

Agenda Item No:	7	
Committee:	Overview and Scrutiny	
Date:	30th May 2018	
Report Title:	Housing Enforcement Policy	

Cover sheet:

1 Purpose / Summary

- To consider a draft Housing Enforcement Policy to inform the final version being considered by Full Council in July

2 Key issues

- A member Task & Finish group met in 2017/18 to look at issues affecting the private rented sector.
- The findings from that task group and improvement action plan were approved by Cabinet on the 22nd March 2018.
- The task group felt it was important to set out, through a clear policy, the approach the Council will take to enforcement in order to improve the management and condition of the housing stock.
- A draft Housing Enforcement Policy is attached as Appendix A. The policy sets out a balanced approach to enforcement, following the principles set out in the Councils overarching Corporate Enforcement Policy. A community impact assessment has also been drafted at Appendix B.
- The policy aims to ensure that only those landlords who fail to maintain reasonable standards or respond to the Council's regulatory approaches are penalised.
- The Housing Enforcement policy will apply district wide.
- Key features of the policy are:
 - The setting out of the Councils approach to using legislative powers relating to the management and condition of housing stock.
 - Provisions for recovering costs relating to enforcement and regulatory advice wherever possible. This includes introducing charging for non-statutory housing inspections and enforcement costs where a notice needs to be served.
 - The introduction of monetary and civil penalties in relation to carbon monoxide regulations and contravening certain offences under the Housing Act 2004.
 - The use of Rent Repayment Orders where Landlords have committed certain Housing offences.
- Cabinet approved the policy to go out to consultation at its meeting on the 19th April. Consultation commenced on the 23rd April 2018 and closes on the 17th June.

- The policy consultation is being promoted in various ways including the Councils' website, direct mailing, social media and word of mouth.

3 Recommendations

It is recommended that Overview & Scrutiny:

- Comment on the proposed policy to help inform a final version that will be taken to Full Council in July 2018

Wards Affected	All
Forward Plan Reference	
Portfolio Holder(s)	Councillor Dee Laws
Report Originator(s)	Dan Horn - Head of Housing & Community Support
Contact Officer(s)	Dan Horn as above Sarah Gove - Housing & Communities Manager Richard Cassidy - Corporate Director
Background Paper(s)	Cabinet 22nd March 2018 - Report of the Private Sector Housing Task and Finish Group. Cabinet 19th April 2018 - Housing Enforcement Policy

4 Background

- 4.1 A member task and finish group was formed in 2017/18 to explore issues within the private rented sector. This was following a proposal to consider a selective licensing scheme for Wisbech. The member task and finish group considered the findings along with new powers from government to help tackle issues within the private rented sector.

5 Considerations

- 5.1 The Council has been successful in bidding for additional enforcement resource under the Controlling Migration Fund. This bid has enabled two Private Sector Housing Officers to begin conducting street by street property inspections in Wisbech town properties, identifying and tackling faults and failings in private rented homes.
- 5.2 In order to provide a transparent and consistent approach to enforcement, a Housing Enforcement Policy has been drafted which sets out the Councils approach to using relevant legislative powers and follows the principles of good regulation detailed in the Council's overarching Corporate Enforcement Policy. It is intended that the Housing Enforcement Policy will apply district wide, although the main regulatory focus is currently within Wisbech.
- 5.3 The draft Housing Enforcement Policy incorporates a number of new powers that allow Local Authorities to recover the costs of regulation and enforcement from those Landlords who do not maintain acceptable property or management standards. This helps ensure that those landlords who do comply with the law and the wider Council Tax payer do not have to meet all the costs of Housing regulation.
- 5.4 One particular power, introduced by the Housing & Planning Act 2016, are Civil Penalties which allow Local Authorities to issue penalties of up to £30,000 as an alternative to prosecution for certain specified offences.

- 5.5 There is no prescribed model by which the civil penalty structure can be set, therefore officers have looked at various schemes that have been approved by other Local Authorities and felt an approach developed by Amber Valley Council represented the most structured and easily understandable methodology. The Amber Valley scheme is based upon the existing criminal fine structure already used within the judicial system for related housing offences. This ensures that the Civil Penalty is based upon similar culpability and harm factors which are used to set out the relative seriousness of existing criminal sanctions.
- 5.6 Civil Penalties are subject to an internal appeal; this is a process whereby the owner / agent can make representations which will then be considered by a senior officer. The recipient of the civil penalty then also an opportunity to subsequently refer the matter to the First Tier Tribunal (Property Section) which is part of HM Courts & Tribunals Service.
- 5.7 Other key features of the draft Housing Enforcement Policy include:
- The introduction of monetary penalties for breaches of the Smoke & Carbon Monoxide Regulations 2015, which concerns the provision and maintenance of smoke and carbon dioxide alarms in rented premises.
 - Making a charge for notices and recovering expenses for re-inspection of premises along with charging for non-statutory housing inspections.
 - Applying for Rent Repayment Orders where the landlord has been convicted of a relevant housing offence and it is considered in the public interest to apply for an order.
- 5.8 Although the main provisions of the draft Housing Enforcement Policy relate to privately rented properties, the policy also sets out an enforcement approach relating to Housing Associations/Registered Providers and Owner Occupiers, generally when there are either special or exceptional circumstances requiring intervention.
- 5.9 It should be noted that the Government has proposed that it will be extending the mandatory licensing of Houses in Multiple Occupation scheme, to be less than the 3 storey threshold that currently exists. Once that new legislation comes into effect the Council will implement accordingly including setting a licensing fee based on full cost recovery in accordance with guidance that will be issued.

6 Consultation

- 6.1 Consultation on the policy with stakeholders commenced on 23 April 2018 and closes on 17 June 2018. A final version will be considered by Cabinet and Full Council on 19 July 2018.
- 6.2 The policy consultation has been promoted through the media, the Council's website and social media. Officers have been promoting the policy consultation in their day to day engagement with landlords, agents and tenants. Responses to the consultation are currently low. This could be as a result that the proposed approach to the Council's enforcement work is based on targeting rogue landlords which reflects the feedback from landlords and agents who got involved with both the Selective Licensing consultation and the consultation event that took place as part of the member task group.
- 6.3 However reminders have been sent out through the media and social media along with a direct letter to known landlords and agents. As well as this the National Landlords Association and the Association of Residential Lettings Agents (ARLA)
- 6.4 In terms of proposed amendments / additions to the policy highlighted during the consultation so far:

- A process chart for Civil Penalties to ensure openness and transparency to landlords that may become subject to a civil penalty process.
- Cambridgeshire County Council (CCC) has the delegated authority to enforce private rented properties that do not have an Energy Performance Certificate. However they recognise District Council has more contact with these properties through our core regulatory work and are therefore far better placed to use these enforcement powers. CCC now have member approval to delegate this power to a district council the district council able to retain any fines recovered under fixed penalty notices. Therefore the Council propose to train our regulatory officers to undertake this function accordingly and reflect in the policy.
- An additional enforcement power to fine landlords who do not register with one of the 3 national redress schemes (to place the deposit):
 - Local authorities can impose a fine of up to £5,000 where a lettings agent or property manager who should have joined a scheme has not done so.
 - The authority must give written notice of their intention to impose a penalty setting out the reasons and the amount of the penalty. The lettings agent or property manager will have 28 days to make written representations or objections to the authority, starting from the day after the date the notice of intent was sent.
 - At the end of the 28 day period the enforcement authority must decide, having taken into account any representations received, whether to impose the fine and, if so, must issue a final notice to the lettings agent or property manager giving at least 28 days for payment to be made.
- These changes will be reflected within the final draft for consideration along with other changes that are made to reflect the feedback from the consultation.

