

SUBJECT:	<i>Housing and Planning Act 2016: Impact on Housing Enforcement Policy</i>
REPORT OF:	<i>Portfolio for Healthy Communities – Cllr Paul Kelly</i>
RESPONSIBLE OFFICER	<i>Martin Holt, Head of Healthy Communities</i>
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WARD/S AFFECTED	<i>All</i>

1. Purpose of Report

The purpose of the report is to:-

- Advise Members of the implications of the Housing and Planning Act 2016 in respect of enforcement options against private sector landlords
- Seek delegated authority for the Head of Healthy Communities to enforce the provisions of the Act and ask that the Scheme of Delegation be amended accordingly
- Seek Members comments on the draft amended housing enforcement policy.
- Seek delegated authority for the Head of Healthy Communities to agree the final policy in consultation with the Portfolio Holder.

RECOMMENDATIONS

1. **That the new provisions of the Housing and Planning Act 2016 be noted.**
2. **That Cabinet agree to give delegated authority to the Head of Healthy Communities to enforce the provisions of the Act and the Scheme of Delegations be amended accordingly.**
3. **That Cabinet authorise the Head of Healthy Communities to agree the final Housing Enforcement Policy in consultation with the Portfolio Holder, having regard to members' comments and the regulations in respect of Banning Orders, once published.**

2. Reasons for Recommendations

The Housing and Planning Act 2016 introduced a range of new powers and tools to assist local authorities in dealing with poor landlords.

Statutory guidance on the new powers requires that councils develop their own policies for applying the new powers and duties. Further regulations are awaited in respect of Banning Orders.

The draft amended joint housing enforcement policy in Appendix 1 will provide a robust framework for the authority to implement the new powers as required. Delegated authority to

the Head of Healthy Communities to agree the final version will enable amendments to be made in respect of the use of Banning Orders, once the regulations have been published.

3. Content of Report

The Housing and Planning Act 2016 introduced a range of new powers and tools to assist local housing authorities in dealing with landlords who fail to comply with statutory requirements.

The new provisions include:

- Power to apply to the First Tier Tribunal for a banning order where a landlord has been convicted of specified offences. A banning order will ban a landlord from letting or managing property for a period of at least 12 months.
- Power to issue a financial penalty of up to £30,000 as an alternative to prosecution in respect of certain specified offences.
- Extension of powers to apply to the First Tier Tribunal for a Rent Repayment Order where a landlord has committed specified offences and housing benefit has been paid in respect of the property
- Establishment of a 'database of rogue landlords' by the government, to which local authorities may add details of local landlords who have been convicted of specified offences or been issued with at least two civil penalties
- Requirement to consider additional factors when determining whether a landlord is a 'fit and proper person' to hold a licence.

The above powers and requirements are now in force, with the exception of banning orders, which are expected to come into force in October 2017.

The new enforcement tools are designed not only to act as a punishment to the offender and deter others, but also to remove any financial benefit the offender may have obtained as a result of committing the offence.

Statutory guidance has been issued in respect of the use of financial penalties and rent repayment orders. The guidance states that local authorities are expected to develop and document their own policies on:

- the circumstances in which it will issue a financial penalty as an alternative to prosecution,
- the circumstances in which it will apply for a rent repayment order and
- its approach in determining the appropriate level of penalty and/or the amount of rent to reclaim

and should decide which options to pursue on a case by case basis.

A financial penalty can only be considered where the authority has evidence to demonstrate "beyond reasonable doubt" that certain offences have been committed.

In setting the level of a financial penalty, the Council must have regard to a number of factors including the severity of the offence, the culpability of the offender and the level of harm caused. The maximum penalty is expected to be reserved for only the very worst offences.

The landlord has a right of appeal against a financial penalty and recovery of any charge would be via a court order. Consequently, the issue of a financial penalty as an alternative to prosecution will have cost implications to the Council, will not necessarily result in a guaranteed income or off set the full costs of the housing standards service.

The Council currently has a joint housing enforcement policy with Chiltern District Council which sets out the councils' policies in using formal enforcement action to address hazards in housing. A draft amended policy is contained in Appendix X. Sections 1.2, 3.5, 3.8, 3.9 and Appendix 3 (highlighted) have been inserted/amended to take into account the new powers.

It is anticipated that the majority of residential landlords will comply with the requirements of the Housing Act 2004 and that enforcement action and penalties will only be required in a minority of cases.

4. Consultation

Statutory consultation is not required. The Government prepared two Regulatory Impact Assessments in relation to these Regulations. Informal consultation with other Bucks Authorities has taken place to ensure consistency of enforcement approach.

5. Options

The authority must have regard to the Statutory Guidance when using the new powers but has a discretion in determining the circumstances in which the various penalties can be applied, including the level of any financial penalty.

The options are:

1. To amend the housing enforcement policy to give robust guidance to be applied on a case by case basis, in accordance with the guidance
2. To amend the housing enforcement policy to include detailed and explicit circumstances when the powers will be used and a scale of financial penalty to be applied
3. To not make any amendments the existing enforcement policy and not make use of the new powers.

Option 1 is recommended as the other options are likely to restrict the Council's options in dealing with a non-compliant landlord and/or leave the authority open to challenge.

7. Corporate Implications

Financial	Revenue received from any civil penalty may be used for any purpose by the Council. However, there are likely to be staff resource/cost implications in preparing for and attending First Tier Tribunal hearings and debt recovery proceedings.
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Legal	The Council has a duty to implement the regulations, and must have regard to the Statutory Guidance in doing so.
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8. Links to Council Policy Objectives

The strategy contributes to the 'Working towards safe and healthier local communities' aim of the Joint Business Plan 2014-19.

9. Next Steps

If agreed, officers will prepare and implement the final Housing Enforcement Policy and will publicise via letting agents, the Council's website and directly to landlords.

Background Papers:	None
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