

THE HOUSING AND PLANNING ACT 2016
Councillor Mrs Macpherson
Cabinet Member for Communities

1 Purpose

- 1.1 To provide a summary of what the new Act introduces and to explain how and why we might use civil penalties as an alternative to prosecution for offences.

Recommendations

That:

- 1.2 the provisions of the Housing and Planning Act 2016 ('the Act') and the introduction of civil penalty charges for certain offences under the Housing Act 2004 be endorsed;
- 1.3 the power to apply for a banning order against certain persons convicted of a banning order offence to prohibit them from letting property for a specified period of time be endorsed;
- 1.4 the power to apply for a Rent Repayment Order for certain offences to seek recovery of rent paid by Universal Credit be agreed;
- 1.5 delegated authority be given to the Group Manager, Regulatory Services to delegate officers to enforce the provisions of the Act;
- 1.6 the Principal Enforcement Officer, (Private Sector Housing) be authorised to prepare and agree a penalty fee structure in respect of the penalty charges in line with the Act and Statutory Guidance for relevant offences specified under Act in consultation with the Group Manager, Regulatory Services and the Cabinet Members for Environment and Waste and Communities.
- 1.7 a fee structure be adopted to set penalty charges for certain specified offences under the Housing and Planning Act in accordance with Statutory Guidance.

2 Reason for decision

- 2.1 The Housing and Planning Act 2016 ('The Act') is expected to come into force in several stages in 2017. The provisions for civil penalty notices and Rent Repayment Orders commenced on 1 April 2017, the provisions for banning orders are scheduled for 1 October 2017.
- 2.2 The Act provides Local Housing Authorities an alternative enforcement option for non-compliance with certain Housing Act 2004 offences rather than taking a prosecution in Court. Although the burden of evidence will be the same for a civil penalty as it is for a prosecution, prosecutions can be both time consuming and expensive. The provisions do not replace the option for prosecution, and it is expected that a prosecution would still be taken in the most serious of cases or for repeat offenders.
- 2.3 The use of banning orders is designed to prevent rogue landlords and/or property agents from letting property for a fixed period of time, from holding an HMO licence or from making a prohibited disposal of property. The Banning order must be made for a minimum of 12 months. A Banning Order can be made by a first Tier Tribunal if a person is convicted of a Banning Order Offence which will be specified in Regulations. Breach of a banning order is an offence, a person being guilty on summary conviction may face a fine and/or imprisonment for a period of up to 51 weeks. However the Authority may as an alternative to prosecution impose a civil

penalty fee of up to £30,000 if it decides beyond all reasonable doubt the person has breached a Banning Order. The Authority will have a Statutory Duty to enter data on a National Database of Rogue Landlords.

- 2.4 Civil penalties are designed to act as a punishment to the offender, deter others, and to remove financial benefit the offender may have obtained as a result of committing the offence.

3 Implications

- 3.1 The Council has a statutory duty as a Local Housing Authority to enforce relevant Housing legislation.

- 3.2 Officers must be delegated under the Act to carry out their functions.

- 3.3 The Council must have regard to any Statutory Guidance issued in relation to determining the level of any civil penalty.

- 3.5 The Act allows the Authority to use income from civil penalty charges to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector.

4 Background

4.1 Civil Penalties under the Housing and Planning Act 2016 (s126 and Schedule9)

Civil penalties came into force on the 1 April 2017 and provide powers for housing authorities to issue financial penalties of up to £30,000 as an alternative to a prosecution in respect of the following offences:

- Failure to comply with an improvement notice (Section 30)
- Failure to licence an HMO (Section 72)
- Offences in relation to licensing of houses under part 3 of the Act (section 95)
- Failure to comply with an overcrowding notice (section 139)
- Breach of management regulations in respect of Houses in Multiple Occupation (section 234)

- 4.2 The authority must be satisfied, **beyond reasonable doubt**, that an offence has occurred and there must not have been a conviction or pending action in respect of the offence.

- 4.3 Prosecution should be considered where an offence is particularly serious or where the offender has committed similar offences in the past.