Appendix A: Housing Enforcement Policy



Appendix A

1 Introduction

- 1.1 The aim of this policy is to allow the consistent and fair enforcement of housing legislation to raise standards in the private housing sector.
- 1.2 The policy is based around the Regulators' Code which this Authority has adopted. The general principles of good enforcement, which are set out in the council's Corporate Enforcement Policy are to be adhered to by the council in its housing enforcement activities and when carrying out enforcement we will have regard to all legal requirements which may apply to our actions.
- 1.3 All enforcement decisions and actions will be made having due regard to the provisions of equal rights and anti-discrimination legislation. Local Authorities have extensive powers to intervene where they consider housing conditions are unacceptable. The options are mostly contained in the Housing Act 1985, the Housing Grants, Construction and Regeneration Act 1996 and the Housing Act 2004. These interventions include:
 - enforcement activity (e.g. serving notices on owners to defer action, repair, demolish or prohibit the use of dwellings);
 - slum clearance;
 - compulsory purchase order (e.g. for empty homes);
 - renewal areas;
 - works in default;
 - disabled facilities grants; and
 - private sector renewal grants.
- 1.4 Enforcement of housing standards is an integral part of meeting the council's statutory duties in relation to Private Sector Housing. This policy applies to Housing Associations (Registered Providers) as well as private sector landlords.
- 1.5 This policy sets out to ensure the Council undertakes its housing enforcement role in a consistent, practical, open and transparent manner. When an officer is dealing with a property which is below acceptable standards, this housing enforcement policy will be followed.
- 1.6 The policy takes into account the Code of Practice for Crown Prosecutors.
- 1.7 This policy sets out the current regulatory legislation that the Council has at its disposal to use. It may be other legislation or regulation will come into operation before this policy is updated and the Council reserves the right to do so if the legislation allows.
- 1.8 The fees and charges laid out in the policy will be reviewed on an annual basis as part of the fees and charges setting Council process.

2 What to expect from the Private Sector Housing Team

- 2.1 Landlords
- 2.2 We will advise you of the legislation and help you understand how you can comply with it.

- 2.3 We will advise you as to what action you need to take to comply with the legislation and ask you to respond with your proposal of how you intend to comply within a reasonable timescale.
- 2.4 If we are satisfied with your proposal we will work with you to comply within agreed timescales.
- 2.5 If we are not satisfied with your proposal or how the work is progressing we will initiate formal action by either the service of a notice, carrying out works in default and/or prosecution; either via the criminal or civil route.
- 2.6 In making the decision to prosecute we will have regard to how serious the offence is, the benefit of prosecution and whether some other action would be better.
- 2.7 A charge will be made for the service of a notice.
- 2.8 Tenants
- 2.9 We will expect you to advise your landlord, in writing, of the issues within your property before contacting us.
- 2.10 We will advise you as to what action we can take and advise you of the expected timescales.
- 2.11 We will expect you to cooperate with the landlord to get the works carried out and to advise us of any action taken by the landlord.
- 2.12 Engagement with the Private Sector Housing team is to ensure house condition improvement only and is not intended to increase priority on the housing register
- 2.13 Owners
- 2.14 We will expect owners to maintain the properties they live in.
- 2.15 Enforcement action will be considered if there is a serious risk to a person's health and/or the property is causing a statutory nuisance to neighbouring properties.
- 2.16 Where there are safeguarding concerns, or where it is considered enforcement is not appropriate, the council will consider alternative interventions.
- 2.17 Owners of Empty Homes
- 2.18 We will work with owners of empty homes to bring empty homes back into use. Incentives may be available to owners to make their empty homes available to the council in discharging their statutory Homelessness duties.
- 2.19 Where properties remain empty for a period of 2 years or more, Enforcement action (Compulsory Purchase Order, Empty Dwelling Management Order, and Enforced Sale) will be considered if an owner does not cooperate and the empty property has an impact on the neighbourhood.

3 Legislation

- 3.1 The Housing Act 2004, ("the Act"), together with Regulations made under it, prescribes the Housing Health and Safety Rating System as the means by which Local Authorities assess housing conditions and decide on action to deal with poor housing.
- 3.2 It is a risk assessment system of the likely effect of housing conditions on the health of occupiers. 29 potential hazards are assessed and scored for their severity.
- 3.3 The scores for each hazard are ranked in Bands. Hazards falling into Bands A to C are more serious, and are classed as Category 1. Less serious hazards fall into Bands D to

J, and are classed a Category 2. The council must take appropriate action in respect of a Category 1 hazard, and may do so in relation to Category 2 hazards.

- 3.4 A 'Category 1 hazard' arises when a hazard reaches a score of 1000 or more under the Housing Health and Safety Rating System. A 'Category 2 hazard' arises when a hazard reaches a score of 999 or less under the Housing Health and Safety Rating System.
- 3.5 The score is based on the risk to the potential occupant who is most vulnerable to that hazard. However, in determining what action to take, the council will not only take account of the score, but also whether the council has a duty or discretion to act, the views of occupiers, the risk to the current and likely future occupiers and visitors and the presence of other significant hazards in the property.
- 3.6 The Housing and Planning Act 2016 confers additional enforcement powers as described in this Policy.

4 Statutory Action

- 4.1 The Housing Act 2004 is the principal Act covering statutory action. If a Category 1 hazard is identified, the council has a duty to require the owner to remedy the defect. The council has discretionary powers to deal with Category 2 hazards and the most appropriate course of action will be decided on a case-by-case basis. Where an improvement notice is served, the council will require sufficient works to abate the hazard for five years.
- 4.2 It is for the council to determine the most appropriate course of action in relation to the hazard in all circumstances. Consideration is to be given to all relevant factors of the case, to published guidance from central government & professional organisations and to the views of owners and tenants, before formal action is taken.
- 4.3 There are a number of different notices available to the council which requires a person, business or organisation to comply with specific requirements relating to Category 1 and 2 hazards:

5 Hazard Awareness Notice

- 5.1 Hazard Awareness Notice relating to Category 1 Hazards; section 28
- 5.2 Hazard Awareness Notice relating to Category 2 Hazards; section 29
- 5.3 This is used where a hazard has been identified but it is not necessarily serious enough to take more formal action. It is a way of drawing attention to the need for remedial action. This notice should not be used if the situation is considered serious enough for follow up inspections to be made. This notice is not registered as a land charge and has no appeal procedure.

6 Improvement Notice

- 6.1 Improvement Notices relating to Category 1 Hazards; section 11
- 6.2 Improvement Notices relating to Category 2 Hazards; section 12
- 6.3 An improvement notice will provide the most appropriate action for most Category 1 hazards where reasonable remedial works can be carried out to reduce the hazard sufficiently.

7 Prohibition Order

- 7.1 Prohibition Orders relating to Category 1 Hazards; section 20
- 7.2 Prohibition Orders relating to Category 2 Hazards; section 21
- 7.3 A prohibition order may be appropriate where conditions present a risk but remedial action is unreasonable or impractical e.g. where there is inadequate natural light to a room or no protected means of escape in case of fire. The order may prohibit the use of part or all of a premises for some or all purposes. It may also be used to limit the number of persons occupying the dwelling or prohibit the use of the dwelling by specific groups. In an HMO it can be used to prohibit the use of specified dwelling units.

8 Suspended Notices & Suspended Prohibition Orders

- 8.1 Suspension of Improvement Notice; section 14
- 8.2 Suspension of Prohibition Order; section 23
- 8.3 These may be suspended where enforcement action can safely be postponed until a specified event or time. This can be a period of time or a change in occupancy. Current occupation and wishes may be taken into account. These may also be used where there is programmed maintenance. The suspensions must be reviewed at least every 12 months. The advantage of suspending a notice is that there is a record of the Local Housing Authority's involvement and the situation must then be reviewed. It is also recorded as a land charge.

9 Emergency Remedial Action, Section 40

- 9.1 When the council is satisfied that a Category 1 hazard exists on any residential premises and is further satisfied that the hazard involves an imminent risk of serious harm to the health and safety of any occupiers or visitors and no Management Order is in force under Chapter 1 or 2 of Part 4 of the Act. Emergency Remedial Action may be taken by the Authority in respect of one or more Category 1 hazards on the same premises or in the same building containing one or more flats. The action will be whatever remedial action the council considers necessary to remove an imminent risk of serious harm.
- 9.2 This is likely where the council considers it is immediately necessary to remove the imminent risk of serious harm, there is no confidence in the integrity of any offer made by the owner to immediately address the hazard, and the imminent risk of serious harm can be adequately addressed through remedial action to negate the need to use an Emergency Prohibition Order. If this action is taken, a notice will be served within 7 days of taking the Emergency Remedial Action, detailing the premises, the hazard, the deficiency, the nature of the remedial action, the date action taken, and the rights of appeal.

