It is to be added that whilst help can be provided this in no way means that property owners should not seek out and rely upon their own independent advices to ensure legal compliance. However, we will not hesitate to use our enforcement powers where necessary. Formal action will be taken, including prosecution, against those who flout the law or act irresponsibly.
- 3.2 Enforcement includes any action aimed at ensuring compliance with the law. The range of action that may be considered include;
- A. Informal Action** – will be considered where one or more of the following circumstances apply;
- there is no legislative requirement to serve formal notice or order and the circumstances are not serious enough to warrant formal action;
  - past history suggests informal action will achieve compliance;
  - there is confidence in the management or the individual;
  - the consequences of non-compliance will not pose a significant risk to occupiers or others.
- B. Serve a Statutory Notice / Order or a civil penalty** – This will be considered where it is appropriate and where there is evidence to justify the issuing of a notice, order or penalty.



#### **4. Housing Act 2004.**

- 4.1 In relation to Part One offence under the Housing Act 2004 service of statutory notices / orders will be based on the hazards found and how serious they are deemed to be. This is assessed using the Housing Health Safety Rating System.
- 4.2 The Private Sector Housing Team has a legal duty to take the most appropriate course of action available in relation to category 1 hazards. The type of Notice or Order served will be based on the best course of action assessment undertaken as required by Housing Act 2004.
- 4.3 There is a power for the Private Sector Housing Team to deal with category 2 hazards. The type of Notice or Order served will be based on the best course of action assessment undertaken as required by Housing Act 2004.
- 4.4 The Private Sector Housing Team will exercise enforcement action in the following circumstances;
- Where there are category 1 hazard(s) present in the residential unit of accommodation
  - Where the category 2 hazard is progressive and will likely become a category 1 hazard unless preventative action is taken.
  - Where there are a number of category 2 hazards which would present a hazard to occupiers
  - In any other circumstances at the discretion of the Private Sector Housing Manager.
- 4.5 Part 1, Housing Act 2004 includes the types of notice/order that can be issued by The Private Sector Housing Team which include;
- Hazard Awareness Notice – notice advising the person on whom it is served of a category 1 and/or category 2 hazards at the property.
  - Improvement Notice – notice requiring the person on whom it is served to take the remedial action specified in the notice in relation to the hazards found.
  - Prohibition Order – an order imposing restrictions on the use of the whole or part of the property and/or who can use the property.

- Emergency Prohibition Order – same as a prohibition order but the order will take effect immediately.
- Emergency Remedial Action Notice - To undertake serious works within a short period of time.
- Demolition Order – an order requiring the demolition of the property.
- Declaring a Clearance Area – an area which is to be cleared of all buildings.

4.6 When any Notice or Order are served, the Private Sector Housing Team will have full regard to the relevant areas within Part 1, Housing Act 2004 and the appropriate Schedules to ensure that the Notice or Order have been served correctly and will be in a position to be enforced should the landlord fail to comply with the Notice or Order.

4.7 Other legislation is available to The Private Sector Housing Team, for example the Environmental Protection Act 1990 which allows the service of an Abatement Notice. Regardless of the legislation used the principles of this policy will be followed.

## **5. Houses in Multiple Occupation - Licensing.**

5.1 Prospective applicants for a licence will be vetted to determine whether they are a 'Fit and Proper' person to hold a licence as required by section 66 Housing Act 2004. Where a person is found not to be a 'Fit and Proper' person to hold a licence, this information will be stored within the Council's records and shared as necessary with other Departments and other Local Housing Authorities.

5.2 A Public Register of licensed HMOs, dwellings with interim/final/empty dwelling management orders and HMOs with temporary exemption Notices in force and will be available, upon request, for public inspection at the Civic Offices, Guildhall Square, Portsmouth, in line with the requirements of the legislation and guidance. If a copy of the register either by street or individual property is requested by a member of the public, this may be subject to a reasonable fee to cover administration costs.

## **6. Suspend, revoke or refuse to renew or grant a licence or authorisation.**

6.1 This will be considered where licensing conditions are not being met and there are clear failings by the landlord in relation to Part 2, Housing Act 2004. The general principles set out within this policy will also apply to any action taken under this part.

## **7. Penalty Charge Notices.**

7.1 Under various legislation the Private Sector Housing Team enforce there is the ability to issue penalty charge notices to address non-compliance. How these notices will be issued and the level of penalty imposed is detailed in the Statement of Principles at Appendix 1 of this policy.