- 4.4 The legislation does not permit local housing authorities to impose a civil penalty and prosecute for the same offence.

- 4.5 The maximum civil penalty of £30,000 is expected to be reserved for the worst offenders. The actual amount levied in any particular case should reflect the seriousness of the offence, as well as taking account of the landlords previous record of offending. The following factors should be considered to help ensure that the civil penalty is set at an appropriate level:

- Severity of 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.

4.6 Before imposing a civil penalty, the Authority must first serve a 'Notice of Intent' and consider written representations.

4.7 An Appeal provision is in place to the First Tier Tribunal in relation to the decision to impose a civil penalty or the amount of the civil penalty.

4.8 Banning Orders (sections 14-27 and Schedules 2 and 3)

4.9 The Act introduces a power for local authorities to apply for a banning order (under s16) from the First-tier Tribunal for any person (e.g. landlord, letting agent, property manager) or corporate body who has **been convicted of a banning order offence**.

4.10 Banning order offences are to be the subject of a consultation and will require approval of parliament, but are likely to include:

- Offences involving fraud, violence, drugs, sexual assault
- Illegal eviction or harassment
- Offences under the Housing Act 2004

4.11 The ban must be for at least 12 months but can contain exceptions.

4.12 It is an offence to breach a banning order (under s21), for which the local authority can prosecute or seek financial penalties.

4.13 The effect of an order is to ban that landlord or property agent from being involved in letting and/or management of property or being involved in any company which carried out those activities. They must also be included on the database of rogue landlords.

4.14 A person with a banning order is not a fit and proper person for the purposes of obtaining a licence and the local authority have a duty to revoke a licence where a banning order is made against a licence holder, a person with an estate or interest in the house/HMO or is a lessor or licensor of the house.

4.15 A local authority also has a power to make a management order in respect of a property let by a person who has received a banning order.

4.16 Database of Rogue Landlords and Agents (sections 28 -39)

4.17 The government is to establish a database of rogue landlords and give access to local authorities.

4.18 A local authority will be given powers to maintain the database and **must** include details of any landlord who has received a banning order. They **may** include landlords who have been convicted of banning order offences, or who has received at least two financial penalties in 12 months for banning order offences, but authorities must first give notice to the landlord which may be appealed.

4.17 Rent Repayment Orders (sections 40-52)

4.18 The First Tier Tribunal may issue a rent repayment order to any landlord who has been convicted of the following offences:

- Eviction or harassment under Protection from Eviction Act
- Failure to comply with an Improvement Notice
- Failure to comply with a Prohibition Order
- Control or management of unlicensed HMO or house
- Failure to comply with a banning order
- Violence for securing entry under the Criminal Law Act 1977

4.19 A tenant or the local authority may apply to the Tribunal for the RPO, but the local authority must give notice to the landlord of intended proceedings and invite representations.

4.20 The local authority has **a duty** to consider applying for a rent repayment order where it becomes aware that a landlord has been convicted of a relevant offence. Guidance may be published to assist local authorities in deciding whether to apply for a rent repayment order.

5 Consultation

5.1 Informal consultation with the other Buckinghamshire local Authorities is taking place to ensure that our procedures for enforcement and for determining the amount of any civil penalties are consistent.

5.2 Following presentation of this report to the Cabinet Briefing on the 17th July there was some discussion as to the potential for commercial opportunities arising from this new legislation. The new penalty charges offer us a cost efficient alternative to prosecutions where this is appropriate and does allow for the money received from fines to be used for housing enforcement purposes. However we adopt a tiered approach to enforcement in line with our enforcement policy. Therefore the number of fines issued per annum is likely to be low.

There is potential to work with landlords in a commercial manner however this report focuses on the delegation and implementation of the new legal powers and as such commercial opportunities will be explored separately.

6 Next Steps

6.1 If these recommendations are approved, Officers will design and implement a procedure that enable the use of civil penalties as an alternative to prosecution. The procedure will be agreed by the Group Manager, Regulatory Services in consultation with the Cabinet Member for Environment and Waste.

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