10 Emergency Prohibition Orders, s.43

- 10.1 When the council is satisfied that a Category 1 hazard exists on any residential premises and is further satisfied that the hazard involves an imminent risk of serious harm to the health and safety of any occupiers of those or any other residential premises and no Management Order is in force under Chapter 1 or 2 of Part 4 of the Act, action may be taken by the Authority in respect of one or more Category 1 hazards on the same premises or in the same building containing one or more flats. The order specifies prohibitions(s) on the use of part or all of the premises with immediate effect.

10.2 This is likely where the imminent risk of serious harm cannot be adequately addressed through the use of emergency remedial action for whatever reason. Where this action is taken the council will, if necessary, take all reasonable steps to help the occupants find other accommodation when the tenants are not able to make their own arrangements.

11 Demolition Order, S.46 (Housing act 2004), Part 9 (Housing Act 1985)

11.1 When the council is satisfied that a Category 1 hazard exists in a dwelling or HMO which is not a flat, and a Management Order is not in force, or in the case of a building containing one or more flats where the council is satisfied that a Category 1 hazard exists in one or more of the flats contained in the building or in any common parts of the building, and the circumstances of the case are circumstances specified or described in an Order made by the Secretary of State. At the time of writing this policy, no such order has been made.

12 Clearance Areas, s.47 (Housing Act 2004), Part 9 (Housing Act 1985)

12.1 This may be declared when the council is satisfied that each of the residential buildings in the area contains a Category 1 hazard and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area, or when the council is satisfied that the residential buildings in an area are dangerous or harmful to the health or safety of the inhabitants of the area as a result of their bad arrangement or the narrowness or bad arrangement of the street and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area.

13 Statement of Reasons

13.1 All Notices and Orders will have a Statement of Reason attached to them as appropriate. The Statement should include why one type of enforcement was taken over another. A copy of the Statement must accompany the Notice or Order. Before formal enforcement action is taken regarding a fire hazard in a House of Multiple Occupation, the council will consult with the Fire Authority regarding works required to abate the hazard.

14 Rights of appeal

14.1 There is a right of appeal against most notices, orders or decisions made by the council. Where there is an appeal, the appropriate authority may confirm, quash, vary or suspend any notice, order or decision.

15 Vacated Premises

15.1 In cases where properties are subject to a statutory notice and the property is subsequently vacated, all Notices or Orders will be reviewed to consider whether the notices or orders may be varied, suspended or revoked. The council will seek to deter

landlords from undertaking retaliatory eviction and will not consider that removal of a tenant achieves compliance with any Notice served, except in overcrowding situations where it was a specific requirement of the notice.

16 Charging for Notices and Recovery of Costs

- 16.1 Local Authorities can make a charge as a means of recovering expenses incurred in:
- serving an Improvement Notice,
 - making a Prohibition Order,
 - serving a Hazard Awareness Notice,
 - taking Emergency Remedial Action,
 - making an Emergency Prohibition Order
 - or making a Demolition Order under the Housing Act 2004.
- 16.2 These costs are in relation to re-inspection of premises, the subsequent consideration of action to be taken and the service of Notices etc. No maximum charge has been set by a Government in England. In Fenland the standard charge for a Housing Act Notice will be £240 for each Notice or Order made. This charge has been calculated using an officer's hourly rate of £60.
- 16.3 In accordance with Sections 49 and 50 of the Housing Act 2004, the council will exercise the right to charge and recover the reasonable expenses incurred in taking enforcement action when serving the following notices:
- an improvement notice;
 - a hazard awareness notice;
 - a prohibition order;
 - a suspended improvement notice or suspended prohibition order;
 - emergency remedial action notices;
 - making an emergency prohibition order; and
 - making a demolition order
- 16.4 Costs will only be waived in exceptional circumstances such as deficiencies caused by tenant neglect and owner occupied premises and only at the discretion of the Council
- 16.5 From the time the notice charge is issued to the landlord for payment a legal charge will be registered against the property which is a local land charge. The charge will remain on the property until the sum is repaid in full.
- 16.6 When enforcement costs exceed £500 (as a result of multiple notices having been served), the council will normally exercise its rights and remedies under the Law of Property Act 1925 (c.20) which includes by deed having powers of sale and lease, or accepting surrenders of leases and of appointing a receiver to recover costs.
- 16.7 When enforcement costs do not exceed £500, the council will seek to recover enforcement costs through the small claims court and will use court remedies such as the use of the court bailiff to recover enforcement costs.
- 16.8 The council will make a charge to cover the cost of carrying out a review of Suspended Improvement Notices or Suspended Prohibition Orders, and for serving a copy of the

council's decision on a review and that charge will also be registered as a charge against the property.

- 16.9 All enforcement costs incurred and recovered will be based upon the activities listed within section 49 of the Housing Act 2004, and will be charged at an hourly rate. The hourly rate will be based on the actual cost incurred to the council of performing the chargeable activity.
- 16.10 Works in Default of a Statutory Notice
- 16.11 The council will consider undertaking Works in Default of a statutory notice, either with or without agreement, subject to the following conditions:
- 16.12 The person responsible for undertaking the works has not complied with the enforcement notice to which the works relate; and
- 16.13 Works in default powers are provided by the specific legislation being used in relation to the case; and
- 16.14 The council will register a charge against the premises for the costs incurred in undertaking the works.
- 16.15 In the majority of cases the council will seek to recover the costs incurred in undertaking works.

17 Non-Statutory Inspection Charges

- 17.1 The Private Sector Housing team will charge for inspections that are non-statutory. These include inspections relating to fitness of dwellings for the purposes of immigration requests and requests for advice from stakeholders in relation to duties under the Housing Act 2004. The cost for this service will be charged at £60 per hour in line with officers' hourly rate as detailed in the fee matrix in Appendix 2.

18 Right to Rent Legislation

- 18.1 Under the Right to Rent, introduced in the Immigration Act 2014, private landlords, including those who sub-let or take in lodgers, must check the right of prospective tenants to be in the country to avoid being issued with a penalty of up to £3000 per tenant. Enforcement rests with the Home Office.

19 Issuing Monetary and Civil Penalties

Smoke & Carbon Monoxide Regulations 2015

- 19.2 These regulations were introduced to ensure that private sector landlords install and maintain at least one smoke alarm on every story of their rented properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire or wood burning stove).
- 19.3 It also makes it the landlords' responsibility to ensure that the alarms are in working order at the start of each new tenancy. In addition, the regulations amend the conditions which must be included in a licence under Part 2 or 3 of the Housing Act 2004 ("the 2004 Act") in respect of smoke and carbon monoxide alarms.

- 19.4 The enforcement authorities (local authorities) are required to issue a remedial notice where they have reasonable grounds to believe a landlord has not complied with one or more of the requirements of the regulations.
- 19.5 The landlord must comply with the notice within 28 days. If they do not, the local authority must carry out the remedial action (where the occupier consents) to ensure the requirements in the regulations are met and can issue a civil penalty of up to £5,000. Penalty charges for non-compliance are as follows:

First Offence	£1,500	Reduced to £750 if paid within 14 days
Second Offence	£3,000	No reduction for early payment
Additional Offences	£5,000	No reduction for early payment

- 19.6 In determining the level of the fixed penalty notice the Council has considered the likely costs it will incur and the amount required sufficient to provide a deterrent to non-compliance. Increasing the fine for a second or third offence reflects the seriousness of the offence and is designed to deter repeat offending.
- 19.7 While these charges are set as standard, a landlord may seek to review a penalty charge notice within 28 days by service of notice on the Council. A senior officer not directly involved in the service of the original notice, usually the Housing & Communities Manager will carry out this review. The reviewing officer will consider the representations made by the landlord and decide whether to confirm, vary or withdraw the penalty charge notice.
- 19.8 In doing so the reviewing officer will have regard to the amount required for the Council to recover its costs and that the Council has considered and agreed a level of fine that it considers is sufficient to provide a deterrent to non-compliance. After reviewing the fixed penalty notice the reviewing officer will inform the landlord by service of notice of their decision. The 50% reduction for a first offence will apply to any revised charge set should payment be within 14 days of service of the revised notice.

