

**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

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**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.

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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