## **8. Prosecute.**

8.1 This action may be considered for more serious offences as an aim to punish serious wrongdoing, to avoid a reoccurrence of the offence and to act as a deterrent to others. The Private Sector Housing Team will take account of the Code for Crown Prosecutors ([https://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/](https://www.cps.gov.uk/publications/code_for_crown_prosecutors/)) and will only prosecute where;

A. There is sufficient admissible and reliable evidence that the offence has been committed and there is a realistic prospect of conviction

AND

B. We believe that it is in the public interest to do so.

8.2 The following factors will be considered in deciding whether or not to prosecute:

- Social, physical or economic, environmental or personal health and safety effect of the offence in order to quantify the serious nature of the offence, Failure to comply with the requirements of an improvement notice or prohibition notice failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information.
- Excessive or persistent breaches of regulatory requirements,
- Foreseeability of the offence and the circumstances leading to it, Intent of the offender, individually and/or corporate body, History of offending, Attitude of offender, Deterrent effect of a prosecution on the offender and others, Culpability of the offender, A history of similar offences. Carrying out operations without a relevant licence, Failure to comply or to comply adequately with formal remedial requirements, Obstruction of an authorised officer.

8.3 The factors are not exhaustive and those that apply will depend on the particular circumstances of each case. The Private Sector Housing Manager

will decide how important each factor is in the circumstances of each case and go on to make an overall assessment

**9. Rent Repayment Order.**

9.1 If a landlord has been convicted of an offence under The Housing Act 2004 for failing to comply with an improvement notice, failing to comply with a prohibition order, being in control or managing an unlicensed HMO or house the Council has a power to consider an application to the First Tier Tribunal for a rent repayment order. A notice of intended proceedings will be sent to the relevant party with the required information and details of the right to make representations.

9.2 In all instance were formal proceedings have been taken and substantiated by the court. Portsmouth City Council will look to make an application for a rent repayment order.

**10. Works in Default.**

10.1 This may be considered as an alternative to, or in addition to prosecution. The Council will carry out the works in default and seek to recover the full and associated costs, where necessary through the Courts. This will include where applicable, administration costs and officer time.

10.2 The Financial Rules and Financial Operating Procedures of the Council will be fully adhered to. Where appropriate the costs will be placed against the property as a Charge. The Council may seek to use its powers to enforce the sale of the property in order to recover the costs.

10.3 Each case will be looked at individually and the Private Sector Housing Manager will make the decision to undertake works in default depending upon the type, extend and the protection of the health, safety and welfare of any occupant.

**11. Proceeds of Crime.**

11.1 The Proceeds of Crime At 2002 allows the courts to deprive perpetrators of criminal offences of any proceeds they have accrued as a result of their criminal activity. The Private Sector Housing Team will work with the Trading Standards Team where appropriate and in consultation with legal services.

**12. Delegation & Decision Making.**

12.1 Decisions about the most appropriate enforcement action to be taken will be made in line with this policy and based on professional judgement, legal

guidelines and advice, statutory codes of practice and priorities set by the Council and/or Central Government.

- 12.2 The Director for Housing and Property has the delegated authority in accordance with the councils Scheme of Delegation to Officers within the Councils constitution to take certain action under a range of legislation, e.g. the service of enforcement notices.
- 12.3 A decision to instigate any type of enforcement action by the Private Sector Housing Team will be taken by the Private Sector Housing Manager (as delegated by the Director of Property and Housing) in consultation, if required with the Councils legal Team.

### **13. Costs of Enforcement.**

- 13.1 The Council is able in certain circumstances to charge for enforcement action, e.g. service of an improvement notice. What can be charged for will depend on the type of action taken. Examples include; costs associated with determining whether to serve a notice, costs involved in identifying any action required and costs associated with serving a notice. When costs are to be charged an invoice will be sent to the relevant party outlining the amount to be paid, what it covers and the payment terms. The charge levied will only cover the cost of the enforcement action to the authority.
- 13.2 The full breakdown of the charges applicable for each Notice or Order can be found in Appendix 02.

### **14. Appeals.**

- 14.1 Any person served with a notice/order has the right to appeal on any grounds set out in the legislation. The main reasons for appeal are likely to be the contents of the notice/order and the schedule of work. Appeals can also be made on the grounds that the notice/order was not served on the correct person, or that a different course of action would be more appropriate.
- 14.2 Appeals regarding enforcement action under The Housing Act 2004 are made to the relevant. First-tier Tribunal (Property Chamber) and full details of this process are contained in the relevant notice/order.
- 14.2 The Council will rigorously defend any appeals where the notice/order has been correctly served.

### **15. Review.**

- 15.1 This Enforcement Policy shall be reviewed annually and amended to reflect any change in legislation, corporate policy or official guidance. Any

amendment shall be in line with meeting the requirements of the legislation and the public interest.