Civil Penalties

- 19.9 The Housing & Planning Act 2016 introduces a range of measures to crack down on rogue landlords including the power for Councils to issue Civil Penalties of up to £30,000 as an alternative to prosecution for certain specified offences.
- 19.10 This power came in to force on 6 April 2017 and was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.
- 19.11 Income received from a Civil Penalty can be retained by the local housing authority provided that it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector.
- 19.12 A civil penalty may be imposed as an alternative to prosecution for the following offences under the Housing Act 2004:
- Failure to comply with an Improvement Notice (section 30)
 - Offences in relation to licensing of Houses in Multiple Occupation (section 72)
 - Offences in relation to licensing of houses under Part 3 of the Act (section 95)

- Offences of contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234)

19.13 The amount of penalty is to be determined by the Council in each case. In determining an appropriate level of penalty, the Private Sector Housing Enforcement Team will have regard to statutory guidance given in the DCLG publication 'Civil Penalties under the Housing and Planning Act 2016'.

19.14 Only one penalty can be imposed in respect of the same offence and a civil penalty can only be imposed as an alternative to prosecution. However, a civil penalty can be issued as an alternative to prosecution for each separate breach of the House in Multiple Occupation management regulations. Section 234(3) of the Housing Act 2004 provides that a person commits an offence if he fails to comply with a regulation. Therefore, each failure to comply with the regulations constitutes a separate offence for which a civil penalty can be imposed.

19.15 The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, the Council must satisfy itself that if the case were to be prosecuted in a magistrates' court, there would be a realistic prospect of conviction.

19.16 In order to achieve a conviction in the magistrates' court, the Council must be able to demonstrate beyond reasonable doubt that the offence has been committed.

19.17 Determining the Sanction

19.18 The following principles will apply to each case to be considered in relation to a Civil Penalty;

- Each case will be considered on its own merits
- There must be sufficient, reliable evidence to justify the action taken
- The action taken must be in the public interest
- Any mitigating circumstances will be considered
- The decision to prosecute an individual is a serious step and has serious implications for all involved. Decisions to prosecute should always be fair and consistent.

19.19 Factors to be taken into consideration when Determining the Penalty

19.20 In accordance with the statutory guidance, the Council will consider the following factors to help ensure that the civil penalty is set at an appropriate level:

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

19.21 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 demonstrates the consequences of not complying with their responsibilities.

19.22 The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in 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.

19.23 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:

- the local housing authority is proactive in levying civil penalties where the need to do so exists and
- that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

19.24 The guiding principle should be 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.

19.25 Penalties Structure:

- For the purpose of the offence the following three steps below shall be used to determine the level of fine to issue.

Step One:

- A decision shall be made, by first considering the culpability factors below.

Serious breach of legislation	Very High
History of failing to comply with legislation	High
An act or omission that a reasonable person would not commit	Medium
Effort was made to comply but was insufficient	Medium
Minor failings due to an isolated incident	Low

- The harm factors should then be considered and given a category below. Consideration to be given to the likelihood of actual harm occurring due to the breach, and the severity of that harm.

Serious adverse effect on individual or high risk of adverse effect	Cat 1
Adverse effects, lesser than above. Medium risk of adverse effect, or low risk but of serious effect. Tenant seriously misled.	Cat 2
Low risk of an adverse effect.	Cat 3

Step Two:

- The Standard Scale (Criminal Justice Act 1982) has been used as reference and converted below to provide a point scale within the range of the civil penalty.

- 1. £1-£500
- 2. £501 - £1000
- 3. £ 1001-£2500
- 4. £2501 - £7000
- 5. £7001 – 17000
- 6. £17001-£30000

19.26 The table below indicates the level at which the fine should be imposed by considering culpability and harm

Culpability	Harm Cat 1	Harm Cat 2	Harm Cat 3
Very High	6	5	4
High	5	4	3
Medium	4	3	2
Low	3	2	1

19.27 The following factors shall be considered, along with any other relevant information, which may be used to justify an upward or downward adjustment.

- Factors increasing seriousness
- Statutory aggravating factors

19.28 Previous convictions, having regard to

- the nature of the offences to which the conviction relates and its relevance to the current offence; and
- the time that has been elapsed since the conviction
- Offence committed whilst on bail
- Other aggravating factors include (this is not an exhaustive list):
 - Motivated by financial gain
 - Deliberate concealment of illegal nature of activity
 - Established evidence of wider/community impact
 - Obstruction of justice
 - Record of providing substandard accommodation
 - Refusal of free advice
- Factors reducing seriousness or reflecting personal mitigation (this is not an exhaustive list):
 - No previous convictions or no relevant/recent convictions
 - Steps voluntarily taken to remedy problem
 - High level of co-operation with the investigation, beyond that which will always be expected
 - Good record of maintaining property/member of Accreditation scheme

- Self-reporting, co-operation and acceptance of responsibility
- Good character

- 19.29 The Council shall submit a request to the offender, to provide any financial information that they feel shall influence their ability to pay a high fine. This will be taken into consideration if it appears reliable. If no information is provided then the Council will consider any information known to them regarding the offender, consider this when making a decision regarding the level of fine.
- 19.30 The Council will issue the person deemed to have committed a relevant offence a notice of its proposal ('notice of intent') to impose a financial penalty. This will set out;
- The amount of the proposed financial penalty;
 - The reasons for proposing to impose the penalty;
 - Information about the right of the landlord to make representations.
- 19.31 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.
- 19.32 A person who is given a notice of intent may make written representations to the Council about the intention to impose a financial penalty within 28 days from the when the notice was given.
- 19.33 Where written representations are made, a senior officer not previously involved with the case will consider the appeal. This will usually be the Head of Housing and Community Enforcement or another relevant officer at this level within the Council's structure. The decision of the senior officer will set out their reasons for making their decision clearly and the following options will be available to them;
- Withdraw a notice of intent or final notice; or
 - Reduce the amount specified in a notice of intent or final notice
 - Uphold the original decision to issue the notice of intent
- 19.34 At the end of the 28-day period, the Council will decide whether to impose a penalty and, if so, will set the amount of the penalty. If the decision is made to impose a financial penalty, we will give the person a final notice requiring that the penalty is paid within 28 days. The final 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; and
 - The consequences of failure to comply with the notice.
- 19.35 A person who receives a final notice may appeal to the First-tier Tribunal (Property Chamber) against:
- The decision to impose a penalty; or
 - The amount of the penalty.
- 19.36 In these circumstances, the final notice is suspended until the appeal is determined or withdrawn.

20 Rent Repayment Orders

- 20.1 A Rent Repayment Order is defined in section 40(2) of the Housing and Planning Act 2016 as an order requiring the landlord under a tenancy of housing to :
- repay an amount of rent paid by a tenant, or
 - pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
- 20.2 The reference to universal credit or a relevant award of universal credit includes housing benefit under Part 7 of the Social Security Contributions and Benefits Act 1992 pending its abolition. The Council as the local housing authority has a duty under section 48 of the Housing and Planning Act 2016 to consider applying to the First-tier Tribunal ('the Tribunal') for a Rent Repayment Order in cases where an offence from the list below has been committed.
- 20.3 Offences for which a Rent Repayment Order can be obtained:-
- Failure to comply with an Improvement Notice, contrary to section 30(1) of the Housing Act 2004 (served under the Housing Act 2004)
 - Failure to comply with a Prohibition Order etc., contrary to section 32(1) of the Housing Act 2004 (served under the Housing Act 2004)
 - Being a person having control of or managing a house in multiple occupation (HMO) which is required to be licensed under Part 2 of the Housing Act 2004 but which is not so licensed, contrary to section 72(1) of the Housing Act 2004
 - Being a person having control of or managing a house which is required to be licensed under Part 3 of the Housing Act 2004 but is not so licensed, contrary to section 95(1) of the Housing Act 2004 Using violence to secure entry to a property, contrary to Section 6(1) of the Criminal Law Act 1977
 - Illegal eviction or harassment of the occupiers of a property, contrary to section 1(2), (3) or (3A) of the Protection from Eviction Act 1977
 - Breach of a banning order made under section 21 of the Housing and Planning Act 2016 (not yet in force but scheduled to be 1 October 2017)
- 20.4 The offences under the Housing Act 2004 must relate to hazards within occupied premises and not common parts only. The offence must have been committed on or after 6th April 2017. A RRO can be applied for whether or not the landlord has been convicted.
- 20.5 Where there has been a conviction, a certificate of conviction will suffice to establish commission of the specified offence. In the absence of a conviction, the Tribunal will need to be satisfied beyond reasonable doubt that the landlord committed the specified offence. Officers shall have regard to the Crown Prosecution Service Code for Crown Prosecutors (see [Code for Crown Prosecutors](#)) in order to establish whether there is likely to be sufficient evidence to secure a conviction and therefore to establish the necessary burden of proof to the Tribunal.
- 20.6 In deciding whether to apply for a RRO, the Council must under section 41(4) of that Act have regard to any guidance issued by the Secretary of State (see the DCLG document 'Rent Repayment orders under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities' - [Rent Repayment Orders Guidance](#)).
- 20.7 Council officers may offer advice to tenants who are eligible to claim a RRO in respect of rent paid themselves but in such cases, the tenant will usually be referred direct to the Citizen's Advice Bureau or other appropriate bodies for further support.
- 20.8 Council officers are granted powers and duties to deliver proportionate and targeted enforcement. It is vital that regulatory resource is used consistently and to best effect by

