

# EXECUTIVE

LEADER: Cllr Jeremy Christophers

PORTFOLIO HOLDER: Cllr Humphrey Clemens

**DATE:** 2 October 2017

**REPORT OF:** ALISON DOLLEY - PRIVATE SECTOR HOUSING TEAM LEADER

**SUBJECT:** HOUSING ENFORCEMENT POLICY: CIVIL PENALTIES AND RENT REPAYMENT ORDERS

**PART I**

## RECOMMENDATIONS

The Executive is recommended to approve the changes to the Housing enforcement policy to include the implementation of civil penalties and rent repayment orders. To approve minor changes to existing enforcement policy

### 1. PURPOSE

The purpose of this report is to advise members of changes to existing housing enforcement legislation and to approve changes to the enforcement policy .

### 2. BACKGROUND

The Housing and Planning Act 2016 introduced a range of measures to help improve housing conditions in the private rented sector and to crack down on rogue landlords, which came into operation during 2017.

This included:

1. The ability of the Local Authority to issue Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences (came into force April 2017);
2. Extension of rent repayment orders to cover illegal eviction, breach of a banning order and certain other specified offences (came into force April 2017);
3. Database of rogue landlords and property agents convicted of certain offences (scheduled to come into force on 1 October 2017 but likely to be delayed);
4. Banning orders for the most serious and prolific offenders (scheduled to come into force on 1 October 2017 but likely to be delayed).

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### **Civil Penalties**

These provisions give the local housing authority the power to issue a financial penalty for certain Housing Act 2004 offences as an alternative to prosecution.

The civil penalties option can be used for the following Housing Act 2004 offences:

- Failure to comply with an improvement notice
- Offences in relation to HMO licensing
- Offences relating to the contravention of an overcrowding notice
- Failure to comply with the HMO management regulations

The council is required to have a policy in place that details when to prosecute and when to consider a civil penalty and must provide guidance on how the fine levels will be set.

The guidance document issued by the Department of Communities and Local Government (DCLG) provides details on the considerations that must be taken into account as part of the fine setting process. It places particular emphasis upon the severity of the offence and the landlord's previous record of offending.

### **Rent Repayment Orders**

The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed, specifically offences in relation to licensing of Houses in Multiple Occupation. Rent repayment orders have now been extended through the Housing and Planning Act 2016 to cover a much wider range of offences.

A rent repayment order is defined as an order requiring a 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. (This also includes housing benefit)

Rent repayment orders are being extended to cover the following situations:

- Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004;
- Failure to comply with a Prohibition Order under section 32 of the Housing Act 2004;
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016;
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
- Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.

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- Breach of a banning order (not yet in force)

An application for a rent repayment order to the First Tier Tribunal can be made when the landlord has committed an offence, whether or not they have been convicted of one of the offences.

### **Other changes.**

#### **Choice of Enforcement Action**

The current enforcement policy states that “it is expected that the landlord will commence works within 28 days of being notified by the Council of the issues identified” (Page 6). However in some circumstances this may disadvantage a tenant who may be at risk of retaliatory eviction. In these cases it may be more appropriate to reduce this time period depending on the works required. It is therefore recommended that the policy is changed as follows:

“It is expected that hazards identified are reduced within an appropriate time. If not satisfied with the landlords intention or proposed timescale or the work is not carried out within this timescale, the Council will move to a formal approach and it will determine which of the specific enforcement options it will use, taking into account the facts and circumstances in each individual case and having regard to the protection of the tenant under the Retaliatory Eviction and Deregulation Act 2015.”

#### **Mandatory Licensing of houses in multiple occupation**

Mandatory licensing legislation does not require planning permission to have been attained where a property has been converted into an HMO consisting of more than 6 bedsits/flats and the local authority are obliged to issue a licence (subject to all other criteria being met). This has led to the issuing of an HMO licence to properties that currently do not have existing planning permission and may be subject to planning enforcement. It is therefore recommended that an additional discretionary condition is agreed as follows:

“the Licence holder shall ensure that all requirements of planning legislation has been adhered to”

### **3. MAIN IMPLICATIONS**

A copy of the proposed policy is attached as Appendix A and details when a civil penalty and/or rent repayment order will be used and how the civil penalty will be calculated.

This policy will ensure consistency in approach and that there are protections and safeguarding practises in place for landlords. It will also enable a robust mechanism within which to defend any challenges that are open to the local authority from landlords, through the means of a tribunal.

The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, the local housing authority must be satisfied that if the case were to be prosecuted in the

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magistrates' court, there would be a realistic prospect of conviction. Similarly where a landlord has not been convicted of an offence the first tier tribunal must be satisfied beyond reasonable doubt that the landlord has committed an offence before determining an application for a RRO.

Unlike fines issued through criminal proceedings, income received from civil penalties and from rent repayment orders is retained by the Council and can only be used towards the statutory functions in relation to its enforcement of standards in the private rented sector. The Council may also apply for costs and expenses incurred in relation to the enforcement action.

Any income generated from the issuing of civil penalties and rent repayment orders, at present, is unpredictable due to the nature of enforcement activity. In 2016/17, 33 enforcement notices were issued with one successful criminal prosecution undertaken. Other notices were complied with within the timescales stipulated.

The benefit of this additional tool will help to improve standards within the private rented sector, providing a more efficient and effective mechanism to tackle rogue landlords, as well as reduce the burden on courts and provide a ring-fenced income for Teignbridge Council to further improve the private rented sector.

#### **4. GROUPS CONSULTED**

In the development of the guidance, extensive consultation was carried out by central government with the National Landlord's Association. Significant peer consultation across Devon and Somerset has taken place to ensure a consistent approach of the legislation. Internally legal and finance have been consulted.

#### **5. TIME-SCALE**

Following the required call in period, the immediate adoption of the civil penalties and rent repayment policy and the proposed levy of fines.

#### **6. JUSTIFICATION**

To ensure the quality of housing in Teignbridge is improved and in particular to ensure that tenants are provided with safe and secure accommodation.

#### **7. DATE OF IMPLEMENTATION (CONFIRMATION OF DECISION SUBJECT TO CALL-IN)**

10.00 a.m. on Tuesday, 10<sup>th</sup> October 2017

**Alison Dolley**  
**Private Sector Housing Team Leader**

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<b>Wards affected</b>	All
<b>Contact for any more information</b>	Alison Dolley - 01626 215418
<b>Background Papers (For Part I reports only)</b>	Guidance - <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606653/Civil_Penalties_guidance.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606653/Civil_Penalties_guidance.pdf</a> <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606654/Rent_Repayment_Order_guidance.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606654/Rent_Repayment_Order_guidance.pdf</a>
<b>Key Decision</b>	
<b>In Forward Plan</b>	Y
<b>In O&amp;S Work Programme</b>	
<b>Community Impact Assessment attached:</b>	Y
<b>Appendices attached:</b>	A: Housing Enforcement - Civil Penalty and Rent Repayment Order Policy