Appendix 1

**Statement of Principles – Determining the Amount of a Penalty Charge.**

1. The Private Sector Housing Enforcement Policy sets out the enforcement options available to the Private Sector Housing Team when addressing non-compliance with housing legislation.

1.1 All notices will include information on the reason for the penalty charge, the amount, how it can be paid, and any information required by statute. Depending on the legislation being enforced there are different penalty charges applicable.

**2. Types of Penalty Charge:**

- Penalty Charge Notice (The Smoke and Carbon Monoxide Alarm Regulations 2015)
- Penalty Charge Notice (Section 249A) The Housing Act 2004 introduced by (The Housing and Planning Act 2016)
- Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to belong to a Scheme etc.) (England) Order 2014

**3. Determining the Amount of a Penalty Charge.**

3.1 Where the Council is satisfied it has evidence of regulatory non-compliance and the breach allows for the Council to require the offender to pay a penalty charge the amount will be determined using the following principles.

3.2 Consideration will first be given to the application of the maximum penalty charge allowable for the offence in question.

**4. Fine Level:**

4.1 Maximum fine set by each area:

Legislation	Maximum civil penalty charge
The Smoke and Carbon Monoxide Alarm Regulations 2015	£5,000
The Housing and Planning Act 2016	£30,000 per case

Lettings Agency Work and Property Management Work (Requirement to belong to a Scheme etc.) (England) Order 2014	£5,000
---	--------

4.2 The specific circumstances of the offence(s) will then be considered to assess whether applying the maximum penalty is reasonable and proportionate. Whilst each situation will be viewed individually the following factors will be considered;

- The seriousness of the offence (within the context of issuing a penalty charge)
- The level/amount of non-compliance found
- Financial benefit gained by offender of the non-compliance
- Financial loss to others as a result of offender’s non compliance
- Attitude of offender
- Maximum criminal fine a magistrate’s court could impose having consideration to any relevant sentencing guidelines

4.3 The factors are not exhaustive and those that apply will depend on the particular circumstances of each case. The Private Sector Housing Manager will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

4.4 Any mitigating factors will then be considered (if applicable). Where present, each applicable mitigating factor is awarded a percentage reduction. Where a factor is not present as there is insufficient evidence, the score will be 0%.

4.5 These percentage scores are then added together and applied to the maximum penalty applicable for the offence. The normal maximum deduction that can be applied with be 90%.

4.6 This methodology will be used for all civil penalty notices issued by the Private Sector Housing Team.

Mitigating Circumstances.	% reduction.
<b>Internal failed preventative measures</b> – in case of national agents / landlords / businesses, where a local office acted outside the corporately adopted procedures or the offence	20% reduction.



occurred locally	
<b>Good cooperation with the Council</b> – in cases where the offender has cooperated fully with the Council in investigating the offence	20% reduction.
<b>Immediate and voluntary remediation</b> – when the offence was brought to the attention of the offender they immediately rectified any breach(s).	20% reduction.
<b>No previous history of non-compliance with the other housing legislation</b> – if this is a first breach of any housing related legislation.	10% reduction.
<b>Any relevant personal circumstances.</b>	10% reduction.
<b>Undue financial hardship</b> – if fine would cause the offender undue financial hardship such that it might not be able to continue to operate. 10% reduction.	10% reduction.

4.7 In any case it will be the responsibility of the recipient to provide sufficient evidence to support their presentations.

## 5. Rights to Make Representations.

5.1 The recipient of a penalty charge notice has the right to make written representation regarding the notice. Full details of this process and timescales are detailed on the notice. Any representations to the penalty charge will be considered by the Private Sector Housing Manager. The Private Sector Housing Manager will review the penalty charge in line with the mitigating factors. All representations will be considered on their own merit.

## 6. Non-Payment of Penalty Charge.

6.1 If any notices are not paid within the specified period following issue, or where applicable following a review procedure, the Council will pursue non-payment of the penalty through a Court order process.

## Appendix 2.

## Enforcement Fee 2016-17.

Notice Type	Per Notice / Order.
serving an improvement notice under Section 11 or 12 (includes suspended notices)	£587
making a prohibition order under Section 20 or 21 (includes suspended orders)	£657
serving a hazard awareness notice under Section 28 or 29	£587
taking emergency remedial action under Section 40	£657
making an emergency prohibition order under Section 43	£622
making a demolition order under Section 265 of the Housing Act 1985 (c. 68)	£630
review of suspended improvement notices (Section 17) and suspended prohibition orders (Section 26)	£160