ensuring that resources are targeted on addressing the highest risks. The use of RRO's is only to be used where considered appropriate.

- 20.9 The objective of an application for a Rent Repayment Order is not only to issue a punishment as a consequence of non-compliance with the law, but also to deter the offender and others in a similar position from repeat offences.
- 20.10 If a conviction for the offence has been obtained then it is normally expected that a Rent Repayment Order will be pursued where the Council have paid housing benefit, or the housing element of Universal Credit. The Tribunal must, in these cases, order that the maximum amount (12 months) of rent be repaid in these circumstances
- 20.11 The matrix below should be followed to help determine whether to pursue a RRO and the amount of rent to reclaim:

1.	Has the offender been prosecuted and convicted of a relevant offence in Court?	If yes, make an RRO application. If no go to step 2.
2.	Has evidence been obtained from Academy / Benefits to confirm that Housing Benefit has been paid by AVBC over the 12 months?	If no – no case for RRO. If yes, proceed to step 3.
3.	Does the LA have sufficient evidence to prove 'beyond reasonable doubt' that a relevant offence has been committed? Is the evidence reliable? Is there no credible defence?	If no – case closed, do not pursue. If yes, proceed to step 4.
4.	Is it in the public interest to proceed to apply for an RRO? (consider the level of harm that has been caused)	If no – case closed, do not pursue. If yes, proceed to step 5.
5.	Is pursuing an RRO proportionate to the offence?	If no – case closed, do not pursue. If yes, proceed to step 6.
6.	Does the offender have any previous convictions?	If yes – proceed to RRO. If no, proceed to step 7.
7.	Where no previous offence – is the issuing of a RRO likely to deter from future offences?	If yes – proceed to RRO. If no, consider closing and not pursuing.
8.	RRO Would the issuing of a RRO cause substantial hardship to the offender, and are there mitigating circumstances to suggest the LA should not proceed?	If Yes, complete notes to justify reason not to pursue. If no, proceed to RRO application
9.	Are there any other factors that would indicate the Council	If Yes, complete notes to

	should not proceed with the issuing of the RRO	justify reason not to pursue. If no, proceed to RRO application
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- 20.12 If the conclusion is yes to pursue RRO, then the amount to be reclaimed should be determined by considering the factors in the table below.
- 20.13 If the offender has already been convicted of the offence, then the amount shall automatically be determined as 12 months rental income.
- 20.14 If no conviction has been obtained, but the decision has been made to pursue RRO, the factors in the table below should be considered to determine a sum.
- 20.15 The amount of rent to be repaid cannot exceed the amount actually collected. Where the tenant is in receipt of Universal Credit, the formula provided in the DCLG guidance in relation to RRO's shall be followed.
- 20.16 Factors to influence amount of RRO

1.	Punishment of the offender – the RRO should have a real economic impact on the offender and demonstrate consequences of non-compliance with their responsibilities. Consider the conduct of landlord and tenant, financial circumstances of landlord and whether landlord has previous convictions
2.	Deter the offender from repeating the offence – level of RRO must be high enough to deter offender from repeating
3.	Dissuade others from committing similar offences – RRO will be in the public domain. Robust and proportionate use is likely to help others comply with their responsibilities.
4.	Remove any financial benefits that the offender may have obtained as a result of the offence – landlord should be losing the benefits that he has accrued whilst not complying with their responsibilities
5.	Is there any other factors the Council considers should be taken into account.

- 20.17 Consideration of the above points will determine whether the full amount of rent should be reclaimed or whether there are mitigating circumstances, this will depend on the severity of the offence and whether this justifies 12 months of non-payment of rent.
- 20.18 If there are mitigating circumstances, then a deduction should be applied from the full 12 months. The amount payable under a RRO is recoverable as a debt.

21 Owner Occupiers

- 21.1 Other than in exceptional circumstances, the council expects owner-occupiers, including long leaseholders, to take their own action to remedy hazards at their own properties the Council will decide whether there are exceptional circumstances in a particular case to justify intervention.

- 21.2 Occasions will arise whereby Category 1 hazards are identified in owner occupied properties where the owner is not eligible for financial assistance, is unwilling to use financial assistance, or where no financial assistance is available from the council. The duty to take action, as required under Section 5 of the Housing Act 2004 still applies.
- 21.3 However it would not generally be in the public interest to enforce compliance unless the hazard in question was adversely affecting an adjoining property or was endangering the health And safety of the public or visitors to the property (such as Postal Service workers).
- 21.4 Where it appears that there would otherwise be little prospect of such a hazard being remedied within the forthcoming 12 months (for example through a grant to install central heating / insulation to remedy the hazard of excess cold) then the hazard will be brought to the attention of the owner by the service of a Hazard Awareness Notice. No charge would generally be made for the service of such a notice. This fulfils the council's duty under section 5 of the Housing Act 2004 but has no subsequent enforcement consequences.
- 21.5 In some exceptional cases, in line with the guidance given by the HHSRS Enforcement Guidance, it will be necessary to serve an Improvement Notice or Suspended Improvement Notice in respect of hazards in owner occupied properties. No charge would generally be made for the service of such a notice and the Service will work with the owner to offer advice and assistance in complying with the requirements of the notice. Other examples of exceptional cases where the council may take enforcement action include:
- Vulnerable elderly people who are judged not-capable of making informed decisions about their own welfare.
 - Vulnerable individuals who require the intervention of the council to ensure their welfare is best protected.
 - Hazards that might cause harm to persons other than the occupants.
 - Serious risk of life-threatening harm such as electrocution or fire.
 - Any other exceptional case determined by the Housing & Communities Manager.#

22 Housing Associations/Registered Providers (RP)

- 22.1 RP exist to provide suitable and properly maintained accommodation for their tenants. They are managed by Boards (which typically include tenant-representatives) and their performance is scrutinised by the Homes England. RPs normally employ staff to both manage and maintain their properties and will usually have written arrangements for reporting problems, setting out the response times they aim to achieve, and also for registering any complaints about service-failure.
- 22.2 On this basis the council will not normally take formal action against an RP unless:
- They are satisfied that the problem in question has been properly reported to the RP; and
 - The RP has then failed to take appropriate action within a reasonable timescale, taking into account its published or other realistic response targets.
- 22.3 If the council determines that it is appropriate to take action it will then normally notify the RP that a complaint has been received and/or a hazard identified and seek the RPs comments and proposals. Only in cases where it judges that an unsatisfactory response has been received will the council take further action, and will then determine which of

the available enforcement options is the most appropriate, taking into account the facts of the case.

- 22.4 Where we have identified hazards and the Registered Provider has a programme of works to improve or make their stock decent, the officer will take into account the programme when determining the most appropriate course of action, and will liaise with the RP over any works necessary to deal with category 1 and 2 hazards in advance of the planned improvements. In particular, with the Space and Crowding hazard, account will be taken of the availability of suitable alternative accommodation and the priority given to the allocation of alternative accommodation for tenants living in overcrowded conditions which are the subject of a Category 1 or high Category 2 hazard.

23 Management Orders

- 23.1 If a property should be licensed, but for whatever reason(s) there is no reasonable prospect of granting a licence, the council must introduce a Management Order. The council also has a duty to make an Order where the health and safety condition as described in the Section 104 of the Act is met. Similarly, the council can also decide to take over the management of some empty properties in order to bring them back into use and those properties where it is decided the council should intervene for anti-social behaviour reasons.
- 23.2 Management Orders effectively mean that the council (or its Agent) takes over the running of the property as if it were the landlord, including collecting rents, forming tenancies, carrying out repairs and other management matters; the duties vary between the different orders that can be made. This does not affect the ownership of the property; the owner retains certain rights depending on the type of order including receipt of surplus rental income. Relevant costs are recoverable.
- 23.3 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.
- 23.4 An Interim Management Order (IMO) lasts for no longer than 12 months and will be made on a property if it is a licensable HMO but does not have a licence. The council must make an IMO if they do not anticipate that the HMO will be licensed in the near future or because the council has revoked the license. The expiry date of the IMO will be determined when it is made.
- 23.5 Final Management Order (FMO) lasts for no longer than 5 years and must be made on expiry of the IMO where a licence cannot be granted. When a FMO expires a new one may be made if necessary.
- 23.6 A Special Interim Management Order (SIMO) is an Order authorised after a successful application to a Residential Property Tribunal (RPT) where circumstances fall within a category of circumstances prescribed by the national authority and it is necessary to protect the health, safety and welfare of occupants, visitors or neighbours. A FMO can follow a SIMO to protect persons on a long term basis as described in the Order.
- 23.7 An Interim Empty Dwelling Management Order (interim EDMO) is an Order authorised after a successful application to a RPT. The dwelling must have been wholly unoccupied for at least two years and there is no reasonable prospect that the dwelling will become occupied in the near future. An interim EDMO enables the council to take steps to ensure, with the consent of the proprietor, an empty dwelling becomes occupied. An interim EDMO lasts no longer than 12 months.

- 23.8 A Final Empty Dwelling Management Order (Final EDMO) may replace an Interim EDMO if the council feels that unless a Final EDMO is in place the dwelling will become or remain empty. Where the dwelling is already unoccupied the council must have taken all appropriate steps under the interim EDMO with a view to ensuring the dwelling becomes occupied. A final EDMO lasts for 7 years; once a Final EDMO expires a new one may be made if necessary. Orders can be varied or revoked in accordance with the provisions of Part 4 of the Act.
- 23.9 The council is under a duty to issue Interim and Final Management Orders where necessary. Officers will instigate this action where necessary but as a last resort.

24 Additional Enforcement Powers

- 24.1 The following tools are also available where the Housing Act 2004 measures are not appropriate, or do not sufficiently deal with the problem.
- 24.2 Environmental Protection Act 1990 Section 80 – Notices can be served if the officer is of the opinion that there is a statutory nuisance at the premises. The premises must be deemed prejudicial to health or a nuisance.
- 24.3 Building Act 1984 Section 59/60- Used to deal with defective drainage issues in existing buildings.
- 24.4 Building Act 1984 Section 64/65- Used where sanitary conveniences are insufficient or in need of replacement and are considered prejudicial to health or a nuisance.
- 24.5 Building Act 1984 Section 76- Used where the property is so defective so as to be prejudicial to health. This notice notifies the person responsible of the local authority's intention to remedy the problem (similar to work in default)
- 24.6 Public Health Act 1936 Section 45- Used where there are defective sanitary conveniences due to their repair and/or cleansing ability. They must be in such a state as to be prejudicial to health or a nuisance
- 24.7 Public Health Act 1936 Section 83- Used where a property is in such a state as to be in a filthy or unwholesome condition or verminous.
- 24.8 Public Health Act 1961 Section 17- Where any drain, private sewer, water closet, waste pipe or soil pipe has not been maintained and can be repaired for less than £250.
- 24.9 Local Government (Miscellaneous Provisions) Act 1976 Section 33- Used where services such as the water supply are due to be, or have been, cut off to a domestic property.
- 24.10 Local Government (Miscellaneous Provisions) Act 1982 Section 29 (Notice of Intended Entry)- Used to prevent unauthorised access (for example broken windows, doors etc.) to get the owner to secure the premises.
- 24.11 Prevention of Damage by Pests Act 1949 Section 4- Used where there is evidence of or harbourage of rats or mice at a property.
- 24.12 Housing Act 1985 (As Amended)- Some provisions within the 1985 Act have not been revoked and may be appropriate to use in some circumstances. In particular the overcrowding provisions are still available and can be used where the 2004 Act is not sufficient. The other provisions relate to houses in multiple occupation (HMO) and the Housing (Management of Houses in Multiple Occupation) Regulations 1990. These have been revoked with regards to all types of HMO, except certain converted blocks of flats. These regulations can be used to deal with disrepair and management issues of this type of HMO only.

- 24.13 The Management Of Houses In Multiple Occupation (England) Regulations 2006. These regulations have been introduced to deal with all other types of HMO other than those mentioned in above. Therefore, all licensable HMOs, smaller HMOs and flats in multiple occupation are covered by these regulations. Only self-contained flats are exempt as they fall under the regulations mentioned above. The regulations cover the management and repair of the HMO. There are no notice provisions with these regulations therefore if a decision is made to take action under these regulations; the Officer must go straight to prosecution.
- 24.14 The following legislation is also used as part of the day-to-day collection of information, preparing cases for prosecution and gathering evidence.
- Local Government (Miscellaneous Provisions) Act 1976 Section 16- Used to formally request information about a premises or a person.
 - Police and Criminal Evidence Act 1984, Criminal Procedures and Investigation Act 1996, Regulation Of Investigatory Powers Act 2000, Investigatory Powers Act 2016 – used in relation to interviews under caution, prosecution and gathering evidence.
- 24.15 Where housing or other related legislation is introduced which is enforced by the Council and permits the imposition of any monetary penalty or penalty charge the Council will seek to fully implement any duty or power conferred upon it.

25 Powers of entry and power to require Information

- 25.1 Councils have the power of entry to properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004 provided that the officer has:
- Written authority from an appropriate officer stating the particular purpose for which entry is authorised.
 - Given 24 hours' notice to the owner (if known) and the occupier (if any) of the premises they intend to enter.
- 25.2 No notice is required where entry is to ascertain whether an offence has been committed under:
- sections 72 (offences in relation to licensing of HMOs),
 - 95 (offences in relation to licensing of houses) or
 - 234(3) (offences in relation to HMO management regulations).
 - If admission is refused, premises are unoccupied or prior warning of entry is likely to defeat the purpose of the entry then a warrant may be granted by a Justice of the Peace on written application. A warrant under this section includes power to enter by force, if necessary.
- 25.3 Councils also have powers under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with:
- Any purpose connected with the exercise of its functions under Parts 1-4 of the Housing Act 2004.
 - Investigating whether any offence has been committed under Parts 1-4 of the Housing Act 2004.
- 25.4 Councils also have powers under Section 237 of the Housing Act 2004 to use the information obtained above and Housing Benefit and Council Tax information obtained by the council to carry out its functions in relation to these parts of the Act.

26 What is expected of tenants

- 26.1 Before considering taking any action in respect of a tenanted property the tenant(s) will normally be required to contact their landlord about the problems first. This applies to all tenants. Legislation covering landlord and tenant issues require that tenants notify their landlords of any problems with the property. This is because landlords can only carry out their obligations under the legislation once they have been made aware of the problem. Wherever possible this communication should be done in writing as the documentary evidence will be required by the housing enforcement officers at a later date.
- 26.2 In certain situations tenants will not be required to write to their landlord first, e.g.:
- where the matter appears to present an imminent risk to the health and safety of the occupants;
 - where there is a history of harassment/threatened eviction/poor management practice;
 - where the tenant is old and frail or otherwise vulnerable, e.g. where there are pre-school children in the household;
 - where the tenant's first language is not English and this is likely to cause them difficulty;
 - where the tenant could not for some other reason be expected to contact their landlord/managing agent;
- 26.3 Tenants are responsible for keeping Officers informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.) which may affect the action the council is taking or considering taking.

27 Licensing of houses in multiple occupation

- 27.1 Under the Housing Act 2004 certain types of House in Multiple Occupation (HMO) will require a license to operate. An HMO is a building occupied by more than two households as defined in Part 2 of the Housing Act 2004.
- 27.2 Certain HMO's, as determined by legislation, must be licensed. Regulations and guidance published by the Department of Communities and Local Government will be followed in the administration of the council's HMO Licensing duties and enforcement of satisfactory conditions and standards.
- 27.3 Local Authorities have discretionary powers to licence other HMO's which fall outside the mandatory requirement and other types of residential properties in certain circumstances.
- 27.4 However Fenland District Council has not adopted any licensing scheme other than the national Mandatory scheme for HMO's of 3 or more storey.
- 27.5 The Council currently charges £300 for a 3 storey 5 year HMO licence and £100 for a renewal after 5 years.
- 27.6 There are only 13 currently in the district and the fee charge is based on historical advice that is now outdated and not based on full cost recovery.
- 27.7 The government has announced they will be extending the mandatory scheme to less than 3 storeys. The Council will be setting a new license fee to coincide with this legislative change based on full cost recovery and guidance.

- 27.8 Following licensing, HMOs will be prioritised for assessment under the HHSRS. The owner must deal with all Category 1 hazards within a suitable timescale. If they do not, then the council is expected to use their enforcement powers to improve the property. Applicants will be informed of this requirement when the licence is issued and information made available to help them identify and deal with Category One Hazards.
- 27.9 The council will consider service of a Temporary Exemption Notice (TEN) where a landlord is, or shortly will be, taking steps to make an HMO non- licensable. A TEN can only be granted for a maximum period of three months. A second three-month TEN can be served in exceptional circumstances. Where a licensable HMO is not licensed, the landlord cannot serve notice to quit until the HMO is licensed.
- 27.10 Where a landlord fails to licence an HMO, the council can consider taking a prosecution case to the Residential Property Tribunal (RPT). The RPT will replace the courts in judging cases relating to some offences and appeals under the Act.
- 27.11 On conviction for failure to licence, the RPT has the power to make a Rent Repayment Order requiring that up to 12 months' rent is repaid to the tenant or to the council where a tenant is on housing benefits.
- 27.12 The licensee has a right of appeal to the RPT against refusal to licence, licensing conditions and the maximum number of occupiers or households specified on the licence.
- 27.13 Where there is no prospect of an HMO being licensed, the act requires that the council use its interim management powers. This enables the council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. In extreme cases this can be extended to five years, with the council also having the power to grant tenancies.
- 27.14 If the council finds that there has been a change of circumstances in an HMO since it was licensed, it has the power to vary the licence. If there is a serious breach or there are repeated breaches of the license conditions or the licensee or manager are no longer fit and proper persons, the licence can be revoked.
- 27.15 The licence can also be revoked if the property is no longer a licensable HMO or if the condition of the property means it would not be licensable were an application to be made at the later time.

28 Monitoring and review

- 28.1 In accordance with the Regulators' Compliance Code, the council will keep its regulatory activities and interventions under review, with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose.

29 Contacts

- 29.1 If you have any comments or queries in relation to this policy, please contact:
- The Housing & Communities Manager at the following address: Fenland Hall, March, Cambs, PE15 8NQ or by telephone: 01354 654321 or by email at privatesectorhousing@fenland.gov.uk

Appendix B - Assessing Equality – The Equality Act 2010 – Housing Standards

INTRODUCTION

From 1st April 2011, the Equality Act 2010 introduced a new legal duty on all public authorities.

The three arms of the act focus on the need for public authorities to have ‘due regard’ to the need to:

- **Eliminate unlawful discrimination**, harassment, victimisation and any other conduct prohibited by the Act:
- **advance equality of opportunity** between people who share a protected characteristic and people who do not share it; and
- **foster good relations** between people who share a protected characteristic and people who do not share it.

The protected groups (previously known as equality strands) are as follows:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Gender
- Sexual orientation
- Marriage and civil partnerships (eliminate unlawful discrimination only)

The duty means that – as previously – we should analyse the effect of existing and new policies and practices on equality. However it does not specify how we should do this.

The equality analysis should be proportionate and relevant – not just a tick box exercise. In some cases the written record will be a quick set of bullet points or notes under each heading. Others will need a more detailed explanation. However, legal cases on the meaning of the previous general equality duty make it clear that we must carry out the analysis **before making the relevant policy decision**. This has not changed.

A meaningful equality analysis will help the Council make the best decisions or formulate a policy which best meets our customers needs.

Appendix B - Assessing Equality – The Equality Act 2010 – Housing Standards

A SIMPLE GUIDE TO ASSESSING EQUALITY

What is Equality Impact Assessment (EqIA)?

- EqIA is the act of systematically assessing the likely (or actual) effects of policies or services on people based on the protected characteristics as defined in the Equality Act 2010:
 - Age
 - Disability
 - Gender reassignment
 - Pregnancy and maternity
 - Race
 - Religion or belief
 - Gender
 - Sexual orientation
 - Marriage and civil partnerships

- This means looking at the three arms of the Equality Act, as set out in the table below, in relation to a policy or service, before a decision is made.

	Eliminating unlawful discrimination, harassment and victimisation	Advancing equality of opportunity between different groups	Fostering good relations between different groups
Disability			
Age			
Pregnancy and maternity			
Race			
Religion or belief			
Sex			
Gender reassignment			
Sexual orientation			
Marriage and civil partnerships			

- It includes looking for opportunities to promote equality, as well as removing or reducing negative or adverse impacts.

Appendix B - Assessing Equality – The Equality Act 2010 – Housing Standards

Why is it important?

- Assessing equality helps us understand the needs of our customers, makes sure our decisions meet those needs, and are also cost effective
- As a public authority we also have a **legal** duty to show “*due regard*” for equality in decision making and the way services are provided
- To be able to show “*due regard*”, we need to show that consideration of equality took place **prior** to a decision being taken; that equality issues were considered, and that this consideration was rigorous, open minded, and involved thinking about the three arms of the Equality Act as part of this process, and that potential adverse impacts were either removed or reduced.
- Documenting our equality analysis helps the Council show it has had “*due regard*” for equality if decisions are challenged. If “*due regard*” for equality can not be shown, decisions may be overturned at judicial review. This could result in lost time, money and negative publicity.
- The sooner equality is considered in a process; the more efficiently that process can be carried out.

How can equality be assessed?

1. Gather information This can be consulting with relevant groups, using a previous EqIA as a starting point, consultations carried out by other services, details of the service ‘hard to reach groups’, customer satisfaction surveys, MOASIC data, consider relevance to equality

2. Assess impact Could different groups be affected differently? Is this difference positive or negative? Consider the three arms of the Equality Act in relation to all the protected groups as per the table.
NOTE: The quality of the assessment will depend on the quality of the information gathered

3. Take action This could be to reduce negative or increase positive impact. Produce an action plan where appropriate; make actions SMART. Unlawful discrimination **MUST** be actioned immediately

4. Summarise your findings on the EqIA form. Where it is clear from initial information gathering that a policy will not have any effect on equality, this may simply be a sentence recording this; the greater the relevance to equality. the greater the level of detail required. Publish your findings

5. Monitor the on-going effects of the policy on equality. This is usually in the form of the annual review carried out in October of each year, to fit in with the service planning cycle. The Equality Act is a **continuing** duty!

Appendix B - Assessing Equality – The Equality Act 2010 – Housing Standards

Equality Analysis Record

Equality Impact Assessment

Title of service or policy	Housing Enforcement
Name of team	Housing and Community Support – Private Sector Housing
Date of assessment	May 2018

An Equality Impact Assessment is a process of systematically reviewing a new or existing policy or service to identify what impact or likely impact it will have on different groups within the community. The primary concern is to identify any discriminatory or negative consequences for a particular group or sector of the community. Equality impact Assessments (EIAs) can be carried out in relation to service delivery as well as employment policies and strategies.

1.	Identify the aims of the policy or service and how it is implemented.
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Appendix B - Assessing Equality – The Equality Act 2010 – Housing Standards

	Key questions	Answers / Notes
1.1	Briefly describe purpose of the service/policy including:	<p>The aim of the Housing Standards Team is to improve property conditions by removing significant housing related hazards.</p> <p>The Enforcement Policy states how Housing Services will enforce legislation under the Housing Act 2004 and is used in all aspects of the teams enforcement work.</p> <p>The outcome of the policy is for Housing Services to have a consistent, open and justifiable policy for enforcing its duties and powers, many of which come under the Housing Act 2004 and other relevant legislation.</p> <p>The policy also shows how we will have a reasonable approach to enforcement and use our powers in a proportionate manner.</p> <p>The Housing Standards Team has four main areas of work all designed to fulfil our statutory obligations and improve property conditions:</p> <ul style="list-style-type: none"> • Reactive work – responding to service requests and property condition complaints; • Licensing of Houses in Multiple Occupation (HMOs); • Programmed inspections of non-licensable HMOs and other high risk properties. <p>The outcome of the work carried out by the Housing Standards Team is to improve property conditions, reduce significant hazards, improve well being through housing and fulfil the council's statutory functions.</p>
1.2	Provide brief details of the scope of the policy or service being reviewed.	<p>The Housing Enforcement policy is required in order for Housing Services to adequately fulfil its statutory duties.</p> <p>It is essential that Housing Services has an enforcement policy to enable the service</p>

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		<p>to adequately fulfil its requirements under the legislation and to provide openness and transparency to the public on how we work and how we will go about our duties.</p> <p>Our enforcement policy covers what enforcement action will be taken, how we will work with people, how we assess properties and how we will be open, clear, accessible and approachable.</p> <p>The enforcement policy covers our main areas of work which can be divided into two areas, reactive and proactive as described in the table below.</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;"> <p>Reactive work</p> <p><u>Service requests</u></p> <p>↓ ↓</p> <p>Investigation Action</p> </div> <div style="text-align: center;"> <p>Proactive work</p> <div style="display: flex; justify-content: space-between; width: 100%;"> <div style="text-align: center;"> <p><u>HMO Licensing</u></p> <p>↓</p> <p>Investigating potentially licensable properties</p> </div> <div style="text-align: center;"> <p>↓</p> <p>Processing licence; applying conditions fit & proper person check; Inspection</p> </div> <div style="text-align: center;"> <p><u>Programmed Inspections</u></p> <p>↓ ↓</p> <p>Investigation Action Formal Informal</p> </div> </div> </div> </div>	
<p>1.3</p>	<p>Do the aims of this policy link to or conflict with any other policies of the Council?</p>	<p>The policy links in with the council’s Business Plan, Statutory Housing work, Community Safety and The Council’s Health & Wellbeing Strategy</p>	
<p>3. Assessment</p>	<p>Based upon any data you have analysed, or the results of consultation or research, use the spaces below to list how the service or policy:</p>		

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of impact	<ul style="list-style-type: none"> ● Meets any particular needs of each of the eleven equalities groups or helps promote equality in some way. ● Could have a negative or adverse impact for each of the eleven equalities groups 		
3		Examples of what the service has done to promote equality	Examples of potential negative or adverse impact and what steps have been or could be taken to address this
3.1	<p>Gender – identify the impact/potential impact of the policy on women, men and transgender people</p>	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards gender.</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of gender.</p>	<p>There are not considered to be any adverse impact regarding gender.</p> <p>When officers carry out overcrowding visits there is a need to identify people's gender.</p> <p>.</p>
3.2	<p>Disability - identify the impact/potential impact of the policy on disabled people (ensure consideration of a range of impairments including both physical and mental impairments)</p>	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards disability</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a person disabilities.</p>	<p>When communicating on Enforcement issues there is the potential that a person has not understood what is expected of them or the consequences of not complying with what has been required, as a result of their disability.</p> <p>It is important to make sure that people have understood what is required of them and the consequences for not taking action and that assistance can be provided where appropriate.</p>
3.3	<p>Age – identify the impact/potential impact of the</p>	<p>Action taken to remove risk to health, safety and welfare.</p>	<p>A lot of housing services information is available via the internet and although</p>

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	<p>policy on different age groups</p>	<p>The policy has no impact with regards to age</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons age.</p> <p>We always offer home visits and make hard copies of information available on request.</p> <p>However, within the legislation vulnerability is considered based on the age of the most vulnerable group. This is a statutory requirement and is not influences by our polices or procedures.</p>	<p>most age groups have access to the internet and email some of the older generation may not have the confidence or ability to access the internet.</p> <p>Where possible we always provide hard copies of documents on request and give verbal advice in person or over the phone.</p>	
<p>3.4</p>	<p>Race – identify the impact/potential impact on different black and minority ethnic groups</p>	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to race</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons race.</p> <p>We offer translation services in a variety of languages.</p> <p>All officers are aware and can access a phone service to provide verbal</p>	<p>Information gathered during routine inspections indicates that migrant workers are potentially vulnerable to poor housing conditions and this policy supports redress of those issues.</p>	

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		translation. We also provide a translation booklet which offers translations in the 5 key languages identified in the area and we enclose this with all letters/schedules of work where appropriate.	
3.5	Sexual orientation - identify the impact/potential impact of the policy on lesbians, gay, bisexual & heterosexual people	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to sexual orientation</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons sexual orientation.</p>	<p>LGBT community may experience harassment and 'hate crime' and be reluctant to come forward with complaints about their property conditions.</p> <p>When officer's carryout overcrowding assessments there is a need to find out the occupants of the property and the occupancy of individual rooms.</p> <p>Lack of knowledge or understanding or assumptions about sexual orientation may cause embarrassment leading to people being reluctant to access the service.</p> <p>Training and development of the team to be aware of sensitivities in this area can help ensure all residents who have concerns with housing standards can come forward to the council.</p>
3.6	Religion/belief – identify the impact/potential impact of the policy on people of different religious/faith groups and also upon those with no religion.	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to religion and belief</p> <p>Our services are based on guidance,</p>	No specific issues identified

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		<p>legislation and written policy and are provided to all regardless of a persons religion or belief.</p> <p>We show respect and flexibility for religious beliefs and festivals and try and be aware of cultural differences.</p>	
3.7	<p>Socio-economically disadvantaged – identify the impact on people who are disadvantaged due to factors like family background, educational attainment, neighbourhood, employment status can influence life chances</p>	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to socio-economic</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons socio-economically circumstances</p> <p>We assist people where possible with completing any forms they need and explain things avoiding technical jargon.</p> <p>We are also in the process of having our letter templates plain English checked and we have built up a variety of contacts in various organisations to enable us to signpost users to other service providers.</p>	<p>These residents may be less of aware of the services we offer and how to approach us for information and guidance.</p> <p>Mandatory HMO licensing includes a cost to landlords. Feedback from Landlords engagement meetings indicated that fees may be passed on to tenants. This could have an affect on rental increases to people on low income.</p> <p>In liaising with other Councils who have licensing schemes , we have not had evidence that rental process increase due to this.</p> <p>Under the legislation LAs are permitted to cover their costs through a licensing fee. Fenland are unable to subsidise this mandatory service and must carry out detailed cost analysis to ensure minimum charges are applied in order to cover costs.</p>
3.8	Gender reassignment	Action taken to remove risk to health, safety and welfare.	No issues identified

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		<p>The policy has no impact with regards to gender re-assignment</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons gender reassignment</p>	
3.9	Pregnancy & Maternity	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to pregnancy and maternity</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons pregnancy and maternity circumstances</p>	No issues identified
3.10	Marriage & Civil partnerships	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to marriage and civil partnership</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons marriage and civil partnership circumstances</p>	No issues identified
3.11	Human Rights	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to human rights</p>	No issues identified , although the work of Operation pheasant has supported many residents into the national referral mechanism who may have had their rights compromised though modern day

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		Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons human rights	slavery and exploitation.	
No major change needed <input type="checkbox"/> Y Adjust the policy <input type="checkbox"/> N Adverse impact but continue <input type="checkbox"/> N/A Stop and remove / reconsider policy <input type="checkbox"/> N				